



# **TONGA'S EXPERIENCE IN DSM NEGOTIATION**

Pacific ACP States Regional Workshop on DSM Law and Contract Negotiations  
SPC-EU EDF10 Deep Sea Minerals (DSM) Project  
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# BACKGROUND

- Discoveries of seabed minerals (1970's) in Tonga Waters
- Many perceptions of seabed minerals
- Benefits and the disadvantages
- What do we really want from DSM?
- Why the continued disputes after the agreement is signed?
- High expectations, too much, too soon.
- Know how to get what we want is "KEY"



# NEGOTIATION EXPERIENCE

- Three Exploration Companies holding License to Prospect DSM
- No recollection of negotiations taking place, no meeting minutes, etc.
- First negotiation meeting is recognized as an enquiry
- Second negotiation meeting is recognized as an application submission
- Underlying heavy focus on benefits (“in the long run” and little on the current)
- How much negotiations took place?
- Who benefits the most?



# NEGOTIATION RESULTS

Companies Benefits	State's Benefit	State's Disadvantages
>Cheap one off, Exploration Application Fee: TOP\$1,000.00;	>Maintain or attract Exploration Companies;	>insignificant revenue; (should be \$10,000)
>Cheap Prospecting License Fee: TOP\$500.00 per tenement per 2 years (\$250/yr);	>Maintain or attract Exploration Companies;	>insignificant revenue; (should be minimum \$15,000 per tenement per 2 years)
>Large Tenements: 4,700 – 5,000 km <sup>2</sup> per tenement (1 tenement is 5 times bigger than all the Tonga Land area combined)	>Maintain or attract Exploration Companies;	>no space for additional exploration companies; >less revenue;
>Cheap annual rental: TOP\$6,500.00 per 34 tenements per year (from all 3 companies). (Total granted area: 165,254km <sup>2</sup> )	>Maintain or attract Exploration Companies;	>insignificant revenue; (should be minimum \$254,500 per year from all 3 companies).
>Extension of License to Prospect with minimal performance appraisal.	>Maintain or attract Exploration Companies;	>no space for additional exploration companies; >less revenue;



# EVALUATION

- Unrecognized (enquiry) negotiations:
  - Negotiation is generally new;
  - No prior negotiation experience;
  - Unfamiliar with relevant offshore exploration Acts; Minerals Act, Petroleum Act; Regulations, etc.
  - Lack of practice of proceedings in compliance with legislations;
  - Gaps within the existing Acts and policies;
  - Too many responsibilities placed on one person;
  - Lack of staff to handle individual cases;
- Application submission negotiation:
  - Focus on evaluations of benefits;
  - Pressured by limited time and other backlog of responsibilities at work;
  - Limited technical capacity and experience;



# LESSONS LEARNT

- We need to recognize when a negotiation is taking place during any interactions with DSM Companies;
- We need to be familiar with all DSM related legislations, including Petroleum Mining Acts; Environment Impact Assessment Act; Minerals Act; Income Tax Act; etc. and thoroughly understand how they are related and linked;
- We need to be familiar with national strategic development goals and objectives and conceptualize how DSM can make an impact at the national level, both good and bad.
- We need to be familiar with administrative procedures and legal proceedings in accordance with relevant legislations and policies; and ensure compliance of all players;
- We need also to be abreast of the technology and best practice in the field of offshore exploration to be on the same wavelength with the exploration companies;
- We need a National Strategy towards Deep Sea Mineral: to state the State's Vision, Mission, Objectives and Actions to guide negotiations tactics.



# WAY FORWARD

- Establish the National DSM Committee (To act as the Advisory Body to the DSM Authority)
- Develop the National Strategy for DSM Exploration and Development
- Get acquainted with relevant legislations, policies, strategies and all aspects of DSM
- Develop a Negotiation Strategy to maximize benefits from DSM;
- Enact the Seabed Minerals Bill 2013

