



# Deep Sea Minerals Workshop

## Financial Aspects

13-16 May 2014

Rarotonga

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Deep Ocean Stewardship Initiative (DOSI)  
Institute for Advanced Sustainability Studies (IASS)

# Transparency (behaviour)

From Wikipedia

[...]

Transparency is operating in such a way that it is easy for others to see what actions are performed. It has been defined simply as "the perceived quality of intentionally shared information from a sender".<sup>[1]</sup>

[1] Schnackenberg, A., Tomlinson, E., 2014. Organizational Transparency: A New Perspective on Managing Trust in Organization-Stakeholder Relationships. *Journal of Management*

You are currently - [Home](#) / [Who we are](#)

SEARCH

## OUR VISION

A WORLD IN WHICH  
GOVERNMENT, POLITICS,  
BUSINESS, CIVIL  
SOCIETY AND THE DAILY  
LIVES OF PEOPLE ARE  
FREE OF CORRUPTION



*Filed Under:* [Investor Relations](#)



## Definition of 'Transparency'

The extent to which investors have ready access to any required financial information about a company such as price levels, market depth and audited financial reports. Classically defined as when "much is known by many", transparency is one of the silent prerequisites of any free and efficient market.

**“Transparent rules and contracts promote stability and credibility”**

--said during the DSM Finance Workshop, 13-16 May 2014

**Question 1:** Do you agree that transparency will be important in the good governance of DSM?

**Question 2:** Are existing transp. rules, codes of conduct, etc., sufficient for DSM in the Pacific?



*"Let's never forget that the public's desire for transparency  
has to be balanced by our need for concealment."*

# Transparency Report

Communicate fearlessly to build trust

## Information requests



Government requests for  
account information

## Removal requests



Government requests for  
content removal


## Copyright notices



DMCA takedown and  
counter notices

# Top tech titans get thumbs-up in EFF transparency report

The advocacy group says Apple, Facebook, Google, and others have done a lot to protect users' privacy.

by Dara Kerr  @darakerr / May 15, 2014 5:18 PM PDT

## Versus...



### Marine Policy

Volume 49, November 2014, Pages 1–11

### EU–Mauritania fisheries partnership in need of more transparency

Regulator /  
Sponsoring  
State

Mining Entity

Company's  
'home' State  
(legal / listed  
/ tax)

- Legislation
- Agreements
- EITI

- Codes of Conduct
- Agreements
- IMMS code of  
conduct

- Legislation
- Agreements
- Equator  
Principles




# Areas Beyond National Jurisdiction

## Stanford Environmental Law Journal (SELJ)

[Home](#) [Current Issue](#) [Masthead](#) [Past Issues](#) [Subscriptions](#) [Submissions](#) ▾ [For Current and Prospective Students](#)

### Tracking 24 Years of Discussions About Transparency in International Marine Governance: Where Do We Stand?

 [Full Text](#)



March 2014 | 33 Stan.Envtl.L.J. 167 | Article

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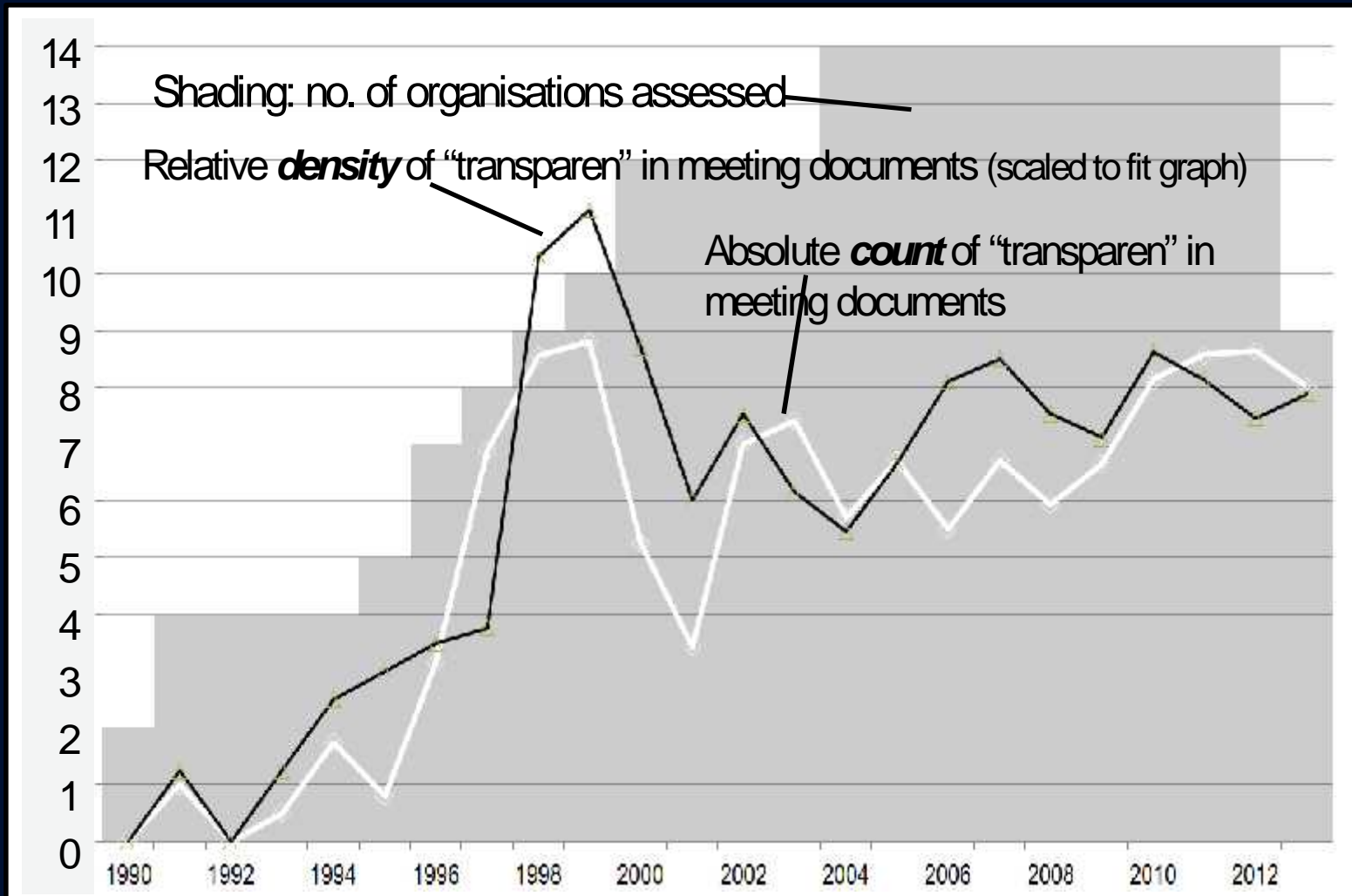
Katherine Seto, Department of Environmental Science, Policy, and Management, University of California, Berkeley

Cassandra Brooks, Stanford University, Emmett Interdisciplinary Program in Environment and Resources

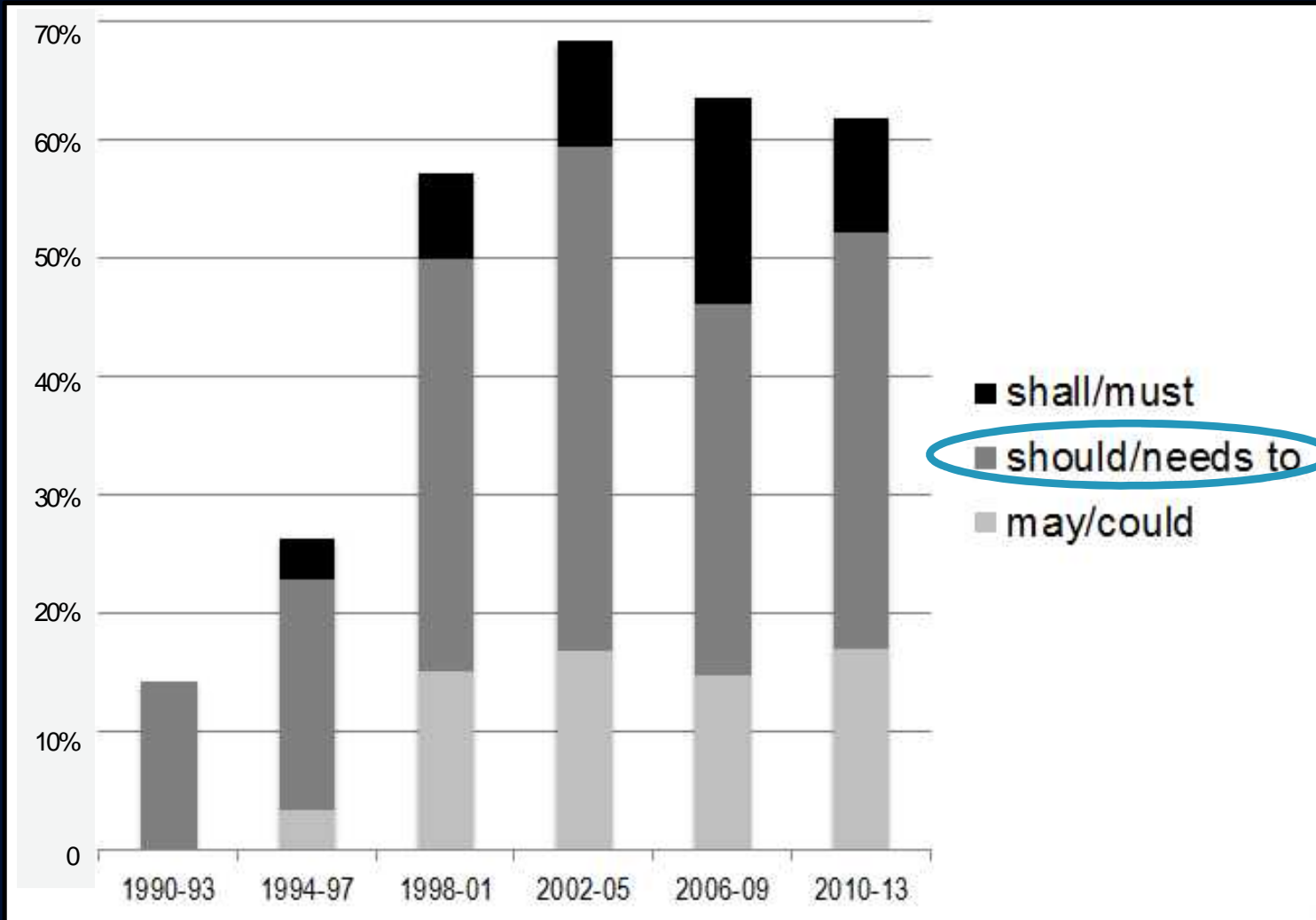
Duncan Currie, Globelaw, Christchurch, New Zealand

Eric Gilman, Hawaii Pacific University, College of Natural Sciences

# How often Transparency is discussed in International Marine Governance Bodies



# Language used in the context of Transparency



## Is “should” good enough?

### A look at FAO Voluntary Codes / Plans (fisheries)

- *Code of Conduct for Responsible Fisheries*  
(1995)
- *International Plans of Action:*
  - for reducing incidental catch of seabirds in longline fisheries (2000)
  - for the conservation and management of sharks (2000)
  - for the management of fishing capacity (2000)
  - to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU; 2001)

# Transparency & Compliance?

- All have reporting requirements but... reporting is weak to non-existent
  - E.g. only 8 IUU *National Plans of Action* have been published on the FAO web site
- 17 years after the FAO Code of Conduct :
  - Only 56% FAO Members reported to have national fisheries legislation in conformity with the Code\*;
  - (40% reported partial conformity\*)

\*FAO 2012: Progress in the Implementation of the Code of Conduct for Responsible Fisheries and Related Instruments, Including International Plans of Action and Strategies, and Other Matters

# Areas within National Jurisdiction



## THE EITI STANDARD



 **Timor-Leste**[Overview](#)**[Reports](#)**[Implementation](#)[Innovations](#)[Contacts](#)

Period Covered	Publication Date	Sectors Covered	Government Revenues (US\$ millions)	Company Payments (US\$ millions)	Number of Companies Reporting	Reconciler
2008	October 2009	Oil, Gas	2 509 500 000.00	2 509 500 000.00	16	Deloitte
2009	February 2011	Oil, Gas	1 763 900 000.00	1 763 900 000.00	17	Deloitte
2010	November 2012	Oil, Gas	2 149 721 568.00	2 149 721 568.00	20	Moore Stephens
2011	December 2012	Oil, Gas	3 453 285 817.00	3 453 285 817.00	20	Moore Stephens



**Financial Audit: An Independent Report Assessing and Reconciling Financial Flows within Nigeria's Oil and Gas Industry - 2009 to 2011.**

Host /  
Sponsoring  
State

Mining Entity

'Home': Legal  
/ Listed / Tax

- Legislation
- Agreements
- EITI

- Codes of Conduct
- Agreements
- IMMS code of  
conduct

- Legislation
- Agreements
- Equator  
Principles

# DSM-related Voluntary Codes of Conduct

- **Industry:** International Marine Minerals Society *Code for Environmental Management of Marine Mining* (2001/2011)
- **Scientists:** InterRidge *Statement of Commitment to Responsible Research Practices at Deep-Sea Hydrothermal Vents* (2006)
- **Regional Seas Agreement:** OSPAR *Code of Conduct for Responsible Marine Research in the Deep Seas and High Seas* (2008)

None of the above have centralised reporting.  
I could not find any reports in my searches & email requests.

## Bias of self-assessment?

- A vast majority (91%) of Scientists see the InterRidge Code as necessary
- A vast majority (92%) say they follow it completely
- But, less than 50% believed that “most organisations or researchers followed this guideline”
- So, what is really going on?
- Without independent assessment, how will we ever know?

Godet et al, 2011. Scientists as Stakeholders in Conservation of Hydrothermal Vents.  
*Conservation Biology*

# Pros & Cons of Voluntary Codes

## Advantages

- Relatively fast to establish
- Fairly easy to revise based on new experiences
- Preferred by stakeholders, can empower them, and increase buy-in as users
- Can serve as a precursor to binding regulations

## Disadvantages

- Reporting is often poor
- Compliance is very hard to determine, monitor and enforce
- Lack of legal accountability =>no funding =>low priority

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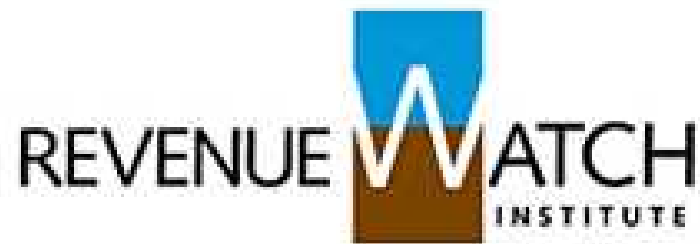
**EQUATOR  
PRINCIPLES**



environmental & social risk management for project finance

“The Equator Principles (EPs) is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making.”





ISSUES

COUNTRIES

GRANTS

PUBLICATIONS

TRAINING

EXPER

Projects

[Home](#) > [Issues](#) > [Dodd-Frank](#)

## Dodd-Frank

In July 2010, the U.S. Congress passed Section 1504 of the Dodd-Frank Act, a measure requiring companies registered with the Securities and Exchange Commission (SEC) to publicly report how much they pay governments for access to oil, gas and minerals.

A solid dark blue rectangular block at the bottom of the page, likely a placeholder for an image or a design element.

**Corrected to Conform to Federal Register Version**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 240 and 249**

**[Release No. 34-67717; File No. S7-42-10]**

**RIN 3235-AK85**

**Disclosure of Payments by Resource Extraction Issuers**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting new rules and an amendment to a new form pursuant to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to disclosure of payments by resource extraction issuers. Section 1504 added Section 13(q) to the Securities Exchange Act of 1934, which requires the Commission to issue rules requiring resource extraction issuers to include in an annual report information relating to any payment

## **FACT SHEET – EU rules for disclosure of payments to governments by oil, gas and mining (extractive industry) and logging companies**

On 26 June 2013 the European Parliament and Council of the European Union (EU Member States) signed into law new payment disclosure requirements for the extractive and forestry industries. These new rules require oil, gas, mining and logging companies to annually disclose the payments they make to governments on a country-by-country and project-by-project basis.

### **DIRECTIVE 2013/50/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of 22 October 2013

amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC

# THE GLOBE AND MAIL



## Ottawa to press ahead with mining disclosure laws if provinces don't

**KIM MACKRAEL**

Toronto — The Globe and Mail

Published Monday, Mar. 03 2014, 10:35 AM EST

Last updated Tuesday, Mar. 04 2014, 9:49 AM EST

Ottawa says it will bring in federal legislation to compel extractive companies to report project-related payments made to governments if the provinces and territories don't act quickly to set up their own reporting systems.

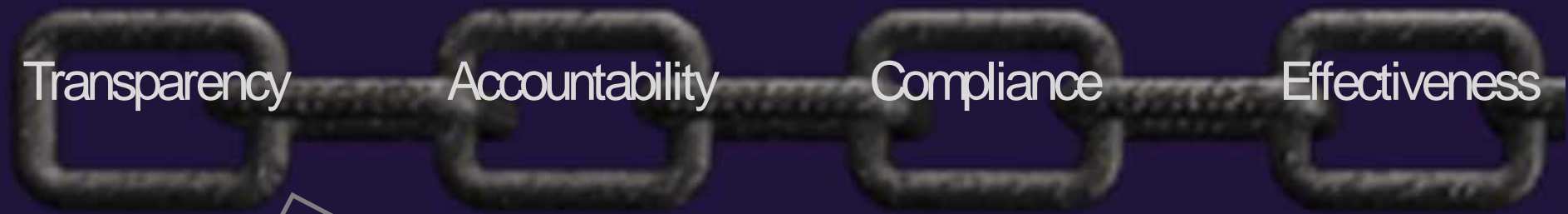
Bring it all together into a

## *Deep Sea Mining Transparency Initiative?*

1. DSM-specific, applicable in both national waters and The Area beyond national jurisdiction;
2. Differentiated obligations between States and operators;
3. Overarching *Principles* with specific *indicators*;
4. Keep It Streamlined & Simple (KISS);
5. Look at the “three spheres” of sustainable development (economics, society, environment);
6. Combine “hard” (obligatory) & “soft” (voluntary) law;
7. Regular reporting and arms-length oversight;
8. Regular opportunity for revision and improvement.

Take-Home Message:

# Transparency is just the First Link in a Chain...



**Question 3:** might Pacific States & stakeholders be interested in developing a *DSM Transparency Initiative*?

1. Information

- e.g. survey data

2. Process

- e.g. decision to award lease

3. Outcomes

- e.g. monitoring & compliance

# Thank you

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Thanks to our Cook Islands hosts & SPC-SOPAC, especially Akuila Tawake and Hannah Lily.

Supplementary info





# Natural Resource Fund Governance: The Essentials

Transparency requirements and checks on corruption and patronage are often inadequate. We find that only about half of the funds in our sample of 18 release internal or external audits of their performance or publish the details of specific investments. Funds in Botswana, Equatorial Guinea, Iran, Kuwait, Mexico, Russia and Qatar remain relatively opaque despite their governments signing on to the Santiago Principles, a set of voluntary good governance standards. The

## Other Voluntary Codes / Plans (fisheries)

- **National:** *Canadian Code of Conduct for Responsible Fishing Operations* (1998)
- **Industry:** South East Trawl Fishing Industry Association Ltd (Australia) *Industry Code of Practice for Responsible Fishing* (2000)
- **Industry:** *Australian Seafood Industry Code of Conduct for a Responsible Seafood Industry* (no date)

## Points in common (fisheries)

- **Next steps often not completed** (e.g. activities of the Canadian “Code Board”)
- **No or little (public) reporting** (e.g. Australian Seafood Industry web site now defunct)
- **Reviews / revisions not carried out** (e.g. South East Trawl Fishing Industry Association did not revise Code in 2008, as was specified)