



SPC-EU EDF10 Deep Sea Minerals (DSM) Project
Pacific ACP States Regional Workshop on DSM Law and Contract Negotiations
11th – 15th March / Venue: Nuku'alofa, Tonga

Introduction: The SPC-EU Deep Sea Minerals (DSM) Project is funded under the 10th EDF to run from 2011-2014, to provide technical advice and assistance to 15 Pacific-ACP States in their decision-making on and engagement with deep sea minerals activities. The Project assist P-ACP States to develop national policy, law, and fiscal regimes, and to build technical capacity in-country. The objective is: informed and careful governance of DSM developments in accordance with international law across the region, with particular attention to the protection of the marine environment, and securing reasonable and equitable arrangements for P-ACP States and their people. Consultation with relevant stakeholders has shown that capacity-building within P-ACP Governments is required to lead to the meaningful participation and effective regulation by P-ACP States in the DSM industry.

The DSM Project has devised a short-term training programme consisting of 5 regional technical workshops¹. The first of these (“Regional Training Workshop on Geological, Technological, Biological and Environmental Aspects of Deep Sea Minerals”) was held in August 2012 in Fiji. This March 2013 event is the second of those workshops, and focuses on legal aspects for States engaging with DSM, and negotiating commercial agreements with DSM operators. This topic was specifically requested as a priority by the DSM Project Steering Committee at its November 2012 annual meeting.

Background to this Workshop: The legal framework for managing DSM encompasses a variety of different legal areas and instruments, and is a new field – within which Pacific Islands are leading the way. Yet few P-ACP States have in-country expertise of DSM law. Many factors relevant to determining the costs and benefits of a DSM project remain unknown, requiring careful and complex decision-making by States as they engage with the DSM industry. Many P-ACP States do not have extensive experience of engagement with the extractive industries. There is likely to be an imbalance of power between small island developing States’ specialist know-how, and the legal, negotiating and marketing arms of mining companies. There is concern that P-ACP States may be approached by purported DSM operators or investors pressuring Governments to sign up to a deal for DSM activities that is described persuasively, but which in practice may pose great risk or present little benefit to the State. Equally P-ACP Governments should be equipped to negotiate – and indeed to recognise – a ‘good deal’ with a credible company when one is on the table. As the DSM industry grows and Governments develop their law and policy in this area, understanding what DSM operators view as an attractive operating environment will also be important.

¹ The third workshop (in June 2013 in Vanuatu) will focus on DSM policy development, social impact and public participation. The fourth workshop in August 2013 in Fiji will cover environmental management for DSM (to be held in partnership with the South Pacific Regional Environment Programme - SPREP). The fifth workshop (in early 2014 in the Cook Islands) will concern fiscal regimes and responsible management of revenue for DSM.

The Workshop Format and Objectives:

Participants: Three representatives from each P-ACP Government have been invited, with the suggestion that the attendees are whoever in that country's context is most likely to be in the room in a minerals contract negotiation situation. Civil society representatives have also been invited.

Delivery: The workshop will consist of:

- a series of lectures,
- case study presentations,
- some short mixed-group exercises,
- panel and plenary discussions,
- a 'real-life' negotiation exercise role-play, and
- the development of DSM due diligence and negotiations check-lists.

Aims: By the end of the workshop participants should:

- Have a basic understanding of the composition and location of DSM deposits, and the associated marine biology.
- Have a realistic view of the likely benefits and costs for a State engaging in DSM.
- Understand a DSM company's operations and perspective.
- Have a good understanding of the international legal framework pertaining to DSM activities, and how this can be implemented at national level.
- Be confident to enter into negotiations with DSM companies (or not to).
- Be able to spot a 'bad deal' or a 'good deal' for the country, and be able to identify aspects could be altered to make the deal more favourable, and to negotiate DSM contracts in the
- Have reference materials and know where to turn for assistance with any future engagement with DSM companies.

Provisional Workshop Programme

<i>Time</i>	<i>Activity</i>	<i>Presenter</i>	<i>Facilitator</i>
Day 1 – Monday 11th March 2013			
8.00 – 9.00	Registration	All participants	
9.00 – 10.15	Opening Prayer Brief welcome and introduction Official Welcome Responding Remarks on behalf of SPC Benediction Group photo for workshop participants	Reverend Sione Ha'angana Dr Suka Mangisi Hon. Samiu Vaipulu, Deputy Prime Minister of Tonga Prof. Mike Petterson, Director SOPAC Division, SPC Rev. Sione Ha'angana All	Dr Suka Mangisi, Deputy Secretary, Ministry of Foreign Affairs and Immigration, Tonga
10.15 – 10.45	<i>Morning Tea</i>		
10.45 – 11.00	Objectives and overview of the Workshop Housekeeping	Hannah Lily, Legal Advisor, DSM Project, SPC	
11.00 – 12.30	Session 1 [Introduction to Deep Sea Minerals] Introduction to the DSM Project DSM overview Deep sea environments	Akuila Tawake, DSM Project, SPC	Hannah Lily
12.30 – 1.30	<i>Lunch</i>		
1.30 – 2.45	Session 2 [DSM: State rights and responsibilities] International law pertaining to DSM resources within national jurisdiction. The Area, and the International Seabed Authority	Hannah Lily Gwenaelle Le Gurun, Legal Officer, International Seabed Authority	Akuila Tawake

<p>2.45 – 5.00</p> <p>(incorporating Afternoon Tea at 3.15)</p>	<p>Session 3 [Regional Legislative and Regulatory Framework (RLRF) for DSM Exploration and Exploitation]</p> <p>Introduction to the RLRF</p> <p>2.45-3.30 Group work</p> <p>Presentations 3.30: Working Group 1 3.50: Working Group 2 4.10: Working Group 3 4.30: Working Group 4</p>	<p>Hannah Lily</p> <p>Workshop Participants</p>	<p>Hannah Lily</p>
<p>6.00 – 8.00</p>	<p>Workshop Cocktail</p>	<p>All Participants</p>	
<p>Day 2 – Tuesday 12th March 2013</p>			
<p>8.30 – 10.00</p>	<p>Session 4 [Understanding Mineral Resource Classification]</p> <p>Operational phases, the players, and commercial realities of a DSM Project: mining, metallurgic, economic, marketing, legal, environmental, social and governmental factors</p>	<p>John Feenan (IHC Mehrwede)</p>	<p>Hannah Lily</p>
<p>10.00-12.00</p> <p>(incorporating Morning Tea at 11.30)</p>	<p>Session 5 [National Regulatory Regime]</p> <p>DSM national law requirements and administrative arrangements overview: institutional structures; application, consultation and decision-making procedures; licensing, monitoring and enforcement.</p> <p>Case studies: Fiji : process for drafting national DSM law</p> <p>Tonga: content of national DSM law</p> <p>Cook Islands: implementation of Seabed Minerals Act</p> <p>Non-state actor participation in developing national law</p>	<p>Hannah Lily</p> <p>Tima Vakadewabuka, Solicitor General's Office, Fiji</p> <p>Neil Adsett, Attorney-General, Tonga</p> <p>Alex Herman, Seabed Minerals Authority, Cook Islands</p> <p>Ngateina Mackenzie, Te Ipukarea Society, Cook Islands</p>	<p>Hannah Lily</p>

12.00-1.00	<p>Session 6 [Securing State benefits from DSM activities]</p> <p>What are the benefits? (EEZ vs the Area) How should they be secured? Methods of responsible revenue management</p> <p>Tonga case study</p>	<p>Hannah Lily</p> <p>Lepaola Vaea, Revenue and Customs, Tonga</p>	<p>Akuila Tawake</p>
1.00 – 2.00	<i>Lunch</i>		
2.00-3.15	<p>Session 7 [Minerals Contracting Overview]</p> <ul style="list-style-type: none"> • Overview of contracting in the extractive industries: <ul style="list-style-type: none"> - Types of agreements/deal structures - Triggering and awarding a minerals contract - Parties, and institutional roles 	<p>Mary Louise Vitelli, SPC - DSM Project Legal Consultant</p>	<p>Cristelle Maurin, SPC - DSM Project Legal Consultant</p>
3.15 – 3.45	<i>Afternoon Tea</i>		
3.45 – 5.00	<p>Session 8 [Terms of a Minerals Contract]</p> <p>Minerals contracts</p> <ul style="list-style-type: none"> • Principles and objectives • Terms: <ul style="list-style-type: none"> - General, - Licensing, - Obligations, - Mining-Specific and Ancillary 	<p>Mary Louise Vitelli</p>	<p>Cristelle Maurin</p>
Day 3 – Wednesday 13th March 2013			
8.30 – 10.00	<p>Session 9 [Overview of Deep Sea Mineral Operations]</p> <p>Introduction to DSM companies:</p> <ul style="list-style-type: none"> • Background • Current work • Future plans • Comments 	<p>KIOST (Korea Institute of Ocean Science and Technology)</p> <p>Neptune Minerals (Bluewater): Tim McConachy</p> <p>Nautilus Minerals: Jonathan Lowe and Paula Taumoepeau</p>	<p>Akuila Tawake</p>
10.00 – 11.15	<p>Session 10 [DSM Financial Models]</p> <p>Introduction to financial modeling for DSM</p> <p>State perspectives: A Panel and Plenary Discussion</p> <p>Panel: Darryl Thorburn (Cook Islands), Malakai Finau (Fiji), Winterford Eko (PNG), Taaniela Kula (Tonga)</p>	<p>John Feenan</p> <p>Panel</p>	<p>Akuila Tawake</p>
11.15-11.45	<i>Morning tea</i>		
11.45-1.00	<p>Session 11 [Negotiation Process and Strategies]</p> <p>Negotiations:</p>	<p>Mary Louise Vitelli</p>	<p>Cristelle</p>

	<ul style="list-style-type: none"> • who, when, where, how? • negotiation strategies 		Maurin
1.00 – 2.00	<i>Lunch</i>		
2.00 – 3.30 including <i>Afternoon Tea</i>	Session 12 [Case studies: Countries' Negotiations Experience] Fisheries Nauru experience Tonga experience Minerals negotiations: Afghanistan and New Zealand PNG Solwara 1 seafloor massive sulphide mining licence	Maurice Brownjohn, Commercial Advisor, Parties to Nauru Agreement; Mike Aroi, Foreign Affairs, Nauru Taaniela Kula Darryl Thorburn Winterford Eko	Hannah Lily
3.30 – 4.30	Session 13 [Company perspective on DSM Negotiations] What the industry seeks? What makes a country an attractive investment prospect for a DSM company? How can a Government evidence this?	Harvey Cook and Tim McConachy, Neptune Minerals (Bluewater)	Akuila Tawake
4.30-5.00	Session 14 [Economic Growth of a Small Island Developing State] Mauritius: a Case Study	Ashvin Degnarain, Advisor to the Government of Mauritius	Hannah Lily
Day 4 – Thursday 14th March 2013			
9.00 – 10.00	Session 15 [Consolidation session] Re-cap from Days 1-3 The Precautionary Approach in a DSM context Q&A Introduction to Role-Play <ul style="list-style-type: none"> - Divide into teams - Role play objectives - Explanation of how the role play will work 	Hannah Lily Siena Taumoepeau, lawyer, Tonga (and DSM Project former legal intern) All Mary Louise Vitelli, with Steve Menzies	Akuila Tawake

10.00 – 4.45 (incorporating Morning Tea, Lunch, and Afternoon Tea)	Session 16 [Role-Play] Negotiations role-play At 4.45 return to plenary for day's closure	Mary Louise Vitelli, with Steve Menzies	
Day 5 – Friday 15th March 2013			
8.30 – 10.15	Session 17 [Role-Play Outcomes] Teams present the outcome of their negotiations	Workshop Participants	Mary Louise Vitelli, with Steve Menzies
10.15 – 10.45	<i>Morning Tea</i>		
10.45 – 13.00	Session 18 [Role-Play Conclusion] Reviewing each others' deals Feedback from trainers Feedback from participants Who struck the best deal? Top Negotiators awards Developing a 'top tips' check-list	Participants, with Mary Louise Vitelli and Steve Menzies	Hannah Lily
13.00 – 14.0	<i>Lunch</i>		
14.00 – 3.15	Session 19 [Q&A] Q&A – with DSM company / expert panel	KIOST Nautilus John Feenan Steve Menzies Mary-Louise Vitelli Hannah Lily Akuila Tawake	Taaniela Kula
3.15 – 3.30	<i>Afternoon Tea</i>		
3.30 – 4.30	Session 20 [Workshop Closure] Issue of Certificate of Completion Workshop Closure	Facilitator team Neil Adsett, Attorney General of Tonga	Akuila Tawake