

SPC – EU Deep Sea Minerals Project

Pacific ACP States Regional Training Workshop on Social Impacts of Deep Sea Mineral ('DSM') Activities and Stakeholder Participation

(1) Legal Aspects of DSM

(2) What is 'policy' and why do we need it?

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OUTLINE

WHAT IS THE LEGAL FRAMEWORK FOR DSM?

WHAT IS POLICY, AND WHY DO WE NEED IT?

WHAT MIGHT NATIONAL DSM POLICY INCLUDE?

- You could spend a whole week talking about DSM law
- In fact some of us already have!



- This Workshop has a different focus: **social impacts, public participation**, and will focus on learning from other industries
- So DSM will get less detailed coverage.



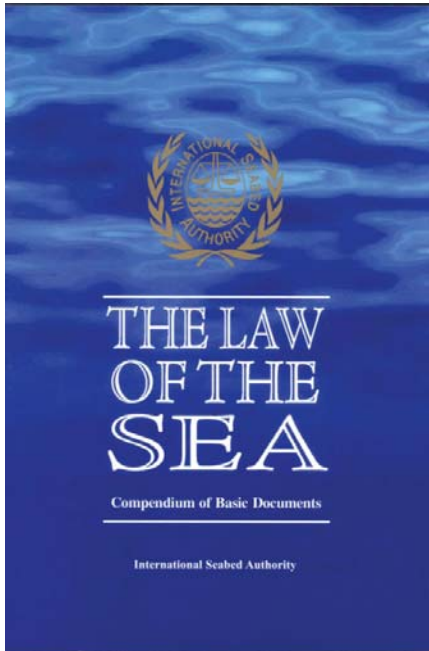
- Ms. Annie Kwan Sing
- DSM Project Legal Assistant
- Started May 2013
- Lawyer from Kiribati (and Fiji)
- Alumna of the DSM project legal internship programme



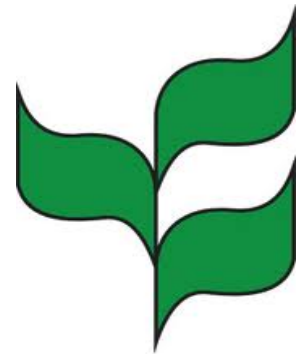
[Please ask for details of the placement programmes we offer for Pacific Island Law Students and Lawyers]



DSM Legal Framework: Sources of Law: International



- UN Convention on the Law of the Sea
- International Maritime Organisation Conventions
- The Convention on Biological Diversity
- The International Seabed Authority Mining Code
- Rio Declaration
- Human rights treaties and declarations e.g. UN Declaration on the Rights of Indigenous People



CBD

The Noumea Convention

- Convention for the Protection of Natural Resources and the Environment of the South Pacific Region.
- Parties are the Cook Islands, Fiji, FSM, Nauru, PNG, RMI, Samoa and Solomon Islands
- Focuses on pollution prevention and sound environmental practices within Parties' marine zones.
- Refers specifically to pollution resulting directly or indirectly from exploration and exploitation of the sea-bed and its subsoil.
- SPREP acts as Secretariat of the Noumea Convention



SPREP
Secretariat of the Pacific Regional
Environment Programme

DSM Legal Framework

- Two different jurisdictions
 - National (EEZ and Continental Shelf)
 - The Area (everything beyond national jurisdiction)

Territorial Sea: Up to 12 nm

Contiguous Zone: From 12nm up to 24nm

Exclusive Economic Zone ('EEZ'): Up to 200nm

The High Seas: the water column beyond national jurisdiction

Continental Shelf: 'co-extensive' with the EEZ

Extended Continental Shelf: up to 350nm

The Area: the seabed beyond national jurisdiction

National Jurisdiction: Rights

- Countries have exclusive sovereign rights over DSM found in the seabed within their national jurisdiction.
- The State can decide whether / when / how to permit third parties to access the seabed for commercial purposes, and how much to charge.
- Important to have finalised maritime boundaries to know exactly where the national jurisdiction is.

International Jurisdiction (the Area)

- Any signatory to UNCLOS can apply to the International Seabed Authority ('ISA') for access to DSM in the Area.
- ISA is an autonomous inter-governmental organisation, with headquarters in Jamaica.
- Developing countries have preferential rights of access (through a system of banked or 'reserved' areas)
- Any contractor in the Area must
 - Adhere to the ISA's Mining Code, and
 - pay fees and royalties to the ISA [????]
 - The ISA must share benefits as 'the common heritage of mankind' [????]

All States have duties to:

- ✓ protect and preserve the marine environment and rare or fragile ecosystems and habitats
- ✓ prevent, reduce, control pollution from seabed activities
- ✓ prevent trans-boundary harm
- ✓ conserve biodiversity
- ✓ employ best environmental practice
- ✓ Take measures for ensuring safety at sea
- ✓ Not interfere with rights and freedoms of other sea users (eg installation of submarine pipelines, marine scientific research, navigation)

Legal requirement for public participation?

- ✓ Apply the precautionary approach

- ✓ Prior
EIA
(or ESIA)

- New
DSM
Project
Info
Brochure
No. 14

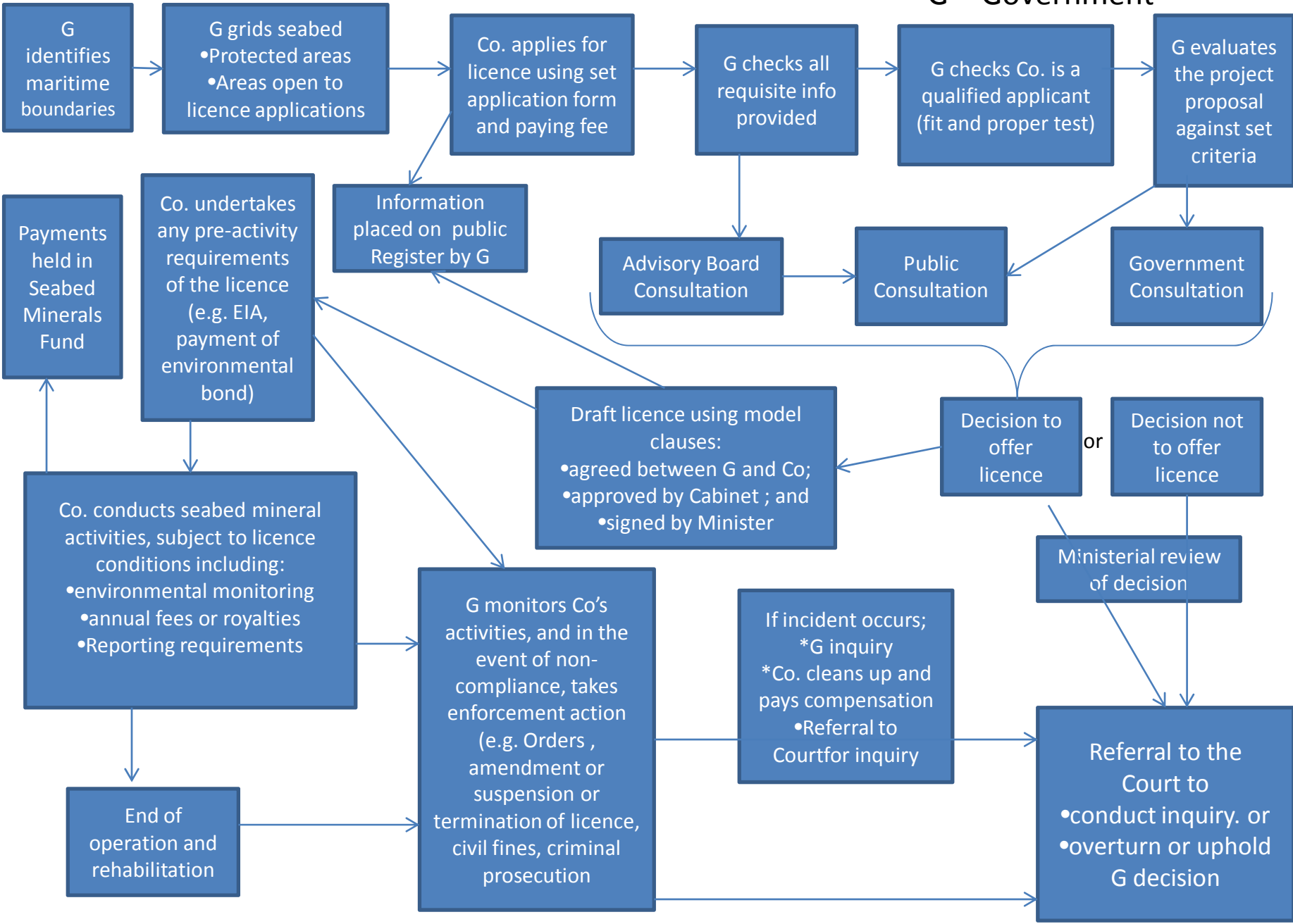


DSM legislation

- States must have laws in place to regulate seabed mining
- This should specify:
 - Different bodies: objectives, powers, duties, functions.
 - How do different Governmental agencies interact?
 - Licensing:
 - Application processes
 - Decision-making (and review of decisions)
 - Public participation and consultation
- Monitoring and enforcement
- Environmental management
- Sanctions and penalties for non-compliance
- Fiscal regime: fees, royalties, taxes
- Model: application forms, licence terms, report format?

National Regulatory Regime for Seabed Mineral Activities

Co. = Mining Company
G = Government



- Constitution
- Maritime zones
- Minerals licensing regime
- Environmental
- Taxation and royalties
- Investment
- Shipping
- Marine resources
- Occupational health and safety and labour laws



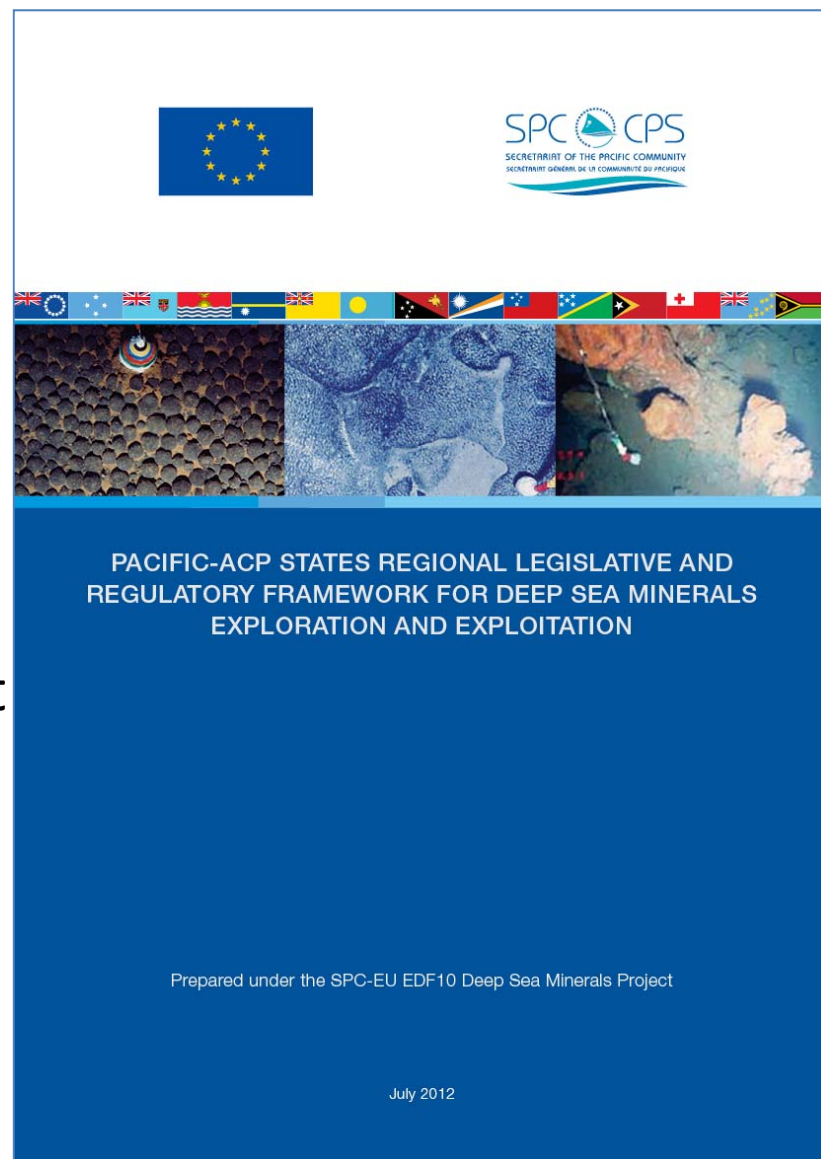
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- Legislation can set parameters and standards, and minimise the areas which are left to individual negotiation.



- Very little seabed-specific legislation world-wide
 - **Cook Islands:** Seabed Minerals Act
 - Draft laws **Tonga, Fiji, Nauru**
 - Next to prepare draft laws / policy: **Tuvalu, Niue, FSM**
 - Review of existing laws: **Vanuatu, Solomon Islands, Fiji, PNG**

- ‘Madang Guidelines’ Principles for the Development of National Offshore Mineral Policies
- Pacific Regional Legislative and Regulatory Framework 2012 (RLRF)
- ISA Guidance to Contractors
- International Marine Minerals Society Code for Environmental Management
- Model Mine Development Agreement (Int’l Bar Association)
- Extractive Industries Transparency Initiative
- Commonwealth and World Bank work on mineral taxation regimes



WHAT IS POLICY

Oxford Dictionary:

- (1) A course or principle of action adopted or proposed by an organization or individual.
- (2) Principles by which a government is guided



UK Foreign & Commonwealth Office:

“Policies are deliberately chosen patterns of activity or courses of action designed to keep moving in the chosen direction”

Government Policy:

Set of ideas, proposals and strategies, aimed to produce the best and final outcome for the public (present and future), and which will direct Government action and decisions.

Will typically become a rule / regulation, enforceable by law.

➤ Policy describes a vision Government seeks to achieve.

- Policy is prepared by the responsible Ministry
- Addresses social, moral, cultural and economic values
- Identifies new laws needed to achieve the policy goals
- May be used to interpret law
- Can introduce new ideas, and test the water, before these become incorporated in law.



- Law sets out the mechanics to make the policy happen
 - Laws are prepared by legislative drafters (under instruction from the responsible Ministry), and require Parliamentary approval
 - Laws introduce institutions, binding standards and procedures
 - Law is designed to regulate behaviour in order to arrive at the Policy's 'vision'; and breaking the law has consequences.
- Over time, and with continual review, policies become more clearly defined and embedded in the legal system

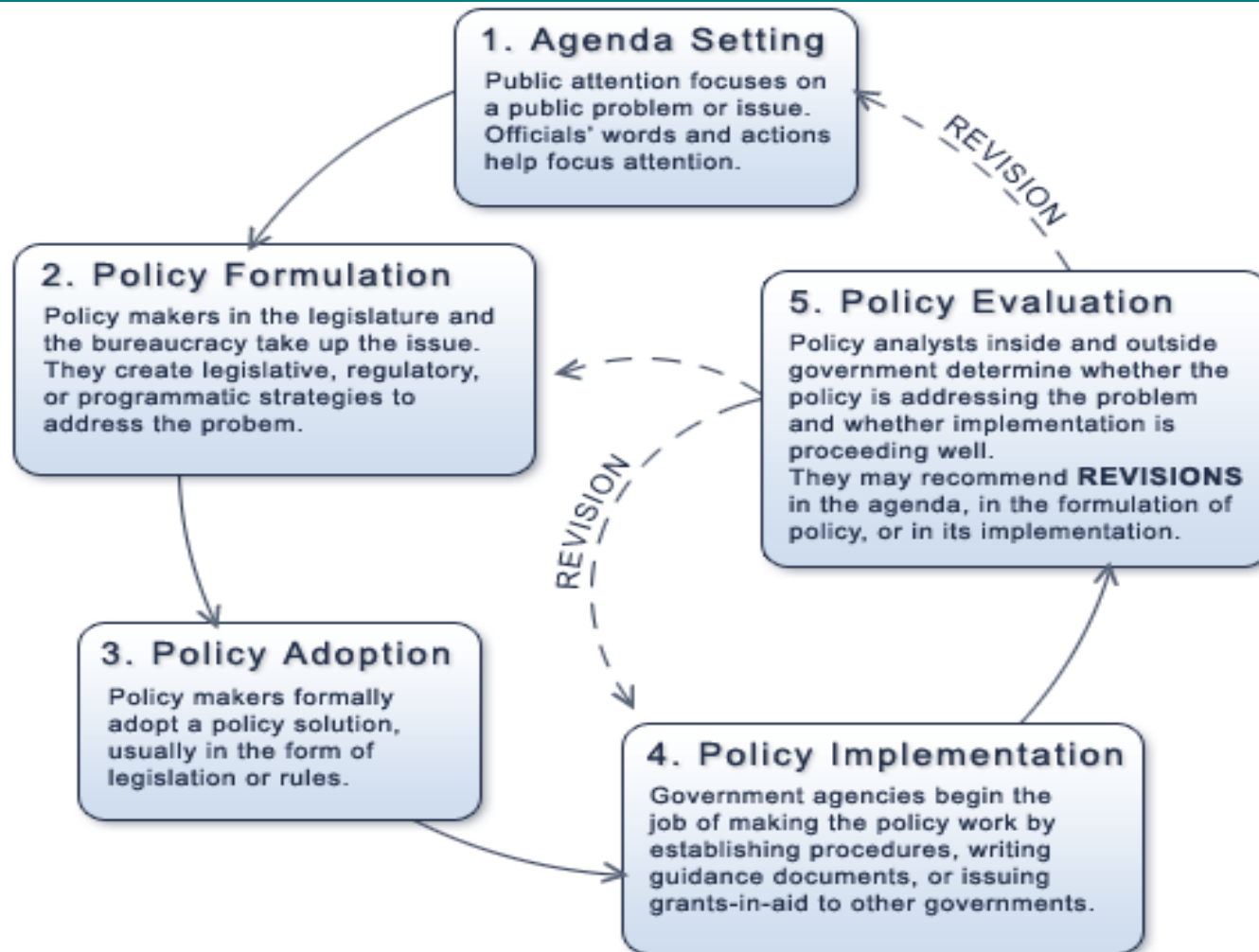


IMPORTANCE OF POLICY

- Pervasive impact in our lives
- Dictates what we may be obliged to do
- Sets standards of what Government wants
- Provides incentives and disincentives to encourage certain behaviour or actions over others
- Gives clarity to all parties for what to expect

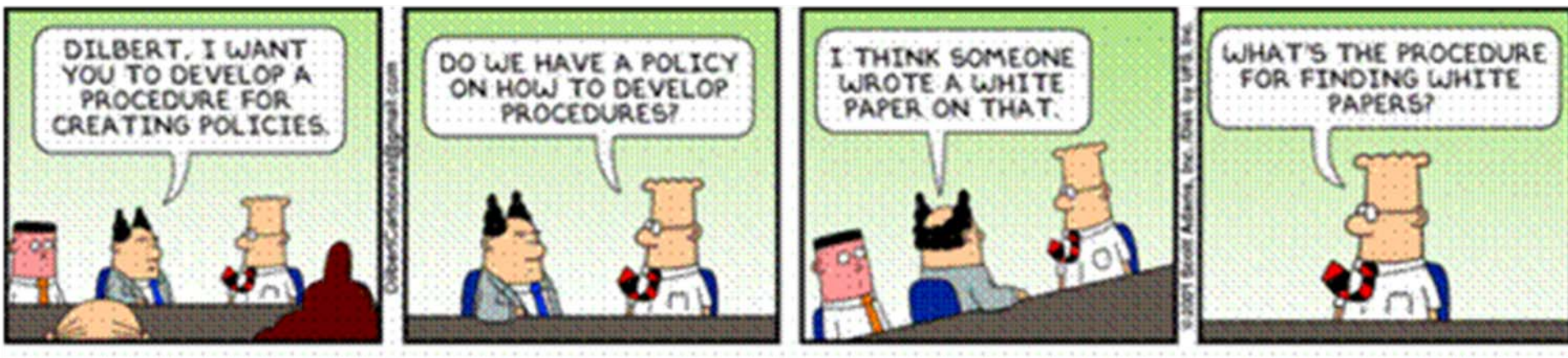


WHEN AND HOW TO MAKE POLICY: 5 STAGES



WHEN AND HOW TO MAKE A POLICY?

- *Before* decisions are taken and laws are passed
- Involves consultation
 - With the public
 - With responsible and other public officials
- May start with discussion papers
- May require Parliamentary approval (and take months / years)



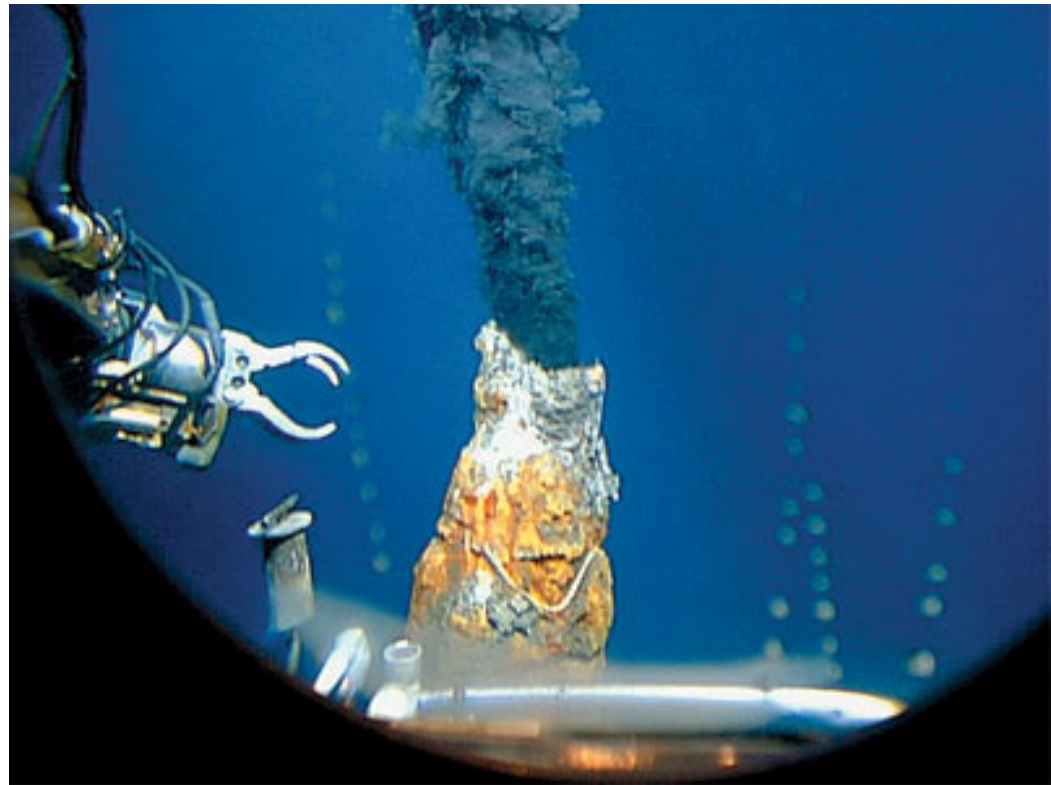
GOOD POLICY:

- (1) Addresses a need area
- (2) Is clear, and fair
- (3) Is backed by solid analysis
- (4) Has public support
- (5) Is understood by those responsible to implement it
- (6) Can be implemented
- (7) Is monitored and reviewed



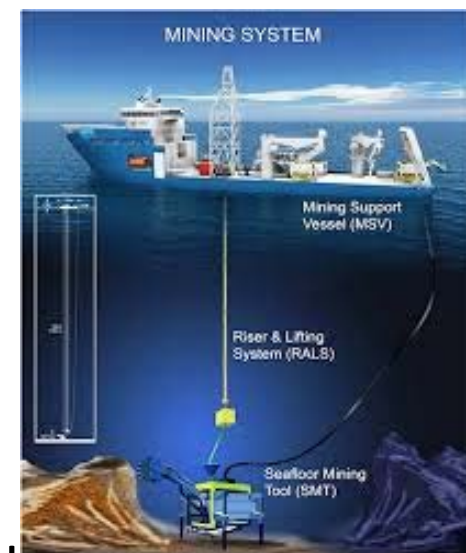
WHY DO WE NEED IT FOR DSM?

- Needed *if* a policy decision has first been taken to engage with DSM
- To explain Government's approach and decisions whether and how to engage with this new industry
 - To the people of the country
 - To industry and third party investors



WHAT SHOULD NATIONAL DSM POLICY INCLUDE?

1. Aim of the Policy
2. Legal Framework
 - Existing and planned laws
3. Regulatory Overview: Role of the State
4. Nuts and Bolts:
 - Generation and access to geological data
 - Cadastral map
 - Maritime boundaries
 - Permitting processes
5. Sustainable Environment Management
 - How will the State discharge its environmental protection duties



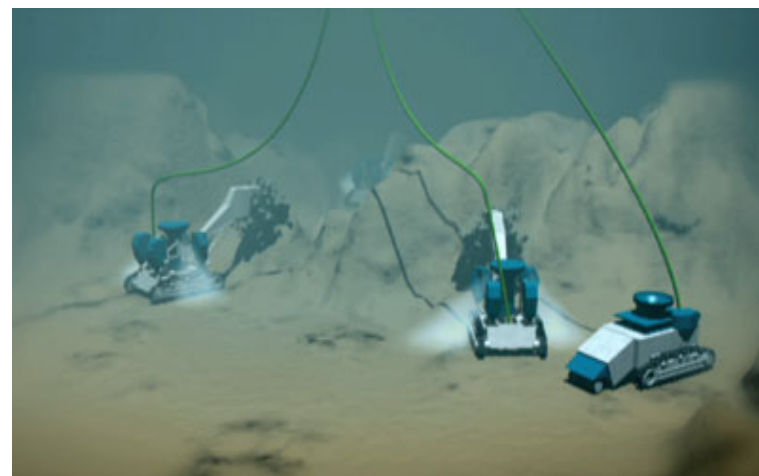
WHAT SHOULD NATIONAL DSM POLICY INCLUDE

6. Optimising Financial Benefits

- investment policy
- fiscal policy
- revenue management / distribution
- transparency

7. Optimising Social Benefits

- local procurement
- employment
- occupational health and safety
- capacity-building
- public participation



WHAT SHOULD NATIONAL DSM POLICY INCLUDE

8. Regional Co-operation

9. Marine Scientific Research

10. Effectiveness of the Policy

- When will it come into force?
- What is the legislative timetable?
- When will it be reviewed?

11. Appendices?

- Glossary
- Flow-chart of licensing system
- Further data about the country's DSM potential





THANK YOU!

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