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SPC-EU EDF10 Deep Sea Minerals Project Proceedings of the Niue National Deep Sea Minerals Stakeholder Consultation Workshop Sports Club, Niue 3 April 2012



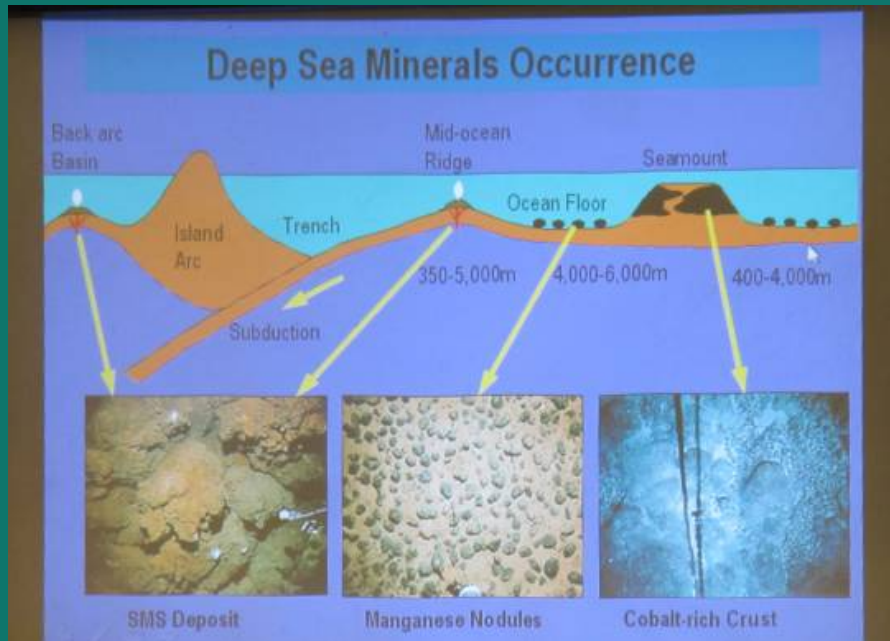
April 2012

SOPAC WORKSHOP REPORT (PR144)

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A slide from Mr Tawake's presentation about the Pacific's Deep Sea Minerals potential

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Proceedings of the Niue National Deep Sea
Minerals Stakeholder Consultation Workshop
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EXECUTIVE SUMMARY

The Niue National Stakeholder Consultation Workshop on Deep Sea Minerals ('**DSM**') was hosted by the SPC-EU EDF10 Deep Sea Minerals Project ('**SPC-EU DSM Project**') at the Niue Sports Club on the 3rd of April 2012. In attendance were representatives from various government departments and public bodies.

Although there are limited non-state actors in Niue, a range of other in-country stakeholders (private sector, educational institutions, and communities) were invited to the workshop. A full list of attendees can be found at Attachment 2 to this Report.

The workshop was organized by the SPC-EU DSM Project in collaboration with Niue's Public Works Department, as part of a combined effort to present the Project to in-country stakeholders and collectively discuss national priorities in relation to DSM issues. In addition, it provided an opportunity to discuss whether Niue may be interested to engage with DSM exploration activities, either in the EEZ or in the Area, and if so, the necessary development of a regional DSM legislative and regulatory framework. Capacity building requirements and how to operate effective environmental monitoring were also key issues discussed.

The workshop aligned with the SPC-EU DSM Project's aim to encourage a stakeholder participatory approach: to keep in-country stakeholders informed, to disseminate sound technical and policy advice, and to provide a forum at which all voices can be heard. The Project provided copies to workshop attendees of its six information brochures, developed to inform Pacific Island countries about minerals and mining issues, and DSM specifically. Attendees were also advised that a Niue-specific brochure, providing information about Niue's DSM deposits, was being produced – and the information held by the SOPAC Division in this regard was provided by a presentation from the Project Team Leader.



The six information brochures produced by the SPC-EU DSM Project

Presentations were also delivered by the DSM Project Legal Advisor, Niue's Senior Crown Counsel, and the Director of the Public Works Department. Topics covered included an overview of the Project, and DSM in the Pacific, Niue's DSM potential, international legal requirements, Niue's existing Minerals Policy and related legislation, as well as the gaps and requirements for future development of national policies and legislation.

In the afternoon, participants divided themselves into two groups for the second half of the workshop: a technical working group, and a policy working group. A lively discussion session took place in each group, who then presented in plenary the outcomes of their discussions for consideration and further deliberations.

Three key action points were identified by the workshop (i) to review existing policy and legislation and to remedy any gaps for regulating DSM, (ii) to seek further surveys within Niue's Exclusive Economic Zone ('EEZ'), and (iii) to build capacity in all aspects of DSM and mining to enable Niue fully to participate in this new industry.

The workshop agreed that a Niue National Offshore Minerals Committee ('NOMC') should be established as an advisory forum to assist the process of developing national offshore minerals policy, legislation and other related DSM issues in-country – at least until a Mining Office is created in Niue. It was agreed that the Niue NOMC should be based on the same membership of an existing committee; and that the Niue Project focal point should remain within the Department of Public Works.

The agreed outcomes of the workshop will be the basis of the DSM Project's future intervention in Niue.

ACKNOWLEDGEMENTS

The workshop was funded by the European Union ('EU') through the SPC-EU EDF10 DSM Project. Much gratitude is extended to Mr Deve Talagi, Director of Public Works for his assistance prior to and during the workshop.

The Project also wishes to acknowledge all the attendees for their active involvement throughout the workshop. The participation and support of Ms Nina Hekau (Crown Counsel) and Mr Richard Hipa (Secretary of the Government) is especially gratefully acknowledged.

1. INTRODUCTION

Previous marine scientific research and offshore mineral exploration conducted within the EEZ of Pacific Island states have confirmed variable potential of mineral occurrence. The high global demand for metals coupled with recent discovery of high grade Seafloor Massive Sulphide deposits in Papua New Guinea have led to the recent upsurge in offshore minerals exploration within the EEZ of Pacific Island countries, and several other Pacific Islands have granted licences for exploration within their EEZ. In 2011 Tonga and Nauru also became the first 'developing states' to sponsor commercial entities to explore in the International Seabed Area ('the Area'). Due to the lack of specific policy, legislation and regulations for the governance of DSM resources in many Pacific states, the SPC-EU DSM Project, in consultation with the participating countries of the Project and a broad range of stakeholders, is developing a regional legislative and regulatory framework, from which national offshore minerals policy, legislation and regulations can be developed.

1.1 Participants of the Workshop

The SPC-EU DSM Project gives particular emphasis to in-country stakeholder participation in developing this new industry. The Niue National DSM workshop was held to bring together key stakeholders in Niue to discuss the challenges and the benefits of Niue's potential engagement with the exploration or mining of DSM. This one-day workshop was held at the Niue Sports Club on Tuesday 3rd April 2012. A range of stakeholders were invited to the workshop. The participants introduced themselves individually to the workshop. A group photo of participants is shown in Figure 1. A full list of participants is attached to this Report. Please see Attachment 1.

1.2 Objectives of the Workshop

The objectives of the Niue national stakeholder consultation workshop were to:

- identify key in-country stakeholders and present the SPC-EU DSM project;
- discuss various issues and concerns relating to DSM and mining;
- determine the needs and priorities of Niue in terms of policy and legislation development, capacity building and other DSM related issues;
- provide the necessary guidance for the implementation of the DSM Project in Niue;
- discuss collaboration with key stakeholders (e.g. government agencies and NGOs), and form a steering committee or other mechanism, to involve all interested parties in project activities in Niue;
- identify in-country technical focal point for the SPC-EU DSM Project;

- obtain from stakeholders answers to the SPC-EU DSM Project's questionnaire to assist the Project staff better understand the situation in Niue; and
- disseminate SPC-EU DSM Project information brochures to stakeholders.

2. RECORD OF THE WORKSHOP PROCEEDINGS

2.1 Workshop Opening

The Workshop was opened by Mr Deve Talagi, Director of the Public Works Department, on behalf of the Minister and the Secretary of Government, who were at a Cabinet meeting that morning. Mr Talagi noted that this was new territory for Niue, but hoped that after the day's workshop Niue would be better-placed to know the way forward

Mr Talagi was pleased that the Planning and Economics Department was represented today – as it was decided in the past that it would be within this Department that the focal point role for minerals should sit within Niue. However since this time, Niue has not significantly engaged with mining generally or DSM specifically. Mr Talagi is Niue's focal point to the SOPAC Division of the SPC, and it is in this capacity that he was facilitating this workshop. He noted that one of the outcomes of the workshop will be to identify a focal point for the Project going forward.

He expressed that the Niue Government will be very interested in the outcomes of the workshop, and urged all participants actively to participate during the workshop: to represent their departments and communities, and contribute in discussions. He welcomed also private sector representation; and looked forward to constructive discussions.



Participants at the Workshop listen to the opening addresses

2.2 Response by Akuila Tawake on behalf of the SPC-EU DSM Project:

In his responding remarks, Mr Tawake thanked the Director of the Department of Public Works for his words of encouragement in opening the Niue National Deep Sea Minerals Stakeholder Consultation Workshop. He welcomed government officials, and representatives of the private sector and civil society. He thanked the Government of Niue and in particular the Department of Public Works for collaborating with the Project in organising this workshop. He thanked the EU for the financial assistance that enables SPC to implement the DSM Project.

Mr Tawake highlighted the circumstances surrounding the conception of the SPC-EU DSM Project. Some 40 years ago, interest in seabed minerals in the Pacific ocean began; and exploration surveys identified potential DSM deposits in the region. At the time it was not considered feasible by industry to extract these seabed minerals. There has however been a recent rejuvenation of interest – triggered by rises in metal prices and global increase in demand for metals. New discoveries of high grade precious and base metals in PNG and Tonga, coupled with the grant of a mining licence to Nautilus Minerals by PNG last year – and Nautilus’ statement that they will commercially mine DSM by the end of 2013: a world first – has put Pacific in the forefront of this emerging industry.

Mr Tawake referred also to the recent signing by the International Seabed Authority ('the ISA') of contracts to explore the seabed beyond national jurisdiction ('the Area') with a company sponsored by Tonga (Tonga Offshore Minerals Limited, or 'TOML'), and a company sponsored by Nauru (Nauru Ocean Resources Inc, or 'NORI'). He explained that other Pacific Island states, such as Kiribati, Samoa, Tuvalu and Fiji, have also expressed their interest to follow Tonga and

Nauru in sponsoring exploration companies to explore the Area. This is a significant milestone for the region – as to date States working in the Area have been industrial developed nations.

Mr Tawake next emphasised that DSM is a very new area, and there are many unknowns. As there is very limited scientific information currently about the potential impact of DSM activities, the precautionary approach must be adopted. In order to build our knowledge-base in the deep sea environment, the role of exploration and mining companies is key. Collecting relevant data is technologically challenging and the costs are high. So this work must be carried out in partnership with those who can afford and manage the financial risk.

The Project was initiated by Pacific Island countries, recognizing that a regional and multi-stakeholder approach is an effective one for developing technical expertise, law and policy for DSM. The SPC through the SOPAC Division (where the Project is situated) is mandated to assist Pacific Island countries in dealing with issues relating to mineral exploration and mining.

Mr Tawake, however, cautioned that while deep sea mining may bring much-needed alternative economic development to countries in the region, we must be careful that we do not create unnecessary fear on one hand, and false hope and expectations on the other to the public. Efforts to date were to *explore* only, rather than to *mine*. Mining projects usually have long gestation periods, and any decision to mine or not to mine hinges on exploration results.

The SPC-EU DSM Project has been actively sharing information with Pacific Islands through media releases, workshops and brochures. The SPC sincerely hopes that the Project can be of service to Niue. Mr Tawake looked forward to the outcome of deliberations during the workshop – and hoped that through interactive discussions we will be able collectively to identify an inclusive and precautionary approach in addressing deep sea minerals issues.



Participants at the Workshop listen to the opening addresses

2.3 Remarks from Richard Hipa (Secretary of the Government):

Mr Hipa joined the workshop, and brought an update from that morning's the Cabinet meeting: the boundaries treaty between Niue and the Cook Islands has been passed by Cabinet, and is ready for signature in August 2012 at the Pacific Island Forum Leaders meeting in Rarotonga. Niue's Premier also recently met with the Prime Minister of Tonga, and Niue looks forward to progressing those discussions and to establishing that boundary also.

Mr Hipa was able to advise the Workshop that there is current interest in mining in Niue (onshore). The Government plans to agree to grant a licence for *exploration* in and around Niue. But it was the current view of Cabinet not to permit *mining*, until there were greater assurances about the protection of the environment and Niue's water source. He reiterated that the Niue Government is not in a rush for money from minerals, but preferred to take a cautious approach, and to take care in upholding the best interests of the country moving forward.

Mr Hipa expressed that Niue was nevertheless very interested in the SPC-EU DSM Project. He thanked Deve for his hard work with the SPC-EU DSM Project team in organising the workshop. Mr Hipa acknowledged that he himself, together with Nina, Deve and Hubert had been engaged with the Project from its inception, and looked forward to continued active engagement.

He encouraged active participation from all participants at the workshop, emphasising that the SPC-EU DSM Project and this workshop is very important to assist Niue and its decision-makers in the future.

2.4 Presentations and Discussions

All presentations that were delivered during the workshop are available on CD from the Department of Public Works (contact: Mr Deve Talagi)

2.4.1 Overview of the Deep Sea Minerals (DSM) Project

Presenter: Akuila Tawake (DSM Project Team Leader)

Mr Tawake explained in his presentation that a regional approach to DSM had been called for by Pacific Island countries, following the recent upsurge in offshore minerals exploration in the EEZs in the region, and in view of the lack of specific policy and legislation in place to regulate DSM activities. He explained that, following the submission of a concept note by the SOPAC Division of SPC to the EU, 4.7 m Euros funding had been granted to support the implementation of the Project in 15 Pacific ACP Countries over 4 years (2011-2014).



Mr Tawake presents the Project's work plan

The Project's overall objective is: to expand the economic resource base of Pacific States by facilitating the development of a viable and sustainable marine minerals industry. The Project aims to do this by strengthening the system of governance and capacity of Pacific States in the management of DSM through the development and implementation of sound and regionally integrated legal frameworks, improved human and technical capacity and effective monitoring systems.

The project has four Key Result Areas:

- (1) Regional Legislative and Regulatory Framework ('RLRF') for offshore minerals exploration and mining;
- (2) National policy, legislation and regulations;
- (3) Building national capacities – supporting active participation of Pacific Island nationals in the offshore mining industry; and
- (4) Effective management and monitoring of offshore exploration and mining operations.

The Project's primary beneficiaries, as agreed with the EU, are (1) national governments, and (2) local communities. Other beneficiaries will include the private sector, non-state actors, regional and international agencies, and implementing partners.

Project activities to date for each of the Key Result Areas have included:

- (1) An inaugural workshop held in June 2011 in Nadi; and the dissemination of a draft RLR in January 2012 to a wide range of stakeholders for comments.
- (2) Six national stakeholder workshops have been convened, and National Offshore Minerals Committees are being established.
- (3) Work on a publication to provide an assessment of DSM knowledge is underway, with contributions from a group of leading experts world-wide. This will be published later this year. The Project is also currently gathering data to establish a regional marine minerals database, building on the SOPAC Division's current data derived from the 1985-2005 Japanese survey.

The Project is identifying national candidates for capacity-building opportunities. A candidate from Kiribati is currently on a safety and awareness training course in Australia, before he embarks on a survey with an exploration company in May 2012; and a candidate each from Cook Islands, PNG and Tonga were sponsored to attend a mining conference in Noumea in November 2011. In collaboration with partners, the production of a DSM documentary is in progress.

- (4) The Project is developing a regional environmental management and monitoring framework and guideline, in partnership with UNEP/GRID-Arendal. When the opportunities arise, the Project will collaborate with marine scientific research groups on monitoring the environmental impacts of deep sea mining over the next 2 years – identifying suitable candidates for on-the-job training in this area.

The Project has supported dissemination of information to key in-country stakeholders, including 6-monthly updates, information brochures, and media work. Web-pages dedicated to DSM are now being launched within the SOPAC Division's website. The Project will support National Offshore Minerals Committees to conduct DSM public awareness programmes.

Discussions on Presentation 1:

Questions were asked by various participants about the Area. Mr Tawake, and Ms Hannah Lily (SPC-EU DSM Project Legal Advisor), explained that the ISA was established by the UN Convention on the Law of the Sea ('**LOSC**'), and that all signatories – including Niue – were

therefore members of the ISA, and were able to apply to the ISA for a licence to explore minerals in the Area. The ISA is governed by a Council, and supported by a Legal and Technical Commission, made up of representatives of a number of member countries – including Fiji. Nauru and Tonga’s recent work to sponsor a commercial entity to explore in the Area was reiterated, and it was explained that, by partnering with Nauru and Tonga, the companies were able to access the reserved areas of the international seabed where mineral deposits occur, which had been set aside for developing states. The company, who have the funding and technical expertise (not found currently within Nauru or Tonga Governments), would perform the DSM activities, in line with ISA terms and conditions (including paying fees to the ISA). Nauru and Tonga hope to benefit from the arrangement by receiving payment from the company if and when minerals are extracted and profits are made.

Other participants requested more information about the different maritime zones. Ms Lily gave a summary of the rules contained within LOSC regarding measuring baselines, establishing the EEZ (and negotiating boundaries treaties where relevant) and the extended continental shelf. It was explained that the geological features required for an extended continental shelf were not present for Niue.

It was highlighted that Niue has made good progress with establishing its boundaries. It already has a treaty in place with American Samoa, and is now ready to sign a second one with the Cook Islands.

It was pointed out that Niue did have an outlying reef 125 miles to the south-east. But Mr Tawake explained that unless this remained above water level during high tide, and could support human habitation, then it could not count as an ‘island’ for the purposes of LOSC, and for establishing an archipelago for baseline and EEZ purposes.

Mr Sione Leolahi (Public Works Department) referred to Mr Tawake’s statement that the Project had received funding of Euros 4.7 million from the EU – and asked how this will be allocated. Mr Tawake explained that this was not simply to be divided between each of the 15 Project countries. The Project established and funded the small team of three personnel based within SPC-SOPAC to provide regional support, and funded various regional initiatives as shown in Mr Tawake’s presentation. There was also Project funding available to support individual countries to implement Project activities – and with the guidance of Project personnel the countries could themselves decide what to prioritise in this regard. One of the purposes of today’s workshop was to identify those priority areas for Niue, and what support Niue would like to request from the Project.

2.4.2 Deep Sea Minerals in the Pacific Island Countries and the outcomes of the June 2011 Project Inaugural Regional Workshop

Presenter: Akuila Tawake (SOPAC Division, SPC)

Mr Tawake introduced the different types of mining in the Pacific, highlighting the fact that DSM mining is a new frontier in mineral development. He explained how marine mineral exploration had occurred from the 1960s to the 1990s, and that these surveys had shown the potential of Manganese Nodules (MN), Sea-floor Massive Sulphides (SMS) and Cobalt-rich crusts (CRC) in the region. From 1985 to 2005, joint Japan-SOPAC surveys were conducted within the waters of PNG, Solomon Islands, Vanuatu, Fiji, Tonga, Samoa, Niue, Cook Islands, Kiribati, Tuvalu, Federated States of Micronesia and Marshall Islands.

Commercial entities currently involved in offshore exploration in the region currently include Nautilus Minerals, Korea Ocean Research and Development Institute (KORDI), and Bluewater Metals. Nautilus Minerals is currently developing the necessary technology to mine SMS deposits in PNG's EEZ.

Mr Tawake described how, where and at what depth deep sea minerals occur and the mineral contents inside MN, CRC and SMS. The potential benefits of offshore mining were also explained, together with the differences between terrestrial and marine mining.

Finally Mr Tawake informed the Workshop of the regional workshop held in Fiji in June 2011 to launch the Project, which set a mandate for the Project for further work with regard to DSM in the following 18 areas: a regional approach, capacity building, technology development and transfer, maritime boundaries, benefit-sharing, data collation, marine scientific research, community concerns and stakeholder consultation, environmental protection guidelines, environmental conservation and monitoring, information sharing and outreach, fisheries, resource assessment, technical information, legal framework, fiscal regime, sustainable economics, and governance and transparency.

Discussions on Presentation 2:

Mr Tawake was asked to provide more information about the differences between onland mining and the way in which deep sea mining would take place. Mr Tawake explained that the methods, not as yet fully developed, would vary from one seabed mineral deposit to another, but would generally require little or no overburden, unlike onland mining. However any offshore mining operation has to contend with the huge body of water (i.e. the ocean) that sits above the mineral deposit. He explained the mine plan in PNG's Solwara 1 Project, whereby remotely-operated vehicles (as shown in the presentation) will be used to mine SMS deposits. On the other hand, Mr Tawake highlighted the likely seafloor dredging-style extraction methods

that may be used for collecting manganese nodules (which would be over a larger area) in the future.

2.4.3 Niue Deep Sea Minerals Potential

Presenter: Akuila Tawake (SOPAC Division, SPC)

Unlike many Pacific Island Countries, Niue's EEZ had previously been surveyed only once for deep sea minerals. This survey was carried out in 2003 as part of the Japan-SOPAC DSM Cooperative Study, to assess the potential of manganese nodules within the EEZ of Niue. The Niue survey area is topographically subdivided into two provinces: Hilly Province including seamounts and knolls, and Plain Province.

Mr Tawake explained that the eastern part of Niue was surveyed using a number of survey methods including seabed sample collection, photography, bathymetry, the use of Multi Frequency Exploration System (MFES) of Manganese Nodules for abundance estimation, and data processing and analysis. An environmental baseline study was conducted to understand the present environmental situation for future evaluation of potential mining impacts on the deep-sea environment.

The results of the survey revealed that among the 12 sampling stations, manganese nodules were collected at one station. In addition, to confirm the occurrences of manganese nodules at other sites, arm dredge sampling was conducted, and 2.4 kg of manganese crust (average thickness of 15 mm) and 158 kg of manganese nodules were collected. Photographs taken by camera mounted on the sampler revealed the distribution of manganese nodules together with manganese crusts. The overall sampling results indicate that the abundance of manganese nodule in the survey area is than 2.5 kg/m². Further dredge sampling was conducted to evaluate the slop of seamount, and manganese crust and nodules were collected. The Abundance Map for Manganese Nodules and the Distribution Map of Cobalt-Nickel-Copper in Nodules as well as the Chemical Composition of different samples were shown and explained.

In conclusion, the manganese nodule survey conducted in the eastern half of Niue's EEZ suggests that the potentiality of manganese nodules in the area is not high, however, dredge sampling conducted on the northern slope of a seamount gives encouraging results collecting manganese crusts with an average thickness of 25 mm. This warrants further survey to assess the potentiality of manganese crusts on seamounts that occur within Niue's EEZ.

Discussions on Presentation 3:

It was acknowledged that there has only been one survey into Niue's DSM potential – as opposed to other countries where more surveys have been conducted – which means there is

limited information about Niue's EEZ potential available. The need for more analysis and survey was highlighted. Participants asked how this would be funded and who would conduct it; and Mr Tawake explained that it would usually be marine scientific research groups and mining companies from developed countries. It was discussed that the Niue Government could make a request to the SOPAC Division to explore with such partners (e.g. Japan / Korea / Germany / US) to conduct another survey. Other Pacific Islands may share that interest for their EEZs, and so a combined request from a number of Pacific Island countries to the SOPAC Division is recommended.

2.4.4 International Law Obligations

Presenter: Hannah Lily (DSM Project Legal Advisor)

Ms Lily explained that Niue has an opportunity to make an informed policy decision about whether it wishes to engage with DSM activities, either in its EEZ or in the Area – weighing up the potential costs and benefits, and Niue's capacity to regulate this.

International law requires States to take all appropriate steps to ensure that DSM exploration and exploitation activities under their jurisdiction or control are appropriately managed, in accordance with international standards. This requires the adoption of laws, regulations and administrative measures. Direct obligations under international law in respect of DSM include (i) the precautionary approach, (ii) best environmental practices and (iii) environmental impact assessment ('EIA'). Legislation is not sufficient on its own. States engaging in DSM will need to identify or create an administering body to receive, assess and decide upon applications, to set the terms of licences for DSM activity, to monitor DSM operators working under such licences or agreements, and to enforce compliance where necessary. This will be a challenge to small countries, with little spare capacity, but options may be available to delegate some functions to a regional body, private contractor or other expert body.

Ms Lily introduced the EU-SPC Project's Regional Legislative and Regulatory Framework ('RLRF'), which provided some detailed guidance for Pacific Island Governments on DSM law and policy requirements.

2.4.5 Niue's Policy and Approach to Deep Seabed Mining and Niue's Relevant Legal Framework

*Presenters: Deve Talagi (Director, Department of Public Works)
Nina Hekau (Crown Counsel, Crown Law Department)*

Mr Talagi presented a summary of the 1999 Niue Minerals and Aggregates Policy. This Policy, produced originally as a Technical Paper by the SOPAC Division and subsequently adopted by the Niue Government, had not been greatly used over the past decade, and consequently not many were aware of it. Mr Talagi summarised its contents, including the following aspects:

- Investment policy, and a cost/benefit analysis.
- Environmental considerations, including a requirement for an EIA in some circumstances.
- The potential that minerals work may have for in-country capacity-building.
- Recommended fiscal regimes.
- Licensing requirement and procedures; conditions and terms – for prospecting, mining and quarrying.
- Operational requirements, covering: mine closure, infrastructure policy, and health and safety standards.
- Employment and training rules.
- Land tenure and compensation principles.
- The appointment of the Economics and Planning Department as the focal point for mining applications.



Mr Talagi's presentation

Mr Talagi explained that the Policy makes little mention of offshore work or seabed minerals, as these were not envisaged at the time, but some of the content could be relevant for DSM work. He highlighted the fit between the Policy and the 1994 Niue Strategic Development Plan, which contains national objectives for the conservation and sustainable utilisation of Niue's cultural and environmental values.

Ms Hekau detailed five pieces of legislation currently in force in Niue, which were relevant to DSM:

- **The Territorial Seas and EEZ Act 1996**, which establishes Niue’s maritime zones. This is due shortly to be replaced by the Maritime Zones Bill 2012, to remove reference to old British Admiralty charts that have been superseded by new more accurate data.
- **The Continental Shelf Act 1974**, which provides for exploration and exploitation of Niue’s continental shelf. The Act vests the minerals resources of the seabed in the Crown, and provides that mining of those minerals is permitted only under licence. The Act provides for the Cabinet to establish the licensing regime. One issue with the Act that Ms Hekau noted the Act is that the maximum penalty for infringement appears to be a \$200 fine – which would be inadequate to compensate in the event of a major pollution or environmental disaster.
- **The Mining Act 1977**, which vests minerals under the surface of the land (or seabed) in the Crown. While the seabed is included in the Act’s scope, its content actually focuses on onland mining, and doesn’t have any provisions tailored to offshore activities. Another gap is that there is no EIA requirement, and nor does the Act cover other types of exploration activity, such as marine scientific research.
- **The Marine Pollution Act 1974**, which is targeted mainly at fishery activities. In any event this Act is problematic as it appears to have been improperly enacted: it was enacted as *a regulation* to the Niue Act 1966, but is described and drafted as *an Act* itself, rather than a regulation. Niue’s Constitutional Advisor has advised that Niue would need either to re-enact it clearly as an Act, or to pass a new regulation, for it to have force.
- **The Environment Act 2003**, which established Niue Government’s Environment Department and its functions. These include: the design and implementation of environmental management and planning strategies and processes for Niue, natural resources management, EIA processes, and nature conservation, amongst other functions. The Department covers activities both onland and in the sea.



Ms Hekau, Senior Crown Counsel

Ms Hekau highlighted that there are several other pieces of legislation that cover maritime activities and safety at sea, but these are mostly specific to transport and fisheries, and do not

envisage DSM. She advised that these laws may need more thorough review, to identify the gaps, and to recommend what supplementary enactments may be required properly to cover DSM within Niue's laws.

2.4.6 DSM Project Implementation in Niue: Formation of National Offshore Minerals Committee and Appointment of National Focal Point for DSM

Presenter: Hannah Lily (DSM Project Legal Advisor)

Ms Lily explained that is the SPC-EU DSM Project's recommendation to have (i) a national technical focal point, and (ii) a National Offshore Mining Committee ('NOMC') to implement the Project in Niue. There is financial support from the Project available for this and for in-country activities to be conducted by the focal point and the NOMC. It is open to Niue to inform the Project who takes these roles, and how it is to be arranged – and this was one matter to be discussed in this afternoon's working groups.

3. WORKING GROUPS AND OUTCOMES

Workshop participants were divided into two groups: (i) a technical and (ii) a law and policy working group, for the discussion session. The technical working group was tasked to discuss technical DSM issues in relation to the needs and priorities of Niue, whilst the policy working group was mandated to discuss the state of national DSM legal instruments and the necessary requirements to put in place relevant to national policy, legislation and regulation. Each group then presented back in plenary on the outcomes of their discussions for consideration and further deliberations.



Working Group 1, in discussion

3.1 Outcomes of Working Group 1: Technical Issues

- **(1) Current institutional capacity and priority areas for capacity building**

It was noted that the data for Niue's EEZ potential was limited. It was recommended that gathering more data should be prioritised, and that better data management systems should be developed.

- **(2) Capacity gaps**

The Group highlighted the need to develop human resources specifically for DSM, through training and education opportunities.

More research and exploration of Niue's seabed mineral potential was also considered to be a priority, and it was suggested to seek the SOPAC Division's help with this.

- **(3) Opportunities for capacity building**

Niue representatives should attend overseas meetings, and learn what is happening in other places that are ahead of Niue in their DSM experiences. In the short-term, workshops and attachments opportunities would be welcomed. In the long-term it was recommended that Niue should identify particular areas relevant to DSM where Niue did not have specialist knowledge, and to find training for that.

It was recommended that the Niue SPC-EU DSM Project focal point and NOMC should work and share ideas with other focal points and NOMCs in the region. This could lead to bilateral or sub-regional initiatives to source joint funding for exploration, technology, or training and information-sharing.

- **(4) Environmental monitoring and management for DSM exploration and mining**

The working group recommended that Niue should have an inspector on board any DSM vessels in Niue's EEZ, to monitor conduct, using a similar model for fisheries. If necessary this person could come from an external expert agency, but it would be better to develop local capacity and skills and make it a job for a Niuean national. The inspection role should be supported by other methods, such as regular and comprehensive monitoring of the coastal and offshore environment to identify any impacts, using a wide scope so as not to miss any unanticipated effects.

- **(5) Stakeholder partnership**

Niue should continue to engage with regional organisations (such as SOPAC and other SPC Divisions). Collaboration with other Pacific Islands was also recommended: not every island will

engage with DSM, in the same way or at the same time – so Niue should learn from other countries' experiences.

Niue should take an inclusive approach, inviting NGOs and local communities to consultation events. It is important that people are informed, and properly understand the potential benefits and risks of DSM. Niue would like to have collective agreement for the Project and any future DSM activities from anyone potentially affected.

- **(6) Technical and technological challenges and recommendations for deep sea mining**

A significant challenge will be to find the technology for environmental monitoring to be performed at the requisite depths. The mining equipment is still being developed by industry even – so how will Government find equivalent technology and resources to monitor exploration and mining activities? Again, a collaborative approach – with regional agencies and mining companies – will support Niue here. The mining companies should bear the onus to provide data and information to the Niue Government, as regulator.

- **(7) General Issues**

(i) Benefits and adverse impacts of offshore exploration and mining

Benefits to Niue of DSM activities could include: employment, and revenue for the Government. Adverse impacts may include: changes in the ecosystem and/or pollution, causing unknown long term effects on the environment.

The working group stressed that it was important to weigh up the potential benefits against the costs, and to continue doing so. When more information becomes available, mitigation methods should be considered e.g. marine buffer zones around mining sites.

(ii) Formation of the National Offshore Minerals Committee ('NOMC')

It was recommended to form an interim NOMC until DSM legislation is passed in Parliament. The membership is recommended to be cross-governmental:

- Department of Public Works (focal point)
- Department of Justice and Lands,
- Crown Law,
- Department of Community Affairs,
- Department of Environment,



Mr Avi Rubin, of Niue's Chamber of Commerce, presents on behalf of Working Group 1

- Department of Agriculture, Fisheries and Forestry,
- Chamber of Commerce,
- Support officer.

This working group wanted to confirm the Department of Public Works as the DSM Project focal point.

(iii) Additional

The community at large should be informed of this new proposed industry in Niue. Everyone at the workshop today represents wider groups and communities, and can and should feedback to those not attending, what they have learned today.

3.2 Discussion of Working Group 1's Presentation

It was discussed whether NGO representatives could be included in the NOMC. It was clarified that the Chamber of Commerce is an NGO, and that the Department of Community Affairs represents the NGO interests and voice.

It was clarified that the recommended 'inspectors' on the vessels would be overseeing compliance with Niue's DSM rules and legislation, including environmental matters and licensing terms (not just health and safety matters) and so 'observers' or 'monitors' may be a better term.

At what stage to consult at a grass-roots level was discussed, and it was agreed: as soon as possible. People will be concerned about the term 'mining' and will have heard of bad experiences in other nations (e.g. phosphate mining in Nauru). Niue has recently learned from experience (with asbestos disposal) that earlier consultation and information was preferable, and enabled people to be well-informed and to participate effectively in policy-development and decision-making. It was agreed that the NOMC should have a community communications and consultation role, within its TORs. The media can also assist with this.

There was further discussion about how Niue can obtain more exploration and assessment of its mineral potential in the EEZ. It was suggested that such a request should come from the Pacific Island countries first (via the SOPAC Division), and that if it were a regional / multi-country approach, this may be an effective approach. The SOPAC Division can be mandated by the countries to seek the assistance of development partners (e.g. Japan, Korea and US) to conduct additional seabed minerals assessment in the region.

3.3 Outcomes of Working Group 2: Law and Policy

- **(1) Development of Offshore Minerals Policy and Legislation, and Regulation**

The second working group considered the best starting point for Niue is to review current legislation, and to see what amendments were required to include the seabed: building on what Niue already has, rather than creating a new standalone piece of legislation. The recommended approach was to identify the shortfalls in the existing law, and see what should be done to address this. It was suggested to look to other jurisdictions also for best practices, particularly with regards to environmental practice. Rather than starting from scratch Niue should rely on other nation's research and precedents (which may be further afield than the Pacific region), and the SOPAC materials (building on the SPC-EU DSM Project's RLRf as a model to follow).

It was noted that very few people in Niue know about the current legislation – and the Minerals Policy was only just discovered again recently. So another issue for Niue is that there may be valuable information there, but few people know about it or know where it is. There is a problem of policies not being continued when key staff members leave.

The current EIA law and policies may not be sufficiently comprehensive. They don't include social impacts currently, and it was recommended to review that. Also, if EIAs are performed currently, they do not always get followed. Those operating the projects tend to focus more on the development and exploitation of resources, than environmental protection.

The public should be kept well-informed also – learning from the recent outcry about planned asbestos-disposal in Niue.

- **(2) Appropriate fiscal regime policies for deep sea mining**

The current position in Niue is for a 50/50 benefit sharing arrangement with mining companies with regards to royalties. This is not in line with global practice, so may need to be reviewed. Niue should assess international trends in fiscal regimes – and consider what is fair for Niue. Although it has to be recognized that in reality the balance of power often falls in favour of the mining companies, who have more financial resources than Niue Government. The fiscal regime should include 'insurance' or an environmental bond. The Marine Insurance Act 1908 also needs to be renewed.

The conduct of EIAs and monitoring will cost – and the DSM legislative framework should include cost recovery provisions for this. The framework also needs to consider the ships and the crew and what tax / cost implications these may present.

The Mining Act 1977 requires the establishment of a Mining Office and Mining Inspectors – which hasn't been done, and which has seems unfeasible given Niue's limited resources and lack of mining currently. However, if DSM or other mining is to be pursued, a body needs to be

given responsibility. There is an exploration licence currently issued (onland) and each time it is due to be renewed, there is a lack of clarity within Niue with regards to what the process is and how has responsibility. This *ad hoc* approach should be replaced with a clear system, and body with a dedicated function (to include monitoring systems).

- **(3) Environmental management and monitoring frameworks / guidelines for deep sea exploration and mining**

The Environment Act 2003 contains broad functions, but lack detail. The Department of Environment has limited capacity. No baseline studies have been conducted to date, against which effects of activities could be measured. It is recommended that preliminary assessments need to be carried out before next steps are taken – perhaps through encouraging marine scientific research within Niue’s EEZ by third parties, if Niue Government itself does not have capacity and resources to do it.

- **(4) Offshore Mining Legal Instruments**

Niue does not have any offshore mining legislation. Niue has ratified LOSC (in October 1996).

- **(5) Development of Marine Scientific Research (MSR) Policy**

There is no specific MSR policy in place in Niue. The Mining Act does not cover MSR. The Territorial Seas and EEZ Act 1996 provides for MSR, by only in broad terms. There will be a need to develop a policy in line with LOSC, to cover interested mining companies to undertake MSR.

- **(6) General Issues**

(i) Benefits and adverse impacts of offshore exploration and mining

There is a need to balance the interest in exploitation of resources against the importance of conservation. Commercial sanctions should be imposed on mining companies that contravene mining licences or undertake practices that are harmful to the environment (these could be scaled according to whether the breaches are willful or accidental breaches; minor or significant).

Mining should not interfere with existing operations, such as whale watching and fishing. Current reef marine protected areas also have to be taken into account. Other impacts to consider include: social impacts arising from any financial windfall from DSM; and the influx of crew on the island, if ships would land in Niue. These could have potentially either positive or negative effect - depending on how such matters are managed.

(ii) Formation of the National Offshore Minerals Committee (NOMC)

It was agreed that a NOMC was needed, and the suggestion was to base it upon the membership of an existing committees (i.e. the Water Steering Committee).

There is a longer-term need (and a requirement of the Mining Act) to establish a Mining Office and Mining Inspector if Niue is to engage with mining properly. When this Office is created, it should be responsible for the NOMC, and should contain the SPC-EU DSM Project focal point. In the meantime the Public Works Department should continue as focal point.

(iii) Additional DSM Issues

Finances need to be established to support these processes, and capacity-building for regulation and in technical areas is a major priority. DSM could be a great opportunity, and this should be harnessed.

It was raised that piracy, or unscrupulous operators could be an issue. Niue also needs to be able to prevent or deal with illegal mining.



Working Group 2, in discussion

3.4 Discussion of Working Group 2's Presentation

There was some discussion about the importance of Niue maintaining strong control over the activities within its EEZ, by having a comprehensive licensing regime that covers all relevant areas, including employment and safety standards.

The recommendation to have an observer onboard the exploration vessel, to monitor the operator within the EEZ, was discussed further. Two models were possible: (1) it could be a Government observer, on the boat at all of the time (on a rotational basis); or (2) the DSM operator could perform self-monitoring through reports and provision of data and samples to

the Government, supported by more routine site visits and inspection by the Government regulatory body. For either model, the cost of monitoring can be passed to the DSM operator.

There is also an issue that there is little capacity and technical expertise to perform the monitoring, and there is some interest in a regional body, or private sector body, to perform this function on behalf of Niue and other Pacific Islands.

It was explained that best practice was for policy to precede legislation. It was agreed that it was possible that this may identify an intention to create a new DSM specific law, rather than building on what was there already. But the current recommendation was to build on existing structures and laws.

3.5 Conclusion of Working Group Session: Workshop Outcomes

The following action outcomes were therefore agreed by the workshop:

- (1) The existing Minerals Policy and Minerals Act 1977 should be reviewed, and amendments proposed to include DSM.
- (2) The Environment Act 2003 and regulations made under it should also be reviewed, to ascertain whether more specific provisions pertaining to the marine environment and likely impacts of DSM are required.
- (3) Until a Mining Office is established in Niue:
 - a. the NOMC would be formed (comprising the same members as the Water Steering Committee, but with private sector representatives added); and
 - b. the SPC-EU Project would liaise with the SOPAC Division focal point (the Director of the Public Works Department) for him to identify a suitable technical focal point within the Public Works Department for future Project activities.

4 CLOSING OF WORKSHOP

Mr Talagi thanked the participants and the SPC-EU Project Team for their invaluable insights today. He reiterated that this is a new area for Niue, and that it was clear from the presentations given at the workshop that there was much to do and to consider, if Niue is to engage with DSM in the future. He noted that the discussions had been very productive and a lot had been learned in the day. He looked forward to the formation of the NOMC in order to

progress some of the matters flagged at the workshop as next steps for Niue in implementing the Project. Niue looked forward to working with the SPC-EU Project further on these points.

Mr Tawake thanked all attendees to the workshop, on behalf of the Director General of the SPC and the Director of the SOPAC Division of SPC, for all their efforts and hard work today, and looked forward to working closely with Niue in the future, via the SOPAC Division national focal point for Niue and the DSM Project technical focal point, once identified.

Mr Hipa, on behalf of the Minister and Government of Niue, congratulated Mr Talagi for bringing the workshop together, and expressed appreciation for the presence and participation of the SPC-EU DSM Project Team, Government representatives and the Chamber of Commerce. He expressed that Niue would take any future engagement with mining very seriously and cautiously, and intended to learn from other nations' experiences and from regional support – like the SPC-EU DSM Project. He thanked the workshop for its productive discussion and the next steps that have been suggested for Niue, particularly with identifying a responsible body within Government to administer mining matters. Mr Hipa closed the workshop by stating that Niue was committed to getting it right, and was excited to be involved at the outset of this new emerging industry.

ATTACHMENT 1 – Niue Deep Sea Minerals National Stakeholder Workshop Programme
Tuesday 3rd April 2012, Niue Sports Club

| Time | Activity | Presenter |
|------------------|--|---|
| 9:00 – 10:00 am | Prayer | Sione Leolahi (Department of Public Works) |
| | Official Opening | Deve Talagi (Department of Public Works, and Project focal point); and Richard Hipa (Secretary of Government) |
| | Responding Remarks | Mr Akuila Tawake (DSM Project Team Leader – SPC) |
| | Overview of the SPC-EU EDF10 Deep Sea Minerals (DSM) Project | Mr Akuila Tawake |
| | [Group Photo for workshop Participants] | |
| 10:00 – 10:15 | Morning Tea | |
| 10:15 – 12:30 pm | Deep Sea Minerals (DSM) in the Pacific Island countries and the outcomes of the June 2011 regional workshop. | Mr Akuila Tawake |
| | Niue Deep Sea Mineral Potential | Mr Akuila Tawake |
| | International law obligations and the draft Regional Legislative and Regulatory Framework. | Ms Hannah Lily (DSM Project Legal Advisor – SPC) |
| | Niue's Policy and Approach to Deep Seabed Mining Niue's Relevant Legal Framework | Mr Deve Talagi; and Ms Nina Hekau (Crown Counsel) |
| 12:30 – 1:30 pm | Lunch | |
| 1:30 – 3.00 pm | <p>DSM Project Implementation in Niue: Formation of National Offshore Minerals Committee and Appointment of National Focal Point for DSM</p> <p>Stakeholder Discussions Participants split into two groups (policy and technical) and are required to discuss on the issues listed below :</p> <p>Group 1: Policy Issues</p> <ul style="list-style-type: none"> • Development of deep sea minerals policy, legislation and regulation • Appropriate fiscal regime policies for deep sea mining • Environmental management and monitoring Frameworks/guidelines for deep sea exploration and mining • | Ms Hannah Lily |

| | | |
|----------------|--|---------------------------|
| | <p>Group 2: Technical Issues</p> <ul style="list-style-type: none"> • Technical and technological challenges of seabed mining and recommendations • Current institutional capacity and priority areas for capacity building • Ideas for capacity building initiatives (e.g. attachment in offshore exploration and mining, training workshops) • How to implement environmental monitoring and management for seabed exploration and mining • Stakeholder partnership (e.g. Government-Private sector-SPC-NGO partnership) <p>General Issues</p> <ul style="list-style-type: none"> • Benefits and adverse impacts of deep sea mining • Formation of a National Offshore Committee (NOMC) for delivery of the DSM Project in Niue • Confirmation of DSM Project focal points • Any additional deep sea mineral issues | Participants |
| 3.00 – 3.15 pm | Afternoon Tea | |
| 3.15 – 4:30 pm | Working Groups Report Back | Chaired by Mr Deve Talagi |
| 4.30 pm | Workshop close | Richard Hipa |

ATTACHMENT 2 – Niue Deep Sea Minerals National Stakeholder Workshop Participants

| | Name | Job title | Organisation | Contact (email) |
|-----|----------------------|---|--|-------------------------------|
| 1. | Akuila Tawake | Project Team Leader, Deep Sea Minerals Project | SPC-SOPAC | akuila@sopac.org |
| 2. | Hannah Lily | Legal Advisor, Deep Sea Minerals Project | SPC-SOPAC | hannah@sopac.org |
| 3. | Deve Talagi | Director | Department of Public Works (DPW) | deve.talagi@mail.gov.nu |
| 4. | Richard Hipa | Secretary of Government | Office to the Secretary of Government | sog.hipa@mail.gov.nu |
| 5. | Sione Leolahi | EU IWRM National Co-ordinator | EU IWRM / DPW | sionel@mail.gov.nu |
| 6. | Avi Rubin | President | Niue Chamber of Commerce | avirubin2001@yahoo.com |
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| 20. | Diamond Tauevihi | Acting Director | Community Affairs | diamond.tauevihi@mail.gov.nu |
| 21. | Maryanne Talagi | Acting Director – Niue Campus Village Councillor | University of the South Pacific Makefu Village Council | Talagi_ma@usp.ac.fj |