Background Briefing: Deep Sea Mining (DSM) and Human Rights in the Pacific
Prepared for 2021 BHR Program in the Pacific

1. What is Deep Sea Mining?

Deep Sea Mining (DSM) refers to the process of retrieving mineral deposits from the deep ocean - the area below 200 metres. Depleting mineral deposits on land, and resistance of local communities and Indigenous peoples to the social and environmental impacts of mining have increased commercial interest in extracting marine mineral deposits, including polymetallic nodules, polymetallic sulphides, and cobalt crusts. These deposits contain metals such as manganese, nickel, cobalt and copper commonly used in technology such as smartphones, solar panels, and electric storage batteries.

Previously, commercial focus has largely been upon mineral exploration, however there is great concern that this exploration will soon turn to exploitation through DSM. The deep sea remains poorly understood, making it difficult to assess the potential impacts of DSM and to put in adequate safeguards to protect the marine environment and livelihoods of Pacific peoples. The challenges are especially acute in areas beyond the boundaries of nation states, with the obligations of their governments to respect, protect and fulfil human rights.

2. Governance of Deep Sea Mining

The International Seabed Authority (ISA) is an autonomous organisation within the United Nations common system that was established under the 1982 UN Convention on the Law of the Sea (UNCLOS). The ISA regulates exploration for and exploitation of minerals found in ‘the Area’, referring to the sea bed and subsoil beyond the limits of national jurisdiction. The Area comprises over 50% of the entire seabed on Earth and was designated as ‘the common heritage of mankind’. Under UNCLOS, exploration for and exploitation of seabed minerals in the Area may only be carried out under a contract with the International Seabed Authority and subject to its rules, regulations and procedures. Contracts may be issued to both public and private mining enterprises, provided they are sponsored by a State party to UNCLOS and meet certain standards of technological and financial capacity. Regarding disputes, under UNCLOS, the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea has been established to have jurisdiction over disputes regarding DSM activities.

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1 This briefing paper was prepared for DTP by DTP intern, Emily Shelley in July 2021
3 Ibid.
The International Seabed Authority: The ISA is made up of 167 Member States and the European Union. The primary policy making body of the ISA is the Assembly, comprising all Member States that have signed UNCLOS. The Assembly sets general policies, establishes budgets, and elects a 37-member Council, which serves as the ISA’s executive authority. The Council has two advisory bodies, the Legal and Technical Commission (30 members) which advises the Council on all matters relating to the exploration and exploitation of non-living marine resources, such as polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts, and the Finance Committee (15 members) that deals with budgetary and related matters.5

The regulation of mining in coastal waters and within national Exclusive Economic Zones is governed by national regulation6 and separate payment regimes, though an international payment mechanism is imposed on coastal States for mineral exploitation on the extended continental shelf.7

3. Where is DSM Exploration Occurring?

Since 1982, the ISA has issued 30 contracts for mineral exploration in the Pacific, Indian and Atlantic Oceans, however most of these sites are located in the Clarion-Clipperton fracture zone (CCZ) of the Pacific Ocean.8 Contracts have been granted to a number of private companies by a number of small island/big ocean States including Kiribati, Nauru, Cook Islands and Tonga. For example, The Metals Company (formerly DeepGreen) is a Canadian firm that holds the rights to exploration contracts in Nauru, Tonga and Kiribati, and plans to begin mining operations in the near future.9 DSM projects had also been proposed by Nautilus company in the Bismarck Sea, Papua New Guinea, however the project has been suspended as the PNG government supported a 10-year moratorium on DSM.10

As noted above Seabed mining will also occur within national Exclusive Economic Zones and extended continental shelves.

4. DSM Exploitation

Although exploration contracts have been issued, the ISA is still developing the Exploitation Regulations and was not able to meet its self-imposed deadline of July 2020, in large part due to the Covid-19 crisis.11 At the end of June 2021, Nauru requested the ISA Council to

9 Ibid.
complete the adoption of the rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation in the Area within two years’ time. If they are not completed within that timeframe and an application for exploitation activities is pending, the Council must nonetheless consider it, but there are numerous legal uncertainties about the consequences of the request.12

5. Concerns on Environmental Impact 13

- **Habitat destruction**: DSM will cause the destruction of habitat on the seafloor with unknown environmental impacts on plant and animal life.

- **Sediment plumes**: Plumes of sediment and wastewater discharged from ships during mining may spread hundreds of kilometres, prove toxic to marine life or enter the marine food chain.

- **Pollution**: noise, vibrations and light pollution caused by mining equipment and surface vessels, could upset species attuned to living in the dark, or the swimming and schooling behaviour of fish, dolphins and whales who use noise, echolocation or bioluminescence to communicate and escape predators. DSM also has the potential for spills of fuel or toxic substances. The location of DSM increases the challenges of regulatory oversight - including responses and accountability for pollution.

An article by the Harvard Environmental Law Review has recorded that the exploratory phase of DSM has already resulted in environmental disturbances. Prospective vessels have created disturbances to traditional fishing grounds in Tonga, and PNG villagers adjacent to the Bismarck sea have reported high incidences of dead fish washed onto beaches.14

6. Concerns for Human Rights

- **Right to Life, health, food and an Adequate Standard of Living**: Risks to local fisheries industries: DSM pollution and mine waste may adversely impact upon fishing and seafood harvesting industries across the Pacific, putting livelihoods of local communities at risk. Impacts may extend beyond coastal communities to wider impacts as well to ecosystem services such as fisheries, climate regulation, detoxification and nutrient cycling that could have wider implications for food security.15

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15 The UK Subsea Mining Capability Statement April 2017, notes that, "The activities involved in subsea mining could have detrimental impacts on localised populations as well as an impact on world oceans through the potential extinction of unique species which form the first rung of the food chain."
• **Access to information, participation and remedy**: The existing prospecting and exploration regulations promulgated by ISA do not include any public participation procedures. The draft Exploitation Regulations contain some improvements in providing further access to information and participation. Deep Sea Conservation Coalition, a coalition of over 90 civil society organisations, views the ISA’s consultation processes as insufficient to establish the Free, Prior and Informed Consent (FPIC) of Indigenous communities. The draft Exploitation Regulations do not permit third party stakeholders, including those representing environmental interests and the interests of local communities in the process of engaging on specific licensing processes to contest final decisions on contracting. In other words, there is no access to remedy for decision-making to challenge the approval of a plan of work or an existing contract. In addition, there are legitimate concerns about difficulties in monitoring and legal liability. How can companies be held responsible when harms are done? Which states bear primary responsibility? There are concerns about the limited capacity of small island states to monitor companies and ensure accountability work.

• **Cultural rights**: For many coastal communities, there is a deep cultural connection to the seas, with cultural or spiritual value associated with a pristine ocean, or traditional sense of ownership of or identification with the ocean and its resources that could be affected. This is an additional argument for incorporating the concept of free, prior and informed consent (FPIC), into licensing processes.

• **Rule of law**: Numerous actors have highlighted concerns about the governance arrangements within the ISA including about lack of transparency and participation in its main decision-making body, which remain closed, despite a Decision from the Assembly, the supreme organ, about the potential formal conflicts of interest and informal conflicts of interest in the state sponsorship requirements for companies seeking licenses. There is little information in the public domain regarding the contractual arrangements and regulatory measures established by states in relation to ISA contractors whom they sponsor.

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22 Lily, H. *Sponsoring State Approaches to Liability Regimes for Environmental Damage Caused by Seabed Mining* (Centre for International Governance Innovation, The Commonwealth)
7. Opposition to DSM Growing:

7.1 Community Opposition in Pacific

- **Alliance of Solwara Warriors**: representing Indigenous communities in Bismark and Solomon Seas of PNG have organised resistance against DSM, launching a legal case against the Solwara 1 project.\(^{23}\)
- **Pacific Islands Association of NGOs (PIANGO)** the Pacific Conference of Churches (PCC), World Wide Fund for Nature (WWF), and the Development Alternatives with Women for a new era (DAWN) launched a [collective statement](http://www.piango.org/our-news-events/latest-news/the-pacific-draws-the-blue-line/) calling for a Global Ban on Deep Sea Mining on March 25\(^{th}\) 2021.\(^{24}\)

7.2 Governments calling for Moratorium

- **Pacific Island Leaders Moratoriums**: The Pacific Island Leaders Forum in Tuvalu in 2019 called for a 10 year moratorium of DSM.
- **The PNG Government** announced a moratorium on DSM bringing an end to the Nautilus plans for the Bismark and Solomon Seas

7.3 Global Corporations Join Calls for Moratorium

- In response to concerns raised by WWF and others, a number of automobile and technology companies have pledged their support for a [global moratorium on DSM](http://www.piango.org/our-news-events/latest-news/the-pacific-draws-the-blue-line/), including BMW, Samsung, Google, and Volv Group. The signatories pledge to not source or use any deep sea minerals in their supply chains, and not to finance DSM activities.\(^{25}\)

Other actors

- The UN Special Envoy for the Ocean, Peter Thomsen, who was himself the former head of the ISA, has called for using the 2021–2030 UN Decade of Ocean Science for Sustainable Development.
- Sir David Attenborough has called for ban on deep seabed mining.\(^{26}\)
- The High Level Panel on a Sustainable Ocean Economy Blue Paper on deep seabed mining noted that a full analysis – fuller than has been done to date - of the perceived positive and negative impacts is required before there can be confidence


\(^{26}\) The Guardian (21 March 2020) David Attenborough calls for ban on 'devastating' deep sea mining
that engaging in industrial-scale deep-sea mining would achieve a global net benefit.²⁷²⁸

8. DSM Campaigns and Calls to Action

- **Alliance of Solwara Warriors:**
  - Alliance of communities in the Bismarck and Solomon Seas who stand to Ban Seabed Mining in PNG and the Pacific.

- **Pacific Blue Line Statement:** [https://www.pacificblueline.org/pacific-blue-line-statement](https://www.pacificblueline.org/pacific-blue-line-statement)
  - Joint statement by Pacific civil society groups including PIANGO, Pacific Conference of Churches calling for a global ban on DSM

- **Deep Sea Conservation Coalition:** [http://www.savethehighseas.org/](http://www.savethehighseas.org/)
  - Founded in 2004, a coalition of more than 80 NGOs, fishers organisations and law policy institutes worldwide aiming to protect vulnerable deep-sea ecosystems

- **WWF No Deep Seabed Mining Campaign:**
  [https://wwf.panda.org/discover/our_focus/oceans_practice/no_deep_seabed_mining/](https://wwf.panda.org/discover/our_focus/oceans_practice/no_deep_seabed_mining/)
  - Calls for a global moratorium on DSM

- **Sustainable Ocean Alliance's deep seabed mining campaign:**
  [https://www.soalliance.org/soa-campaign-against-seabed-mining](https://www.soalliance.org/soa-campaign-against-seabed-mining)
  - Position: [https://www.soalliance.org/soa-campaign-against-seabed-mining#ourposition](https://www.soalliance.org/soa-campaign-against-seabed-mining#ourposition)
  - Campaign toolkit: [https://www.soalliance.org/soa-campaign-against-seabed-mining#campaigntoolkit](https://www.soalliance.org/soa-campaign-against-seabed-mining#campaigntoolkit)

- **The Ocean Foundation Deep Sea Mining Campaign:**

9. The Global Framework on Climate Change, Nationally Determined Contributions (NDCs) and the ISA

The pressures for DSM are likely to grow as shifts towards renewable energy may increase demand for certain minerals found in the deep sea. How the ISA can incorporate the commitments of states to reduce carbon emissions (NDCs), and their commitments on biodiversity into their governance and regulatory regime is coming under scrutiny.

"The International Seabed Authority has an opportunity now, as it negotiates the rules for mining beyond national jurisdiction to:

(a) factor predicted and actual climate variations into its management regime so as properly to understand cumulative impacts, and to manage the predicted adverse effects on biodiversity or ecosystem services caused by mining and other activities

(b) set restrictions on the carbon emitted during at-sea mining operations and account for the real carbon cost of the full industrial chain including transport and treatment"

https://www4.unfccc.int/sites/SubmissionsStaging/Documents/202003301548---DOSI_DOOS%20contribution%20to%20UNFCCC%20SBSTA%20final.pdf

10. Further reading and resources

- UN Overview of Pacific Deep Sea Mining Activity

- World Economic Forum Briefing Paper on Deep-Sea Mining: OECD Due Diligence Guidelines, Rights of Indigenous Peoples, Biodiversity Impacts, UNCLOS laws designating the international seabed as the ‘common heritage of mankind’


- Interview with Alliance of Solwara Warriors

- Impact of COVID-19 on Deep Sea Mining

● See from Klaus Willaert: https://biblio.ugent.be/person/802001635902
  ○ An association of NGOs and citizens from Australia, Papua New Guinea and Canada concerned about the likely impact of DSM on marine and coastal ecosystems and communities.
  ○ The goal of the campaign is to develop an active, broad-based and informed Civil Society response to Deep Sea Mining in the Pacific region. In particular, the aim is to achieve Free Prior and Informed Consent (FPIC) from affected communities and the application of the precautionary principle in decision-making about DSM.