

DSM: international and national law



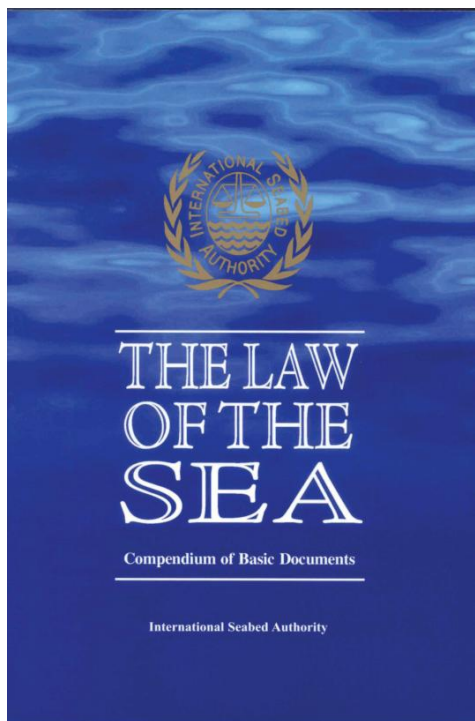
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SPC (SOPAC Division)
Nadi, 10 December 2013

Objective: to strengthen the capacity and systems of governance for management of the Pacific region's DSM, through:

- legal frameworks and fiscal regimes,
- human and technical capacity, and
- data management, environmental management, monitoring systems.
- 15 Project Countries
- Multi-stakeholder approach
- Small core team within SOPAC (Fiji)
- Respond to country requests
- Cover national jurisdiction and beyond
 - ✓ Regional Legal and Regulatory Framework
 - ✓ Training workshops, internships, in-country activities, publications
 - ✓ Environmental management, licensing, social impacts, public engagement, contract negotiations, the ISA, financial management
 - ✓ Bilateral assistance with domestic policy and legislation



Country	DSM Engagement	Law	Legal Intern	
Cook Islands	Plan to tender for exploration in EEZ (and interest in the Area?)	Seabed Minerals Act 2009, drafting Regs	Alex	
Fiji	EEZ exploration (and interest in the Area?)	Decree for ISA 2013 Review of Minerals Act	Panapasa, Marica, Tima (ISA)	
FSM	Interest in EEZ	Draft Bill and Regs	Joses	
Kiribati	ISA exploration contract	Drafting ISA law	Annie	
Nauru	ISA exploration contract	Drafting ISA law	-	
Niue	-	Draft Bill and Regs	-	
Palau	-	-	-	
PNG	EEZ Mining lease granted, and EEZ exploration	Onland minerals law under review	Teona	
RMI	Preparing regime first	Draft Bill and Regs	Johnathen, Yolanda	
Samoa	-	-	Lagi	
Solomon Islands	EEZ exploration	Review of law, new Policy and Bill 2014	Maito'o, Daniel	
Tonga	EEZ exploration and ISA contract exploration	Draft Bill and Regs	'Aisiena, Rose (ISA)	
Tuvalu	Interest in Area	Draft Bill and Regs	Amy, Lisepa	
Vanuatu	EEZ exploration	Policy consultation	Laniana	



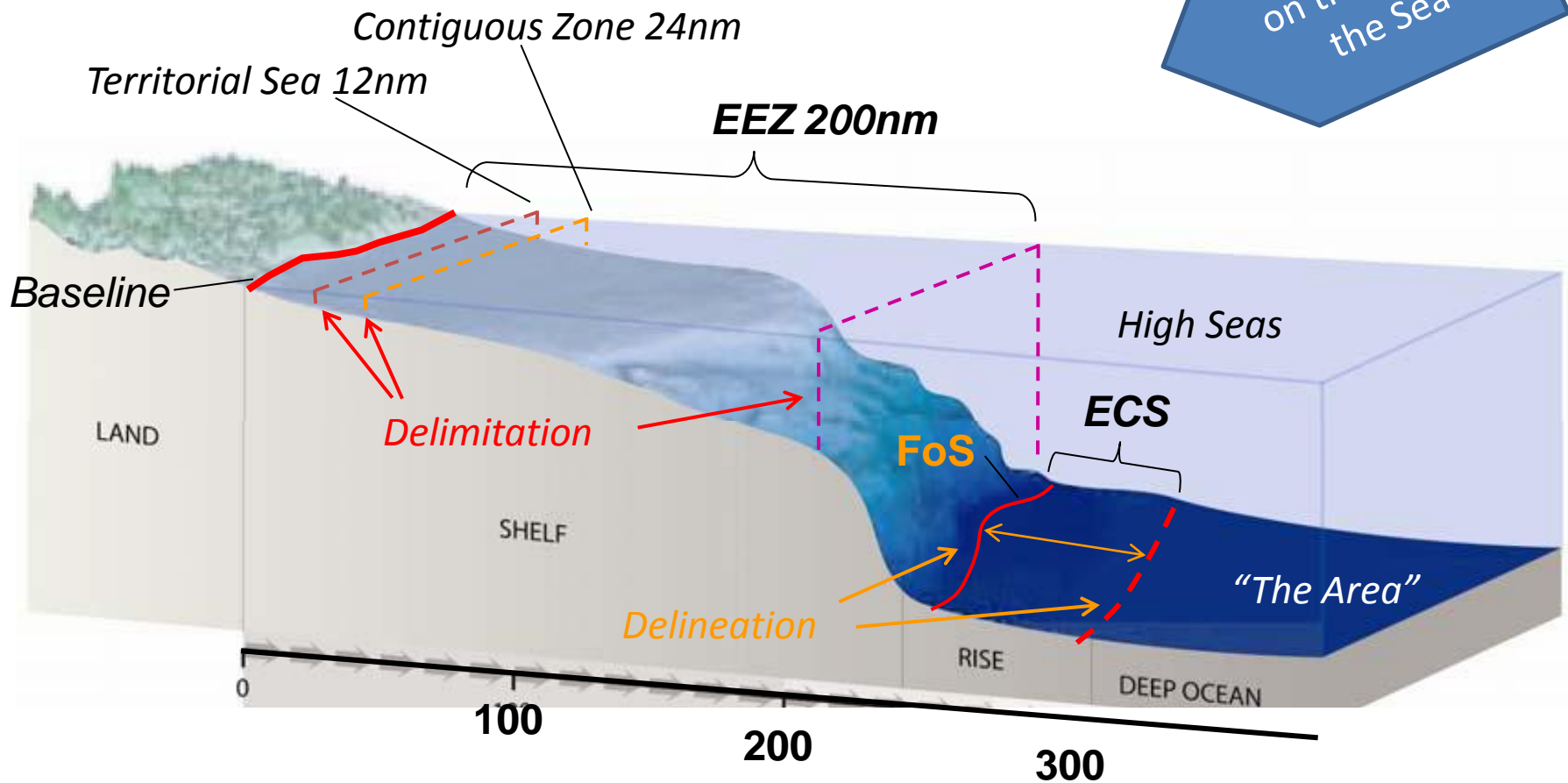
- International treaty on the management of ocean space and resources.
- One of the most complex, interesting and successful international negotiations
- Almost grounded by DSM controversy!
- Adopted in 1982 and entered into force in December 1994.
- 166 States Parties

• UNCLOS Preamble: objectives include establishing an order for the seas which promotes *'the equitable and efficient utilisation of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.'*

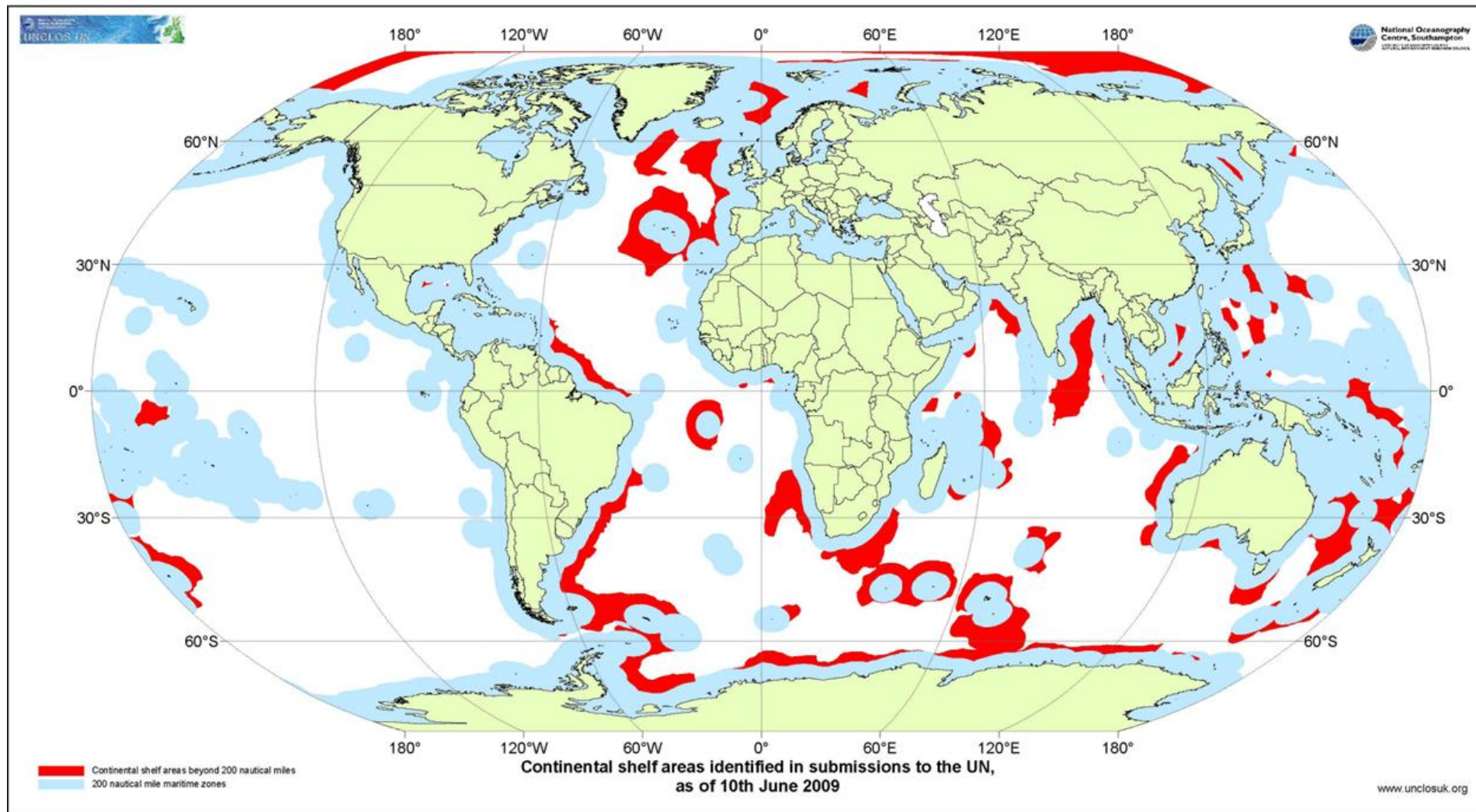
Where are the DSM activities?

National or international jurisdiction?

UN Convention
on the Law of
the Sea



[Importance to finalise maritime boundaries before issuing DSM licences]





Article 136

The Area and its resources are the common heritage of mankind.

Article 137

No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources.

All rights in the resources of the Area are vested in mankind as a whole (represented by the ISA) and no State or natural or juridical person shall exercise mineral rights except in accordance with Part XI.

Article 140

Activities in the Area shall be carried out for the benefit of mankind as a whole.

Article 141

The Area shall be open to use exclusively for peaceful purposes by all States.



- All managed by the **International Seabed Authority:** intergovernmental agency
- Secretariat in Jamaica
- 19 contracts approved
- Preferential access for developing countries



State	Date	Mineral	Location
Eastern Europe and Cuba	2001	Nodules	CCFZ
Russia	2001	Nodules	CCFZ
Korea	2001	Nodules	CCFZ
China	2001	Nodules	CCFZ
Japan	2001	Nodules	CCFZ
France	2001	Nodules	CCFZ
India	2002	Nodules	Indian Ocean
Germany	2006	Nodules	CCFZ
China	2011	SMS	SW Indian Ridge
Nauru (NORI)	2011	Nodules	CCFZ
Tonga (TOML)	2012	Nodules	CCFZ
Russia	2012	SMS	Mid-Atlantic Ridge
Belgium	2013	Nodules	CCFZ
United Kingdom	2013	Nodules	CCFZ

Approved by ISA, but contracts not yet signed:

Kiribati (Nodules), Korea (SMS), France (SMS), China (**Crusts**), Japan (**Crusts**)

Delegations from: Cook Islands, FSM, Fiji, Kiribati, Tonga

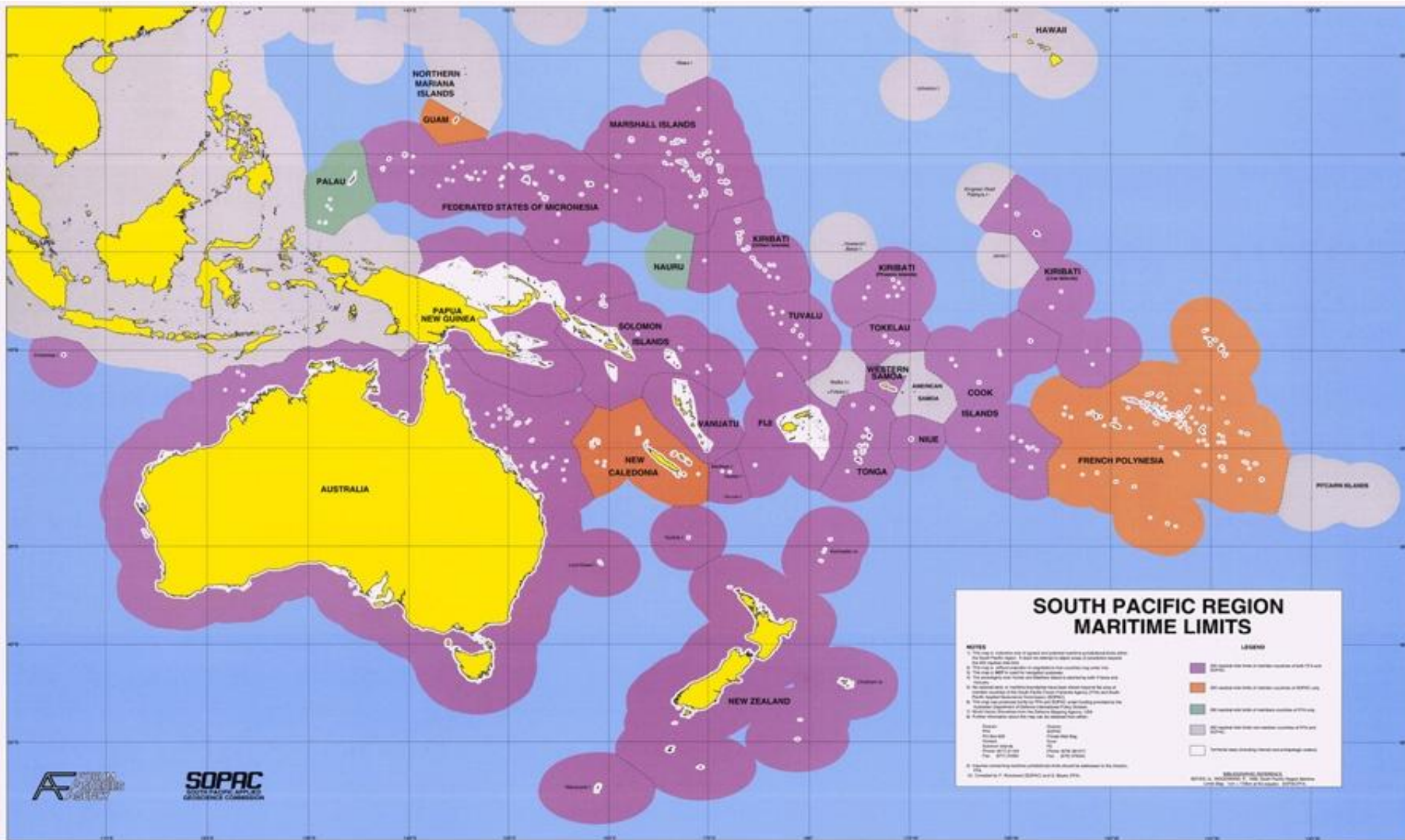


Cook Islands

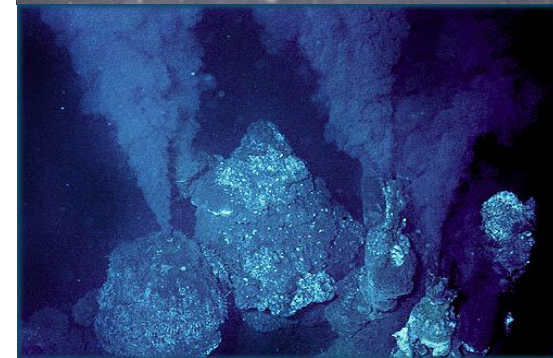


New legal internship placement
(Fiji and Tonga)

- Important decisions being taken
 - Strong involvement and preparation from some States
 - Low Pacific Island representation
- ** Action point for SOPAC ****



- Coastal States have sovereign rights to explore and exploit their own natural resources (UNCLOS Articles 56 and 77); and to authorise structures for economic purposes in the EEZ, or drilling on the CS (Articles 60, 80 and 81)
 - ‘Sovereign right’: exclusive, unrestricted*, no requirement to share access or benefit.
 - Therefore State can access the minerals, or permit someone else to on whatever terms the State wants* – and if the State does not do so, the minerals cannot be accessed (Article 77).
- *Subject to other UNCLOS-protected sea users’ rights (navigation, submarine cabling MSR), and State environmental obligations



DSM Environment Management: international law sources

- **UN Convention on the Law of the Sea - obligations as well as rights:**
 - Obligation to protect and preserve the marine environment and rare or fragile ecosystems, to monitor risks/ impact to the marine environment, and to minimise likelihood of pollution and accidents
- **Noumea Convention (Protection of Natural Resources and the Environment of the South Pacific Region)**
 - Prevent reduce and control pollution, and ensure sound environmental management
- **Convention on Biological Diversity**
 - Conserving biodiversity, and protecting ecosystems *in situ* via marine protected areas
- **International Maritime Organisation Conventions – because DSM uses ships:**
 - Preventing pollution, controlling hazardous materials, preventing collisions at-sea
- **Rio Declaration on the Environment and Development**
 - Precautionary approach, and participation of citizens in decision-making process

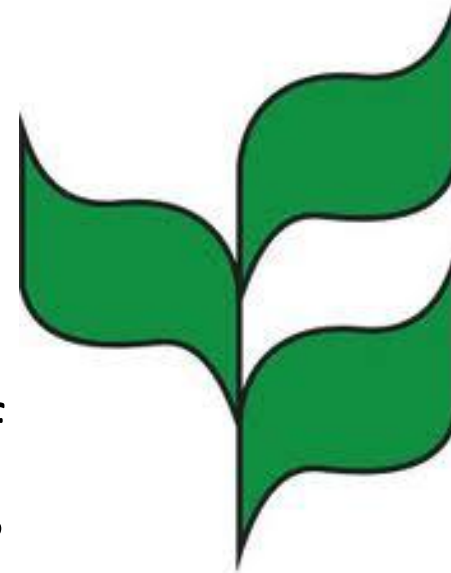


ALSO: * International Seabed Authority Regulations – exploration only, so far

*International Tribunal on the Law of the Sea, Seabed Disputes Chamber, Advisory Opinion 17 (on responsibilities of States sponsoring seabed mineral activities in the Area)

*International Marine Minerals Society Code for Environmental Management

- All Pacific Islands are Parties.
- Objective (i) conservation of biological diversity
- Requires States to protect *in situ* ecosystems and habitats within their EEZ, including via a system of **marine protected areas**.
- Particular focus on enhanced protection of ecologically or biologically significant areas ('EBSA'), which includes hydrothermal vents.
- Objective (ii) fair and equitable sharing of benefits arising out utilisation of genetic resources.
- **Genetic resources:** CBD recognises sovereignty, but encourages research and facilitation of access for third parties
- 2010 Nagoya Protocol: equitable sharing of the benefit
- How to take account of genetic resources in DSM regime?



CBD

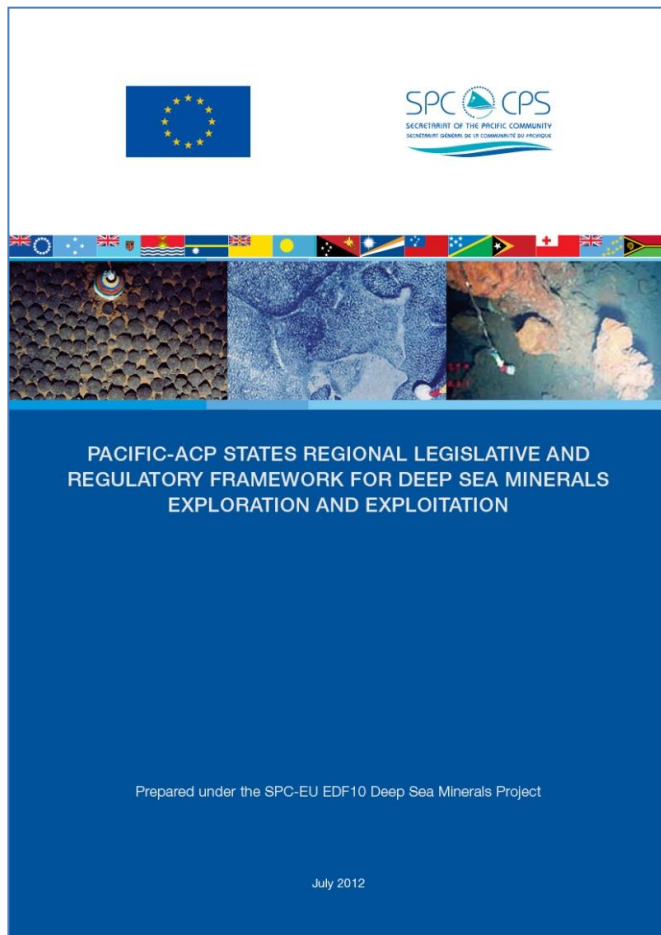
****Action point for SOPAC / SPREP****

The State is responsible for the conduct of DSM activities within its EEZ, or under its sponsorship within the Area

International Tribunal on the Law of the Sea, Seabed Disputes Chamber, Advisory Opinion, February 2011

How?

State must have “effective control”

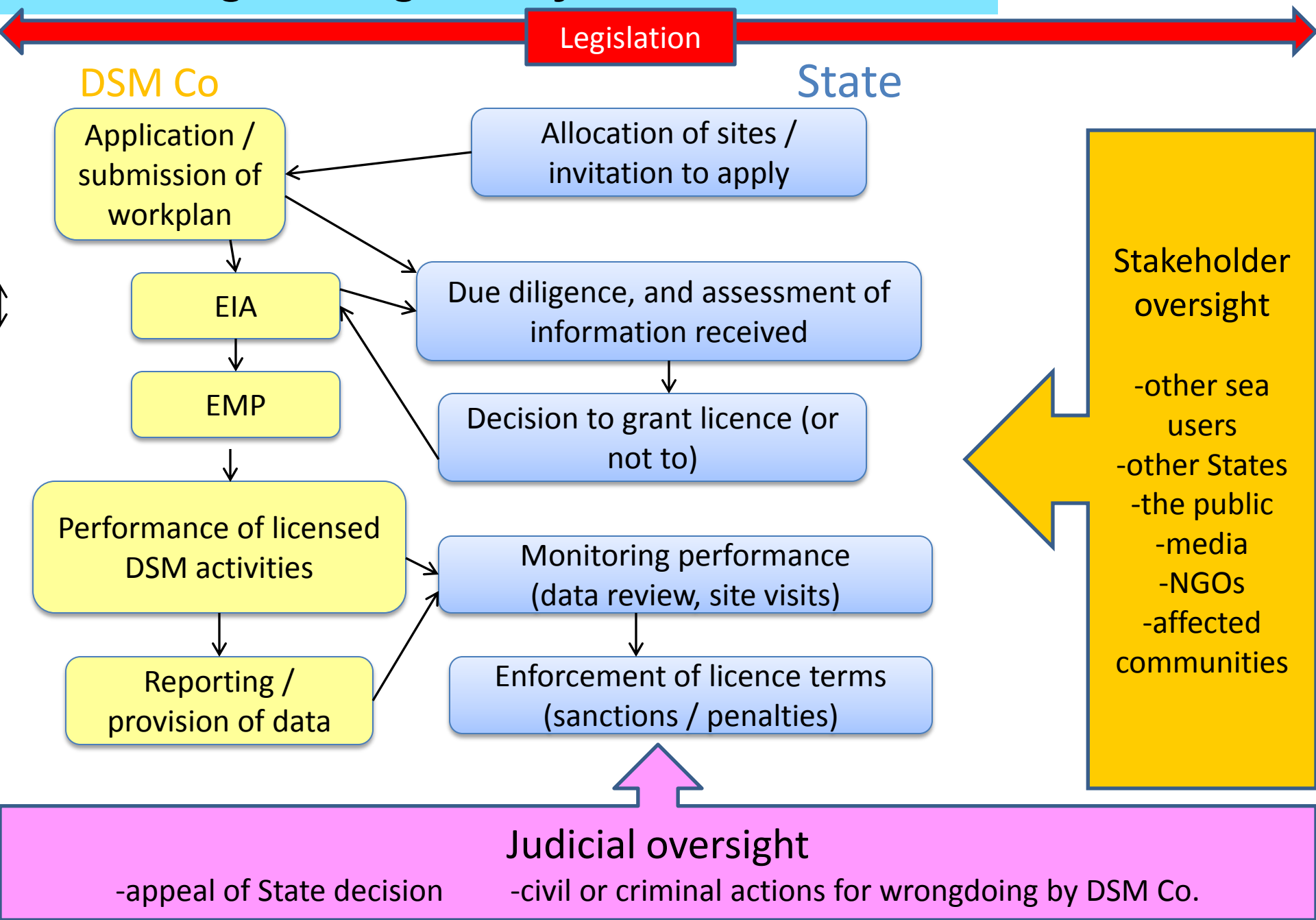


- ✓ National policy, laws and regulations.
- ✓ Administrative measures in place (e.g. a regulating body, licensing regime, EIA process).
- ✓ Implementation, including effective monitoring and enforcement.

What?

- ✓ Environmental management
- ✓ Safety at sea
- ✓ Other sea users
- ✓ National interests
 - Data collection
 - Capacity-building
 - Income generation (fiscal regime)
 - Revenue management

What might a regulatory model look like?



BEFORE DSM ACTIVITIES COMMENCE:

- Cross-governmental dialogue (and public consultation)
- Policies, laws, regulations, institutional arrangements and procedures in place
- Marine spatial planning, strategic env assessment, marine protected areas
- Thorough tender / application process, due diligence of operators and workplans

DURING DSM ACTIVITIES:

- Requirements placed on operators:
 - ✓ Control sites, and buffer zones
 - ✓ The 'precautionary approach'
 - ✓ Best environmental practice
 - ✓ Collection of comprehensive baseline environmental data
 - ✓ Sharing of data with the State
 - ✓ Monitoring against that data, and regular reporting
 - ✓ EIA before any activities that may cause significant harm
 - ✓ Environmental bond
- Monitoring and penalties /sanctions for breach
- An appropriate and functioning EIA regime
 - ✓ Participatory, multi-stakeholder consultation
 - ✓ Access to relevant pool of experts



- Need for scientific data to inform parameters in the law
- Data comes from companies - but not if not required by law - (or if moratorium on all DSM activities), and what data?
- Focus on EIA for DSM project proposals (which is good), but what about policy decisions before that stage?
- Importance of (regional?) SEA and Marine Spatial Planning (needs to be a wider dialogue than DSM personnel or lawyers)
- Relationship between Minerals, Maritime & Environment Depts
- National environmental laws tend to be basic / out-dated
- No DSM specific environmental regulations
- Expertise unlikely to be found in-country
- Need to enhance regional monitoring capacity
- ISA moving slowly:
 - Environmental regulations minimal – nothing for mining
 - Concerns regarding ISA conflict / capacity

- 1. Importance of environmental departments / scientists and policy-makers / lawyers speaking to each other!**
 - Researchers should know what policy-makers need
 - Policy and law should be well-founded on science
- 2. DSM operations should not be approached in isolation**
 - Multi-stakeholder approach
 - Marine spatial planning
 - Strategic impact assessment
- 3. Operate as a region**
 - Strength at the ISA
 - Harmonised licensing / fiscal regime
 - Sharing learning and data
 - A regional treaty for environmental standards?
 - A regional body for DSM regulation support?