



Pacific Institute
of Public Policy

Deep Sea Mining: starting a dialogue

*A report on the Vanuatu Government's consultation workshop 7-9
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Table of contents

1	FOREWORD	3
2	EXECUTIVE SUMMARY	4
3	EVENT SUMMARY	5
4	EMERGING THEMES	7
4.1	Proceed with caution	7
4.2	Don't underestimate natural resource governance challenge	7
4.3	Benefits: revenues for development and uncertain economic spillovers.....	9
4.4	Impact on the environment: uncertainty and questions of governance.....	11
4.5	Land and mineral ownership: an issue not to be avoided.....	12
4.6	International discussions	12
5	RECOMMENDATIONS	14
6	CONCLUSION	16
7	APPENDICES	17
7.1	Programme	17
7.2	Summary notes of presentations.....	17

1 FOREWORD

The Pacific Institute of Public Policy (PiPP) exists to stimulate and support informed debate on the key issues affecting the Oceania region. Deep Sea Mining presents an issue that warrants extensive and accessible dialogue and investigation, given the relative lack of information and experience surrounding what is essentially a new area of public policy consideration.

It is widely thought that Deep Sea Mining (DSM) has the potential to be one the biggest development gains in our region in recent times. The Government of Vanuatu has appointed a National Offshore Minerals Committee (NOMC)¹ to oversee the drafting of a National Offshore Minerals Policy² for the country. The first draft of this policy has now been completed, and the government is undertaking a series of national consultations.

That the Vanuatu government has begun to travel the long path of learning, institutional strengthening and consensus building on this issue is to be commended. This is vital if the government wishes to move ahead with mining activities and to prevent potential benefits being eroded by social, environmental and economic problems - dangers that all too often accompany terrestrial mining.

The following is a report of a workshop on Deep Sea Mining hosted by the Vanuatu Ministry of Lands and Natural Resources on 7-9 October 2014. About 100 participants attended, including representatives of the Malvatumauri National Council of Chiefs, civil society, political parties, church and youth organisations. This report pulls together the presentations and discussions of the workshop and is presented as an independent overview of the key perspectives and emerging themes. It is not an exhaustive summary of the Deep Sea Mining issue, nor of the discussions heard. It is instead intended as a guide to drive further consultation and research into this issue.

¹ Currently consisting of government officials across government but to be expanded (full membership is contained in the draft Deep Sea Mining Policy)

² Draft Deep Sea Mining Policy is available to download from here <http://mol.gov.vu>

2 EXECUTIVE SUMMARY

Vanuatu has barely started to begin to establish the conditions necessary to protect its own political and national interests. The 'resource curse' is a much-discussed and often poorly understood phenomenon whose dangers are nonetheless quite real. If -and how- it manifests itself in deep sea mining is something that few people on either side of the negotiating table understand clearly.

The public consultation on 7-9 October, 2014 made clear that significant education, expertise and effort is necessary if the Government of Vanuatu is to consider itself ready to participate in meaningful levels of submarine resource extraction. Likewise, the people of Vanuatu require much more clarity and a broader, more in-depth understanding of the stakes involved, the costs and the potential benefits.

The following recommendations arise from this report:

1. **See consultation as a dialogue and reach out widely.**

The most important recommendation is for the government to keep soliciting informed comment on subsequent drafts of the policy and to encourage stakeholders sufficient time to absorb and send their considered feedback. As a first step, the government could offer an email contact and reply to frequently asked questions or concerns raised on a public website. Attendees asked that the government reach out to communities to engage in discussions. ***This engagement should be based on Free, Prior and Informed Consent (FPIC).***

2. **Make more information readily available.**

To support discussions and avoid causing uncertainty, the Vanuatu government would benefit from making more information readily accessible to the public. This should include at a minimum details about licences including their locations and status, and all the documentation and presentations provided at the consultation.

3. Work across government.

This work should not – and cannot usefully be – managed through a single office. A great deal of cross-government consultation and feedback is needed to shape a more informed policy position. This should strengthen the NOMC to ensure it receives sufficient technical analysis drawing from expertise across government to support discussions.

4. Learn from others' experience.

Many countries in the Pacific and elsewhere have had to manage natural resource booms. There is a lot to be gained from drawing on the experience of government officials from countries such as Papua New Guinea or Timor Leste as a means of avoiding potential pitfalls.

5. Tailor consultations.

Consultations should be directed a lot closer to the areas of most relevance to attendees and their experience or interest. There is little value of asking specific technical issues unless attendees are full briefed on the key arguments first.

6. Language.

While a good effort was made at translating some of the presentations into Bislama, this process on occasion missed the nuance of comments.

3 EVENT SUMMARY

At the end of 2013, it was announced that 154 licenses for offshore mining exploration and prospecting had already been issued with the knowledge of only a few government officials. The current Minister of Lands and Natural Resources, Parliament, broader civil service and the public were unaware that ships were already scanning Vanuatu's seafloor with an eye to future mining activities.

Following this revelation, the government decided to conduct three consultations on Deep Sea Mining. The first consultation was held at Vanuatu's Chiefs' Nakamal in Port Vila. The event ran from 07-09 October 2014 and placed the Malvatumauri at the centre of discussions.

The consultation drew on government, legal and civil society opinions and experiences on the largely unexplored area of Deep Sea Mining.

Ownership rights and arrangements for Vanuatu's reported oil prospecting licenses were not discussed. Two main developers attended the workshop: Nautilus Minerals and Bismarck Mining Corporation (part of the Neptune Minerals Group³). Nautilus Minerals⁴ are on the verge of beginning mining activities in Papua New Guinea.

PiPP played no part in the design or the running of the workshop; its staff were instead invited to sit in and actively listen to proceedings with the view to providing this considered overview and assessment of the two-day exercise.

At the core of this consultation was the government's desire to receive feedback on whether Vanuatu wants to take what government officials characterised as the 'road of Deep Sea Mining'. Speakers with a range of experience, and possessing a variety of backgrounds and affiliations touched upon numerous topics concerning Deep Sea Mining and the more familiar areas of terrestrial mining (see appendix). This breadth of perspective and experience provided a glimpse of competing views and the uncertainty that surrounds this whole process. The government is also searching for more feedback on the Mines & Mineral Act, Quarries Act, Land Act and a Draft Deep Sea Mining Policy.

On the first day of the consultation we were reminded that there are few areas of policy where the rewards for good decisions are so high and the risks of bad decisions so 'cruel'. Public dialogue is an integral part of the supporting good decision making. We therefore commend the Minister of Lands and Natural Resources for allowing these conversations to take place - if the Vanuatu government continues with this honest and open engagement there is reason for optimism.

As an introduction to a topic the breadth of conversation was important. Much work remains in the areas of developing understanding, consensus building and institutional strengthening. Given this, as we move ahead it is important that the Vanuatu government begins seeking detailed feedback on more focused areas, drawing on attendees' areas of interest, experience and expertise.

³ <http://www.neptuneminerals.com/>

⁴ <http://www.nautilusminerals.com/s/Home.asp>

4 EMERGING THEMES

4.1 Proceed with caution

As expected, and hoped for, more questions were raised than answered. On the whole the stakeholder feedback from the consultation was fairly clear: **we must proceed with caution; we want to learn more; we are not yet ready for mining to commence.**

This is not surprising. A lack of clarity over governance issues combined with a fundamental uncertainty in the technological practicalities of resource extraction and its impacts on the environment ran through all discussions. This was compounded by stories of the Pacific's troubled history of resource extraction. At this early stage, the scale of mineral deposits, prospecting life spans and size of potential revenues are also unclear. Unfortunately, this means that a simple trade-off of costs and benefits – as some requested at the consultation – cannot easily be expressed. The challenge, therefore, is whether, and how well, the government can identify and manage these costs and benefits.

Vanuatu is not set to commence mining activity (although exact details on timing were unclear). But in recent years, vessels have been crossing its waters, scanning for massive seafloor sulphide deposits containing valuable concentrates of minerals such as gold, silver copper and zinc. Information about the current status of licenses and their terms has yet to be made available to the public, however basic maps of areas of exploration were given to participants and the activities of the main scientific research vessels that had visited were provided. More details are now being made available in consultation than in the past, but still only a partial picture is readily visible to the public.

Participants expressed their gratitude at being given a platform to share their thoughts, but believed that cautious, sensible approach would involve learning more about the opportunities and potential costs involved. Government and civil society cooperation, as in this consultation, is a positive foundation for further work.

4.2 Don't underestimate natural resource governance challenge

As the conference progressed, it became clear that the government had only begun the difficult process of understanding fundamental governance issues in their draft legislative amendments and Deep Sea Mining Policy. Additions to the government institutions such as the creation of a Seabed Minerals Fund and the National Offshore Minerals Committee were

announced but still require much more planning, monitoring and implementation before being communicated to the public.

As Francis Hickey from the Vanuatu's Cultural Centre suggested, at the core of the government's DSM policy is a need 'to protect ourselves'. In such a poorly understood area, there is only some comfort to be found in the science or the reassurance of developers. Therefore, if we proceed down this road, the work of the government is to be the lynchpin that 'maximises benefits and minimises costs' of mining activities. Yet the capability of the government to manage the process of DSM was regularly brought into question, by government officials themselves as well as by members of civil society.

They had reason to do so. It is easy to underestimate just how much is needed in order to strengthen small and under-resourced administrative bodies, which can often be at risk of regulatory capture, rent-seeking and outright corruption. In smaller, weaker organisations, there is often a risk that one or two key decision makers can be influenced to make decisions that are not necessarily in the public interest. The history of terrestrial mining shows that institutions and their administrative structures will therefore be tested –and undermined– by this process, particularly in the areas of environmental protection, public financial management, tax compliance and contract negotiation & performance evaluation. In small island states, the risk of this is much greater. As some suggested at the consultation, these weaknesses may provide an argument to postpone mining activities.

Numerous informational materials about the Deep Sea Mining process are available on the Secretariat of the Pacific Community (SPC) website⁵. It is important to be aware of the scale of the information challenge that will run throughout this process: scientific vessels owned by developers are the main source of information on Deep Sea Mining activities. This includes environmental impact assessments. The government must ensure that it can be confident in the reliability and impartiality of information provided throughout the process, and if possible bridge the gap through alternative sources. While there is no evidence to suggest that companies are providing unreliable information, it is important for governments to protect themselves from this eventuality as we move closer to a mining phase and the stakes begin to rise. This promises to be a huge undertaking.

The government's key policy levers are a draft Deep Sea Mining Policy and proposed amendments to the Mines and Minerals Act. Despite offering

⁵ <http://www.sopac.org/dsm/>

numerous alternative paths, both the policy and legislative changes assume we will proceed with certain forms of extractive industry activity in the near future. The government has apparently not considered other options such as a moratorium on activity or slowing down the process. Some stakeholders advocated passionately for a go-slow approach. Strengthening government thinking on these policy options would improve discussions and empower stakeholders, allowing the Vanuatu government to maintain its leadership role in the process and creating confidence that it is not being led by developers.

It is for this reason that discussion within government must carefully add to the Deep Sea Mining Policy to address concerns raised by attendees, such as the need to prevent political interference, to understand the impacts of a range of possible approaches to managing this mining process, and to increase accountability and ensure that the relevant institutions have the capability to meet their aims. This process has been started within the Draft Deep Sea Mining Policy but we must determine whether this will be sufficient. As countries often find, it is easier to vastly announce best-practice processes than actually to plan them, and the additional leap from planning to effective implementation is fraught with difficulty.

Roles and responsibilities must be carefully defined to develop policy and improve decision-making. This includes ensuring that the National Offshore Minerals Committee is staffed by senior officials and provided with strong analytical support from ministries and other government agencies. Cross-government dialogue and consultation is fundamental to this process, but these have not yet taken place. The governance challenge is likely to be significant and one of the most important considerations. Not tackling this head-on increases the risks that poorly designed policies, laws and regulations slip through. It also undermines public faith in the process.

4.3 Benefits: revenues for development and uncertain economic spillovers

Government officials presented DSM primarily as an important tool to raise currently slow growth in government revenues. Spillover benefits from mining activity were highlighted but were really of secondary concern in presentations. This therefore sits as part of broader government aims to increase revenues in the absence of plans to introduce new taxes and in spite of weak economic growth. According to the amendments to the Mines and Minerals Act, these revenues are to be raised by royalty payments, which will be divided automatically between government, province and landowner.

While capturing revenues and their use were discussed briefly, along with a nod to the need for good tax regimes, fiscal frameworks and a seabed minerals fund, the government has provided few details. Nor has it made an assessment of its capability to carry out these functions according to feasible administrative structures. There is a pressing need for these issues to be considered in more detail.

The consequence of insufficient internal discussion became apparent at the consultation. One legal expert, Dr Christiana Ochoa, suggested that proposed revenue-raising measures - as proposed in amendments to Mines and Minerals Act - were likely to fall short, leaving Vanuatu with one of the lowest revenue takes in the world. At the same time, there were contradictory messages about whether the government would use state equity share or create state owned enterprises. This despite the fact that the Deep Sea Mining policy explicitly removes this possibility. These are issues to be debated, but it highlighted the importance of opening the drafting process to broad public scrutiny and discussion to prevent such contradictions from emerging in the future.

Environmental costs of Deep Sea Mining were portrayed by some as less than those from the terrestrial experience. But government presentations implied that DSM would offer similar benefits in terms of investment, skills sharing and economic growth potential. This needs deeper consideration. A ship entering an Exclusive Economic Zone without the mandatory requirement for substantive onshore presence could, in theory, have negligible economic impact. This reminds us that managing expectations is an important part of the consultative process for extractive industries, who should take care not to oversell the briefly benefits. It is also important to ensure that this over-optimism is not at the expense of creating well-thought-out policies to make the most from these broader benefits. While developers often talk of their desire to support community development, Vanuatu does not want to be left short for a lack of effective negotiation in this area.

Despite these conversations some rejected the premise that DSM was necessary for raising revenue or for Vanuatu's broader sustainable development. The idea that this was the only option for raising revenue was questioned, with some suggesting we look at introducing new taxes. Others believed that this was not the only road to Vanuatu's development, and may even be inconsistent with national priorities, suggesting that the government's focus its efforts elsewhere.

Given these discussions, there is a need to align the DSM with plans for improvement of public finances and national development priorities. If we

wish to sell Vanuatu's natural assets, we should ensure that we spend the money in the most effective way. This means we must align spending with government priorities (underpinned by robust statutory fiscal discipline provisions) and protect the revenues from being lost to corruption or waste. Given past experience, this is far from guaranteed and will need some serious attention before long.

4.4 Impact on the environment: uncertainty and questions of governance

The potential for environmental damage and knock-on effects on Ni Vanuatu lifestyles was clearly one of the most emotive and contentious issues. While there were fears for the potential impact on the tourism industry, the greatest concern was that the impact on fisheries could harm livelihoods and food security.

A series of presentations demonstrated that there are few clear answers; the science of Deep Sea Mining is in its infancy. A range of environmental concerns were expressed but those most contentious for attendees were the impacts on water quality, through sediment being released, or on the food chain. Developers implied they were comfortable with the impact on the environment and did not believe the impact on fisheries – or on the ecosystem more broadly – would be significant. They suggested they would take a 'careful approach' to mining to minimise risks. Others feared that this process had the potential to devastate the oceans for Pacific islanders.

Compounding this uncertainty is a lack of confidence among government officials that there is currently the capability to shape and deliver the necessary laws and policy. There were recurring calls for a precautionary approach to ensure that Vanuatu will tread carefully, monitor closely, and if necessary pull the plug on activity whose environmental risks are deemed too great.

Competing views over environmental impact will likely endure. This means the government's creation of environmental rules and regulations that place limits and apply penalties on levels of environmental disturbance are of central importance. Unfortunately, delivery of environmental policy again is likely to be a challenge. While important discussions of the experiences of the environmental management in New Zealand gave a vision of what could be, many of these processes are likely to be out of reach of Pacific island nations – at least in the short term.

Noting this challenge, one government official responsible for developing environmental policy suggested the Vanuatu government currently lacks the ability to check environmental assessments across the islands.

Therefore, making fair judgments from reams of environmental data and information, when developers collect the lion's share of the information, make monitoring a huge administrative undertaking. A weak link in the decision-making chain, whether it be lack of skills or budget resources, or the result of political interference, could come at the expense of Vanuatu's marine environment.

4.5 Land and mineral ownership: an issue not to be avoided

A recurring concern, that will only become more important, is the issue of land and mineral ownership in relation to *kastom*. The government is in the process of interpreting the Constitution and subsidiary legislation to understand the legal basis for sovereign rights to minerals. While the government's conclusion is that the ownership sits with the state, many at the consultation were in disagreement. Attendees called for consultations across the provinces and with communities to understand these issues in more detail.

Traditionally, *kastom* land has not stretched much beyond the adjoining reef, however we were reminded that in some areas, stories and *kastom* practices stretch beyond visible boundaries. At the same time, some of the current areas under license in Vanuatu appear to be relatively close to the foreshore. This means the issues of *kastom* ownership cannot easily be avoided.

The government is attempting to interpret provisions within the Constitution and subsidiary legislation regarding sovereign jurisdiction over minerals. Yet if communities do not accept the legislation, this could become a source of friction. This must be managed carefully to build consensus on some of these most contentious issues.

There were calls to integrate Free, Prior and Informed Consent (FPIC), a key international principle related to indigenous peoples rights, into the government's approach to Deep Sea Mining. The Vanuatu government should carefully consider its position on the issue of FPIC as it may require changes to legislation and policy.

4.6 International discussions

There are many international and regional discussions to be had around the issue of Deep Sea Mining. The lack of transparency around the issue at this stage and the need to resolve questions relating to maritime boundaries means Pacific island nations may be sleepwalking its way toward future disputes with its neighbours.

It became clear that licenses across the region have reportedly been issued in disputed EEZ boundary areas. At the consultation, the Vanuatu

government gave examples of potential disputes with all its neighbours that could come from a lack of clarity over sovereign maritime boundaries. The government's first step is to define its sovereign borders but the exact process and potential stumbling blocks were not discussed.

In international waters, Vanuatu has also to decide whether it wishes to sponsor a company according to International Seabed Authority regulations under the United Nations Convention on the Law of the Sea (UNCLOS) obligations on the State. Many countries have entered into this process but some stakeholders raised concerns about Vanuatu's ability to do effectively do this. Other Pacific island nations have made the decision already to pursue sponsorship. To aid discussions the risks, liabilities and potential benefits of this will need to be understood and communicated much better. As of yet, the government does not appear to have a position on this issue. This prevented attendees at the workshop from providing concrete feedback.

The Secretariat of the Pacific Community also noted the possibility of pooling resources across the region to manage some of the governance issues, particularly those facing the smaller states. As we have seen in other areas, resource pooling might offer a solution to the capacity challenges some countries face, but it can create costs, difficulties and risks. At current pace, mining activities will likely be going ahead before anything meaningful can be agreed upon.

5 RECOMMENDATIONS

1. **See consultation as a dialogue and reach out widely:** It is important to openly build on these discussions to help foster consensus building on this issue. Given the short time that attendees has to digest government proposals and a large amount of technical information, the most important recommendation is for the government to keep soliciting informed comment on subsequent drafts of the policy and to encourage stakeholders sufficient time to absorb and send their considered feedback. As a first step, the government could offer an email contact and reply to frequently asked questions or concerns raised on a public website. Attendees asked that the government reach out to communities to engage in discussions. Many also suggested that this engagement be based on Free, Prior and Informed Consent (FPIC).
2. **Make more information readily available:** To support discussions and avoid causing uncertainty, the Vanuatu government would benefit from making more information readily accessible to the public. This should include publishing additional information heard at the workshop: details about licences including their locations and status, and all the documentation and presentations provided at the consultation. This would importantly set the benchmark of transparency that must run throughout the DSM process, as the government has already highlighted.
3. **Work across government:** A great deal of cross-government consultation and feedback is needed to shape a more informed policy position. This should strengthen the NOMC to ensure it receives sufficient technical analysis drawing from expertise across government to support discussions. More consideration is needed in a range of areas and is not limited to the following:
 - a. Developing a clear plan for roles and responsibilities across government in this process of understanding and decision making and improving accountability
 - b. Develop alternative policy directions to including moratoriums on certain activities with an assessment of their relative merits. This should inform discussions about the 'road to take'.

- c. Interpret and create a government policy position on the precautionary principle and the Free, Prior, Informed Consent
- d. Develop plans for acquiring skills and knowhow necessary for the negotiation stage for mineral extraction
- e. Filing a Special Reference for an interpretation of the constitutional and legislative provisions on land and mineral ownership
- f. An assessment of capability gaps across government institutions and plans to address these where possible
- g. Develop an understanding of issues of kastom ownership and perceptions around this
- h. Undertake considered analysis of effective and deliverable revenue-raising plans
- i. Develop an improved understanding of economic impacts including on employment, economic activity and potential challenges facing macroeconomic policy making
- j. Link DSM to development policies and planned improvements in public financial management
- k. Understand the possibilities and limits for cross-regional cooperation, capacity and managing boundary issues

4. Learn from others' experience: many countries in the Pacific and elsewhere have had to manage natural resource booms. There is a lot to be gained from drawing on the experience of government officials from countries such as Papua New Guinea or Timor Leste as a means of avoiding potential pitfalls.

5. Tailor consultations: consultations should be directed a lot closer to the areas of most relevance to attendees and their experience or interest. There is little value of asking specific technical issues unless attendees are full briefed on the key arguments first.

6. Language: As the Vanuatu government reaches out it must consider carefully the issue of language. While a good effort was made at translating some of the presentations into Bislama, this process on occasion missed the nuance of comments. This situation becomes more important as we reach out to communities who are more comfortable speaking in their own languages.

6 CONCLUSION

While many issues were raised, a few recurring themes were particularly contentious for workshop attendees. The first was the potential for environmental damage and knock on effects on the Vanuatu way of life. The second was the issue of land and mineral ownership in relation to kastom. These issues have the most visible impact on livelihoods and are likely to be most emotive issues. There is a clear need to reach out, and to engage in further dialogue and consultation, both with experts and with communities throughout Vanuatu.

As some speakers noted, a central priority is to protect ourselves by shaping effective legislation and policy. Unfortunately, implementation is likely to be hampered by absent or weak institutions. It was for this reason that the capability of the government to 'maximise the benefits and minimise the costs' of DSM was frequently questioned. Fixing this not only requires budget support, staff and skills, but also less tangible resources such as strengthening mechanisms for accountability, and political will. From this perspective, there is a lot of thinking to be done within government.

The workshop was a good introduction to Deep Sea Mining, but is far from the final word in what will need to be an ongoing and inclusive national dialogue on the topic.

7 APPENDICES

7.1 Programme

7.2 Summary notes of presentations