

From: [Maurice Brownjohn](#)
To: [Pacific Regionalism](#); [Secretary General Meg Taylor](#); [PNA - Transform Agorau](#)
Subject: Minimum terms and conditions [MTC] for Deep Sea Mining
Date: Tuesday, May 26, 2015 3:52:52 PM
Attachments: [Brownjohn DRAFT dsm submission.docx](#)

Joel,

As discussed previously with the SG there is serious need for the region to agree minimum terms and conditions [MTC] for deep sea mining ventures in our region. This would establish agreed minimum terms of access to our DSM resources to mitigate attempts to play off each other, It does not limit what sovereign nations may do or demand of investors; it only sets an agreed minimum. Likely MTC might include, requirement to set up and man a company office in each capital / port, employment, local sourcing, need for observers on board boats, 3rd party assay of all exports in port to verify volumes and mineral content for export taxes, environmental standards, etc

The precedence for this is the MTC for the tuna fishery eg, log books, observers and transshipping in port, This is where PNA has driven participation and benefits rather than selling licences and to be just an observer from the beach.

More importantly you learn about your resource.

Happy to discuss further

Maurice

--

Maurice Brownjohn OBE
Commercial Manager
PNA Office
P.O. Box 3992, Majuro, MI, 96960
ph +692 625 7626
mob +692 4564959
skype mauricebj
email: maurice@pnatuna.com

CONFIDENTIAL

DATE:

REF:

STATUTORY BUSINESS PAPER NO...../

FOR THE MEMBERS OF THE FORUM LEADERS MEETING

**SUBJECT: NEED TO ESTABLISH A REGIONAL AGREEMENT FOR THE
MANAGEMENT AND MONITORING OF DEEP SEA MINERALS
ACTIVITIES IN THE FORUM COUNTRIES' WATERS**

A. PURPOSE

The purpose of this submission is to:

- (i) Inform members of the growing interest in deep sea minerals [DSM] activities within our territorial waters, EEZs and adjacent high seas;
- (ii) Advice that whilst this represents a potentially significant economic opportunity for all Parties, experiences with on-land mining are limited to a few Melanesian countries and DSM experience and legislation is at best embryonic anywhere in our region (and the rest of the world).
- (iii) The International Seabed Authority [ISA] based in Jamaica, was established under UNCLOS and currently has 165 members, with the responsibilities to manage and control activities on the seabed beyond national jurisdiction, the "AREA".
- (iv) The Forum region is unique in terms of the global oceans, being largely EEZs with pockets of enclosed or semi enclosed high seas, rather than open ocean which is more typical. Regrettably unlike the WCPFC fisheries convention, the Forum countries are a minority in the ISA and as SIDS have no special recognition under this global regime.
- (v) The purpose of this submission is to present to the leaders an overview of the development of DSM, and the activities of the SPC/SOPAC DSM Project in our region to assist Parties with developing a better understanding of DSM activities, the potential benefits for small island nations of well managed DSM activities, and the importance of developing stringent national DSM legislation and policies that reflect the countries' development strategies while conditioning DSM activities to the observance of environmental standards;
- (vi) Further provide justification to leaders to look at establishing regional or sub regional agreements, similar to the PNA, so that Parties can agree minimum terms and conditions for DSM activities both within their areas of jurisdiction and demand compatibility in the adjacent "Areas" Drawing from the experiences with Tuna fisheries, look to jointly agreed minimum terms and conditions [MTC], to compliment national laws, these to be enacted through implementing arrangements [IA], so as to ensure national legislations are not undermined, but benefits are accrue sustainably and vulnerable economies are not played off against each other and exploited inequitably.
- (vii) Recommend to the leaders to initiate the establishment of a regional agreement for the development of DSM.

FACTS AND CONSIDERATIONS

1. Background

Scientific Marine Research conducted since the 1950s by foreign interests in our region has located mineral deposits in the territorial waters and EEZs of the island nations and in the deep seabed of the adjacent high seas. Much of this data has not been shared with the host nations despite the terms of research. These identified deposits typically show potentially very rich metal content generating new prospects for an untapped ocean resource. In recent years significant improvements in technology, scarcity of onshore prospects and recent spikes in the value of metals recoverable from the seabed has reignited interests in exploration and exploitation of the seabed.

Unlike on shore deposits in our region which tend to be copper, gold, silver or nickel, the deep sea mineral deposits also include lead, zinc, manganese, cobalt, nickel and a wide range of rare earths, and typically present very high grades compared to on-land deposits.

Besides Melanesia [PNG, Solomon, Fiji and New Caledonia], the Pacific islands have basically nil experience with onshore mining, no legislation or capacity to negotiate or manage mining ventures onshore. Legislation, where existing, would be traditionally limited to onshore resources; gold, copper, silver and nickel only [and Petroleum in PNG]. Besides the National Fisheries Acts of each nation, which cover the respective EEZ, it is typical that all other legislations are limited to territorial waters, 12nm.

Beyond the 200 nautical miles limit of the State's Exclusive Economic Zone, and possibly including any continental shelf extension claims, lies the international waters known as the "Area" - the underlying seabed - where UNCLOS attributes the non living resources to the "benefits of mankind". The International Seabed Authority (ISA) was established by UNCLOS to regulate activities in the "Area", and are currently developing a Mining Code for the management and monitoring of DSM activities in the "area". Although the ISA Mining Code is due to be completed by 2016, the ISA is already issuing licences to explore and exploit the "Area" in our region.

DSM is a new dimension; very limited capacity and experience exists regionally, a different range of minerals to onshore, new environmental concerns, new technologies and a raft of new issues. Clearly there is need for the region to unite to address this at regional governmental levels and whilst each country has national legislation, the development of agreed regional strategies can ensure equitable returns for all.

SOPAC is critical in an advisory capacity to the region.

2. REGIONAL EXPERIENCES IN THE FISHERIES SECTORS

In 1982, 7 like minded nations faced with the prospect of licensed, but largely uncontrolled foreign harvests of tuna, over the horizon, in their EEZs, established the Parties to the Nauru Agreement [PNA] as a sub group of the PACP island nations [Palau, FSM, RMI, Kiribati, Nauru, Solomon Island and PNG [Tuvalu joined later, and note Tokelau since joining the subsidiary Vessel Day Scheme]. This saw the region rally together to set guidelines, Minimum Terms and Conditions [MTC] for access to the rich tuna resources. A unified position ensures compliance and growing state participation. Until the establishment of a PNA Office in 2010, PNA worked as a *ad hoc* group, meeting on the margins of other forums and making joint decisions as "implementing Arrangements". Today we see the PNA skipjack fishery holding the highest global certification for sustainability [MSC], agreed minimum benchmark prices for daily access to fish [so no more playing off smaller administrations], effort controls, compulsory satellite based surveillance, 100% observer coverage of harvesting, and registry requirements. Even more applicable to DSM is the restriction limiting the transshipment of catch to export carrier vessels in designated ports, where species composition, harvest tonnage, etc are checked and verified, and significant additional direct and indirect economic returns are achieved. [For DSM this would mean ore carriers might need clearance in a nominated port or an

inspectors is placed on the mining platform to monitor export volumes and assay the ores being exported as a term of licence. This is typically done by a 3rd party for on shore mines, to protect both the state and buyer. In this case where royalties may apply and the range of target minerals is wide, it is critical for such to be independently done.]

Further through a Forum leaders initiative, we now see a Regional Fisheries Management Organisation [RFMO] established to govern the high seas areas beyond our EEZ. Although evolved from UNCLOS, like ISA, the region negotiated the convention and built on UNCLOS, UNIA, Rio etc so it strongly reflects the unique status and geography of this region and the region's aspirations as small island developing states [SIDS] which are now encompassed in the WCPFC Convention 2000. At this point the ISA offers little or no recognition to our situation, and with 170 members, this region is the minority.

Today the PNA is synonymous with tuna governance globally and controls 50% of the global skipjack supply, with supply limited we have seen global tuna prices more than double in 3 years, domestication of ventures and a dramatic increase in onshore processing and economic benefits back to the PNA nations and industry increased accordingly. For most of the region, tuna was seen as their only economic opportunity until now.

Issues to be considered for a similar approach for DSM:

i. National Level

1. Only Melanesian countries have experience with onshore mining and legislation to support mining activities.
2. Seabed minerals potential has been identified in the EEZs of countries located in the Western Pacific Ocean - Papua New Guinea (PNG), Fiji, Federated States of Micronesia, Kiribati, Tuvalu, Solomon Islands, Vanuatu, Cook Islands, Tonga, and Niue; and most of these countries have already issued licenses for prospecting and/ or exploration, in the absence of dedicated deep seabed minerals legislation. Canada's Nautilus Minerals has obtained the first commercial license to mine seafloor massive sulphides in the Bismarck Sea, which lies in the Archipelagic [territorial] waters of PNG.
3. Legislation to cover DSM activities is at best, in most countries, just recent amendments to existing mining law to accommodate licensing in a politically-motivated context, for fear of losing investment.
4. The SOPAC 'DSM Project' is looking to assist countries in the development of legal and regulatory frameworks to govern deep sea minerals exploration and development, in accordance with their international law obligations. It will deliver by the end of 2013 a model for DSM legislation for countries.

ii. Regional and International Level

1. SOPAC as a regional agency may offer policy guidance and technical advice at the regional level and to states on an individual basis, but the organisation can not supersede states over matters that come under their sovereignty. Should the leaders agree to establish a regional agreement equivalent to the PNA for seabed mining, it will allow dialogue between relevant line departments and for their leaders to agree minimum standards and minimum terms and conditions for DSM. For example, this might include regional environmental and safety standards, the need for the

establishment of a company office onshore and for port clearances on imports and exports for in zone ventures, minimum royalties applicable, etc.

2. A regional body could lead getting special recognitions for PACP states in the adjacent "Areas" through either revision of ISA, or other measures eg terms of in zone access, etc.

B. VIEWS OF THE FORUM LEADERS

To be sought through this submission.

C. VIEWS OF MINING MINISTERS

To be sought through this submission

D. VIEWS OF OTHER MINISTERS [FISHERIES, ENVIRONMENT, ETC]

To be sought through this submission

E. VIEWS OF SPC/ SOPAC

To be advised

F. VIEWS OF OTHER AGENCIES, [eg FORUM SECRETARIATE, FFA, PNA, WCPFC, etc]

To be advised

G. FINANCIAL IMPLICATIONS

Minor, if tagged onto SOPAC and other regional meetings and forums

H. STAFFING IMPLICATIONS

Nil. Except establishing a Mining Department / Agency in countries that currently don't have to deal with DSM issues.

I. LEGISLATIVE IMPLICATIONS

As a Regional Agreement it would require possible ratification.
Agreed regional standards as Implementing Arrangements, would need reflecting specifically in the respective acts or automatic adoption into force, subject to the drafting of the National laws

J. CONSTITUTIONAL IMPLICATIONS

Nil. Sovereignty and National interest is strengthened in zone.

K. POLITICAL IMPLICATIONS

A regional body to enhance DSM capacity in each country must strengthen unity in the region.

L. PLANNING IMPLICATIONS

DSM mining officials and Ministers would need to meet to develop the Regional DSM Agreement, and subsequently agree any resolutions to be applied. SOPAC or SPC could initiate, act as secretariat and policy advisory to the region, to develop this initiative.

M. ENVIRONMENTAL IMPLICATIONS

Nil. A regional agreement can only assist in strengthening the regions capacity to set and monitor minimum environmental standards at the regional level. This may if done now pave the way for the region to demand compatibility in adjacent Areas

N. RECOMMENDATIONS

It is therefore recommended that the Forum Leaders approve the following:-

1. Convene a meeting to explore establishing a regional DSM agreement of like minded Parties in the region for the management and economic participation of Forum countries in DSM.
2. Use the Agreement to establish regional minimum standards and rules for development to compliment contractual arrangements each State may establish under national laws.
3. Look to PNA model as a template, and experiences for guidance.

.....
ANNEXURE – Attached

Annexure – A
PNA agreement
1IA, 2IA, 3IA