Rights of the Deep

This piece is a collaboration between many different people with different ways of seeing the ocean, and this comes through in our text.

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Oceanise Our Minds

Prologue

We are a mix of artists, academics, indigenous people, scientists, lawyers, activists and civil society representatives who have the ocean as our common ground. We all love the ocean, want to defend it and have a collective concern about deep sea mining.

We want to share our concern about the protection of the deep ocean: a space generally understood as everything beyond the depth at which light begins to dwindle, an area that covers over 60% of the planet, but its volume amounts to well over 90% of the water.

It is dark down here; a place where we are dwarfed in scale across time and space. To some, this darkness houses deep fears as almost everything here evokes the unknown.

Yet, within this darkness rests ancestral paths that outline voyage routes once traversed by ancestors in the Pacific.

This darkness also connects us to the air we breathe and with the food we eat. This darkness is life. It is more than a place to be owned, conquered, or mined – it is more than economic opportunities immersed in liquid. Addressing the UN General Assembly in 1967, the Ambassador of Malta, Arvid Pardo said, the deep ocean is 'the womb of life'[1]. Hinano Teavai Murphy, the President of the Association Te Pu Atitia and Cultural Director of Tetiaroa Society, describes it as 'our home, our spiritual place, the womb of our mother earth'.

Since their discovery in the 1970s, deep ocean hot springs or hydrothermal vents have been hypothesised to be the sites where life began on planet Earth. The most likely spaces are those where the fluids are more alkaline, the temperatures warm but not too extreme, where the combination of chemicals, energy and minerals is just right for self-replication of organic compounds.

In the Cook Islands, the Deep Ocean is known as a place where atua (Gods) reside, who have sustained us since the beginning of time. The seabed is Vari-me-te-takere (The Mud-and-the-bottom). She is known as 'The very beginning'. From

her, the first atua, the divine offspring came to be and from these atua all human people descended.

This concept of the living seabed is echoed by Solomon Pili Kahoʻohalahala, seventh-generation indigenous native Hawaiian descendant:

Everything is animate
The nodules[2] are creation itself
Everything is important in its own way.

It is a crucial moment in time for the deep ocean. We are approaching the day when the first ever exploitation contracts may be given out for deep sea mining. Once this Pandora's box to a new extractive industry has been opened, it will be very hard to close.

We are deeply concerned about the insistence of some for the need to pursue seabed mining despite knowledge of its harmful impacts. The deep ocean is part of us and its inhabitants, our ohana (family). Any harm done to the ocean is harmful to us, and the current methods envisaged for deep sea mining are known to be destructive.

There is still so much to learn about the deep ocean. Every time we explore, we discover new species and observe processes in more detail, with new insights. Pursuant to the United Nations Law of the Sea Treaty (UNCLOS)[3], the ocean floor beyond the limits of national jurisdiction and the resources therein are the common heritage of (hu)mankind, meaning the Area and its mineral resources belong to humankind as a whole. Yet, international law currently considers these minerals, such as Polymetallic nodules as non-living, inanimate and property capable of being alienated. What we know today is that these minerals are elements of the deep ocean formed over millions of years by mineral components of sea water precipitating around a nucleus, such as shark tooth or clam shell, including metal oxides derived naturally from water. The sediments and associated nodule communities are a deep historical record of aesthetic, material and cultural processes where all living things are inseparable. In the 1960s Elizabeth Mann-Borgese, maritime law and policy expert, spoke about the divisions of the ocean being outdated narratives[4], but such points of view have not been prioritised by decision makers. International law and its tools of governance like UNCLOS still have a long way to go to make a paradigm shift from the narratives of ownership and property towards recognising the ocean as one living ecosystem.

In order to protect the ocean and more specifically to avoid the degree of assault deep sea mining would inflict, we feel it is important to evolve the legal frameworks in which these activities are permitted. These frameworks fail to truly understand the relationship between ourselves as humans and all things. One pathway is to recognise the ocean as having legal personhood, creating formal structures for ocean guardianship and securing a more powerful voice for the ocean in all decision-making processes affecting ocean health. But in the same breath, we also recognise that in turning to legal rights, we are still reliant on a conquering colonial framework that operates within a system of division and segregation. For now, it may be necessary to use these existing laws and legal interventions, as a temporary step to restore balance in the human-nature interface. Our aim is eventually to get to where we believe we need to be – the place where indigenous cultures already are – of direct engagement with ancient knowledges, practices and traditions that have long-standing relations with nature. We hope this document helps shed light and more broadly contributes to the debate within the wider Rights of Nature movement.

Indigenous communities across Polynesia have always lived in harmony with Moana (ocean). The cultures represented in this group have been living this approach for millennia; Solomon Pili Kahoʻohalahala asserts, 'Personhood describes what already exists in indigenous living cultures', and Alanna Matamaru Smith, Director of Te Ipukarea Society from the Cook Islands echoes, 'this practice is not new; it runs through our blood. We know and we are born into understanding this concept'. Yet this concept

is not only a Pacific one, there is resonance with other cultures around the world, such as the concept of Interbeing within the Zen Buddhist tradition; the idea that everything depends for its existence on everything else.

In this text we are drawing upon knowledge and understandings from these multiple Indigenous Pacific perspectives as a baseline; focusing on Polynesia specifically, as their traditions and notion of the ocean as kin are threatened by the imminence of deep sea mining. It is important to acknowledge however that although these perspectives may be similar and related, they have different approaches and experiences.

We need to take a step back and create space to rethink our relationship with nature. In the words of Solomon Pili Kahoʻohalahala: 'to what extent could the earth restore herself? We have intervened for too long. Maybe a harmonious future lies not in recalculating interventions, but rather reconceptualising our roles in this whole earth system and how we reciprocate such a relationship.'

We are aware that having this conversation is difficult right now, as economic stakes seem to be at the driving seat of the future of the planet. We therefore offer the following values to help support this paradigm shift:

We Are Beings of Nature

If humans have rights, if non-human corporate entities have rights, then why not all of nature? Rights to all-kind? We want to elevate the relationship we have with all ecosystems.

To reflect on ancient wisdom:

— The ocean is part of me
— The whale is part of me
— The coral polyp is part of me
— Any harm inflicted on the ocean is harming me[5].

The Māori world view (te ao Māori) acknowledges the interconnectedness and interrelationship of all living things. Indeed, the notion of division within nature is problematic; separating nations, land and sea, and people. Water is a connecting thread that carries memories and metaphor through all systems. This element flows from the atmosphere we inhabit to the salinity in our bodies, through streams and rivers to the soil, and into the currents of the ocean.

Reciprocal Relationships

There is a reciprocal exchange continuously taking place between the body and the animate space that surrounds us. The density of the underwater environment brings this interdependent relationship to the fore. When immersed in water we cannot escape the presence of the space that holds us, it heightens the non-verbal interplay between body and environment. The movement of a hand sends a ripple that reverberates out through the water; cold water touching a cheek triggers a reflex we share with other large animals, making our human heartbeat slow, enabling us to remain in this space for longer.

If one can care for the other, that is a relationship and it is reciprocal. This can be applied to every layer of existence. A mineral is not just itself; it is connected to organic material. The nodule has a relationship with the deep sea, which has formed over millions of years. The reason we are in the situation we are now is because we have moved away from this reciprocal relationship.[6]

The relationship that Māori hold with their ancestral beings i.e., Mountains, Rivers, Lakes, Oceans, are all reciprocal. Māori activist Quack Pirihi explains, 'Māori believe we are extensions of these beings; calling ourselves tangata whenua (people of the land) demonstrates just that. Māori are born to be kaitiaki (guardians) of the land we descend from.'[7] Article 25 of the United Nations Declaration on the Rights of Indigenous Peoples states 'Indigenous peoples have the right to maintain and

strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.'[8]

In a similar way, the Hawai'ian Kumulipo always looks for balance – a creature from the ocean is named and paired with a creature from the land. When one is thriving, the other is also thriving and vice versa. This encourages connectivity. The Whale and the Sandalwood tree are paired in the Kumulipo – they both were hunted almost to extinction during the whaling era and Sandalwood trade. We need to think about the earth as a way to rebuild relationships with all living things. This helps us to be connected all the time, to rebuild the relationships of all things; a return of care.

The Ocean Is One

The ocean is alive, dynamic and interconnected[9] and the deep ocean is not separate from any other part of the ocean[10]. The ocean is mixed by the wind blowing across the surface, huge currents driving deep flow, eddies and front stirring at the boundaries; the entire volume is in continuous motion.

The physical ocean and its chemistry drive the distribution of species and ecosystems. The surface and the depths are linked via a process known as benthopelagic coupling. Phytoplankton and other microorganisms that live in the sunlit surface waters take up carbon dioxide through photosynthesis. When these microorganisms die or are consumed, they are transported into the deep via passive sinking or active transport by vertically migrating species. In the deep their carbon fuels life in a world without sunlight. Here, surface derived carbon may be stored in the bodies of long-lived animals or become buried in the sediment of the seabed. In both cases carbon can be locked away from the atmosphere and therefore not contributing to climate change.

Mining activity will disturb seabed sediments. These sediments are full of metal contaminants which can then be spread by currents, picked up by migratory species, and rise into the food chain that leads directly to Pacific islanders.[11]

We therefore suggest that the argument against deep sea mining and its impacts applies to the entire ocean, without limit to where it occurs — all realms of the ocean will be impacted from the surface to the deepest depths.

Custodians

Across the Rights of Nature movement, which is an evolving framework, legal custodians play a vital role in fostering care and respect for nature, taking legal action on behalf of nature, and ensuring a duty to protect across generations. Yet, how does one represent, respond with care and carry out duties — how can we become custodians of the ocean?

The value of 'Mana Tiaki' is instilled in Cook Islands culture, where there is no ownership of the world's natural resources, we are all custodians: what we have today, we don't own, we are only guardians, here to look after it and make sure what we have today is still there for our future generations to also benefit from. This concept has proven sustainable compared to western colonial concepts of ownership, extraction, and commercialisation.[12] Similarly Quack Pirihi says, 'we have an intergenerational duty to restore and increase the mauri (life force, vitality) of te Taiao (our land, water, climate, and all living communities).'

By placing indigenous (local) and community ways of care as a prototype for our practices, it inspires us to re-think and shape our own forms of local and global governance and representations. This frees us to consider how we may constructively claim to be custodians for a vast ocean, which also falls under the legal ambit of the common heritage of (hu)mankind.

Epilogue

There are, of course, other threats to the ocean apart from deep sea mining: marine geoengineering, bottom trawling and overfishing, unchecked use of marine genetic resources, plastics, disposal of wastes and climate change. We are hugely concerned about the cumulative stress the ocean faces and that deep sea mining will open yet another frontier where we have limited understanding of the consequences to the ocean and its communities. It is vital that we protect it and all its inhabitants as our kin.

If we keep the ocean intact, it can continue its critical ecosystem functions such as sustaining the marine food web and the regulation of the climate of our planet, as well as the immense cultural and spiritual value it holds to people all over the world. As Quack Pirihi says, 'The ocean holds mana. You cannot mine mana.' Mana is a word commonly used in the Pacific to describe the spiritual power, the authority and prestige something holds.

As indigenous cultures teach us to engage with ancient knowledge, the temporalities of the deep ocean teach us of a time that stretches way beyond our human existence. Polymetallic nodules, one of the objects of deep sea mining, form at a rate of 2–15mm per million years, they have experienced a time that is almost incomprehensible to our human imaginations. We end with this question: can we expand our sense of time and let these nodules live out their lives into the infinite future?

1 Arvid Pardo's speech to the UN in 1967
2 Polymetallic nodules are composed of minerals and are the focus of deep seabed mining
3 Articles 136 and 140 of UNCLOS
4 https://findingaids.library.dal.ca/uploads/r/dalhousie-university-archives/b/4/7/b47328a25acfa53d8366fc88bf3494c286baade240276527d3d74e8667e03bdc/ms-2-744_163-6_access.pdf
5 Solomon Pili Kahoʻohalahala
6 Solomon Pili Kahoʻohalahala
7 Quack Pirihi
8 https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf
9 Solomon Pili Kahoʻohalahala
10 Hinano Teavai-Murphy
11 Alanna Matamaru Smith
12 Alanna Matamaru Smith

Originally commissioned by Science Gallery at King's College London as part of the Vital Signs season.

Reprinted by John Hansard Gallery in association with Tate St Ives and Attenborough Centre for the Creative Arts (ACCA).

Design Daly & Lyon

John Hansard Gallery

University of Southampton

Supported by ARTS COUNCIL ENGLAND

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