Traditional Knowledge, Indigenous Peoples and Local Communities, and the Mining Code of the International Seabed Authority

Cultural Considerations for the Holistic Management of Deep Seabed Mining

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Outline

- Defining traditional knowledge ("TK") of Indigenous Peoples and local communities ("IPLCs")
  - What is traditional knowledge?
  - Who are Indigenous Peoples and local communities?

- TK as relating to the Mining Code

- Reflecting TK and its holders in the Mining Code, particularly its Exploitation Regulations and related Standards and Guidelines

- TK and its holders in other Ocean-related instruments and processes
Working definitions for IPLCs

- Indigenous Peoples and local communities
  - **Indigenous People**: descend from population that inhabited territory at time of its conquest/colonization by foreign entity, currently separate from dominant population(s) in the territory, and retain pre-conquest/colonization socio-economic/cultural/political institutions; or
  - **Local community**: long-standing historical/cultural/political roots in the territory, embodying/practicing traditional lifestyles, and not typically subservient to other population(s) in the territory

Working definition for TK

- Living body of knowledge, practices, skills, and innovations, including intangible cultural heritage such as a song, dance, or story, passed down through generations continuously and in a locally meaningful context by IPLCs who act as their creators, developers, preservers, guardians, and custodians.

- Complement to “white coat” / “lab coat” / “Western” science

Citations: CBD, Nagoya Protocol, Plant Treaty, Desertification Convention, UNDRIP, 1992 Rio Declaration, WIPO IGC Glossary of Key Terms
Potential impacts on the Marine Environment from mining activities in the Area

1) Impacts on the Area itself, including its biological diversity
2) Impacts on the water column above the Area, including the biological diversity in the water column
3) Impacts on the marine environments within national/coastal waters adjacent to the Area, including the biological diversity in those adjacent marine environments

Current definition of “Marine Environment” in the Draft Exploitation Regulations of the ISA Mining Code

“includes the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof”
Types of TK relevant to ISA Mining Code

1) **Connectivity:** The Mining Code must incorporate TK and holders of TK with respect to marine biodiversity that migrate/span/move between the coastal waters of those TK holders on the one hand and the high seas and the Area on the other hand (i.e., areas beyond national jurisdiction, or “ABNJs”) and that could be impacted by DSM activities, including marine species with longstanding cultural significance for IPLCs:
   - Sharks, sea turtles, whales, salmon, tuna, eels, etc.
   - Migratory paths, groupings, breeding patterns, environmental vulnerabilities, etc.

2) **Complementary best environmental practices:** The Mining Code must consider environmental management best practices in coastal waters that are based on the TK of IPLCs and are adjacent/ecologically-connected to regions of the Area where DSM activities take place, including when developing regional environmental management plans and conducting environmental impact assessments
   - Seasonal closures, *tabu*, *bul*, take-limits, pollution avoidance, etc.
Types of TK relevant to ISA Mining Code

Connectivity

Block et al. (2011) Tracking apex marine predator movements in a dynamic ocean. *Nature*

Types of TK relevant to ISA Mining Code

Best environmental practices: One Ocean

Ecosystem approach: Ahupua’a (Hawaii), vanua (Fiji), tapere (Cook Islands), puava (Solomon Islands)

Marine tenure/management: Tabu + qoliqoli (Fiji), masalai (PNG), bul (Palau), rahui (Aotearoa), inati (Tokelau)

Hugh Govan, Stacy Jupiter (2013), Can the IUCN 2008 protected areas management categories support Pacific islands approaches to conservation
3) **Cultural heritage sites**: The Mining Code must require consideration of how to protect/handle the locations of resting sites for victims of trans-Atlantic slave trade, shipwrecks, lost historical/traditional artifacts.

4) **Traditional navigation**: The Mining Code must incorporate TK and holders of TK with respect to ABNJAs derived from **open-Ocean traditional navigation** that can inform management measures/decisions for DSM activities in the Area:
   - Fish aggregation sites, spawning sites, migratory paths, wave patterns, etc.
Types of TK relevant to ISA Mining Code

Knowledge from traditional navigation includes:

- Migratory paths, aggregation sites of tuna and other fish stocks
- Seamounts (high biodiversity, potential climate refugia)
- Wave patterns (early warning about changes in currents)
- Bioluminescent jellyfish and plankton
- Meteorological links with Ocean ecosystems
Reflecting text on TK and IPLCs in Mining Code

- **[Draft] Regulation 2: Fundamental policies and principles**
  - Recognize the relevance of TK and its holders in management measures and decision-making pertaining to exploitation in the Area, as complement to best available scientific evidence ("BASE")

- **[Draft] Regulation 3: Duty to cooperate and exchange of information**
  - Recognize the involvement of IPLCs in cooperation efforts as well as the exchange of relevant information, while adhering to all rights of IPLCs, including right to free, prior, and informed consent

- **[Draft] Regulation 4: Protection measures in respect of coastal States**
  - Require targeted and active consultations not just with potentially affected adjacent coastal States but also the IPLCs residing in their traditional territories in those coastal States with relevant TK and/or who are potentially affected

- **[Draft] Regulation 31: Reasonable regard for other activities in the Marine Environment**
  - Recognize traditional/cultural uses of and values for Marine Environment where activities take place, including traditional navigation, veneration of culturally significant migratory marine species, and cultural sanctification of marine expanses
Reflecting text on TK and IPLCs in Mining Code

- **[Draft] Regulation 34: Notifiable events**
  - When listed events occur, require Contractor to notify potentially impacted IPLCs in coastal areas, as well as its sponsoring State(s), adjacent coastal States, and the ISA SG

- **[Draft] Regulation 35: Human remains and objects and sites of an archaeological or historical nature**
  - Reflect legacy of trans-Atlantic slave trade, and expand to include consideration for lost objects of major cultural significance (e.g., stone money, traditional sailing vessels)

  - Allow for compensation for damage to traditional/cultural uses of the Ocean by IPLCs caused by mining activities in the Area, including harm to culturally significant migratory species as well as marine species closer to shore that are adjacent to the mining activities
Reflecting text on TK and IPLCs in Mining Code

- **Regional Environmental Management Plans**
  - Invite IPLCs with relevant TK (or other experts in such TK) to participate in REMP workshops, and allow for the respectful co-production of knowledge with such TK in the development of REMPs; see, e.g., REMP workshop for the Area of the NW Pacific

- **Environmental impact assessments/statements and environmental monitoring and management plans**
  - Require active consultations with IPLCs with relevant TK when conducting EIAs, preparing EISes and EMMPs, assessing/reviewing Plans of Work, etc., and reflect their feedback accurately and appropriately

- **Definition of Best Environmental Practices**
  - In defining this term, explicitly reference to use of relevant TK of IPLCs as being a type of best environmental practice; insert BEPs whenever referencing BASE
  - Or, have standalone term for relevant TK of IPLCs and insert whenever using BASE

- **TK holders/experts in institutional arrangements**
  - Allow for election of holders/experts of relevant TK onto LTC
  - Allow Contractors, LTC, Council, and ISA SG to respectfully engage with holders/experts of relevant TK when conducting assessments and making decisions
Reflecting text on TK and IPLCs in Mining Code

- **Rights of IPLCs with relevant TK**
  - ISA’s engagement with IPLCs must always be in conformity with all relevant rights recognized under international law, including the right to free, prior, and informed consent and others enshrined in the UN Declaration on the Rights of Indigenous Peoples

- **Stakeholders vs. Rights-holders**
  - IPLCs – particularly Indigenous Peoples – tend to be resistant to being labelled as merely “Stakeholders,” and might prefer separate designation as either IPLCs or (more generically) “Rights-holders”

- **Standards and Guidelines**
  - Ensure equivalent language on TK and IPLCs in relevant Standards and Guidelines, in coherence with similar language in the main Exploitation Regulations

- **Compatibility with other relevant international instruments and processes**
  - Per [Draft] Regulation 1, ensure that the Exploitation Regulations are compatible with “other rules of international law not incompatible with [UNCLOS],” including the incorporation of TK and IPLCs in the CBD, UNFCCC, a future BBNJ instrument, etc.
TK and IPLCs in existing international instruments/processes: CBD

- **Regional workshops** to facilitate the description of Ecologically or Biologically Significant Marine Areas ("EBSAs")
  - Based on **criteria and methods that incorporate TK**
  - EBSAs also cover **areas beyond national jurisdiction**
  - **Direct participation** by IPLCs with relevant TK, as nominated

- Nominations from States as well as the seven recognized Indigenous Peoples socio-cultural regions: Africa; the Arctic; Asia; Central and South America and the Caribbean; Eastern Europe, Russian Federation, Central Asia and Transcaucasia; North America; and the Pacific.

www.cbd.int/ebsa
UNFCCC

- Paris Agreement, preamble
  - *Acknowledging* that climate change is a **common concern of humankind**, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, **the rights of indigenous peoples, local communities**, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

- COP21 Decision 1/CP.21, para. 136
  - *Recognizes* the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and *establishes a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner*;
Local communities and indigenous peoples platform ("LCIPP"): UNFCCC COP24 decision

1. Decides to establish the Local Communities and Indigenous Peoples Platform Facilitative Working Group;
2. Affirms that the Facilitative Working Group is established with the objective of further operationalizing the Local Communities and Indigenous Peoples Platform and facilitating the implementation of its functions;
3. Decides that the Facilitative Working Group shall comprise 14 representatives, as follows:
   - (a) One representative of a Party from each of the five United Nations regional groups;
   - (b) One representative of a Party from a small island developing State;
   - (c) One representative of a least developed country Party;
   - (d) Seven representatives from indigenous peoples organizations, one from each of the seven United Nations indigenous sociocultural regions;
Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (“IPBES”)

- Intergovernmental body (133 States members) which assesses the state of biodiversity and associated ecosystem services, in response to requests from decision-makers
- Recognizes “importance of indigenous and local knowledge to the conservation and sustainable use of ecosystems as a cross-cutting issue relevant to all of its activities” and commits to “promote effective engagement with indigenous and local knowledge holders in all relevant aspects of its work” (2014-2018 Work Programme, Deliverable 1(c))
- Established task force on indigenous and local knowledge to operationalize that commitment: one member from each of the 5 UN regions, up to 20 additional experts on indigenous and local knowledge systems, and “limited number” of experts of Indigenous and local knowledge systems and representatives of Indigenous and local organizations
- Future establishment of a formal participatory mechanism under the Platform for Indigenous and local knowledge systems
- In the SPM for First Global Assessment Report on Biodiversity and Ecosystem Services (May 2019), over 100 references to Indigenous and local knowledge and IPLCs as expert managers of natural ecosystems as well as particularly vulnerable to biodiversity loss and ecosystem decline – systematic inclusion of all knowledge systems
  - “D5: Recognizing the knowledge, innovations, practices, institutions and values of indigenous peoples and local communities, and ensuring their inclusion and participation in environmental governance, often enhances their quality of life and the conservation, restoration and sustainable use of nature, which is relevant to broader society.”
  - Numerous references to IPLCs and their knowledge in the approach of “Promoting sustainable governance and management of seascapes, oceans and marine systems”
IPCC

- Intergovernmental Panel on Climate Change (“IPCC”) Special Report on Global Warming of 1.5 Degrees: Half-dozen references to IPLCs and their knowledge
  - D.5.6. Education, information, and community approaches, including those that are informed by indigenous knowledge and local knowledge, can accelerate the wide-scale behaviour changes consistent with adapting to and limiting global warming to 1.5°C. (high confidence)

- IPCC Special Report on the Ocean and Cryosphere in a Changing Climate: About a dozen references to IPLCs and their knowledge
  - C.2. Terrestrial and marine habitat restoration, and ecosystem management tools such as assisted species relocation and coral gardening, can be locally effective in enhancing ecosystem-based adaptation (high confidence). Such actions are most successful when they are community-supported, are science-based whilst also using local knowledge and Indigenous knowledge, have long-term support that includes the reduction or removal of nonclimatic stressors, and under the lowest levels of warming (high confidence).
United Nations Decade of Ocean Science for Sustainable Development

Implementation Plan

• “Ocean science is broad: it encompasses natural and social science disciplines, local and indigenous knowledge” and “recognises, respects and embraces local and indigenous knowledge.”

• “Holders of indigenous and local knowledge will work as essential partners of the Decade and will contribute to highlighting the multitude of cultural values of the ocean.”

• “[L]ocal, regional, and global initiatives will need to consider how they: Create new opportunities for the participation of industry and local and indigenous groups in ocean science, including those that respect ownership and provenance of knowledge and accommodate forms of knowledge that may not align with scientific numeration or may require new ways of digital representation of evidence.”

Compatibility with ISA Marine Scientific Research Action Plan?
BBNJ negotiations

• Nearly two dozen references to TK and IPLCs, in all four elements of the BBNJ package as well as in institutional arrangements
• TK now part of the group positions of the Pacific Islands Forum (PSIDS plus Australia and New Zealand), the Alliance of Small Island States, and the Group of 77 and China – nearly 150 States
• Strong support expressed by the European Union, Canada, as well as IPLC representative. Support expressed by the United States and Norway. No explicit wholesale rejection of TK in IGC-3, although some delegations either call for fewer references or emphasize science while being silent on TK
• Compatibility between Mining Code and the BBNJ instrument
Suggested reading

• DOSI Policy Brief, May 2021: The Necessity of Traditional Knowledge for Management of Deep-Seabed Mining
