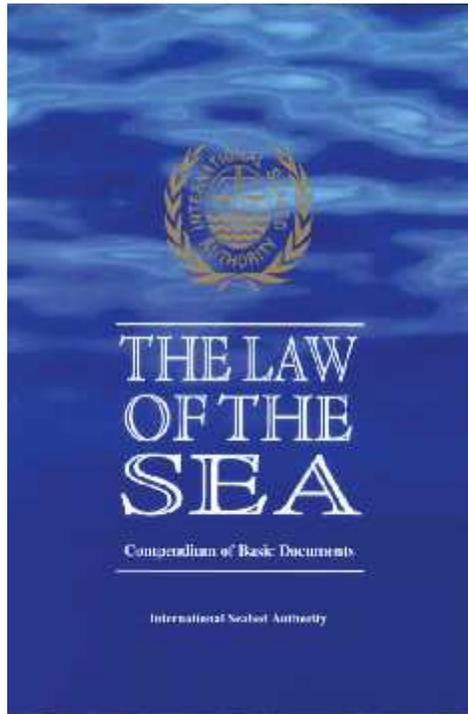


# DSM: international and national law



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**Rarotonga, 13 May 2014**



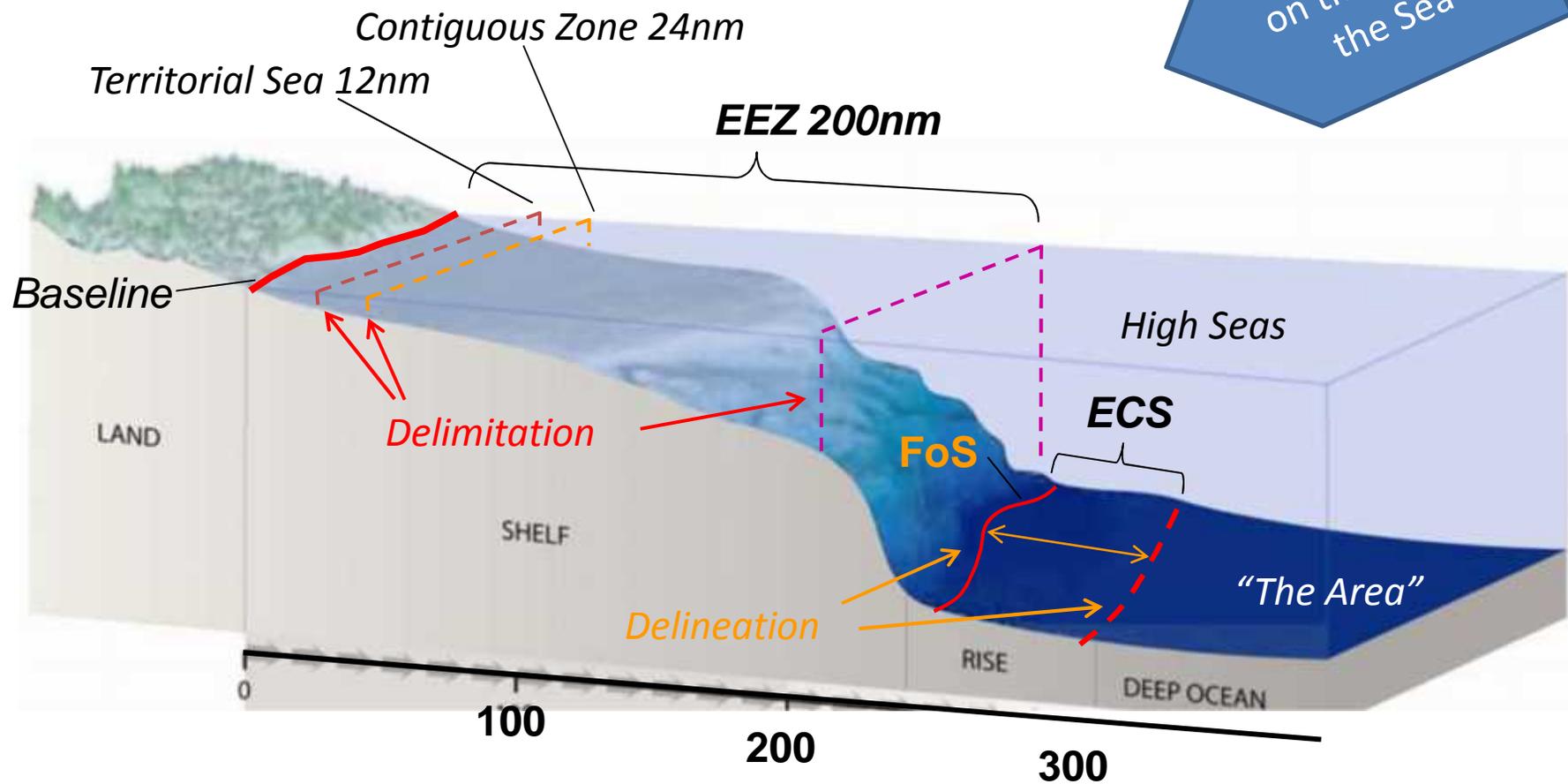
- International treaty on the management of ocean space and resources.
- One of the most complex, interesting and successful international negotiations
- Almost grounded by DSM controversy!
- Adopted in 1982 and entered into force in December 1994.
- 166 States Parties

• UNCLOS Preamble: objectives include establishing an order for the seas which promotes *'the equitable and efficient utilisation of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.'*

# Where are the DSM activities?

National or international jurisdiction?

UN Convention on the Law of the Sea

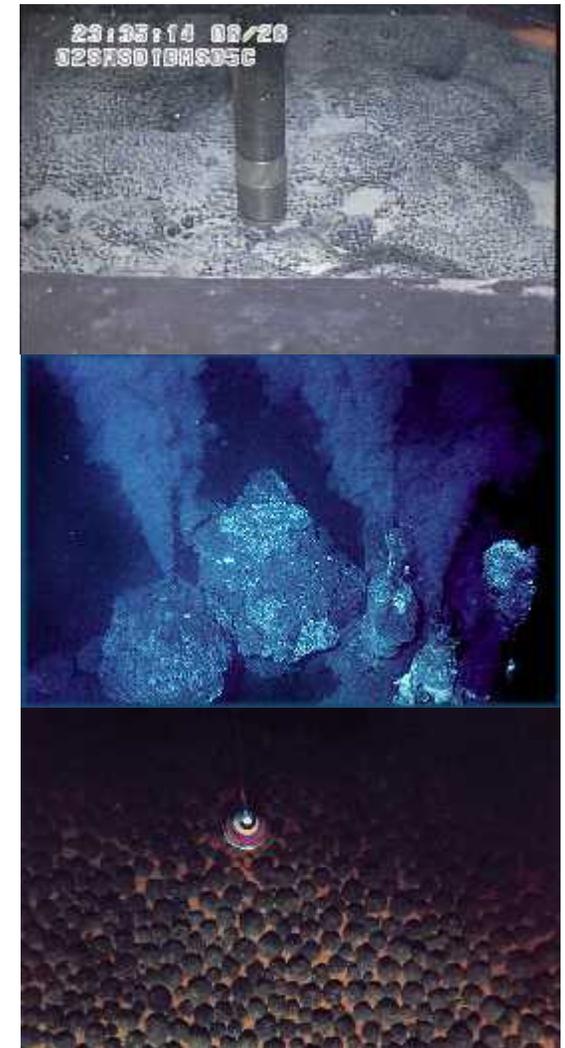


[Importance to finalise maritime boundaries before issuing DSM licences]



## National Jurisdiction: State Rights

- Coastal States have sovereign rights to explore and exploit their own natural resources (UNCLOS Articles 56 and 77); and to authorise structures for economic purposes in the EEZ, or drilling on the CS (Articles 60, 80 and 81)
  - ‘Sovereign right’: exclusive, unrestricted\*, no requirement to share access or benefit.
  - Therefore State can access the minerals, or permit someone else to on whatever terms the State wants\* – and if the State does not do so, the minerals cannot be accessed (Article 77).
- \*Subject to other UNCLOS-protected sea users’ rights (navigation, submarine cabling MSR), and State environmental obligations



# DSM Environment Management: international law sources

- **UN Convention on the Law of the Sea - obligations as well as rights:**
  - Obligation to protect and preserve the marine environment and rare or fragile ecosystems, to monitor risks/ impact to the marine environment, and to minimise likelihood of pollution and accidents
- **Noumea Convention (Protection of Natural Resources and the Environment of the South Pacific Region)**
  - Prevent reduce and control pollution, and ensure sound environmental management
- **Convention on Biological Diversity**
  - Conserving biodiversity, and protecting ecosystems *in situ* via marine protected areas
- **International Maritime Organisation Conventions – because DSM uses ships:**
  - Preventing pollution, controlling hazardous materials, preventing collisions at-sea
- **Rio Declaration on the Environment and Development**
  - Precautionary approach, and participation of citizens in decision-making process





**The State is responsible for the conduct of DSM activities within its EEZ, or under its sponsorship within the Area**

*International Tribunal on the Law of the Sea, Seabed Disputes Chamber, Advisory Opinion, February 2011*

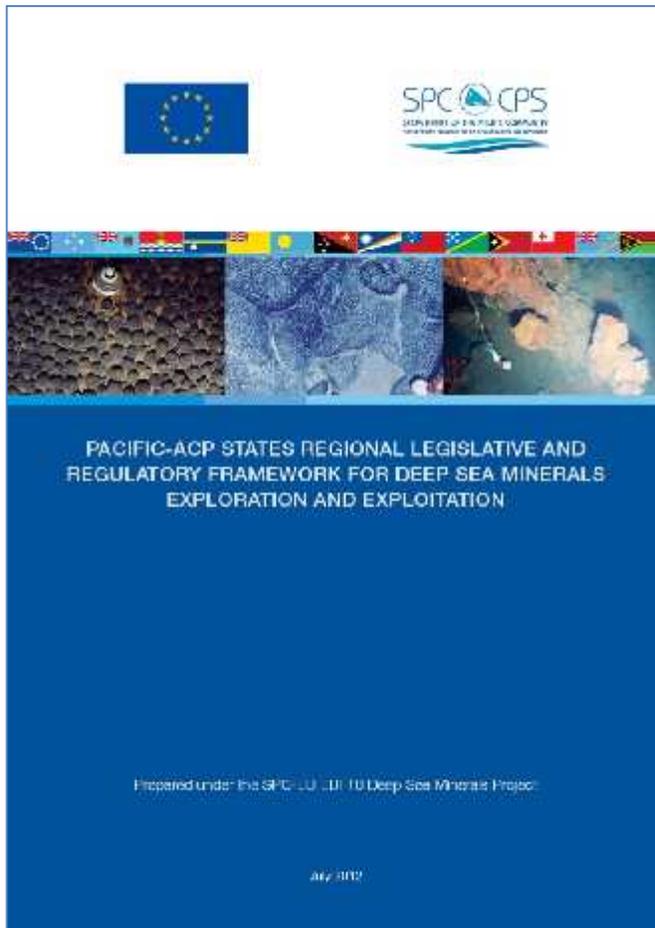
**State must have “effective control”**

**How?**

- ✓ National policy, laws and regulations.
- ✓ Administrative measures in place (e.g. a regulating body, licensing regime, EIA process).
- ✓ Implementation, including effective monitoring and enforcement.

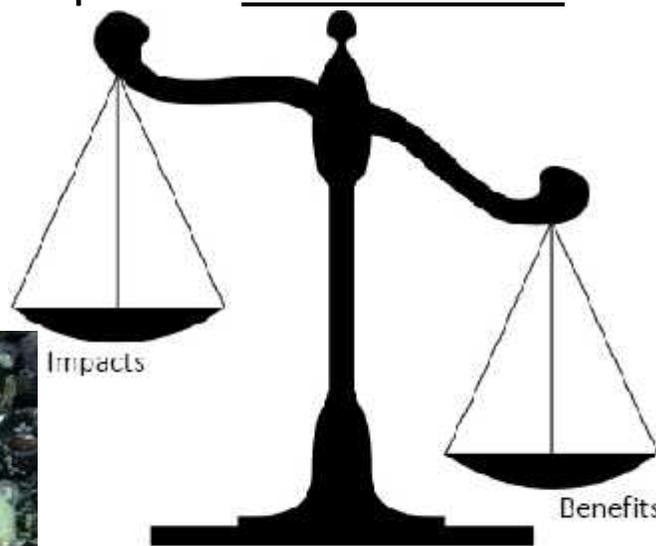
**What?**

- ✓ Environmental management
- ✓ Safety at sea
- ✓ Other sea users
- ✓ National interests
  - Data collection
  - Capacity-building
  - **Income generation (fiscal regime)**
  - **Revenue management**



Country	DSM Industry Engagement	Law and Policy
<b>Cook Islands</b>	EEZ open to tender soon Application to the ISA	Licensing and fiscal laws enacted. Authority established. Policy published. Licensing and environmental Regulations underway now.
<b>Fiji</b>	EEZ exploration (and interest in the Area)	Decree for ISA enacted 2013. Review of Minerals Act, and new law (inc. DSM) due 2014
<b>FSM</b>	Interest in EEZ	Draft Bill and Regulations with Congress now
<b>Kiribati</b>	ISA exploration contract	Policy under consultation May 2014
<b>Nauru</b>	ISA exploration contract	Drafting ISA law – to be finalised August 2014?
<b>Niue</b>	Some historic enquiries	Draft Bill and Regs with Crown Law.
<b>PNG</b>	Mining lease granted (Solwara 1), and EEZ exploration	Onland minerals law under review. Offshore Minerals policy due for publication.
<b>RMI</b>	[Preparing regime first]	Draft Bill and Regulations with AG's Office
<b>Samoa</b>	Interest in the Area?	[Attending ISA meeting this year for further enquiry]
<b>Solomon Islands</b>	EEZ exploration, and mining applications recently received	Review of Mining Act, and drafting of new Policy and Bill (inc. DSM) scheduled for 2014
<b>Tonga</b>	EEZ exploration and ISA contract exploration	Draft Bill and Regs with AG's Office. To Parliament July 2014?
<b>Tuvalu</b>	Interest in the Area	First-draft Bill and Regulations with AG's Office. To be finalised July 2014?
<b>Vanuatu</b>	EEZ exploration	Policy consultation underway now, in all Provinces. Relevant law to be drafted subsequently

- **There is no point a State engaging with DSM activities unless it will bring net benefit to the country and its people**
- Main benefit is likely to be financial (taxes and royalties)
- May be some other benefits (employment, local business)
- This workshop will consider:
  - How to assess likely benefits in advance – and take steps to maximise.
  - How to assess likely ‘costs’ in advance – and take steps to minimise.
  - How to transform short-term financial gain, into long-term sustainable development for all citizens.





## On-land:

- Local landowners or users may have rights over minerals.
- May also be issues of relocation or social disruption on-land.
- Rights often protected in the Constitution, customary law, or recognised by Government / mining company arrangements.
  - Free, prior and informed consent (or 'FPIC') for those whose property is adversely affected
  - Share in the profits, community development fund, local infrastructure development, compensation for social impacts.



DSM Project 2013 3<sup>rd</sup> Regional Training Workshop on Social Impacts and Public Participation, Vanuatu



## Offshore:

- Unlikely that there would be customary / local ownership or rights over seafloor of EEZ.
- No social disruption envisaged.
- One of the advantages of offshore vs. on-shore.....
- ....but public perception may not mirror letter of the law.
- Call for “FPIC” for DSM
  - *But whose property or rights are adversely affected for DSM?*
- Importance of a ‘social licence’ to proceed.
- These issues need to be considered and managed by Government, in consultation.

## Also:

- How will provincial or state Government share in (i) management, and (ii) proceeds, of DSM activities?
- Some countries are choosing to focus their DSM laws beyond the territorial seas (area beyond 12 nautical miles from shore).

1. **Government controls the conditions of DSM extraction within their waters or under their sponsorship. [So first, you need to know: what are *your* waters (boundaries)!]**
2. **Those conditions should be carefully-set, based upon best available information, and in consultation with relevant stakeholders, including concerned citizens.**
3. **What happens to DSM revenue coming in to the country, will be the crucial factor in making DSM a positive opportunity for Pacific Islands States.**

**[4. So make use of your friendly local DSM Project Advisors!]**

