

**Consulting with Humankind:
Integrating Stakeholder Voices in Deep-ocean Decision-making
Wednesday, 10 November, 2021
Webinar Summary**

Introduction and Background

The Pew Charitable Trusts and RESOLVE convened a webinar on Wednesday, 10 November, 2021, to hear experts' perspectives on national and international systems for engaging stakeholders in environmental decision-making and explore how these systems might be applied to governance of the deep seabed in areas beyond national jurisdiction.

Andrew Friedman, The Pew Charitable Trusts, welcomed webinar participants and thanked the panelists for their time. He noted The Pew Charitable Trusts has long had a guiding principle linking civic participation to better policy outcomes, and this ambition takes on a new scope when considering the global scale of stakeholders for deep seabed mining (DSM) in the area beyond national jurisdiction and the challenges associated with incorporating those stakeholders' voices into the decision-making process. Mr. Friedman indicated he was hoping to identify lessons about stakeholder participation in decision-making during this webinar that could be carried into the work now underway at the International Seabed Authority (ISA).

The webinar was facilitated by Paul De Morgan, RESOLVE. The webinar agenda, slides presented, and recording are available on [RESOLVE's website](#).

Perspectives on Stakeholder Participation

A National Perspective: Engaging Stakeholders on Seabed Minerals in the Cook Islands

Ms. Alex Herman, Seabed Minerals Commissioner at the Cook Islands Seabed Minerals Authority, described the effort in the Cook Islands to engage stakeholders in seabed minerals (SBM) activities, including efforts to raise awareness about SBM generally, the Cook Islands nodule resources, the Cook Islands SBM governance regime, and the Cook Islands SBM exploration activities. To support stakeholder engagement, the Cook Islands SBM Authority conducted stakeholder mapping and identified four main stakeholder groups and related subgroups: 1) Government, including members of Parliament, government agencies, and Island Councils; 2) Community, including an Advisory Committee, NGOs, uniform code (e.g., Girl Guides), schools, and Pa Enea or outer islands; 3) Traditional Leaders; and 4) Religious Leaders, including a Religious Advisory Council. The Cook Islands SBM Authority then conducted engagement activities with these four groups, tailoring the level of and approach to engagement to each specific group and subgroup. Surveys were conducted after engagement with each stakeholder group, and feedback indicated participants were generally pleased with the quality of presentations and information sharing effort, and requested additional presentations in Cook Islands languages.

Describing lessons learned, Ms. Herman emphasized the importance of having a clear stakeholder engagement plan that defines: 1) the target audience (who); 2) the topic (what); 3) the reason for informing and consulting stakeholders (why); 4) the approach to distributing information and engaging stakeholders (how); and 5) the appropriate timing for engagement (when). Ms. Herman noted that the potential development of SBM in the Cook Islands has the potential to affect all Cook Islanders; therefore, her team felt it was very important to support broad information sharing about SBM so stakeholders could provide informed feedback.

In addition to the public engagement processes, Ms. Herman described two other mechanisms for receiving and incorporating stakeholder input into the Cook Islands Seabed Minerals Authority's decision-making: engagement with an Advisory Committee, charged with making recommendations to the government on SBM policies; and the opportunity for public input on SBM exploration license applications. For more information, Ms. Herman's slides are available on [RESOLVE's website](#).

An International Perspective: Public Participation in International Human Rights and Environmental Law
Professor Elisa Morgera, Director, One Ocean Hub and Professor of Global Environmental Law, University of Strathclyde Law School, provided an international perspective on public participation in the ISA, linking human rights law to inclusive ocean management. Prof. Morgera indicated human rights to health, food, water, and culture are dependent on the protection of the marine environment. This is particularly true for ocean-dependent communities, indigenous peoples, and women. Prof. Morgera also emphasized the role of children as human rights holders in this context. As a result, these groups should be considered rightsholders (rather than stakeholders), and Prof. Morgera highlighted a number of international legal obligations and standards that apply to engaging rightsholders in international decision-making, such as the decision-making that takes place at the ISA. These are procedural obligations and standards associated with the specific human rights of access to information and public participation in decision-making, as well as integrating human rights into environmental impact assessments and access to remedies for violations of human rights and environmental laws.

Prof. Morgera referenced the [2018 U.N. Framework on the Principles of Human Rights and the Environment](#), developed by the former U.N. Special Rapporteur on Human Rights and the Environment, Prof. John Knox, as an important resource that illustrates the legal basis found in existing international human rights treaties that also contribute to protecting the environment. Under international human rights law, States have an obligation to prevent the violation of human rights; this also applies to domestic and international activities that may infringe on human rights dependent on marine ecosystems. Prof. Morgera also mentioned that the U.N. Framework on Principles of Human Rights and the Environment spells out the following international standards regarding public participation in decision-making: public participation should take place early in the decision-making process; information should be made available in an objective, understandable, affordable, and timely manner; the public should have an adequate opportunity to express their views; relevant authorities should take the public's views into account and provide a justification for decisions to the public.

The U.N. Framework on Principles of Human Rights and the Environment also indicates decision-makers should take additional steps to facilitate the participation of marginalized communities, women, and children in decision-making. Prof. Morgera highlighted the importance of engaging children as rightsholders in ISA decision-making as part of the accountability of the ISA to "humankind", given that children already represent future generations who will be impacted over time by environmental decisions taken today. Engaging children in environmental decision-making is particularly important because they are more vulnerable to environmental harm; doing so may require specific strategies to share accessible information with children and take their input into account. For more information, Prof. Morgera's slides are available on [RESOLVE's website](#).

A Community Perspective: Encouraging Local Participation in Environmental Decision-making

Ms. Pelenatita Kara, National Coordinator for DSM Campaign, Civil Society Forum of Tonga, provided a perspective on local participation in environmental decision-making and shared examples of efforts to engage the public on DSM in Tonga. Ms. Kara emphasized the importance of public consultation around environmental issues, and decision-making related to DSM. She noted the Civil Society Forum of Tonga

has been engaged in DSM since 2012, and, together with a broad group of stakeholders across the country, called for a moratorium on DSM in Tonga's Exclusive Economic Zone (EEZ) and in the Area in 2020.

Ms. Kara indicated the government of Tonga did not consult with the local community regarding DSM decision-making, noting Tonga's constitution does not require consultation with the local community regarding bills or policies. She suggested legislation requiring public consultation and a "freedom of information act" would increase transparency and provide the public with opportunities to share input on the laws and policies that could impact their lives.

Ms. Kara noted that the Civil Society Forum of Tonga uses the "Who, What, Where, When, Why, and How" framework to plan for public engagement, similar to the approach described by Ms. Herman used in the Cook Islands. Regarding timing, Ms. Kara emphasized the importance of considering stakeholder availability when engagement or consultation takes place and ensuring the target audience will have enough time to review materials to provide informed feedback. She suggested 6-12 weeks would allow for representative views from the community. Regarding who is engaged, she recommended engaging government officials and legal experts, as well as the communities most vulnerable to changes in ocean health, such as island communities, people with disabilities, and children.

The Civil Society Forum of Tonga communicates and consults with the public in a variety of ways, including engaging through different forms of media, visiting communities on different islands, and consulting with decision-makers. These engagements provide valuable opportunities to share information about the potential positive and negative impacts of DSM, and to receive input on community perspectives.

Ms. Kara also emphasized the importance of information sharing and transparency, to ensure local stakeholders are providing feedback on a complete picture. Additionally, policy makers should share updates with the community once decisions are made so people can see how their feedback was incorporated into the process, and provide the opportunity to appeal decisions.

Stakeholder Participation at the ISA: Current Landscape and Next Steps

Dr. Aline Jaeckel, Senior Lecturer, University of New South Wales and Research Associate, Institute for Advanced Sustainability Studies in Potsdam, discussed the current landscape of stakeholder participation at the ISA and opportunities for increasing participation in the future. She indicated the relevant stakeholder at the ISA is all humankind, which is distinct from most international organizations who may only need to consider the interests of their member States.

Current engagement opportunities at the ISA for stakeholders include participation as: observers to the Council and Assembly deliberations; in stakeholder consultations; through technical workshops; and in outreach events. Dr. Jaeckel noted some limitations with the current approaches. For example, Observer organizations currently do not represent youth, indigenous groups, or organizations from the Global South; stakeholder consultations primarily engage states or small groups of organizations and are fairly technical; technical workshops organized on a specific topic bring in external expertise, but are not open to the public; and outreach events are focused on information sharing, but do not necessarily provide opportunities for stakeholder input. Dr. Jaeckel pointed to areas of progress in recent years, such as increased transparency about ISA activities and an improved online presence.

Dr. Jaeckel then identified several opportunities for increasing stakeholder participation at the ISA, including:

- Ensure stakeholder comments during consultations are given due consideration and increase transparency regarding whether and how they were considered in the decision-making process;
- Conduct outreach and consultation with stakeholders around broader policy questions, not only narrow technical documents;
- Develop and adopt a robust stakeholder engagement strategy that includes clear procedures for ways the public can engage and strategies to increase public engagement;
- Proactively encourage and support participation by groups underrepresented by governments, including rightsholders such as children and indigenous communities; and
- Engage stakeholders in the implementation of ISA decisions, such as the creation of environmental baselines and monitoring environmental effects.

Dr. Jaeckel also suggested procedural modifications related to the COVID-19 pandemic should not be used to further reduce public participation at the ISA. She noted the silence procedures used recently at the ISA limited the ability for discussion around decisions and did not provide opportunities for Observers to provide input. When the ISA does convene the next in-person meeting, special attention should be given to Observer participation and attendance from the Global South. For more information, Dr. Jaeckel's slides are available on [RESOLVE's website](#).

Panel Discussion

Following the discussion, panelists discussed several questions exploring how their experiences and perspectives on stakeholder participation can be applied to governance of DSM in the Area.

How can regulators effectively identify and proactively engage broad stakeholder communities?

Ms. Herman noted the challenges inherent in identifying stakeholders in the international space of DSM, but indicated progress would only be possible if all relative voices, including the ISA Secretariat, were involved. Ms. Herman suggested a valuable next step would be for the ISA Secretariat to conduct a stakeholder mapping exercise. Dr. Jaeckel offered that while there is an expectation for consultation to be as broad as possible, given humankind is the constituency, it may be valuable to start by engaging those groups under-represented by governments such as indigenous communities and future generations. Ms. Kara echoed the value of a stakeholder mapping exercise and also differentiating between the obligations to stakeholders and rightsholders.

What are the key elements required for appropriate stakeholder participation in environmental decision-making? Relatedly, webinar participants shared questions regarding: the extent to which the ISA could better incorporate stakeholder comments; how stakeholders can take comfort if their serious concerns are not acted upon; what information should be kept confidential; and how much time is reasonable for stakeholder engagement?

Prof. Morgera pointed to international human rights standards as a starting point when considering these questions. For example, international human rights standards suggest consultation should start "early enough," with the specific timing depending on the material being reviewed, including factors like the level of technical detail and length of documents. The materials provided to the public for feedback need to be objective, understandable, and affordable. Some stakeholders or rightsholders, such as indigenous peoples, may have more challenges accessing information or providing input than others, and special considerations need to be taken when engaging them.

Prof. Morgera suggested the default approach by decision-making institutions should be to provide as much information to as many people as possible. The decision to keep information confidential, as an exception to this norm, should be made cautiously and the reasons for doing so should be made public. She mentioned the Special Rapporteur on Toxics and Human Rights has said information essential for human right to life should be made available as much as possible, so people can assess potential risks to their health and environment; only aspects absolutely crucial to commercial interests should be kept confidential.

Prof. Morgera also highlighted the importance of transparency around stakeholder participation in the decision-making process. This includes disclosing what public input was received, how it was considered in the decision-making process, and why a decision may not align with the public input received.

She also noted rightsholders should not shoulder the burden of public participation, since they have the right to access information. States through the ISA collectively and individually have an obligation to provide information and support public participation to protect human rights.

Dr. Jaeckel underscored the importance of an independent process, so that the public participation process is designed to seek the views of communities in an unbiased way and allow for introduction of diverse opinions. Additionally, the stakeholder views should be considered in policy decisions and, an explanation of how they are used, or not, should be provided.

How can the ISA best integrate the views of stakeholders, especially as that includes all of humanity?

Ms. Kara reiterated the need for transparency around how views are integrated into the decision-making process. She suggested the ISA needs mechanisms to communicate what input has been received and how and why the relevant policy reflects that input. She provided an example by describing an Environmental Impact Assessment (EIA) for a collector test recently submitted for stakeholder consultation by the mining company Nauru Ocean Resources Inc. (NORI). The EIA is being simultaneously assessed by the ISA, as stakeholders also review the document. At the end of the consultation period, when stakeholders have submitted comments, it is not clear how the ISA, as the regulator, will take comments raised by civil society into account in its own review. It is also not clear what obligations exist for NORI, as the proponent, to revise its EIA based on comments received.

Dr. Jaeckel described some specific mechanisms the ISA could use to hear and integrate input from diverse stakeholder groups, including convening an advisory panel comprised of indigenous peoples, hiring an ombudsperson charged with reflecting the views of future generations, or adding an agenda item for the Assembly and Council to discuss the views of stakeholders collected during stakeholder engagement processes. Additionally, the mining code could include regulations around protecting stakeholders. For example, the mining code could require the Legal and Technical Council (LTC), when assessing new applications, to name the risks and benefits for groups that may be affected by a particular mining operation.

Building on the other panelists' comments, Ms. Herman acknowledged the challenges associated with effectively bridging stakeholder engagement between the national and international level, noting that community groups do not typically engage at the international level. She described recent workshops for Pacific Island member states that provided an opportunity to connect the more local and national level stakeholder perspectives to the international discussions, as well as to share information about the international proceedings more locally. Ms. Herman suggested that additional, similar regional workshops

organized around the geographic groupings can continue to help connect the local and national stakeholder perspectives to the international discussions.

Audience Questions

In response to a number of questions from the audience, Ms. Herman emphasized the importance of ensuring stakeholders understand the information being presented so they can better engage in the discussions. An important lesson from the Cook Islands was to carefully consider who the stakeholders are and how they might take in information, and to then tailor the message and medium used to deliver it with that in mind. In the Cook Islands, this often meant sharing information by video. Ms. Herman also noted the effort described in her presentation was the first time the Cook Islands had engaged the public on the SBM licensing process, and there were a number of lessons during this webinar from the panelist remarks and audience comments that could be applied to further improve future public engagement in the Cook Islands on the topic.

In response to a question regarding the public availability of contracts signed by the Tongan government, Ms. Kara clarified that Tonga does not have laws requiring the publication or disclosure of government activities and the Tongan constitution does not require disclosure. As a result, DSM-related contracts signed by the Tongan government are not publicly available.

In response to a question regarding the burden of consultation, Prof. Morgera reiterated member States should bear the costs and take the initiative to engage the public, either individually or through the ISA. She added the ISA could draw lessons on engaging rightsholders from other U.N. bodies, such as the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) or the Local Communities and Indigenous Peoples Platform under the U.N. Framework Convention on Climate Change (UNFCCC), and discuss those approaches with relevant DSM stakeholders and rightsholders.

Dr. Jaeckel closed by responding to a question about sharing data associated with EIAs, noting it is a best practice to share environmental data and considered an essential prerequisite to support public participation in environmental decision-making.

Closing Remarks and Next Steps

Mr. Friedman closed the webinar by thanking the panelists and participants for their time, and invited participants to share thoughts on topics for future webinars in the series of substantive discussions Pew will sponsor before the next meeting of the ISA Council.

In an effort to ensure wide participation of stakeholders in different time zones, the timing for future webinars will be staggered, and sessions will be recorded and shared. Please visit [RESOLVE's website](#) for more information on future webinars in this series on draft regulations for seabed mining.

Webinar Participation

Panelists

- Ms. Alex Herman, Seabed Minerals Commissioner at Cook Islands Seabed Minerals Authority
- Dr. Aline Jaekel, Senior Lecturer, University of New South Wales and Research Associate, Institute for Advanced Sustainability Studies (IASS) in Potsdam
- Ms. Pelenatita Kara, Civil Society Forum of Tonga
- Prof. Elisa Morgera, One Ocean Hub and Professor of Global Environmental Law, University of Strathclyde Law School

Participants

- Laura Anthony, Florida State University
- Jeff Ardron, Commonwealth Secretariat
- Aaron Barr, Transocean
- Sabine Christiansen, IASS
- Malcolm Clark, National Institute of Water and Atmospheric Research (NIWA)
- Guido Corno, Independent
- Catherine Coumans, MiningWatch Canada
- Duncan Currie, Deep Sea Conservation Coalition (DSCC)
- Mekhala Dave, TBA21-Academy
- Laurens de Jonge, Royal IHC - IHC Mining
- Mamadou Diallo, Conservation and Research of West African Aquatic Mammals (COREWAM)
- Elva Escobar, Universidad Nacional Autónoma de México (UNAM)
- Jacqueline Evans, Independent
- Andrea Folds, Earthjustice
- Tomohiko Fukushima, Japan Oil, Gas, and Metals National Corporation (JOGMEC)
- Cadinia Funganitao, Tonga Offshore Mining Ltd
- Gina Grillo, Embassy of Costa Rica in Jamaica and Permanent Mission to the ISA
- Renee Grogan, Impossible Mining
- Kristine Gu, University of Waterloo
- Steven Haddock, Monterey Bay Aquarium Research Institute (MBARI)
- Addie Haughey, Earthjustice
- Kaitini Herman, Cook Islands Seabed Minerals Authority
- Becky Hitchin, Commonwealth Secretariat
- Karin Hoal, Cornell University
- Minyi Hou, Natural Resources Canada
- Rachel Houmphan, The Metals Company
- Thomas Hourigan, NOAA Fisheries
- Emeline Siale Ilolahia, Pacific Islands Association of Non-Governmental Organizations (PIANGO)
- Mayumi Inoue, E&E Solutions Inc.
- Jun Jiang, Permanent Mission of China to ISA
- Megan Jungwiwattanaporn, Pew Charitable Trusts
- Giulia La Bianca, University of Plymouth
- Leona Lau, Natural Resources Canada
- Mitchell Lennan, University of Strathclyde
- Lisa Levin, UC San Diego
- Hannah Lily, Independent Consultant
- Mele Makasiale, Ministry of Lands & Mineral Resources
- Phil McCabe, DSCC
- Drew McCusker, Independent
- Kate McKessar, Te Ipukarea Society
- Corey McLachlan, The Metals Company
- Kirsty McQuaid, University of Plymouth
- Thaissa Meira, Uni Basel
- Laura Meriläinen, One Ocean Hub
- Anna Metaxas, Dalhousie University
- Laurie Meyer, Ocean Minerals LLC
- Rubie Nottage, University of The Bahamas
- Angela Palacios, Ministry of Transport, The Bahamas
- Patricia Parkinson, Environmental Law Oceania Consultancy
- Kelvin Passfield, Te Ipukarea Society
- Darrel Pelley, Transocean
- Steve Persall, UK Seabed Resources

- Jan Pingel, Ozeanien-Dialog c/o EMW
- Frank Pocock, Transocean
- Rachel Reeves, Independent
- Mary Beth Reissen, Peace Economy Project
- Julia Ritter, International Tribunal for the Law of the Sea (ITLOS)
- Godfrey Rolle, Ministry of Foreign Affairs, The Bahamas
- Scott Schang, Wake Forest University
- Patrik Schotte, Federal Public Services Economy, S.M.E.'s, Self-employed & Energy
- Claire Slatter, Development Alternatives with Women for a New Era (DAWN)
- Hans Smit, Ocean Minerals
- Samantha Smith, Blue Globe Solutions
- Laura Strickler, Bureau of Ocean Energy Management, U.S. Department of the Interior
- Rajjeli Taga, Ministry of Lands and Mineral Resources
- Shelly-Ann Thompson, Attorney-General's Chambers, Jamaica
- Cindy Van Dover, Duke University
- Steven Vandendorre, DG Environment
- Kenneth Wong, Global Affairs Canada

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