

Deep Seabed Minerals: Law and Policy



Deep Sea Minerals Project
SPC/SOPAC Division

Overview

1. International law requirements
2. Coastal States Responsibilities
3. Legislative Requirements
4. Regional Legislative and Regulatory Framework
5. Next step

International Law Principles

- UN Convention on the Law of the Sea,
- Convention on Biological Diversity,
- International Maritime Conventions,
- Noumea Convention

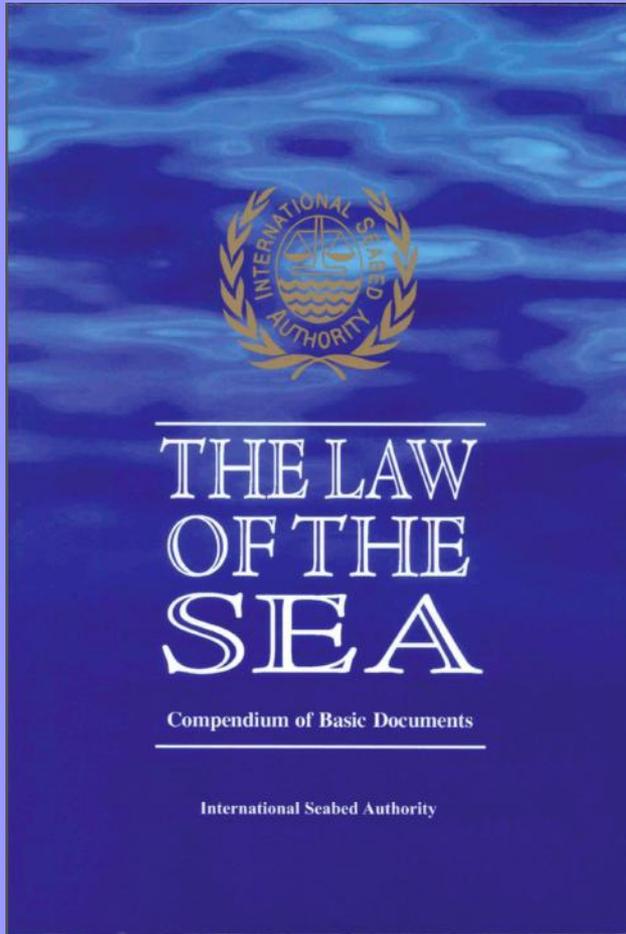
HANDBOOK OF THE
**CONVENTION ON
BIOLOGICAL DIVERSITY**
INCLUDING ITS CARTAGENA PROTOCOL ON BIOSAFETY

3rd edition

(Updated to include the outcomes of the 7th meeting of the Conference of the Parties to the Convention and the 1st meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety)



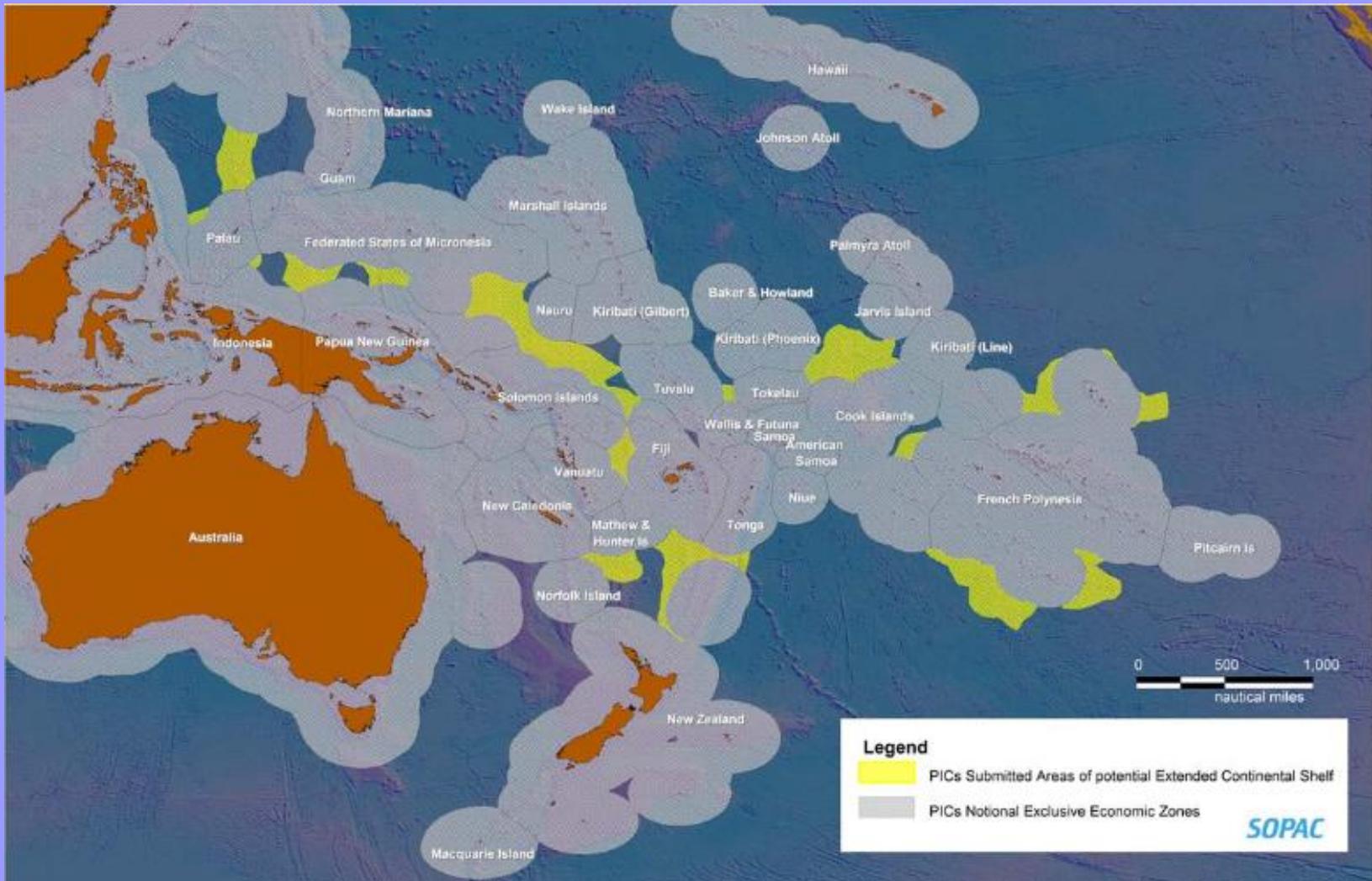
UN CONVENTION ON THE LAW OF THE SEA



- Sets Exclusive Economic Zone: 200 nautical miles from baseline
- Gives sovereign rights over minerals in EEZ and extended Continental Shelf
- Establishes the minerals of 'the Area' (outside of national jurisdiction) as the 'common heritage of mankind'
- Gives preferential access to seabed minerals in the Area to developing States
- Requires protection of marine environment
- Requires legislation and administrative measures

Maritime Boundaries

Coastal states have sovereign rights to non-living resources in their **EEZ** and on their **Continental Shelf**.



What are the Coastal State's responsibilities?

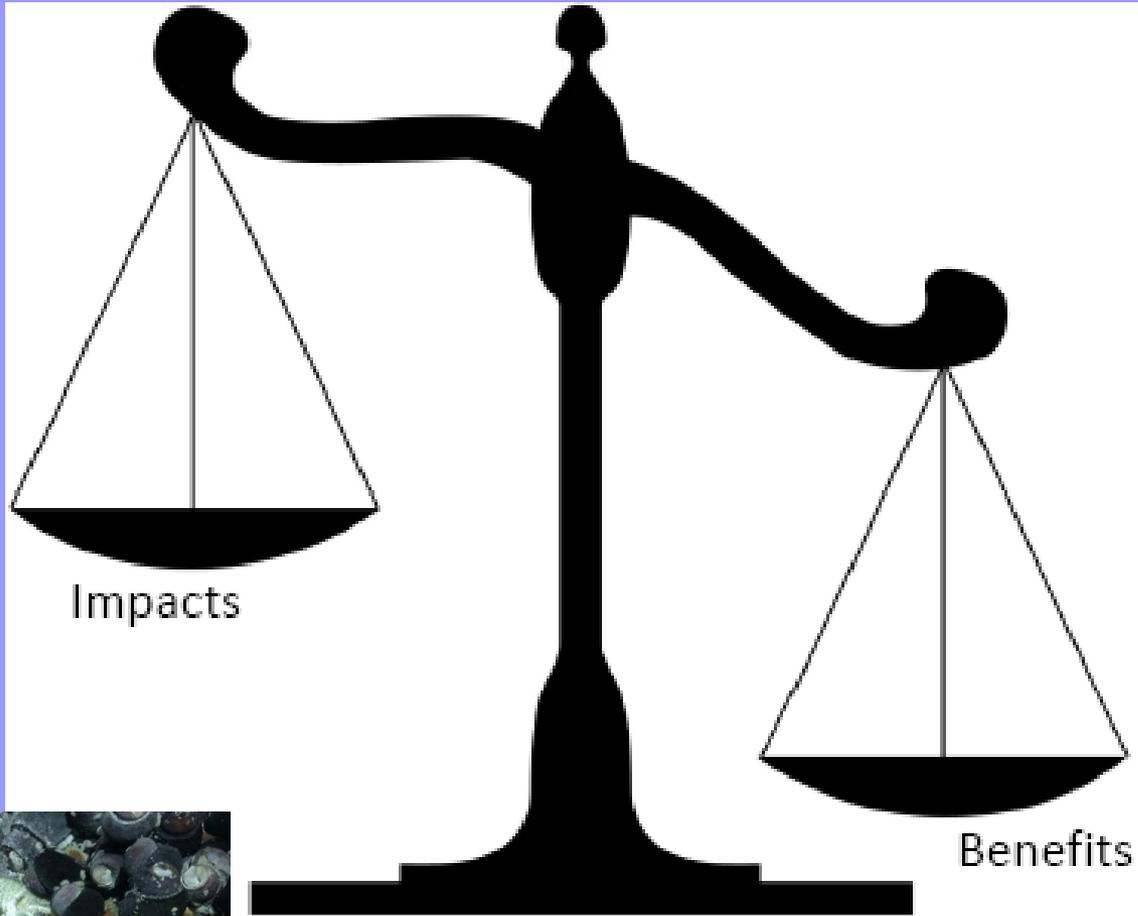
UNCLOS, Noumea Convention, Convention on Biological Diversity, International Maritime Conventions

- Duty to:
 - protect the marine environment
 - preserve rare or fragile ecosystems and habitats
 - prevent pollution from seabed activities
 - conserve biodiversity
 - not to interfere with rights of other States (submarine pipelines, maritime transport, marine scientific research, trans-boundary impacts)
 - take measures for ensuring safety at sea

Stakeholder and Policy Concerns?

- Impacts on living ocean resources:
 - fisheries (commercial and artisanal)
 - biological communities associated with DSM
- Impact on other sea users:
 - Tourism, Maritime transport
- Potential impacts on local communities.
- In-country capacity and expertise to monitor and assess DSM activities and impacts,
- Effective enforcement of legislation and licensing terms
- Securing benefits from DSM:
 - Financial returns, saving scheme,
 - capacity to fully participate in this new industry

DSM Policy – a balancing Act



Why is Legislation required?

- Required by international law:
 - UNCLOS requires DSM activities to be properly under the State's control, and in adherence with international standards
- Provides regulatory certainty:
 - Promotes a country's reputation internationally
 - Encourages investment
- Provides comfort to the people:
 - safeguard as to environmental and social impact
 - Legislation reduces potential for liability for damages
 - Provisions to promote consultation and transparency

Assistance under the SPC-EU DSM Project

- Use the Regional Framework (i.e. RLRF) to develop national DSM policy, legislation and regulations
- Dedicated legal team to provide legal advice and assistance on the development of national DSM policy and legislation
- Each Pacific ACP State has different context / needs:
 - develop new DSM policy and legislation
 - review policy and law



The image shows the cover of an information brochure for the SPC-EU EDF10 Deep Sea Minerals (DSM) Project. At the top left is the European Union flag, and at the top right is the logo of the Secretariat of the Pacific Community (SPC) Applied Geoscience and Technology Division (SOPAC). The title 'SPC-EU EDF10 Deep Sea Minerals (DSM) Project' is prominently displayed. Below the title are three small images: a close-up of a mineral sample, a satellite map of the Pacific region, and a deep-sea hydrothermal vent. The text 'Information Brochure 1 Deep Sea Minerals (DSM) Project Overview' is at the bottom of the brochure cover.

Rationale

Existing legislative instruments that define and govern the marine spaces of the Pacific Island Countries (PICs) equate to sovereign rights and ownership of the non-living resources of the seabed and subsoils within the region's Exclusive Economic Zones (EEZs) and potential extended continental shelf areas but do not necessarily provide the required legal and policy frameworks to govern these resources. Regional legislation that deals with offshore resources are usually silent on the management of seabed minerals and more often designed to administer the ocean's living resources such as fisheries. By comparison, most of the active mineral and mining legislation in the region is applicable only to onshore exploration and exploitation with little or no mention of the offshore resources.

Apart from the lack of policies, legislation and regulations to govern mineral exploration in the marine environments of PICs, specific technical capability and human resources that will enable countries to effectively participate in the development and management of these new ocean resources and benefit streams are lacking. Thus the ability of PICs to effectively regulate and monitor offshore exploration and mining, manage revenue streams and monitor and mitigate environmental impacts is weak. There is also a general lack of understanding in many PICs of the nature and economic potential of these mineral deposits as well as factors that are going to affect the viability of any possible mining operations.



The image shows an aerial view of an active onshore mineral mining operation. It features a large open-pit mine, several processing buildings, and a network of roads and infrastructure. The surrounding area is lush green, indicating a tropical environment.

Figure 1. Active onshore mineral mining in the region are administered through relevant policy and legislation that do not govern offshore minerals exploration and exploitation.

Why a DSM Regional Framework?

- Regional Legislative and Regulatory Framework for Deep Sea Minerals Exploration and Exploitation ('RLRF'):
 - (1) promote a regionally integrated approach;
 - (2) need for harmonised national DSM legal instruments
 - (3) guide national level policy and legislation to meet international standards, and reduce State liability;
 - (4) minimise risk of environmental harm, and interference with other sea users;
 - (5) provide sufficient incentives and security of tenure to promote investment; and
 - (6) recommend an approach that is cost-effective to Pacific ACP States and to users, and proportionate to the risks involved.

What does the RLRF cover?

- Legal Rights to Deep Sea Minerals
- Deep Sea Minerals Activities and Policy
- International and Regional Obligations
- Maritime Zones and Continental Shelf
- Relevant Domestic Law
- Fiscal Regime
- Revenue Management
- Institutional Implementation
- Allocation of Exploration and Exploitation Sites
- Administrative Arrangement
- Decision-making
- Public Participation
- Judicial Oversight of Decision Making
- Environmental Management
- Occupational Health and Safety
- Due Regard to Other sea Users
- Marine Scientific Research
- Due Regard to Other States
- Capacity-building
- Regional Cooperation
- Transitional Provisions

What to do?

□ Review or develop national frameworks:

- **Policy** for engagement with Deep Seabed Exploration and Mining
- **Legislation** to regulate Deep Seabed Exploration and Mining
 - - Review of existing legislation
 - - Fit with marine spatial planning
 - - Fiscal regime (and revenue management)
 - - Public consultation
 - - Transparency
- **Regulations** to give detail to legislation:
 - - Due diligence, decision-making, EIA review
 - - Licensing, monitoring and enforcing

SPC-EU DSM Project Support

- The Project's Legal Advisor can assist
- Hannah Lily on hannah@sopac.org