

SPC-EU DEEP SEA MINERALS PROJECT

Regional Training Workshop on Deep Sea Minerals Law and Contract Negotiations 11th – 15th March 2013

SPC Responding Remarks

*Prof Mike Petterson
Director – SOPAC Division
Secretariat of the Pacific Community*

The Deputy Prime Minister of the Kingdom of Tonga, Honourable Samiu Vaipulu, Excellencies, Senior Government Officials of all Pacific ACP States, representatives of regional and international agencies, the Private sector, Civil Society, and the Media, Ladies & Gentlemen. I wish to say “Malo e lelei” to you all. For those who have not met me, I am Michael Petterson the new Director of the SOPAC Division of the Secretariat of the Pacific Community (SPC) and I have been in post for two months now.

On behalf of the Director General of the Secretariat of the Pacific Community, Dr Jimmie Rodgers, I would like to thank the Honourable Deputy Prime Minister for his warm words of welcome and wisdom in opening the second regional training workshop that specifically deal with ‘Deep Sea Minerals Law and Contract Negotiations’. I also wish to thank the Ministry of Lands, Environment, Climate Change and Natural Resources, particularly those of the Natural Resources Division for the wonderful assistance provided to the SOPAC Division staff in organising this regional training workshop.

Additionally, I would like to acknowledge our donor partner, the European Union, for its financial assistance that enables the SOPAC Division to implement this SPC-EU EDF10 Deep Sea Minerals Project in 15 Pacific ACP States. Further, I wish to acknowledge the presence of Gwenaelle Le Gurun, the International Seabed Authority’s (ISA) Legal Officer in this workshop. This demonstrates that the SPC is working with key stakeholders not only in the Pacific Islands region but also at the international level to assist Pacific ACP States to deal with a broad range of deep sea mineral issues.

As you will be aware, the Secretariat of the Pacific Community is an inter-governmental agency mandated to provide development assistance to Pacific Island Countries and Territories (PICTs). Our work plans are developed and approved in consultation with our member countries and accordingly the work of the Deep Sea Mineral Project is a direct response to PICTs Membership request for assistance in this sector. Our role is to advise and advocate according to Pacific Island Countries’ wishes and best interests. But we also recognise that a multi-stakeholder approach is essential for informed decision-making. This inclusive approach means we seek to promote dialogue and interaction between all interested parties, whether Community, NGO, Government, or industry.

Please allow me to say a few remarks in relation to deep sea minerals in Tonga and the Pacific Islands region. In consultation with Government of the Kingdom of Tonga, we have decided to hold this regional training workshop on Deep Sea Minerals Law and Contract Negotiations here in Nukua’lofa as this event has particular significance to Tonga for a number of reasons.

First, three exploration companies have been granted permits to conduct exploration activities within Tonga’s Exclusive Economic Zone (EEZ) hence the government would require expert

assistance to deal with specific deep sea mineral issues. In addition, in 2011 the International Seabed Authority has granted Tonga Offshore Mining Limited, a subsidiary of Nautilus Minerals, exploration licences in the Area under Tonga's sponsorship. This means that Tonga is not only among developed nations in participating in this exciting venture but the government is also going to benefit from the revenue generated if mining does occur. Thirdly, at the request of the Tonga Government, the SPC-EU Deep Sea Minerals Project has drafted national policy, legislation and regulations for the governance and management of Tonga's deep sea mineral resources. This set of legal instruments is under review at this stage and I am sure the outcomes of this workshop will help the government in that review process.

As we are all aware, marine scientific research and exploration of deep sea minerals and studies on biological communities associated with deep sea mineral deposits have been ongoing in the Pacific Islands region in the last 40 years. The then Committee for the Coordination of Offshore Prospecting in the South Pacific (CCOP/SOPAC) that later became the Pacific Islands Applied Geoscience Commission (SOPAC), was instrumental in this work in collaboration with developed countries such as the USA, Australia, Japan and Germany. These early efforts have led to the discovery of potential seabed mineral deposits within the Exclusive Economic Zones of countries such as the Cook Islands, Papua New Guinea (PNG), Tonga, Republic of the Marshall Islands, Fiji and Kiribati.

Due to the rise in metal prices that have been triggered by sustained increase in global demand for metals, recent interests in deep sea mineral deposits have been rejuvenated in the Pacific Islands region. In addition to a number of entities that have either been granted or applied for commercial exploration licences with the Exclusive Economic Zones of Pacific ACP States, a number of exploration companies have been sponsored by Pacific Island Countries to explore "the Area". Apparently, the interest in deep sea minerals goes beyond national jurisdiction as countries continue to seek alternative economic development opportunities.

This exciting new frontier brings about opportunities as well as challenges to the Pacific Islands region. In other words, the potential economic benefits must be balanced with sound environmental management hence any adverse impacts of deep sea mineral activities must be avoided or minimised. While deep sea mining will generate revenue, if proven to be viable, other benefit streams such as employment, capacity building, and generation of other economic activities will be very important to any country. On the other front, since deep sea mining has yet to occur anywhere in the world, the environment impacts of deep sea mining can only be predicted based on scientific knowledge. Notwithstanding this shortfall, countries in the region must embrace the precautionary approach going forward to ensure that the state of the environment is not comprised by sub-standard environment management practice.

As part of its capacity building and information sharing to Pacific ACP States, the SOPAC Division through the Deep Sea Minerals Project has devised a training programme that includes five regional training workshops and each workshop would address specific deep sea mineral topics. In August 2012, the first regional training workshop was held in Nadi Fiji focusing on Geological, Technological, Biological and Environmental Aspects of Deep Sea Minerals. This event is the second of those workshops, and focuses on legal aspects for States engaging with Deep Sea Minerals, and negotiating commercial agreements with DSM operators. This topic was identified as a priority during the Deep Sea Minerals Project Steering Committee meeting that was held in Noumea New Caledonia last November, hence a regional training workshop on deep sea minerals law and contract negotiations was agreed.

The legal framework for managing deep sea minerals 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. One of the main objectives of the SPC-EU Deep Sea Minerals Project is to assist Pacific ACP States in developing the necessary legal instruments for the governance and management of deep sea mineral resources.

To kick start this regional cooperative approach, the SPC-EU Deep Sea Mineral Project has developed the “Pacific ACP States Regional Legislative and Regulatory Framework (RLRF) for Deep Sea Minerals Exploration and Exploitation” in consultation with Pacific ACP Countries as well as other interest groups. This regional framework was officially launched during the August 2012 Pacific Forum Leaders Meeting that was held in Rarotonga Cook Islands. The Forum Leaders have supported the work of SPC through the DSM Project and this was reflected in the Forum Communiqué, and I quote *“Leaders welcomed the Regional Legislative and Regulatory Framework for Deep Sea Minerals Exploration and Exploitation identified as a Pacific Plan priority action in 2009 and thanked the Secretariat of the Pacific Community (SPC) and the European Union (EU) for the assistance towards the Framework. Leaders recommended that Forum Island Countries (FICs) consider using the Framework in formulating relevant national policy noting it highlights the need for a precautionary approach and addresses economic, social and environmental aspects to ensure sustainable resource use prevails”*, unquote.

In addition to Tonga, the SPC-EU Deep Sea Minerals Project is now assisting a number of Pacific ACP States in developing national deep sea minerals policy and legislation. As the deep sea mineral 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.

When we talk about the extractive industry and mining in particular, many smaller island countries in the region have neither any knowledge in metalliferous mining nor the experience in engaging with well-resourced mining companies. For this new frontier, such negotiation requires careful judgement and complex decision-making by any State. The best way forward is to seek and engage external experts who can provide sound technical and policy advice hence the government can make prudent decisions for the best interest of the country. Equally P-ACP States should be equipped with the necessary skills to negotiate and indeed to recognise a ‘good deal’ with a creditable company when one is on the table.

I trust that you will all find this training workshop useful. This is part of the SOPAC Division’s effort, through the Deep Sea Minerals Project, to share information and build deep sea minerals negotiation capacities of countries in the region. Further, I am also hopeful that this capacity enhancement process will be ongoing beyond the life of the SPC-EU Deep Sea Minerals Project to ensure effective and meaningful engagement with other stakeholders including mining companies.

With those remarks, I once again thank the Government of Tonga for hosting this event and I look forward to meeting with you and discussing relevant minerals and mining issues in the next five days.

Thank you and Malo apito!