

10 April 2024

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proactive release

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OIA 29118

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I refer to your email of 13 February 2023 in which you request the following under the Official Information Act 1982 (OIA):

- *All briefings about deep sea mining*
- *Briefings in the past 12 months (since 13 Feb 2023) about the indebtedness of Pacific Island nations to China*

On 21 February 2024 we sought your agreement to refine your request to:

1. *Formal briefings to the Minister of Foreign Affairs, where the main topic of the briefing is deep sea mining beyond national jurisdiction, sent between 1 July 2022 and 13 February 2024.*
2. *Formal briefings to the Minister of Foreign Affairs, since 13 Feb 2023 about the indebtedness of Pacific Island nations to China*

On the same day you responded requesting:

1. *Formal briefings to the Minister of Foreign Affairs, where the main topic of the briefing is deep sea mining beyond national jurisdiction, sent between 1 July 2021 and 13 February 2024.*
2. *Formal briefings to the Minister of Foreign Affairs, since 13 Feb 2023 about the indebtedness of Pacific Island nations to China*

On 22 February 2024 we proposed:

1. *Formal briefings to the Minister of Foreign Affairs, where the main topic of the briefing is deep sea mining beyond national jurisdiction, sent between 1 January 2022 and 13 February 2024.*
2. *Formal briefings to the Minister of Foreign Affairs, since 13 Feb 2023 about the indebtedness of Pacific Island nations to China*

You agreed to this refinement on the same day and we confirmed by return email, notifying you that this would be treated as a new OIA request (section 15(1AA) of the OIA refers).

On 21 March 2023, the timeframes for responding to your request were extended by an additional 15 working days because responding to your request necessitated the review of a large quantity of information (section 15A(1)(a) of the OIA refers).

Question One

There are four documents (attached) in scope of this part of your request.

1. Pacific engagement on deep-sea mining (dated 3 February 2022)
2. Review of Aotearoa New Zealand's approach to deep sea mining in areas beyond national jurisdiction (dated 29 September 2022)
3. 2023 Meeting of the International Seabed Authority and Credentials (dated 2 March 2023)
4. International Seabed Authority: Mining Code Deadline to Expire in July, update on Aotearoa New Zealand's engagement (dated 26 June 2023)

We have withheld some information in these documents under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis;
- 7(b): to avoid prejudicing the relations between the Government of New Zealand and the self-governing State of the Cook Islands;
- 9(2)(a): to protect individuals' privacy;
- 9(2)(ba): to protect the supply of confidential information by another party;
- 9(2)(f)(iv): to protect the confidentiality of advice tendered by Ministers of the Crown and officials;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments;
- 9(2)(h): to maintain legal professional privilege; and
- 9(2)(j): to avoid prejudice to negotiations.

There is a fifth document in scope. This document is withheld in full, including the title, under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government; and
- 7(b): to avoid prejudicing the relations between the Government of New Zealand and the self-governing State of the Cook Islands.

Where the information has been withheld under section 9 of the OIA, we have identified no public interest in releasing the information that would override the reasons for withholding it.

Question Two

We refuse this part of your request under section 18(e) of the OIA, as nothing in scope of this part of your request exists.

Please note that it is our policy to proactively release our responses to official information requests where possible. Therefore, our response to your request (with your personal information removed) may be published on the Ministry website: www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the

Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'SC', written in a cursive style.

Sarah Corbett
for Acting Secretary of Foreign Affairs and Trade



3 February 2022

Minister of Foreign Affairs

For action by

17 February 2022

Pacific engagement on deep-sea mining

BRIEFING Decision Submission

PURPOSE To seek your agreement on an updated approach for engaging on deep-sea mining in the Pacific.

Tukunga tūtohua – Recommended referrals

Prime Minister	For information by	17 February 2022
Minister for Oceans and Fisheries	For information by	17 February 2022
Minister of Conservation	For information by	17 February 2022
Associate Minister of Foreign Affairs	For information by	17 February 2022

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Finbar Kiddle	Senior Adviser	Pacific Regional Division	s9(2)(a)
Joanna Anderson	Unit Manager	Pacific Regional Division	

Mā te Tari Minita e whakakī – Minister's Office to complete

<input type="checkbox"/> Approved	<input type="checkbox"/> Noted	<input type="checkbox"/> Seen
<input type="checkbox"/> Needs amendment	<input type="checkbox"/> Declined	<input type="checkbox"/> Withdrawn
<input type="checkbox"/> Overtaken by events	<input type="checkbox"/> See Minister's notes	

Comments

Pacific engagement on deep-sea mining

Pito matua – Key points

- Deep-sea mining in the Pacific has only become more divisive over the last year. The region's mining proponents are forging ahead, while the call for a moratorium on deep-sea mining resonates with some others.
- s6(a), s9(2)(g)(i)

- Our high-level approach of respecting the mana of each country to manage their own kaitiakitanga responsibilities, while having open conversations on deep-sea mining and its risks remains fit for purpose.
- But there is a need for more targeted engagement to build dialogue in the region and avoid further entrenchment of positions. This is a process that will take time.
- Officials recommend prioritising bilateral engagement with s6(a)

International Seabed Authority (ISA) Council, which is the critical body in the development of rules to govern deep-sea mining under the high seas.

- Amongst the regional agencies, we recommend a focus on the Pacific Community to facilitate regional dialogue on deep-sea science, and the Secretariat of the Pacific Regional Environment Programme (SPREP) s6(a), s9(2)(g)(i)
- We recommended raising our views on deep-sea mining at the ministerial level as part of other engagements (i.e. we do not recommend specific calls to discuss deep-sea mining exclusively at this time).
- We also recommend extending the scope of the assistance we can provide to Pacific Island countries regarding deep-sea mining to include proactively supporting deep-sea science, with a particular focus on marine ecosystems, habitats and their species. One of the few areas of agreement in the region is that we need to know more about deep-sea ecosystems and how mining may affect them.
- This scope extension aligns with our refreshed international approach on deep-sea mining that focuses on high environmental standards, which in turn depends on good science.
- Assistance to Pacific Island countries regarding robust legal frameworks, governance structures and environmental protections would remain on an "if asked" basis – as per our current mandate.

Andrew Needs
for Secretary of Foreign Affairs and Trade

Pacific engagement on deep-sea mining

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|---|-----------------|
| 1 | Note that deep-sea mining is a divisive and delicate issue in the Pacific. | Yes / No |
| 2 | Note that s6(a), s9(2)(g)(i) | Yes / No |
| 3 | Agree to focus bilateral engagement on s6(a) and regional engagement on the Pacific Community and the Secretariat of the Pacific Regional Environment Programme. | Yes / No |
| 4 | Agree to raise our views on deep-sea mining at the ministerial level as part of other engagements. | Yes / No |
| 5 | Agree to expand the scope of Aotearoa New Zealand's mandate on providing deep-sea mining related assistance to Pacific Island countries to include proactively engaging to improve deep-sea science, with a particular focus on marine ecosystems, habitats and their species. | Yes / No |
| 6 | Refer a copy of this submission to the Prime Minister, Minister for Oceans and Fisheries, Minister of Conservation, and Associate Minister of Foreign Affairs. | Yes / No |

Hon Nanaia Mahuta
Minister of Foreign Affairs

Date: / /

Pacific engagement on deep-sea mining

Pūrongo – Report

Context

1. As discussed in the submission *New Zealand's international approach to deep sea mining* of 24 November 2021, the divisiveness of deep-sea mining has only increased in the Pacific. s6(a), s9(2)(g)(i)

2. s6(a), s9(2)(g)(i)

An attempt by the Secretariat of the Pacific Regional Environment Programme (SPREP)¹ to get members to support a moratorium in 2021 s6(a)

3. Our high-level approach to deep-sea mining in the Pacific is to respect the mana of each country to manage their own kaitiakitanga responsibilities (Whāia te Taumata Ōhanga). But we will have open conversations about our views on deep-sea mining and its risks (Tātou Tātou).

4. This aligns with our refreshed international position on deep-sea mining. Under this approach, Aotearoa New Zealand will continue to proactively advocate for high environmental standards, and publically communicate that New Zealand will vote against any Mining Code that does not ensure the effective protection of the marine environment. This refreshed approach balances our concern for the marine environment, the legitimate role of the ISA, and states' right to exploit the resources in their EEZ. It also ensures consistency with our own domestic settings, which allow deep sea mining in our EEZ subject to robust regulatory controls.

5. In relation to requests for assistance from Pacific Island countries regarding deep-sea mining, our current mandate is to not advocate for mining, but to respond on an "if asked" basis. We can only consider requests relating to the development of robust legal frameworks, governance structures and environmental protections. Assistance includes relevant New Zealand agencies potentially providing advice and input into regulations, or making use of international development cooperation (IDC) funding to contract specialised support. Appendix 1 sets out the principles guiding our engagement in more detail. In applying them, we also place particular importance on giving effect to the precautionary approach – in line with our commitment to entrenching a precautionary approach to deep-sea mining made under the Lemoore Declaration².

6. s6(a), s6(b)(i)

¹ The Pacific regional agency charged with promoting cooperation in the Pacific region and providing assistance in order to protect and improve its environment and to ensure sustainable development for present and future generations.

² A declaration setting out nature conservation actions in the Pacific for 2020 to 2025.

Pacific engagement on deep-sea mining

Way forward

7. Our high-level approach based on Whāia te Taumata Ōhanga and Tātou Tātou remains fit for purpose, but there is a need for more targeted bilateral and regional engagement to build dialogue in the region. s6(a), s9(2)(g)(i)

Mitigating these risks and building

towards a strong regional position will take time.

Bilateral engagement

8. s6(a) are the priority countries to engage with bilaterally on deep-sea mining (covering both mining within EEZs and under the high seas). We recommend messages focus on:

- s6(a)

9. These messages should also be communicated at the ministerial level as part of other engagements. Balanced against competing priorities and factoring in some countries' sensitivities, we do not recommend specific calls to discuss deep-sea mining exclusively at this time.

10. Within the ISA process for developing and agreeing the Mining Code, officials will prioritise working with s6(a) as members of the ISA Council. The ISA Council is the primary body responsible for negotiating and provisionally adopting the Mining Code. Aotearoa New Zealand is only an observer on the Council, thus making our engagement with Council members vital. Our engagement will take into account s6(a)

11. s6(a)

s6(a), s9(2)(g)(i)

s6(a)

Pacific engagement on deep-sea mining

s6(a)

12. s6(a)

s6(a), s6(b)(i)

s6(a)

13. s9(2)(ba)
(i)

They also recognise that some Pacific Island countries view deep-sea mining as necessary for their economic development. Any substantive change in our position on deep-sea mining at the ISA will also be consulted with Tokelau in advance.

Regional engagement

14. Amongst the regional agencies, we recommend a focus on the Pacific Community (SPC) and SPREP. The other regional agencies have not engaged on deep-sea mining in recent times.

15. For SPC³, we propose to engage through the Aotearoa New Zealand funded Pacific Community Centre for Ocean Science to encourage SPC to hold a regional dialogue on deep-sea science. Ideally, this would focus on the information needed to be able to robustly assess the environmental impacts of deep-sea mining. One of the few areas of agreement in the region on deep-sea mining is that we need to know more about deep-sea ecosystems and how mining may affect them. We consider that promoting science-focused dialogue has the best chance of getting Pacific Island countries around the table and engaging constructively together.

16. For SPREP, when the new Director General, Mr Sefanaia Nawadra, begins his role in April 2022, we propose the Associate Minister of Foreign Affairs discuss the agency's approach to deep-sea mining early in his tenure, and as part of the introductory call if possible.

s6(a), s9(2)(g)(i)

It would canvass Mr Nawadra's initial views on other ways to encourage more constructive engagement in the region.

Science assistance

17. To backup these conversations and better highlight risks, we also recommend expanding the scope of Aotearoa New Zealand's 2019 mandate on providing deep-sea mining related assistance to Pacific Island countries to include proactively engaging to improve deep-sea science. The benefits of this approach are that it would:

- help furnish the evidence base to enable Pacific Island countries to better assess and manage risks to the Blue Pacific;
- s6(a), s9(2)(g)(i)

³ The principle scientific and technical organisation in the Pacific. SPC has historically provided substantial technical advice on deep-sea mining through a European Union funded project but is much less active in the area now.

Pacific engagement on deep-sea mining

- align with our refreshed international approach on deep-sea mining that focuses on high environmental standards, which in turn depend on good science;
 - align with our science focus at the ISA, where we are seeking greater scientific expertise on the ISA's Legal and Technical Commission;
 - provide broader scientific benefits, such as exploring new marine genetic resources or providing scientific services relevant well beyond deep-sea mining; and
 - through a particular focus on understanding risks to marine ecosystems, habitats and their species, best minimise the risk that assistance from Aotearoa New Zealand is perceived as enabling deep-sea mining.
18. Expectations on the IDC budget would require management. Options for activities under the new climate change funding are likely limited to research into the role of the deep-sea in the climate system, how mining may disrupt this and potentially investigating the role of deep-sea minerals in a green transition. An initial focus on dialogue and identifying information gaps presents a low-cost starting point. Other activities could include research expeditions, scientific modelling and developing scientific infrastructure.
19. s6(a), s6(b)(i)

Released under the Official Information Act

Pacific engagement on deep-sea mining

Appendix 1: Principles for New Zealand's approach to requests for support for deep-sea mining in the Pacific

New Zealand can encourage sustainable management of non-living deep-sea natural resources if approached for assistance from Pacific partners. This recognises the need to balance protection of the environment and biodiversity with the sovereign rights states have over natural resources within their EEZs.

When considering any requests from the Pacific, key principles guiding our support are to:

- promote the sustainable management of non-living natural resources of the seabed and subsoil of the Continental Shelf of Pacific countries;
- protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter;
- support the country to meet its obligations under international law;
- ensure that New Zealand support aligns with Pacific Island Forum regional ocean objectives;
- coordinate with regional agencies and other donors to avoid duplication of effort and focus on areas where there is New Zealand expertise;
- promote the adoption of robust and transparent processes and governance structures for awarding contracts and revenue management to ensure best outcomes for Pacific countries, including protection of sovereignty.

Sustainable management of non-living natural resources means managing their use, development, and protection in a way, or at a rate, that:

- safeguards the life-supporting capacity of the environment;
- protects the biological diversity and integrity of marine species, ecosystems and processes, and protects rare and vulnerable ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life;
- avoids, remedies, or mitigates any adverse individual or cumulative effects of activities on the environment;
- sustains the potential of non-renewable natural resources to meet the reasonably foreseeable needs of future generations;
- ensures people and communities can provide for their social, economic and cultural well-being and for their health and safety.

If a request for support is received, the New Zealand Government's role is to provide links to New Zealand agencies that may have relevant expertise. Agencies might provide guidance and feedback on policy, legislation, scientific research and other aspects where appropriate (as we do for the International Seabed Authority). New Zealand agencies have a shared view on what a good regime should look like, and we can share this knowledge with Pacific partners along with associated documents and literature used to assist in developing New Zealand policy and management strategies.

If required, development support could be provided to enable Pacific Island Governments to access appropriate expertise and specialist advice from New Zealand agencies to ensure that legal and policy frameworks are in place to promote best outcomes for Pacific Island people and the environment. These should be based on sound science, good governance structures and best practice.



29 September 2022

Minister of Foreign Affairs

For action by

14 October 2022

Review of Aotearoa New Zealand's approach to deep sea mining in areas beyond national jurisdiction

BRIEFING	Decision Submission
PURPOSE	To review and provide recommendations on Aotearoa New Zealand's approach to deep sea mining in areas beyond national jurisdiction.

Tukunga tūtohua – Recommended referrals

Prime Minister	For information by	14 October 2022
Minister of Energy and Resources	For information by	14 October 2022
Minister for the Environment	For information by	14 October 2022
Minister for Oceans and Fisheries	For information by	14 October 2022
Minister of Conservation	For information by	14 October 2022
Associate Minister of Foreign Affairs	For information by	14 October 2022

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Andrew Williams	Chief International Legal Adviser (Acting)	Legal	s9(2)(a)
Abby Hutchison	Legal Adviser	Legal	s9(2)(a)
Finbar Kiddle	Lead Adviser	Pacific Regional	s9(2)(a)

Mā te Tari Minita e whakakī – Minister's Office to complete

<input type="checkbox"/> Approved	<input type="checkbox"/> Noted	<input type="checkbox"/> Referred
<input type="checkbox"/> Needs amendment	<input type="checkbox"/> Declined	<input type="checkbox"/> Withdrawn
<input type="checkbox"/> Overtaken by events	<input type="checkbox"/> See Minister's notes	

Comments

Pito matua – Key points

- Aotearoa New Zealand’s current approach to deep sea mining in areas beyond national jurisdiction is to advocate proactively for high environmental standards in the development of the Mining Code at the International Seabed Authority (ISA) and to communicate that New Zealand will vote against any Mining Code that does not meet those standards (our submission of 24 November 2021 refers).
- It was agreed that approach would be reviewed following the August “make or break” negotiating session of the ISA.
- The key developments since November 2021 are:
 - Lack of progress in the negotiations at the ISA on rules to govern deep sea mining beyond national jurisdiction, meaning it is very unlikely the ISA will deliver a robust Mining Code before the July 2023 deadline (established by Nauru’s triggering of the “two-year rule” in July 2021).
 - A lack of clarity on what happens if there is no agreement in the ISA by the deadline, particularly on whether or not mining can take place without a Mining Code in place. Some states consider that mining could proceed in such a scenario.
 - Increased expressions of support for a moratorium on deep sea mining (from Palau, Fiji, Federated States of Micronesia, Solomon Islands, Tuvalu and Samoa) – while Tonga, Cook Islands, Nauru and Kiribati continue to see deep sea mining as a key economic opportunity.
- New Zealand’s key interests with respect to deep sea mining in areas beyond national jurisdiction are to: protect and preserve the marine environment; build Pacific resilience; acknowledge the potential (global) economic and environmental benefits of deep sea mining; s6(a) avoid perceived inconsistency with New Zealand’s current domestic seabed mining regime, and critically, uphold the integrity of the UN Convention on the Law of the Sea (UNCLOS), of which the ISA multilateral process is a key part.
- UNCLOS is central to the security and prosperity of New Zealand and the Pacific region. Given our vital interests in the Exclusive Economic Zones (EEZs) and other rights guaranteed under UNCLOS, s6(a) it is critical that any option selected is consistent with and upholds the UNCLOS regime.
- Taking into account these recent developments and New Zealand’s interests, officials have identified the following options for you to consider:
 - **Option 1: Support a blanket moratorium** on deep sea mining (which is unconditional s6(a))
 - **Option 2: Publicly call for a conditional moratorium** on deep sea mining in areas beyond national jurisdiction, to apply until such time that a Mining Code can be agreed at the ISA that ensures the effective protection of the marine environment as required by UNCLOS (which requires adequate scientific knowledge about the impacts).
 - **Option 3: Maintain New Zealand’s current approach.**
- **Officials do not recommend option 1.** s9(2)(g)(i), s9(2)(j)

s9(2)(h), s9(2)(j)

s9(2)(j)

s9(2)(j)

- **While option 3 was a sound starting point, officials do not recommend maintaining this position.** Officials consider that the recent developments identified above justify New Zealand taking a stronger position, in particular in order to influence discussions in the ISA on what happens at the end of the two-year period.
- **Accordingly, officials recommend option 2:**
 - A clearly defined and conditional moratorium on deep sea mining that only applies to areas beyond national jurisdiction is **consistent with UNCLOS**.
 - It would **enable New Zealand to take a leadership role in the ISA** and to shape discussions on what should happen if no Mining Code is agreed by the July 2023 deadline.
 - It would best give effect to our **kaitiakitanga responsibilities** for Te-moana-nui-o-kiwa.
- Option 2 would require careful public communication to ensure that the conditions for ending the moratorium were understood. Proactive engagement with partner countries, s6(a) would also be necessary to ensure that New Zealand's position was not misinterpreted as being inconsistent with UNCLOS, s6(a)
- Option 2 would also allow New Zealand to lend support to calls for a **“precautionary pause”** on deep sea mining in contexts where this was helpful. The “precautionary pause” is a substantively equivalent concept, which is being promoted by some ISA members, including Chile, Costa Rica and Spain.

Victoria Hallum
for Secretary of Foreign Affairs and Trade

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|----|--|-----------------|
| 1 | Note that, at your request, officials have reviewed Aotearoa New Zealand’s approach to deep sea mining in areas beyond national jurisdiction and have identified three possible options for New Zealand’s future approach. | Yes / No |
| 2 | Decide which of these three options, if any, will be New Zealand’s new approach to deep sea mining in areas beyond national jurisdiction. | |
| | ○ Option 1: Support a blanket moratorium on deep sea mining (which is unconditional and s6(a) | Yes / No |
| | ○ Option 2 (recommended): Publicly call for a conditional moratorium on deep sea mining in areas beyond national jurisdiction, to apply until such time that a Mining Code can be agreed at the ISA that ensures the effective protection of the marine environment as required by UNCLOS (which requires adequate scientific knowledge about the impacts). | Yes / No |
| | ○ Option 3: Maintain the current approach of proactively advocating for high environmental standards in the development of the Mining Code. | Yes / No |
| 10 | Refer a copy of this submission to the Prime Minister, the Minister of Energy and Resources, the Minister for the Environment, the Minister of Oceans and Fisheries, the Minister of Conservation, and the Associate Minister of Foreign Affairs. | Yes / No |

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

Pūrongo – Report

Introduction

1. Aotearoa New Zealand’s current international approach to deep sea mining is to proactively advocate for high environmental standards in the development of rules to govern deep sea mining in areas beyond national jurisdiction (known as the “Mining Code”) at the International Seabed Authority (ISA), and to communicate that New Zealand will vote against any Mining Code that does not ensure the effective protection of the marine environment as required under the UN Convention on the Law of the Sea (UNCLOS) (our submission of 24 November 2021 refers).
2. It was agreed that approach would be reviewed following the August 2022 meeting of the ISA, in particular taking into account:
 - (1) progress made at the multilateral negotiations currently taking place at the ISA to agree rules to govern deep sea mining in areas beyond national jurisdiction;
 - (2) the shifting positions of Pacific Island countries.
3. This submission sets out options, and provides officials’ recommendations, for a revised international approach to deep sea mining in areas beyond national jurisdiction.
4. This submission was developed in consultation with the Ministry for the Environment, the Department of Conservation, the Ministry for Business, Innovation and Employment, the Environmental Protection Authority, and Te Puni Kōkiri, and their views have been reflected.

Recent Developments

Multilateral negotiations in the ISA

5. Since our November 2021 submission, there have been two rounds of negotiations at the ISA to develop the Mining Code. The most recent round, held in August 2022, was essentially “make or break” for the prospect of completing a robust Mining Code by July 2023 - the deadline to which the ISA is required to work since Nauru triggered the ISA’s “two-year” rule in July 2021.
6. As per our mandate, New Zealand continued to advocate for a Mining Code that ensures the effective protection of the marine environment – in particular through a joint proposal with Chile, Costa Rica, Federated States of Micronesia, the Netherlands, and the United Kingdom, which is designed to embed this requirement into the Mining Code.¹
7. However, progress in the negotiations has been slow and **it is very unlikely the process will deliver a robust Mining Code before the July 2023 deadline**. This is also increasingly the view of other states who have started contingency planning for a failure to reach agreement on a Mining Code. s6(a)

8. s6(a)

¹ Promisingly, New Zealand’s joint proposal, was included in the various updated drafts of the Mining Code that were released prior to the commencement of the August session.

s6(a)

9. States' views differ on what should happen if no Mining Code is agreed by July 2023. s6(a)

Pacific developments

10. Deep sea mining remains divisive in the Pacific. At the June 2022 UN Ocean Conference in Lisbon, Palau, Fiji and Samoa joined environmental NGOs in launching an "Alliance of Countries Calling for a Deep Sea Mining Moratorium". Tuvalu, Federated States of Micronesia and Solomon Islands joined subsequently. s6(a)

11. s6(a)

12. s6(a), s6(b)(i), s7(b)(i), s7(b)(ii)

13. s6(b)(ii), s9(2)(g)(i)

NGOs/civil society

14. Stakeholders were invited to submit views on the review of New Zealand's approach to deep sea mining in areas beyond national jurisdiction. Officials received input from several environmental NGOs, including the Deep Sea Conservation Coalition (DSCC), Kiwis Against Seabed Mining (KASM), and civil society organisations from Canada and Tonga - those views are summarised below.
15. Environmental NGOs continue to call for New Zealand to support a moratorium or alternatively, a "precautionary pause", on deep sea mining. The Deep Sea Conservation

² NGOs have provided officials the formal declaration sitting underneath the alliance, which does provide specific conditions and focuses on the area governed by the ISA, s6(a)

Coalition (who have attended all deep sea mining hui hosted by you to date) was instrumental in launching the “Alliance of Countries Calling for a Deep Sea Mining Moratorium.” They are now pushing for other states to join this alliance, particularly New Zealand, who they consider should be supporting their “like-minded neighbours in the Pacific” in this initiative. s6(a)

16. s6(a)

Environmental NGOs are now encouraging New Zealand to weigh into the conversation about whether, as a matter of policy, deep sea mining should be permitted at this point in time.

17. There is also a general push, particularly from domestically focused NGOs, for New Zealand to share “the teachings of [its] own experiences” in assessing applications for seabed mining within its national jurisdiction with the international community.

18. Environmental NGOs also have significant concerns about the ISA and its ability to operate effectively as a regulatory body for deep sea mining. They have cited a lack of transparency, alleged pro-mining leadership, and the absence of a scientific body, as reasons behind this. The reform of the ISA is often attached to the calls by civil society for a moratorium on deep sea mining, as a condition that must be met before a moratorium can be lifted.

Domestic developments

19. New Zealand's current domestic regime allows applications for seabed mining within our jurisdiction to be considered subject to robust assessment processes. To date, three applications for seabed mining in New Zealand's EEZ have been considered, and all have effectively been declined (see **Annex 3** for details).

20. On 4 August 2022 Debbie Ngarewa-Packer's private members bill, the Prohibition on Seabed Mining Legislation Amendment Bill, was drawn from the members' ballot. The key proposals in the Bill are:

- (1) a ban on seabed mining consents within the EEZ and Aotearoa's coastal waters;
- (2) prohibiting the application for exploration rights for seabed mining under the Crown Minerals Act 1991 (CMA); and
- (3) retrospectively withdrawing existing seabed mining consents and exploration rights under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) and the CMA.

21. The Government is yet to indicate its position on the Bill.

New Zealand interests

22. New Zealand's interests with respect to deep sea mining in areas beyond national jurisdiction are:

- **Protecting and preserving the marine environment:** a healthy ocean is vital to New Zealand's identity, well-being, and prosperity and the regulation of deep sea mining must ensure the protection and preservation of the marine environment.

- **Upholding the integrity of UNCLOS and supporting the multilateral process:** UNCLOS is central to the security and prosperity of New Zealand and the Pacific. Given the vital interests of New Zealand and Pacific countries in the regime established by UNCLOS, which includes the recognition of EEZs, s6(a) it is critical that any approach is consistent with and upholds the UNCLOS regime and preserves the multilateral process it establishes.
- **Building Pacific resilience and supporting our engagement principles:** respecting the sovereign rights of Pacific Island states and their ability to exercise stewardship, while also delivering our collective responsibilities for the stewardship of the Blue Pacific, particularly in areas beyond national jurisdiction.
- **Acknowledging the potential (global) economic and environmental benefits:** deep sea mining has potentially significant economic benefits for developing countries, including Pacific Island states, as well as potential benefits to a low emissions economy.
- s6(a)
- **Avoiding perceived inconsistency with New Zealand's current domestic seabed mining regime:** ensuring New Zealand's international positions do not appear inconsistent with New Zealand's current domestic seabed mining regime.

23. A fuller description of these interests and how each interest has been affected by the recent developments is set out in **Annex 2**.

Review of New Zealand's position

24. Officials consider that New Zealand's existing approach to deep sea mining – which is proactively advocating for a Mining Code that ensures the effective protection of the environment, was sound as a starting point, but that further development of our approach is appropriate given:
- It is now clear the ISA process is very unlikely to deliver a robust Mining Code before the two-year deadline;
 - The uncertainty about what happens if no Mining Code is agreed by the deadline, in particular whether the ISA can consider and approve mining applications;
 - The strong push by a number of Pacific Island states for a moratorium on deep sea mining, and a clear shift from other likeminded partners in the ISA (including Chile, Costa Rica, Spain) against mining being permitted in the short term.
25. Accordingly, officials have identified three options for New Zealand's future approach:
- **Option 1:** Support a blanket moratorium on deep sea mining, s6(a)
 - **Option 2:** Publicly call for a conditional moratorium on deep sea mining in areas beyond national jurisdiction, subject to the specific condition that the moratorium

would apply only until, and if, a Mining Code can be agreed at the ISA that ensures the effective protection of the marine environment as required by UNCLOS (which requires adequate scientific knowledge about the impacts).

- **Option 3:** Maintain the current approach of proactively advocating for high environmental standards in the development of a Mining Code and communicating that New Zealand will vote against any Mining Code that does not ensure the effective protection of the marine environment as required under UNCLOS. This option stops short of taking a position on what should happen if a Mining Code is not agreed.

26. A fuller analysis of the risks and benefits of each of these options is included in **Annex 4**.

Options analysis and recommendation

27. Officials do not recommend option 1, as it continues to entail significant risks:

- Supporting a blanket moratorium s9(2)(g)(i), s9(2)(h), s9(2)(j)

UNCLOS, which provides a mechanism to enable deep sea mining subject to the regulatory authority of the ISA. s6(a)

- s6(a)

- s6(a), s7(b)(i), s7(b)(ii)

- It could also be perceived as being at odds with New Zealand's current domestic settings on seabed mining, which allows for seabed mining within our national jurisdiction subject to robust assessment processes.

28. **Officials recommend option 2.** This option enables New Zealand to take a stronger position in response to the changed context, and support a moratorium that makes clear that mining must not go ahead unless and until a robust Mining Code is agreed which ensures the effective protection of the marine environment.

29. Option 2 mitigates many of the risks of Option 1:

- This option would call for a moratorium only until such time as the regulatory authority of the ISA has been exercised in a manner consistent with UNCLOS (i.e. in a way which ensures the effective protection of the marine environment). s9(2)(g)(i)
- Option 2 would also be consistent with the existing multilateral ISA process, because it explicitly links the term of the moratorium to the adoption of a satisfactory Mining Code.
- By limiting the scope of the moratorium to areas beyond national jurisdiction, this option would avoid making a statement about how states, including Pacific Island

states, manage the resources within their own jurisdictions, as permitted by UNCLOS s6(a), s7(b)(i), s7(b)(ii)

- This option would not be at odds with New Zealand's current domestic settings.

30. Furthermore, calling for a “**conditional moratorium**” would:

- a) Enable New Zealand to take a leadership role in the ISA context and shape discussions on what the consequences should be for deep sea mining if a robust Mining Code is not adopted by the deadline s6(a)

- b) s9(2)(g)(i)

31. s6(a), s9(2)(j)

32. Option 2 would require careful public communication to ensure that the conditions for ending the moratorium were understood. Proactive engagement with partner countries, s6(a) would also be necessary to ensure that New Zealand's position was not misinterpreted as being inconsistent with UNCLOS, s6(a), s9(2)(j)

33. Option 2 would also allow New Zealand to support calls for a “precautionary pause”, which is a substantively equivalent concept and a term being used by some ISA members, including Chile, Costa Rica and Spain.

Advancing the new approach at the ISA

34. If New Zealand were to pursue option 2, as recommended above, New Zealand would maintain its substantive engagement on the Mining Code negotiations at the ISA to advocate proactively for high environmental standards and to ensure the effective protection of the marine environment. This would include examining issues around the institutional capacity for the ISA to ensure the effective protection of the marine environment.

35. s6(a), s9(2)(j)

36. s6(a), s9(2)(j)

Engagement with stakeholders – and communications plan

37. If New Zealand were to pursue option 2, in terms of public messaging, in particular engagement with stakeholders, our key messages would be that:
- New Zealand supports a conditional moratorium on deep sea mining in areas beyond national jurisdiction until a Mining Code can be agreed at the ISA that ensures the effective protection of the marine environment as required by UNCLOS (which requires adequate scientific knowledge about the impacts).
 - This position is in response to our concern about the potential for the ISA to approve mining applications before the effective protection of the marine environment can be ensured.
 - This position relates to areas beyond national jurisdiction, where a regulatory regime for deep sea mining is still being negotiated. It does not apply to areas within countries' national jurisdiction.
 - New Zealand will continue to engage actively in negotiations at the ISA to advocate for high environmental standards in the Mining Code.
38. If agreed, officials would work with your office to determine the best means of publicly communicating the outcome of this review. A stakeholder hui is planned ahead of the next ISA meetings at the end of October, which will be an opportunity to engage on any new approach.

Engagement with Pacific Island countries

39. s6(a)

40. s6(a)

Intersection with domestic regime

41. For the reasons outlined in paragraph 27, options 2 and 3 would not have implications for New Zealand's domestic settings on seabed mining and s9(2)(f)(iv)

42. s9(2)(g)(i)

Consultation

43. This submission was developed in consultation with the Ministry for the Environment, the Department of Conservation, the Ministry for Business, Innovation and Employment, the Environmental Protection Authority, and Te Puni Kokiri, and their views have been reflected.

Released under the Official Information Act

s6(a), s6(b)(i)

Released under the Official Information Act

Annex 2: New Zealand's interests in deep sea mining

- **Protecting and preserving the marine environment:** a healthy ocean is vital to New Zealand's identity, well-being, and prosperity. Our activities on land and at sea, are negatively affecting the marine environment, and as such, the regulation of deep sea mining should ensure the protection and preservation of the marine environment. A key concern is that detailed scientific knowledge around the deep seabed, its ecosystems, and the impact of deep sea mining, remains extremely limited. This lack of knowledge makes it difficult to develop rules to govern deep sea mining.

Māori interests and values engaged in deep sea mining similarly focus on kaitiakitanga, which requires guardianship of the ocean and protection of its resources for future generations. Responsibility for wisely managing the health of the ocean and its contribution to present and future generations is a fundamental aspect of mātauranga Māori.

- **Upholding the integrity of UNCLOS:** UNCLOS is central to the security and prosperity of New Zealand and the Pacific. One of the most significant achievements of UNCLOS was the recognition of Exclusive Economic Zones (EEZs) (the zone which grants coastal states rights over natural resources out to 200 nautical miles) – prior to UNCLOS, the EEZ was contested with many states holding to a 3 mile territorial sea. For the Pacific in particular, the recognition of EEZs created significant benefits – for example Kiribati has a land area of 811 square kilometres and an EEZ of 3.55 million square kilometres. The economic benefits from EEZs (fisheries, aquaculture) are critical for all Pacific countries, including New Zealand.

The EEZ was agreed in UNCLOS as part of a package which included a benefit-sharing regime to allow developing countries, particularly those without significant EEZs, to benefit from deep sea mining activities. Given the vital interests of New Zealand and Pacific countries in the regime established by UNCLOS, s6(a)

it is critical that any option is consistent with and upholds the regime established by UNCLOS.

- **Supporting the multilateral process:** New Zealand's interests will be best served if deep sea mining is regulated by a functional and effective multilateral system. However, having engaged proactively and in good faith in the multilateral process under way at the ISA, it is clear that the process is very unlikely to deliver before the two-year deadline. Accordingly, we now need to consider contingency planning to ensure that deep sea mining does not take place without a robust regulatory framework. This should be pursued in a way that preserves the multilateral process and ensures consistency with UNCLOS.
- **Building Pacific resilience and supporting our engagement principles:** New Zealand has a strong commitment to respecting the ability of Pacific Island countries to exercise their own stewardship, while working together to deliver our collective responsibilities for the stewardship of the Blue Pacific. These collective responsibilities come to the fore in areas beyond national jurisdiction.

s6(a), s6(b)(i), s7(b)(i), s7(b)(ii), s9(2)(g)(i)

s6(a), s7(b)(i), s7(b)(ii)

- **Acknowledging the potential (global) economic and environmental benefits:** deep sea mining has potentially significant economic benefits for developing countries, including Pacific states.

Deep sea mining also offers potential benefits to a low emissions economy by providing access to a rich source of key mineral resources. The transition to greener transport and energy systems will increase demand for deep sea mined minerals, though timeframes around when demand will outstrip existing sources of supply are deeply uncertain.⁴

- s6(a)

s6(a)

- **Avoiding perceived inconsistency with New Zealand's current domestic mining regime:** the position New Zealand takes on deep sea mining internationally will be compared with our domestic regime.

s6(a), s7(b)(i),
s7(b)(ii)

Annex 3: Regulatory framework for deep sea mining

International framework:

1. Deep sea mining in the seabed under the high seas is governed by Part XI of UNCLOS. UNCLOS provides a mechanism to enable the exploitation and use of the mineral resources in the seabed in areas beyond national jurisdiction, subject to the regulatory authority of the ISA. Under UNCLOS, the ISA is responsible for adopting and facilitating a regulatory regime to govern deep sea mining in areas beyond national jurisdiction, ensuring the effective protection of the marine environment, and the equitable distribution of the benefits.
2. Deep sea mining in areas within states national jurisdiction, including EEZs, is governed by the coastal state. Under UNCLOS, the coastal state has the sovereign right to exploit the resources within their EEZ, subject to the duty to protect and preserve the marine environment.

New Zealand framework:

3. New Zealand, as a coastal state, has a comprehensive regime for seabed mining within our EEZ. This is governed by several pieces of legislation. Permits for prospecting, exploration and mining for Crown-owned minerals are granted under the Crown Minerals Act 1991 (CMA). Regional Councils would consider applications for seabed mining in the territorial sea under the Resources Management Act 1991. The Environmental Protection Authority (EPA) considers applications for consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.⁶ Seabed mining is currently prohibited in five marine mammal sanctuaries and one whale sanctuary in New Zealand.⁷
4. Our current domestic legal framework requires a robust assessment of any seabed mining proposal and emphasises the need to favour caution and environmental protection. To date, no consents for seabed mining have been approved in New Zealand's waters under this framework (three proposals have been considered and ultimately declined, predominantly on environmental grounds). This recognises that while seabed mining offers potential economic benefits, precaution is warranted in the face of uncertain or inadequate information about the marine environment, and the effects of such activities.⁸
5. In 2017, a marine consent was granted to Trans-Tasman Resources Ltd to conduct seabed mining in the South Taranaki Bight. The Supreme Court ruled that the EPA had erred in the granting of this consent (by failing to favour environmental protection and not taking a broad enough interpretation of the treaty clause). The matter has been referred back to the EPA for reconsideration – this is due to happen mid-next year. Trans-Tasman Resources Ltd continues to hold a permit under the CMA, but, without a marine consent, cannot commence activities. This case has renewed calls for a ban on seabed mining within our EEZ, and Te Paati Māori has drafted a private members Bill (the Prohibition on

⁶ Aspects of seabed mining are also regulated by New Zealand Petroleum and Minerals under the Crown Minerals Act 1991, Worksafe under the Health and Safety Work Act 2015, and Maritime New Zealand under the Maritime Transport Act 1994.

⁷ These sanctuaries cover a significant area of New Zealand's coastline within 12 nautical mile territorial limits, stretching along the west coast of the North Island from Northland to Taranaki, and key areas on the eastern and south coasts of the South Island.

⁸ In the territorial sea, the RMA takes a similar effects based assessment approach. While no deep sea mining occurs in the territorial sea, there are a number of locations in New Zealand where sand dredging or mining occurs or has occurred in the past. These activities occur on beaches and in the territorial sea i.e. in near shore locations, inlets, and harbours, and mostly use dredging technique and ships/barges

Seabed Mining Legislation Amendment Bill) to this effect which was pulled out of the members' ballot earlier this year.

6. Mining of sand, shingle or other natural material can be conducted in the coastal marine area without requiring a minerals permit under section 8(2)(b) of the CMA. Appropriate resource consents are still required. Examples of this is the sand extraction offshore of Pakiri beach north of Auckland for Auckland's construction industry and other dredging operations in harbours and offshore around New Zealand.
7. As indicated above, due to the various legislative instruments governing seabed mining within New Zealand's EEZ, a review of our domestic settings on seabed mining would involve the engagement of the Minister for Energy and Resources, the Minister for the Environment, the Minister for Oceans and Fisheries, the Minister for Economic and Regional Development, the Minister for Māori Development, the Minister for Trade and Export Growth, and the Minister of Conservation.

Released under the Official Information Act

Annex 4: Detailed options analysis

	Benefits	Risks
<p>Option 1: Blanket moratorium</p> <ul style="list-style-type: none"> - Open-ended (not time bound) - Unconditional i.e. no conditions attached to the moratorium - Could extend to mining within countries' national jurisdictions that is not managed by the ISA. 	<ul style="list-style-type: none"> - Supports protection of marine environment in absence of adequate scientific knowledge. - Likely to be positively received by those Pacific Island countries and civil society organisations calling for a moratorium. 	<ul style="list-style-type: none"> - s9(2)(g)(i), s9(2)(h) - Would likely undermine New Zealand's credibility in negotiations on Mining Code. - s6(a) - s6(a) - s9(2)(g)(i) - Inconsistent with New Zealand's current domestic regime.
<p>Option 2: Conditional moratorium</p> <ul style="list-style-type: none"> - Call for a conditional moratorium on deep sea mining until a Mining Code agreed that ensures effective protection of marine environment as required by UNCLOS (including the availability of adequate science about the impacts). - Applies to area governed by ISA only (i.e. beyond national jurisdiction). 	<ul style="list-style-type: none"> - Taking a clear position that New Zealand does not support mining of the deep seabed unless a robust Mining Code is agreed. - Supports position that mining applications should not be considered or approved in absence of Mining Code, notwithstanding end of two-year deadline. 	<ul style="list-style-type: none"> - Risks misconception by civil society and international community that New Zealand supports blanket moratorium (note risks associated with this option above). - s9(2)(g)(i) - (Low) risk of international investors perceiving possible shift in New Zealand's domestic position creating uncertainty.

<p>Option 3: Status quo</p> <ul style="list-style-type: none"> - Proactively advocate for high environmental standards - Publicly communicate that New Zealand will vote against any Mining Code that does not ensure the effective protection of the marine environment, as required under UNCLOS. - Stops short of taking a position supporting prevention of deep sea mining until robust Mining Code can be agreed. 	<ul style="list-style-type: none"> - Consistent with UNCLOS given Art 145 obligation to ensure protection of the marine environment. - Brings New Zealand's position closer to those Pacific Island countries calling for a moratorium. - s6(a) <ul style="list-style-type: none"> - s9(2)(j) 	<ul style="list-style-type: none"> - s9(2)(j)
<p>Option 3: Status quo</p> <ul style="list-style-type: none"> - Proactively advocate for high environmental standards - Publicly communicate that New Zealand will vote against any Mining Code that does not ensure the effective protection of the marine environment, as required under UNCLOS. - Stops short of taking a position supporting prevention of deep sea mining until robust Mining Code can be agreed. 	<ul style="list-style-type: none"> - Broadly consistent with New Zealand's interests (outlined above). - Allows focus/resourcing to remain on negotiating high standard Mining Code. 	<ul style="list-style-type: none"> - Fails to take a clear position on whether mining should go ahead in absence of robust Mining Code. - This is particularly important given Mining Code unlikely to be agreed by July 2023 deadline, and lack of clarity around what this means for mining applications (with some states arguing that UNCLOS requires that mining applications should nonetheless be considered/approved).



2 March 2023

Minister of Foreign Affairs

For action by

9 March 2023

2023 Meeting of the International Seabed Authority and Credentials

BRIEFING Decision Submission

PURPOSE To provide you with an update on New Zealand's ongoing engagement on deep sea mining.

To seek your signature of the attached Letter of Credentials for the New Zealand delegation to the International Seabed Authority.

Tukunga tūtohua – Recommended referrals

Associate Minister of Foreign Affairs	For information by	9 March 2023
Minister of Energy and Resources	For information by	9 March 2023
Minister for Oceans and Fisheries	For information by	9 March 2023
Minister for the Environment	For information by	9 March 2023
Minister of Conservation	For information by	9 March 2023

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Sarah Ireland	Unit Manager	Legal	s9(2)(a)
Charlotte Skerten	Lead Adviser	Legal	s9(2)(a)

Mā te Tari Minita e whakakī – Minister's Office to complete

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|--|---|------------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Noted | <input type="checkbox"/> Referred |
| <input type="checkbox"/> Needs amendment | <input type="checkbox"/> Declined | <input type="checkbox"/> Withdrawn |
| <input type="checkbox"/> Overtaken by events | <input type="checkbox"/> See Minister's notes | |

Comments

2023 Meetings of the International Seabed Authority and Credentials

Pito matua – Key points

- Aotearoa New Zealand will participate, as a member of the International Seabed Authority (ISA), in its 2023 meetings, the first of which begins on 16 March 2023.
- The main focus of the March ISA meeting is to continue developing rules for deep sea mining in areas beyond national jurisdiction (the “Mining Code”). It remains highly unlikely that the ISA will deliver a robust Mining Code before the July 2023 deadline (established by Nauru’s triggering of the “two-year rule” in July 2021).
- Officials continue to engage actively in the ISA meetings on the basis of our new international approach to deep sea mining agreed by you in October 2022: to publicly call for a conditional moratorium on deep sea mining in areas beyond national jurisdiction, until a Mining Code can be agreed at the ISA that ensures effective protection of the marine environment as required by the UN Convention on the Law of the Sea (UNCLOS).
s6(a), s9(2)(j)
- At the final 2022 session of the ISA in November a good foundation was laid for discussions on what happens at the expiry of the two-year deadline in the absence of an agreed Mining Code, with almost universal agreement that mining should not be permitted to take place. s6(a), s9(2)(g)(i), s9(2)(j)
- Officials continue to regularly engage with a range of stakeholders on ISA developments. We are planning to hold a stakeholder hui during the week beginning 6 March 2023 to discuss priorities for the March meeting, which will likely be focused on the (yet to be released) text of the latest draft regulations.
- Officials will report back on progress made at the ISA, both on the rules to govern deep sea mining, and on discussions related to the application of the two-year rule, before the July 2023 meeting, which will be the final opportunity to engage in the ISA context before the expiry of the two-year deadline.

Rosemary Paterson
For Acting Secretary of Foreign Affairs and Trade

2023 Meetings of the International Seabed Authority and Credentials

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|---|-----------------|
| 1 | Note that New Zealand will participate in the twenty-eighth session of the International Seabed Authority (ISA), beginning on 16 March 2023, to continue to advocate for a conditional moratorium on deep sea mining in areas beyond national jurisdiction, until a Mining Code can be agreed at the ISA that ensures the effective protection of the marine environment as required by the UN Convention on the Law of the Sea. | Yes / No |
| 2 | Sign the attached Letter of Credentials for the New Zealand delegation to these meetings. | Yes / No |
| 3 | Refer a copy of this submission to the Associate Minister of Foreign Affairs, Minister of Energy and Resources, the Minister for Oceans and Fisheries, Minister for the Environment and the Minister of Conservation. | Yes / No |

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

Released under the Official Information Act

2023 Meetings of the International Seabed Authority and Credentials

Pūrongo – Report

Update on the November ISA meeting

1. The final session of the International Seabed Authority (ISA) for 2022 took place in November. Negotiations on the Mining Code made some progress, but the meeting reinforced that the two year deadline is unlikely to be met.
2. The November session saw a raft of announcements of new positions by Member States seeking to buy more time before deep sea mining takes place in areas beyond national jurisdiction. These included New Zealand's announcement of our call for a conditional moratorium. Other notable announcements included Panama and Germany's calls for a "precautionary pause" on deep sea mining pending further marine scientific research. s6(a)

3. s6(a), s9(2)(j)

4. s6(a)

s6(a), s9(2)(j)

Other engagement

7. s6(a)

8. In addition to the ISA Friends, officials are also working with another group of states, led by France and styled as "a partnership for the deep sea". The group is likely to also include s6(a)

The group is having a preliminary meeting on the sidelines of Our Ocean in Panama this week. While Aotearoa New Zealand is not represented at Our Ocean, we are in close contact with France to retain the option of signing

2023 Meetings of the International Seabed Authority and Credentials

on to the “call to action” to ensure the protection of the marine environment, which France hopes to release as a joint statement at the March ISA meeting.

New Zealand delegation

9. The attached credentials letter applies to all ISA meetings for 2023. We have included a complete list of officials that may join these meetings virtually, allowing us to maintain flexibility of our delegation composition. Two officials will attend the March meeting in person.

Released under the Official Information Act



26 June 2023

Minister of Foreign Affairs

For action by

3 July 2023

International Seabed Authority: Mining Code Deadline to Expire in July, update on Aotearoa New Zealand's engagement

BRIEFING Overview Submission

PURPOSE To provide you with an update on New Zealand's engagement at the International Seabed Authority on deep sea mining in areas beyond national jurisdiction ahead of the expiry of the two-year deadline for negotiations on a Mining Code on 9 July 2023

Tukunga tūtohua – Recommended referrals

Associate Minister of Foreign Affairs	For information by	3 July 2023
Minister of Energy and Resources	For information by	3 July 2023
Minister for the Environment	For information by	3 July 2023
Minister of Conservation	For information by	3 July 2023
Minister for Oceans and Fisheries	For information by	3 July 2023

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Sarah Ireland	Unit Manager	Legal Division	s9(2)(a)
Charlotte Skerten	Lead Adviser	Legal Division	s9(2)(a)

Mā te Tari Minita e whakakī – Minister's Office to complete

- | | | |
|--|---|------------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Noted | <input type="checkbox"/> Referred |
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| <input type="checkbox"/> Overtaken by events | <input type="checkbox"/> See Minister's notes | |

Comments

International Seabed Authority: Mining Code Deadline to Expire in July, update on Aotearoa New Zealand's engagement

Pito matua – Key points

- As you are aware, in July 2021, Nauru triggered a “two-year rule” under the 1994 Implementing Agreement to the United Nations Convention on the Law of the Sea (UNCLOS 1994 Agreement). This requires the International Seabed Authority (ISA) membership to agree on rules to govern deep sea mining in areas beyond national jurisdiction (the Mining Code) by 9 July 2023.
- Although some progress has been made, it is clear that the Mining Code will not be completed by the deadline. Most members of the ISA expect the Mining Code will take several more years to finalise.
- It is not clear what will happen should an application for mining be submitted after 9 July but before the Mining Code is finalised, given that the UNCLOS 1994 Agreement provides for the ISA Council to “provisionally approve” applications.
- Like Aotearoa New Zealand, most ISA members take the view that deep sea mining in areas beyond national jurisdiction should not begin until the Mining Code has been completed. s9(2)(g)(i), s9(2)(j)
- At the July ISA meetings, Aotearoa New Zealand will continue to advocate for a conditional moratorium s6(a), s9(2)(j)
- s6(a), s9(2)(j)
- Officials continue to engage regularly with a range of stakeholders on ISA developments. We are arranging a stakeholder hui during the week beginning 3 July 2023 to discuss priorities for the July meetings, which you have been invited to host.

Victoria Hallum
For Acting Secretary of Foreign Affairs and Trade

International Seabed Authority: Mining Code Deadline to Expire in July, update on Aotearoa New Zealand's engagement

Tūtohu – Recommendations

It is recommended that you:

- 1 **Note** that the two-year deadline for the negotiation of a Mining Code at the International Seabed Authority (ISA) to govern deep sea mining in areas beyond national jurisdiction will expire on 9 July 2023, with the Mining Code not yet finalised. **Yes / No**
- 2 **Note** that it is currently unclear what would happen if an application for deep sea mining in areas beyond national jurisdiction is submitted after the deadline expires but before the Mining Code has been agreed. **Yes / No**
- 3 **Note** that Aotearoa New Zealand will participate in the July ISA meetings to continue to advocate for a conditional moratorium on deep sea mining in areas beyond national jurisdiction until a Mining Code can be agreed that ensures the effective protection of the marine environment as required by the United Nations Convention on the Law of the Sea. **Yes / No**
- 4 **Refer** a copy of this submission to the Associate Minister of Foreign Affairs, Minister of Energy and Resources, Minister for the Environment, Minister of Conservation and the Minister for Oceans and Fisheries. **Yes / No**

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

International Seabed Authority: Mining Code Deadline to Expire in July, update on Aotearoa New Zealand's engagement

Pūrongo – Report

1. In accordance with its mandate, the International Seabed Authority (ISA) is negotiating rules to regulate deep sea mining in areas beyond national jurisdiction (the Mining Code). As you are aware, in 2021, Nauru sought to accelerate this process by triggering the ISA's "two-year" rule. This requires the ISA to adopt a Mining Code by 9 July 2023. While steady progress has been made in negotiating the Mining Code, it remains incomplete and will not be finalised by the deadline. Most delegations consider it will take several more years to finalise the Mining Code.
2. Nauru has stated that it will not sponsor a deep sea mining application by the Nauru Ocean Resources Inc. (NORI) until after the July 2023 ISA Council meeting. It is unclear when an application will be submitted. NORI's website states that it expects to submit an application in the second half of 2023, s6(a), s9(2)(g)(i)
s9(2)(g)(i)

July meetings of the ISA Council and Assembly

3. The ISA Council will meet for two weeks from 10 July 2023. Aotearoa New Zealand is not one of the 36 members of the Council, but participates in Council meetings as an observer. The July meeting will be largely dedicated to progressing negotiations on draft regulations, which will form part of the Mining Code. We expect progress to remain slow, as the draft regulations are very technical and detailed. In addition to the regulations, the Mining Code will also include standards and guidelines. These have not yet been discussed by the Council, and will not be discussed at the July meeting.
4. The Council will also discuss the expiry of the two-year rule with a view to adopting a Council decision on what should happen if a deep sea mining application is received. While most delegations agree that deep sea mining should not begin until the Mining Code has been finalised, it is proving difficult to find a way to formalise this that is acceptable to all ISA members and consistent with the UNCLOS 1994 Agreement, which provides for the Council to "provisionally approve" applications after the expiry of the two-year rule.
5. Following the Council meeting, the ISA Assembly will meet for one week. There are suggestions that the Assembly may be a more appropriate organ to make a decision on what should happen if a mining application is received, given that its membership includes all ISA members. However, the UNCLOS 1994 Agreement provides that any such decision of the Assembly would need to be made in collaboration with the Council. An additional complication is that a proposed decision that mining cannot begin until the Mining Code has been finalised would likely be put to a vote, and there is unlikely to be a quorum of Assembly members present for such a vote to be taken.

Update from March ISA meeting

6. At the March ISA meeting, Vanuatu, Finland and the Dominican Republic announced their support for a precautionary pause on deep sea mining in areas beyond national jurisdiction, joining a growing list of countries supporting a similar position.
7. Pacific positions on deep sea mining remain divided. s6(a), s7(b)(i), s7(b)(ii)

International Seabed Authority: Mining Code Deadline to Expire in July, update on Aotearoa New Zealand's engagement

8. France announced the Partnership for the Deep, which as you know Aotearoa New Zealand is a member of, together with Costa Rica, Chile, Fiji, Germany, Monaco, Palau, Spain and Vanuatu. This partnership is focused on increasing scientific knowledge and ensuring the effective protection of the marine environment before deep sea mining is able to commence in the area beyond national jurisdiction. Several other ISA members endorsed the partnership and its key messages following France's announcement.
9. Discussions on the sidelines of the March meeting focused on what should happen if a deep sea mining application is received after the two-year deadline expires and before the Mining Code has been finalised. Although extensive efforts were made to agree on a clear process for that scenario, ISA members could not reach consensus on this. The Council of the ISA ultimately adopted a decision to continue intersessional dialogue on the application of the two-year rule.

Intersessional work

10. Twelve intersessional working groups have been established to continue work on specific aspects of the Mining Code in between the formal ISA Council meetings in March and July 2023. s9(2)(j)
11. Officials also participated in an intersessional dialogue co-hosted by Belgium and Singapore on the implications of the expiry of the two-year rule. Ahead of this meeting, we submitted a paper setting out Aotearoa New Zealand's views on the guiding questions posed by the co-hosts. At the intersessional dialogue it was clear that most ISA members hold the view that deep sea mining in areas beyond national jurisdiction should not begin until the Mining Code has been finalised. s9(2)(j)
12. s6(a), s9(2)(j)

Other outreach

13. Together with Australian colleagues, we co-hosted a virtual update/roundtable for Aotearoa New Zealand and Australian academics on the negotiation of the Mining Code following the March ISA Council meeting. Two prominent New Zealand academics s9(2)(a) took part from New Zealand, together with a number of Australian academics and post-graduate students.
14. In the lead-up to the two-year deadline, and during the July ISA meetings, officials will continue to engage with a wide range of other states, including from the Pacific, and other stakeholders to promote strong environmental protections in the Mining Code and to explore various avenues to ensure that deep sea mining cannot take place in areas beyond national jurisdiction until the Mining Code has been finalised.
15. Officials are also arranging a stakeholder hui to discuss priorities for the July meetings, which you have been invited to host.