

Rights-based and stewardship of the Pacific Ocean¹

1. Key Points

- Customary rights and association of Pacific peoples with the seas is deep, strong and represent their livelihood, stewardship and identity – as Epeli Hau’ofa “*We are the Sea, We are the Ocean*”.
- The Pacific Ocean (PICT including Australia and New Zealand) is about 41 Million Km² which encompasses one of the largest, complex and powerful symbols of rights ranging from indigenous people and the essential rights of the ocean functions and services.
- Growing recognition for Ocean needs to be treated with respect to prevent the disruption or discontinuity of the critical services which we heavily depended on for survival. Some have also called for recognizing the rights of the Pacific Ocean.
- Ability to effectively exercise jurisdiction, and to enjoy the sovereign rights to the resources within their Exclusive Economic Zones (and extended continental shelves) are granted under the 1982 Convention on the Law of the Sea (UNCLOS).
- There is no clear guidance or lack of mechanism to address the issue of the impact of sea level rise and receding baselines, against coastal States claims under the Convention.
- Yet there is high likelihood for the permanent loss of baselines, including low elevation islands due to climate change - which generate maritime zones and could result in substantial loss of maritime claims and sovereign rights
- Blue Pacific narrative and Blue Pacific Continent – embraces rights, respects and stewardship of the Pacific Ocean - as core driver of collective action and sustainably develop the region.

2. Challenges and opportunities (integrated ocean governance)

To respond to increase in the call for the “whole-of-ocean” approach, to respond to the threats undermining the integrity of the Ocean, there is a slowly growing movement to recognize nature, in particular the Pacific Ocean as a legal person. In particular, in November 2018, a group called the collective thinking on the rights of the Pacific Ocean gathered in Auckland and recommended to establish a regional convention on the rights of the Pacific. The underpinning rationale is to promote the responsibility to protect the ocean to counter “the maritime chauvinism by States and territories”. Some proponents on the recognition of the rights of nature suggest that it would not stop all development, but halt only those uses that interfere with the very existence and vitality of ecosystems which depend upon them. However, any expansion of rights is likely to lead to resistance, including because rights of nature are at odds with the traditional western legal construct, which is framing nature as the property of humans. Pushing for the rights of nature and the recognition of the rights of the Ocean will need to clearly identify what these entails, whether

and how it would underpin the development of the Blue Pacific Continent. It would also need to get the support of the region as a whole.

Maritime boundary rights

In the context of basepoints and maritime zones established pursuant to the 1982 LOSC, the permanent loss of low elevation islands that generate maritime zones could result in substantial loss of maritime claims. The potential contraction of territory and jurisdiction could have far-reaching consequences for the region and its peoples. The importance of preserving the *certainty* of *basepoints*, lies in its character as the legally recognized starting point from which maritime zones¹ are measured sea-ward. Basepoints also determine the way in which maritime boundaries between adjacent, and or opposite States, are demarcated.

At the regional and national levels, concluding the work on the remaining boundaries and maritime zones is a key prerequisite to achieving the Blue Pacific Continent and also before the launch of international efforts to shape and influence international law.

3. Background and other reference materials

- 1982 United Nations Law of the Sea Convention;
- Vienna Convention on the Law of Treaties;
- Montevideo Convention on the Rights and Duties of States;
- Framework for Pacific Regionalism;
- Pacific Islands Regional Oceans Policy and Framework for Integrated Strategic Action 2002;
- Framework for a Pacific Ocean-scape 2010

ⁱ This brief was compiled by PIFS with inputs from relevant organizations, experts and literature.

¹1982 LOSC, Article 3 (Territorial Seas 12 nm); Article 33 (Contiguous Zone 24 nm); Article 57 (Exclusive Economic Zone 200 nm)