



Deep Sea Mining in Melanesia

A legislative and policy review

May 2026

The 2023 Udaune Declaration (**UD**) was an important regional milestone setting out commitments of member states of the Melanesian Spearhead Group (**MSG**) to prevent and protect member states from climate change. These commitments encompassed a number of environmental matters including in particular commitments to not allow Deep Sea Mining (**DSM**). The UD also included an important commitment to pursue nations' responsibilities on Climate Change through the ICJ advisory opinion.

Given the delivery of the ICJ advisory opinion in July 2025, the Melanesian Ocean Summit presents a timely opportunity to review, strengthen, and expand the commitments under the UD.

The ICJ advisory opinion emphasised the obligations of all States, under customary international law, to employ all means reasonably available to them, including precautionary measures, to prevent significant harm to the environment beyond their jurisdiction.¹ With respect to States' obligations under the UN Convention on the Law of the Sea (UNCLOS), the ICJ agreed with the 2024 International Tribunal

for the Law of the Sea (ITLOS), making clear that each nation has:

A positive obligation to take measures to protect and preserve the marine environment and a negative obligation not to degrade it...to take measures as far-reaching and efficacious as possible” to protect and preserve the marine environment...

[342-343]

The Court also observes that the sovereign right of States parties under Article 193 of UNCLOS:

“To exploit their natural resources pursuant to their environmental policies” is subject to “their duty to protect and preserve the marine environment”²

Committing to that duty requires States to co-operate on an ongoing basis and formulate rules and procedures that reflect the obligation to protect and preserve the marine environment under customary international law as well as UNCLOS [351].

¹ ‘Obligation of States in respect of Climate Change (Advisory Opinion), ICJ, 23 July 2025, with reference to Article 192 of the UNCLOS [131]-[139].

² Obligation of States in respect of Climate Change (Advisory Opinion), ICJ, 23 July 2025, with reference to Article 192 of the UNCLOS [342]-[344]

These developments reinforce the need for nations and regions to take co-ordinated actions to ensure that questions on DSM governance are framed in a manner which acknowledges the absence of scientific certainty, the plausible long-term severe and irreversible environmental impacts (including that rehabilitation may be impossible), the lack of understanding of wider ecosystem impact from DSM, the inequitable economic returns for local communities and the sacred relationship and moral obligations Melanesian people have with and to the ocean.

Nations should consider their own Melanesian peoples' rights and responsibilities to the marine environment, as well as the duties and obligations of Nations under international law to provide long-term protection of the marine environment when considering DSM policies; in particular the obligation under article 145 of the Convention to ensure effective protection for the marine environment from harmful effects which may arise as well as the application of the precautionary principle and taking into account traditional knowledge of Indigenous Peoples and local communities.

International policy development on DSM needs to recognise that studies, and our understanding of DSM's long-term impacts are ongoing.³ Similarly, continuing delays to development of the ISA Mining Code regarding exploitation of DSM highlight the importance of nations and regions proactively mitigating the unknown legal, economic and environmental risk of DSM.

³ Commonwealth Scientific and Industrial Research Organisation (CSIRO) has released a number of reports citing the need for more scientific data and

Impact of the UD on DSM in the Pacific

Signatories to the UD have had varied success in implementing domestic laws giving effect to moratorium, this unfortunately reflects the reality of law and policy on DSM globally. It also highlights how important continued recommitment and support of the UD and its position on DSM is, for national advocacy and law reform. Below is a summary of current DSM-related laws in those countries.

Nation	Attempted to allow DSM	Attempted moratorium	Effective moratorium
New Caledonia			Y
Fiji		Y	N
Papua New Guinea	Y		N
Solomon Islands		Y	N
Vanuatu			N

Signatories to the UD, and other nations, should be encouraged to make clearer legislative commitments on DSM in domestic legislation given the ICJ's decision makes clear nations' responsibilities to act, cooperate to minimise environmental or climate harm such as DSM. Domestic moratorium law provides clear evidence and action in line with international law duties on climate change. Domestic laws also avoid ambiguity about how these regional commitments are enforced within each State.

Successful moratorium laws

Firstly, it is important to be clear about the meaning of a 'moratorium' as it is a precise

research to be done on assessing potential impacts of deep sea mining activity on deep-sea ecosystems.

term which is defined as “*A temporary prohibition or suspension of a particular activity*”. As such a moratorium tends to occur where new or emerging issues occur which require more time or research, before final and binding legal positions are made clear.

International examples of successful moratoria or laws restricting DSM provide a useful framework for nations wanting to incorporate their commitments into domestic law.

For example, New Caledonia’s moratorium, declares:

Within the maritime area..., any exploitation, any exploration and any prospecting of mineral resources is prohibited for a period of fifty years. [translated]⁴

A notable example of a moratorium enacted was by the Northern Territory Government in Australia, it states:

A Moratorium is in place in respect to all activities..., including those related to or associated with, exploration for minerals within the coastal waters of the Northern Territory, mining in the coastal waters of the Northern Territory, or both.⁵

The language of these laws is unequivocally prohibitive, with clear references to “moratorium” and “prohibit[ion]” of seabed mining. While nations do not need to recreate these laws to honour their commitment, they should consider why they are successful.

⁴ Law of the Country No. 2025-6 Establishing a Moratorium on the Exploration and Exploitation of Mineral Resources in the Maritime Area of New Caledonia, 13 June, 2025, with reference to Article 1 [1]

Nations should be encouraged to recommit at this Summit to enacting domestic laws that are similarly effective. Some countries prefer the term “precautionary pause”. It is not the name but the measures it entails that matter.

MSG states’ proposed moratorium laws

Other countries such as Fiji and the Solomon Islands have made attempts at introducing a moratorium on DSM. To date, these attempts have been unsuccessful, reflecting the difficulty and complexity of legislating in this area. Some countries in the region have actively permitted DSM in new laws, despite making Pacific regional commitment in the 2050 Strategy for the Blue Pacific Continent to:

“...adopt a precautionary forward looking approach to protect the region’s biodiversity, environment and resources from exploitation, degradation...”⁶

Regional challenges underscore the need for recommitment and strengthened regional support to develop effective and co-ordinated approaches across the region.

Opportunities at the 2025 Melanesian Ocean Summit to lead globally on DSM

1. Recommit to UD

The Summit occurs at a unique timing, post ICJ advisory opinion and in a climate of increased uncertainty about DSM. It is an opportunity to recommit to the UD’s clause undertaking to not allow DSM and to help

⁵ Moratorium on Exploration And Mining in Coastal Waters Of The Northern Territory Until 2015, 6 March 2012, [1]

⁶ 2050 Strategy for the Blue Pacific Continent, 14 July 2022, [27]

extend the signatories' abilities to reflect that commitment in domestic law. One way to do this would be for states to concur to amend the UD with the inclusion of an additional clause, along the lines of:

[*original*] “UNDERTAKE not to allow Underwater Seabed Mining to be carried out in their jurisdictions;” (**UD DSM Commitment**)

[*additional*] “COMMIT to implement the above DSM undertaking, from the 2023 Udaune Declaration, in domestic law;”

This commitment can then be coupled with a broader call to action to bolster domestic commitment along the lines of:

“CALL for the development of a Pacific regional moratorium on Deep Sea Mining exploration and exploitation until such time as the effect on the marine environment, biodiversity and human activities and cultural impacts at sea have been studied and researched sufficiently and all possible risks are understood and mitigated.”

Other possible opportunities for improved and more consistent law making on DSM could be supported with commitments such as:

Standardisation of wording

Other possible opportunities for improved and more consistent law making on DSM could be supported with a regional commitment to fund development of standard laws which can be adopted to give effect to the UD. This would minimise barriers of entry into the UD DSM commitment. A regional commitment could be made along the lines of:

“PURSUE the funding and creation of a working group which can create and coordinate the drafting of standardised laws to ensure a unified approach across the committed states to the legislating of the commitment to ban Underwater Seabed Mining.”

2. Expansion of the Membership of the UD

Enable new nations to join the regional effort on DSM and allow other nations to become signatories to the UD DSM commitment.

Conclusion

The Udaune Declaration was ahead of its time. It is worthy of clear unambiguous recommitment and reinvestment to deliver a regional moratorium on DSM upholding the international duties, made clear by the ICJ Advisory Opinion as well as recognising the unique relationships and duties we as Melanesian peoples have with our ocean and marine environment.

This brief is endorsed by:

- *Centre for Melanesian Law and Governance*
- *Development Alternatives with Women for a New Era (DAWN) Feminist*
- *Deep Sea Mining Campaign (DSMC)*
- *Pacific Conference of Churches (PCC)*
- *PNG Ocean Alliance*
- *Social Empowerment and Education Program (SEEP)*
- *Vanuatu Indigenous Land Defence Desk (VILDD)*