

BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION (BBNJ) PACIFIC WORKSHOP

Pacific Islands Forum Secretariat, Main Conference Centre, Suva, Fiji
30 January – 1 February 2019

“High hopes for High Seas”

WORKSHOP SUMMARY

From 30 January to 1 February 2019, the Office of the Pacific Ocean Commissioner (OPOC), in collaboration with the Council of Regional Organizations of the Pacific (CROP), and other partners of the Pacific Ocean Alliance (POA), delivered a regional workshop on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ) at the Forum Secretariat Main Conference Centre in Suva, Fiji.

2. The workshop was attended by Government Officials from Australia, Fiji, Kiribati, Republic of the Marshall Islands, Nauru, New Zealand, Palau, French Polynesia, Samoa, Solomon Islands, Tonga, and Tuvalu. It was also attended by representatives and experts from CROP agencies – FFA, SPC, SPREP and USP – and Pacific Ocean Alliance Partners – Conservation International (CI), Australian National Centre for Ocean Resources and Security (ANCORS), International Ocean Governance Institute (IDDRI), London School of Economics and Political Science, International Seabed Authority (ISA), University of Griffith, University of Washington, Grace Trifarm, Rainbow Pride Foundation, IUCN, and Oxfam in the Pacific, Pacific Islands Climate Network, Locally Managed Marine Area Network (LMMMA), PANG, PIANGO, Pacific Council of Churches, Pacific Youth Council (PYC), FCOSS, and the Pacific Climate Dialogue. The participants list is attached as **Annex 1**,

3. The purpose of the three-day workshop was to provide an opportunity for Government officials to collectively scale up their preparations towards the second Inter-Governmental Conference (IGC) negotiations on the international legally binding instrument on the high seas to be held at the United Nations Headquarters in New York in March 2019.

4. The Pacific Ocean Commissioner and PIFS Secretary General, Dame Meg Taylor, opened the workshop and welcomed delegates to Suva. She recalled Pacific Forum Leaders’ commitment in 2018 to achieving Pacific priorities in the new Implementing Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction.

5. In the Leader’s Communique in their Forum Meeting in Nauru last September 2018, the Leaders emphasized that the Pacific region’s involvement in BBNJ is based on the premise that ocean governance is not complete without a strong governance regime in the high seas. Leaders also committed to mobilizing all relevant Forum mechanisms to advance the regions position in the negotiations for a new implementing agreement on the high seas.

6. Also at the opening session, the representative of Fiji, delivered a statement in his capacity as chair of the Pacific Small Island Developing States (PSIDS). He commended the organizers of the workshop and emphasized the importance of continued technical and expert support for PSIDS in defending the priorities and interests of the region in the BBNJ process.

7. There are four overarching elements of BBNJ as set out in the United Nation's General Assembly resolution 69/292, including Marine Genetic Resources, Area Based Management Tools including Marine Protected Areas and Marine Spatial Planning, Environment Impact Assessment and Capacity Building and Technology Transfer.

8. These elements form the basis of the discussions during the Preparatory Committee and now IGC stages negotiation sessions for the elaboration of an internationally binding instrument on BBNJ.

9. Some of the participants have been involved in the process as negotiators and were also present at the first Intergovernmental Conference (IGC1) on Biological Diversity Beyond National Jurisdiction (BBNJ), held at the United Nations Headquarters in New York between 4 – 17 September.

10. Given the importance of the ocean to the Pacific, there has been strong mobilization by the Pacific throughout the BBNJ process, in particular since the PrepCom to the current stage of the IGC.

11. Building on from the technical discussions during the sessions of the PrepCom, the Pacific region have benefitted from the vast knowledge acquired collectively through relevant national expertise, from experts within regional organizations and the wider Pacific Ocean Alliance network.

12. Since 2015 a number of capacity building initiatives have been conducted by the Office of the Pacific Ocean Commissioner, together with the regional organizations and POA partners to prepare delegations for the BBNJ process.

13. A summary of each of the key sessions of the workshop is provided as follows:

- Setting the scene – BBNJ in the Blue Pacific:
The session stressed that the ocean constitutes the knowledge and pride of Pacific people and was a highway to connect. This vision is resurfacing as Leaders are starting to speak of “Large Ocean States” or the “Blue Continent”. In light of the critical importance of the ocean for Pacific island nations and the many pressures it is facing, including climate change, Pacific Leaders have committed to strong engagement in the BBNJ process.
- Overview of IGC and brief on the ‘President’s Aid to negotiations’ paper:
The presentation highlighted the balanced and detailed nature of the document which follows the format of a treaty. It provides a wide range of options, in treaty language, which encompass the various positions heard during the IGC 1 and PrepCom. Pacific priorities and proposals are well captured throughout the document as are those of most delegations.

- Traceability in the MGR ABS mechanism: the role of IPR – Control and governance of tangible and intangible MGR:
This session addressed the issue of traceability, to support the implementation of a fair and equitable access and benefit sharing mechanism for the utilization of marine genetic resources of ABNJ. It was emphasized that IP law was territorial in nature and, as such, there was no global intellectual property. Furthermore, the relationship between IP and access and benefit sharing varied depending on the implementation of national law. The point was made IP law could support the implementation of an ambitious access and benefit mechanism. It was suggested to move ABS from a modality to a principle. Lessons learned from issues in the implementation of the Nagoya Protocol were highlighted. Capacity building as benefit sharing to scale up the implementation of existing UNCLOS provisions to support the conservation and sustainable use of biodiversity was also stressed.
- Relating traditional knowledge to BBNJ discussions:
It was indicated there are many systems of traditional knowledge (TK) that vary depending on the context, which is a challenge in the context of the BBNJ negotiations. It was explained that TK could play a significant role in providing accountability, legitimacy and transparency in processes. It was further suggested to include TK as an overarching principle in the BBNJ ILBI as well as consider the concept of “ocean kinship” to reconcile TK and the rights of nature/ocean. There are several processes and projects already integrating TK, including IPBES or SPREP in the context of climate change.
- Capacity building and technology transfer:
This session discussed Pacific needs in capacity building and technology transfer, in the context of BBNJ. It was emphasized that access to data and knowledge, and identification of capacity needs, including institutional and human capacity, should be country driven. Specific projects from USP and SPC were highlighted, including a “clearing house mechanism” type of initiative, the ocean project. The session highlighted the opportunities but stressed the critical importance provide adequate and sustained means to implement capacity initiative as well as to monitor progress.
During the discussion, it was emphasized that capacity needed to respond to both immediate and long term needs to support good ocean governance, monitoring, as well as enforcement. The role of a technology and capacity assessment mechanism was also discussed.
- Discussion of different governance options – global (such as UNCLOS, ISA, CBD, Nagoya, and WIPO) & regional (such as RFMOs, SPC, SPREP, FFA, PIFS and USP):
The aim of this session was to set the context for in-depth discussions and examination of potential governance options on the second day. Presenters briefly presented on the framework of UNCLOS, highlighting the gaps in governance, some regional instruments and organizations. The session was also an opportunity to give a brief overview of the three models of institutional arrangements that are currently being considered by the BBNJ IGC being (i) global model, (ii) regional model, and (iii) hybrid.
During the discussions, lessons learned from the recent Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean was mentioned.

- Interactions between the proposed BBNJ global institution and other existing global institutions, e.g. ISA, CBD, IOC, WNPFFC:

Presentations focused on describing the following global and regional frameworks and conventions: ISA, IOC UNESCO, WIPO, the Noumea Convention, CBD Nagoya Protocol, the FAO Plant Treaty, SPRFMO and WCPFC. Lessons learned from the implementation of these instruments include lack of coordination among global instruments with complementary mandates, a gap in linking regional levels and global structures especially in those instruments with mandates to establish regional centers, and a dilution of the Pacific voice in some instances. Structural issues and lack of political will were identified as some explanations for non-optimal implementation.

The definition of “region” in the Pacific BBNJ institutional arrangement context was raised with the Blue Pacific as one option. However, it was also stressed that regionalism as applied in the Pacific may not be a replicable model despite a growing interest in the Pacific model in the fisheries sector for instance.

While no clear model of BBNJ governance was suggested nor endorsed, there was some agreement in the room that the future BBNJ ILBI should include both a global level (to provide global accountability) and a regional level (that builds on existing regional mechanisms), to ensure regional ownership. Caution against allowing for the lowest common denominator in standard setting or decision making was also raised.

Continue engagement support and consultations with Pacific delegations on the institutional arrangement of the future BBNJ ILBI.

- Capacity building – relevance of the Ocean Science Decade
The Decade for Ocean Science is a global initiative under the coordination of UNESCO IOC to advance marine science, in the widest sense possible including humanities or traditional knowledge. In the Pacific, SPC coordinates planning for the Decade. Several initiatives are in place to gather the region’s comments and priorities including an upcoming meeting in July 2019 as well as surveys. The objective is to mobilize the Pacific so as to make the most of the opportunities the decade can bring to global ocean science and for the Pacific.
- Essential tools for international negotiations, and role play for BBNJ negotiation session
Key tools and principles for effective negotiations were presented and explained. Some include knowing one’s interests and others, anchoring one’s interest-based position on paper and through repeated statements, adequate preparations, or building relationships with fellow negotiators. Experienced negotiators shared their experience in international negotiations to exemplify some of the elements presented. It was suggested to compile a reference guide from the presentations to be circulated to the POA members.

14. Small break-out groups discussed issues related to institutional arrangements which drew out comments on: the importance of preserving regional interest, capitalizing on and recognizing regional expertise; the importance to think of the well-being of local communities; and the importance of a global framework for promoting buy-in in measures and decisions implemented and provide strong regular checks.

15. Members requested the region's support, as affirmed by the Forum Leaders to provide comments to the recently published 'President's Aid to Negotiations', as a concrete next step, which would build further from the workshop and in preparation for IGC2 and IGC3.

16. The three-day workshop ignited many rich discussions on a variety of issues, with recognition of the relevance of similar meetings to continue the regional engagement on BBNJ. Some of the key issues raised include:

- a. Importance of safeguarding the Pacific's regional characteristics and needs in the future instrument, while ensuring coordination and coherence through some sort of global level
- b. The Blue Pacific should not shy away from ambition, in particular in the asks as regards access and benefit sharing
- c. Traditional knowledge, as an intrinsic value of the Pacific, should be underpinning the implementation of BBNJ. At the same time, consideration of the overarching values of TK, such as stewardship as a framing concept in the BBNJ could be considered
- d. OPOC to continue coordinating CROP and other relevant and committed POA partners, to support the work of Pacific negotiators.
- e. OPOC through its Ocean Communication Officer to work with CSOs to elaborate the consultation and coordination arrangements before IGC2 and beyond.

Office of the Pacific Ocean Commissioner
1 February 2019

Annex 1

**BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION (BBNJ) PACIFIC
WORKSHOP**

**PACIFIC ISLANDS FORUM SECRETARIAT HEADQUARTERS
RATU SUKUNA ROAD, SUVA, FIJI**

30 JANUARY TO 1 FEBRUARY 2019

List of participants

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