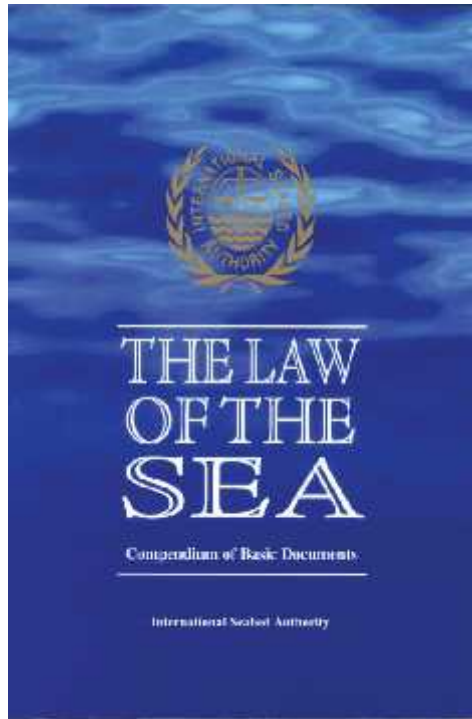


DSM: international and national law



Hannah Lily
Legal Advisor, Deep Sea Minerals Project,
SPC (SOPAC Division)
Rarotonga, 13 May 2014

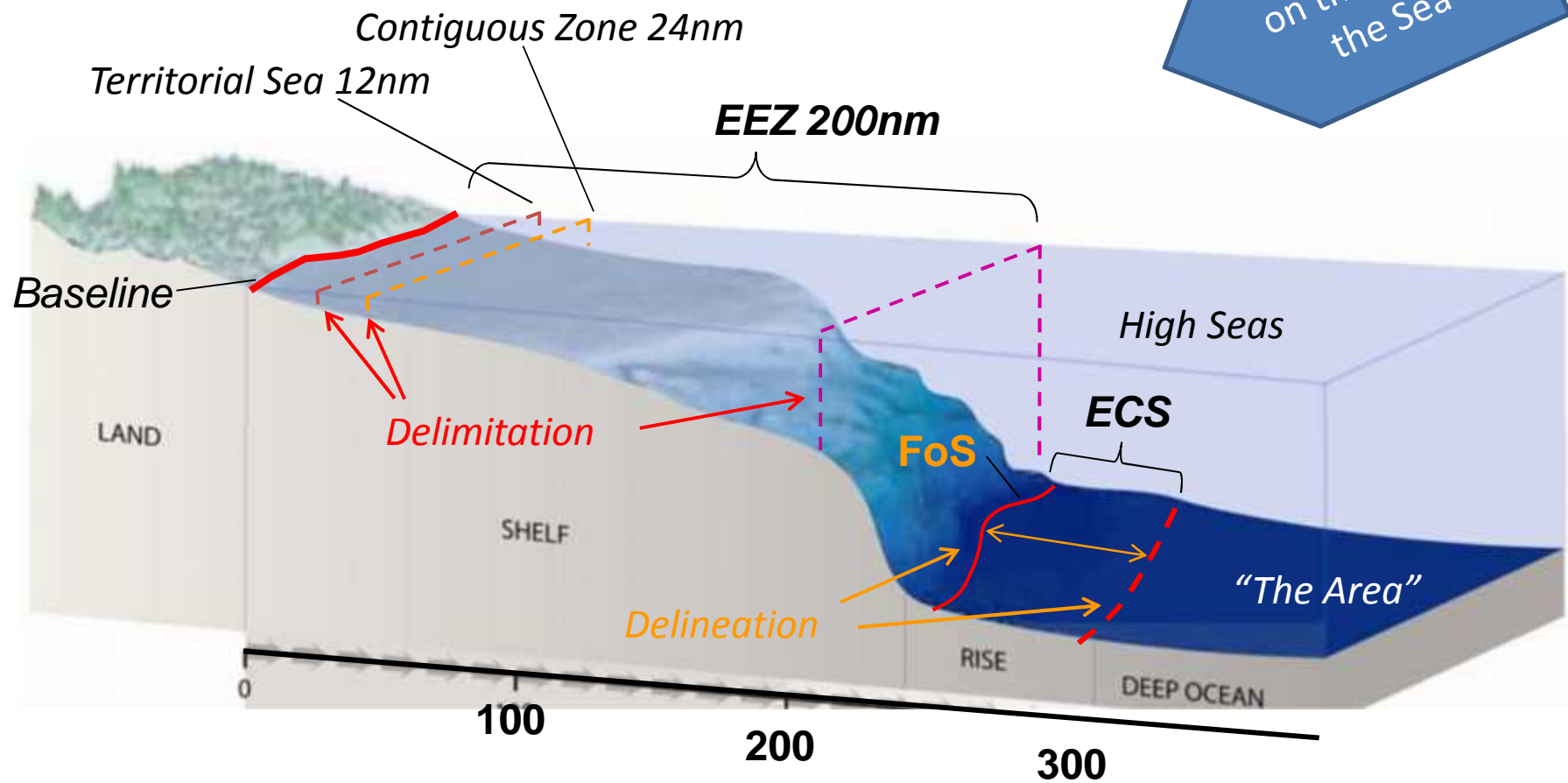


- International treaty on the management of ocean space and resources.
 - One of the most complex, interesting and successful international negotiations
 - Almost grounded by DSM controversy!
 - Adopted in 1982 and entered into force in December 1994.
 - 166 States Parties
- UNCLOS Preamble: objectives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

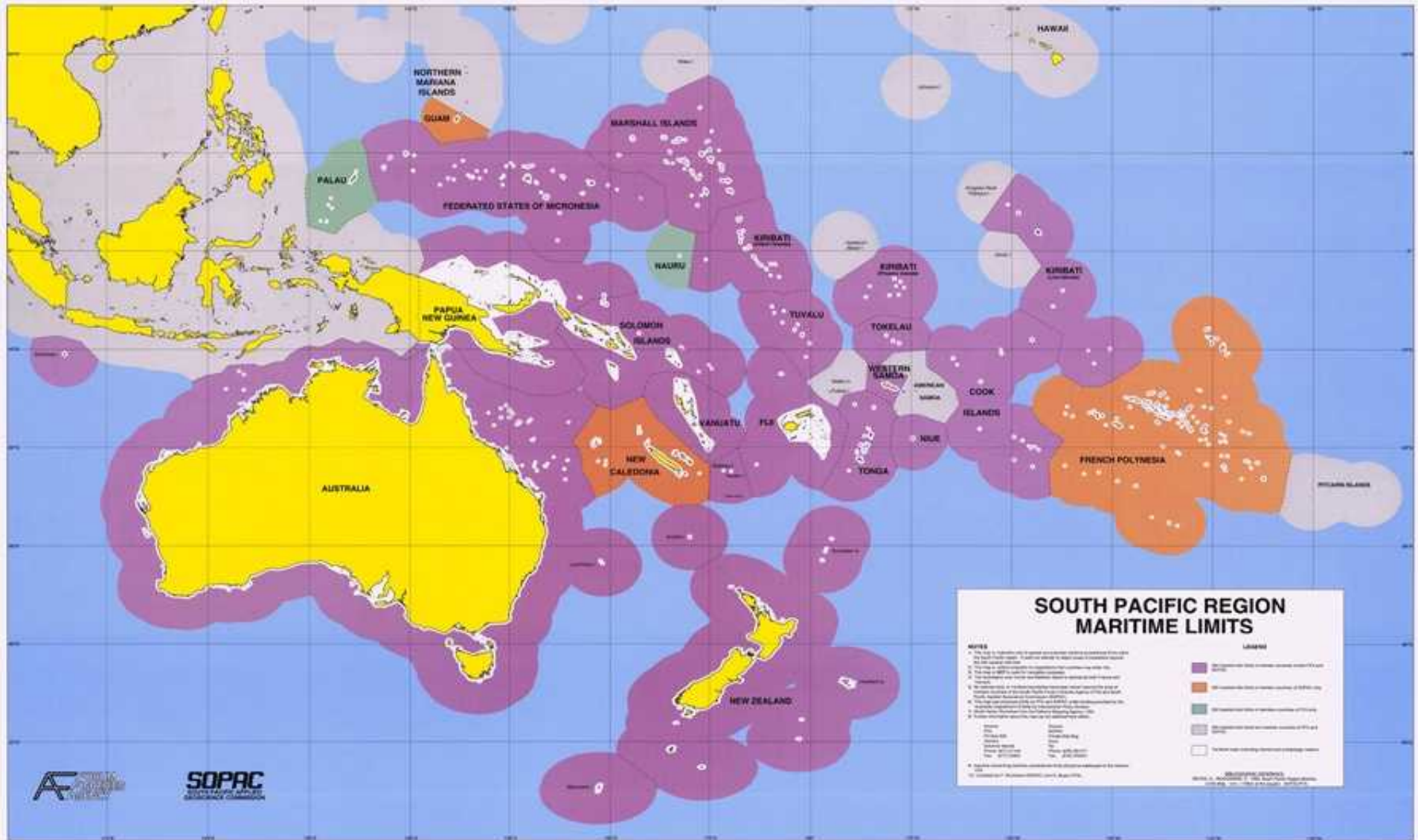
Where are the DSM activities?

National or international jurisdiction?

UN Convention on the Law of the Sea

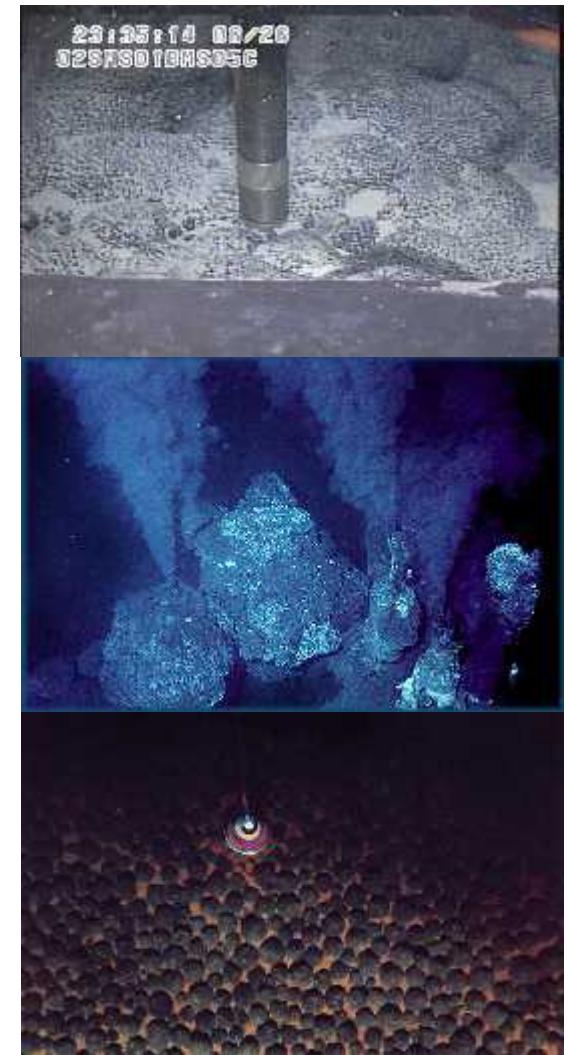


[Importance to finalise maritime boundaries before issuing DSM licences]



National Jurisdiction: State Rights

- 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





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

State must have “effective control”

How?

- ✓ 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**



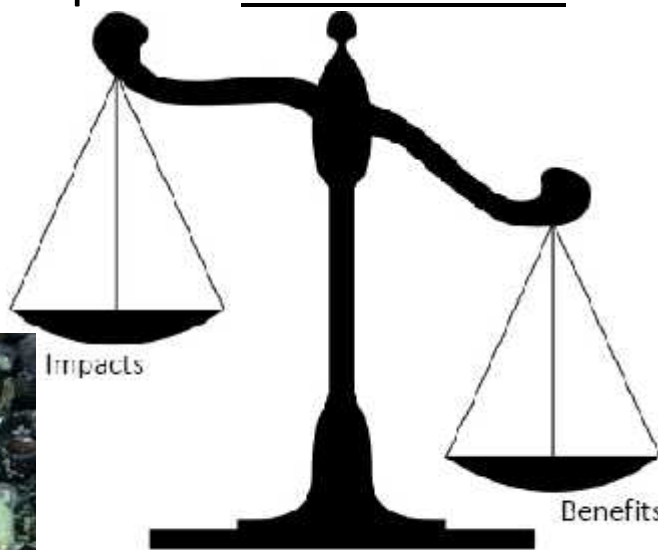
Country	DSM Industry Engagement	Law and Policy
Cook Islands	EEZ open to tender soon Application to the ISA	Licensing and fiscal laws enacted. Authority established. Policy published. Licensing and environmental Regulations underway now.
Fiji	EEZ exploration (and interest in the Area)	Decree for ISA enacted 2013. Review of Minerals Act, and new law (inc. DSM) due 2014
FSM	Interest in EEZ	Draft Bill and Regulations with Congress now
Kiribati	ISA exploration contract	Policy under consultation May 2014
Nauru	ISA exploration contract	Drafting ISA law – to be finalised August 2014?
Niue	Some historic enquiries	Draft Bill and Regs with Crown Law.
PNG	Mining lease granted (Solwara 1), and EEZ exploration	Onland minerals law under review. Offshore Minerals policy due for publication.
RMI	[Preparing regime first]	Draft Bill and Regulations with AG's Office
Samoa	Interest in the Area?	[Attending ISA meeting this year for further enquiry]
Solomon Islands	EEZ exploration, and mining applications recently received	Review of Mining Act, and drafting of new Policy and Bill (inc. DSM) scheduled for 2014
Tonga	EEZ exploration and ISA contract exploration	Draft Bill and Regs with AG's Office. To Parliament July 2014?
Tuvalu	Interest in the Area	First-draft Bill and Regulations with AG's Office. To be finalised July 2014?
Vanuatu	EEZ exploration	Policy consultation underway now, in all Provinces. Relevant law to be drafted subsequently



- **There is no point a State engaging with DSM activities unless it will bring net benefit to the country and its people**
- Main benefit is likely to be financial (taxes and royalties)
- May be some other benefits (employment, local business)
- This workshop will consider:
 - How to assess likely benefits in advance – and take steps to maximise.
 - How to assess likely ‘costs’ in advance – and take steps to minimise.
 - How to transform short-term financial gain, into long-term sustainable development for all citizens.



Impacts



Benefits



On-land:

- Local landowners or users may have rights over minerals.
- May also be issues of relocation or social disruption on-land.
- Rights often protected in the Constitution, customary law, or recognised by Government / mining company arrangements.
 - Free, prior and informed consent (or 'FPIC') for those whose property is adversely affected
 - Share in the profits, community development fund, local infrastructure development, compensation for social impacts.



DSM Project 2013 3rd Regional Training Workshop on Social Impacts and Public Participation, Vanuatu



Offshore:

- Unlikely that there would be customary / local ownership or rights over seafloor of EEZ.
- No social disruption envisaged.
- One of the advantages of offshore vs. on-shore.....
-but public perception may not mirror letter of the law.
- Call for “FPIC” for DSM
 - *But whose property or rights are adversely affected for DSM?*
- Importance of a ‘social licence’ to proceed.
- These issues need to be considered and managed by Government, in consultation.

Also:

- How will provincial or state Government share in (i) management, and (ii) proceeds, of DSM activities?
- Some countries are choosing to focus their DSM laws beyond the territorial seas (area beyond 12 nautical miles from shore).

1. **Government controls the conditions of DSM extraction within their waters or under their sponsorship. [So first, you need to know: what are *your* waters (boundaries)!]**
2. **Those conditions should be carefully-set, based upon best available information, and in consultation with relevant stakeholders, including concerned citizens.**
3. **What happens to DSM revenue coming in to the country, will be the crucial factor in making DSM a positive opportunity for Pacific Islands States.**

[4. So make use of your friendly local DSM Project Advisors!]

