


FFA
**FORUM FISHERIES COMMITTEE
ONE HUNDREDTH AND EIGHTEENTH MEETING**
11-14 May 2021

Agenda Item:	X
Paper No:	FFC118-INFO.08
Title:	INTERNATIONAL ENGAGEMENT Key issues in Biodiversity Beyond National Jurisdiction (BBNJ) & Oceans events

Summary:

This paper discusses various international initiatives and their potential implications on fisheries in the region. In particular, the paper highlights fisheries governance issues to be carefully negotiated in the draft BBNJ Implementing Agreement text. Other international meetings of relevance include: the Palau Our Ocean Conference, the UN Ocean Conference, the UN Climate Change Conference, and the Conference of the Parties to the Convention on Biological Diversity.

Recommendations:

The Committee is invited to:

- i. Note the implications of international meetings on fisheries governance in the region;
- ii. Note, in particular, the need to engage meaningfully in the BBNJ negotiations;
- iii. Note that the Secretariat will work with Members to ensure that the membership is effectively represented in all relevant international meetings.

Introduction:

1. This objective of this paper is to discuss various international meetings and initiatives and their implications on fisheries in the region. In particular, the paper highlights fisheries governance issues to be carefully negotiated in the draft BBNJ Implementing Agreement (IA) text, issues to be considered at the Palau Ocean Conference, and other international meetings such as the UN Ocean meeting.
2. At the regional level, the Secretariat continues to collaborate with other CROP agencies. An important mechanism for regional cooperation is the Ocean Taskforce which meets as required to consider key international meetings and to coordinate CROP inputs. The Director-General and the PIF Secretary General are the co-chairs of the Ocean Taskforce.

A. Implementing Agreement on Biodiversity Beyond National Jurisdiction (BBNJ IA)

3. The first BBNJ inter-governmental conference session was convened from 4 to 17 September 2018, the second session from 25 March to 5 April 2019 and the third session from 19 to 30 August 2019. By resolution 75/239, the UN General Assembly decided to convene the fourth session from **16 to 27 August 2021**. The President's revised text, that is the subject of intersessional work, and related meeting documents are available at:
<https://www.un.org/bbnj/content/fourth-substantive-session>
4. Although the UNGA resolution underpinning the Intergovernmental Conference requires that the BBNJ IA does not undermine global, regional and subregional instruments and frameworks and sectoral bodies, based on the revised text and intersessional discussions the proposed instrument will have significant implications on the fisheries sector. At the outset it is useful to note the following overarching provisions: Article 4.3 (Recognition of competencies; IA not to undermine global, regional and subregional instruments and frameworks and sectoral bodies) and Article 6.1 (International cooperation to achieve the objectives of the IA).

(a) Environmental Impact Assessments (EIAs)

5. The requirement to undertake EIAs is provided for in the 1982 UN Convention on the Law of the Sea ("LOS") in relation to activities which may cause significant or harmful changes to the marine environment (LOS, Article 206).
6. Impact assessments are already undertaken in the fisheries sector, taking into account, the type of fishing, best available scientific and technical information on the current state of fishery resources and baseline information on ecosystems, habitats and communities, identification and mapping of Vulnerable Marine Ecosystems known or likely to occur, data and methods used to assess impacts, occurrence, scale and duration of impacts including cumulative impacts, risk assessments and proposed mitigation and management measures. The ongoing work of regional fisheries bodies in undertaking fisheries assessments must be recognised.
7. Articles identified for particular consideration include: (i) Scope of the EIA Part (activities beyond areas under national jurisdiction, or activities having an impact in areas beyond national jurisdiction (latter extends scope to areas within)); (ii) Article 23.4 – Requirement for EIA; (iii) Article 25 – Cumulative impact assessments; (iv) Article 27 – VMEs and ABSAs – EIA required; (v) Article 28 – Strategic Environmental Assessments (SEAs); (vi) Article 29 – List of activities requiring EIAs (need to specificity and clarity on thresholds).

(b) Area based management tools

8. Area-based measures and marine spatial management tools are commonly used for managing fisheries to protect target fish stocks, non-target fish stocks as well as habitats from significant impacts. Area-based

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measures, including in the ABNJ, are tools within the framework of precautionary and ecosystem approaches, and they have been improved over time as lessons are learned through their implementation. In the ABNJ, their implementation has primarily been through RFMOs.

9. RFMOs with the mandate to manage deep-sea fisheries such as the South Pacific Regional Fisheries Management Organisation, have implemented spatial measures under which the use of certain gear types, particularly bottom-contact gear, are restricted or not allowed in order to protect benthic habitats such as vulnerable marine ecosystems (VMEs).
10. For tuna RFMOs such as the Western and Central Pacific Fisheries Commission, the usefulness of spatial closures in tuna fisheries is usually less than that for other fisheries because tuna are highly migratory in nature and fishing of the resources is almost exclusively pelagic, and thus benthic habitat is not directly affected. Nevertheless, some tuna RFMOs have, at some point, utilised area-based management measures to take advantage of specific opportunities provided by temporal heterogeneities in the distribution of the fish.
11. Articles identified for particular consideration include: (i) Article 15.1(a) – International cooperation (including through RFMOs); (ii) Article 15.3 – Cooperation with instruments and bodies; (iii) Article 18.2(b) – Invitation to comment on proposals; (iv) Article 19.c – Decision making – role of sectoral bodies; (v) Article 20.4 – Promoting adoption of measures through, inter alia, sectoral bodies; (vi) Article 21.5 – Role of sectoral bodies in monitoring and review and in the implementation of measures established under the IA; and (vii) Article 20.6 – Non-members and non participants.

(c) Marine genetic resources

12. While the regime for fishing on the high seas currently governs access to marine living resources, under the proposed BBNJ IA, access to the high seas for the purposes of marine bioprospecting, marine scientific research, or the collection of marine genetic resources is expected to be regulated by an additional body to be established under the IA.
13. It is anticipated that there will be a discernible overlap between the current regime for fisheries governance on the high seas and a proposed regime for accessing marine genetic resources. Central to this is the definition of “marine genetic resources” and how it accommodates “fish”. A review of the definitions of “fish” within the laws of FFA Members, finds that: (i) the definition of “fish” is broad and includes aquatic animals or plants; and (ii) in most instances, “marine genetic resources” can fall within the definition of “fish”. Even derivatives of marine genetic resources can fall within the definition of “fish”. There will therefore be an overlap between the definition of “marine genetic resources” in the future IA and the definition of “fish” in national fisheries laws of FFA Members.
14. Given RFMO competence under international law to regulate fish and related activities in distinct areas, the regime for accessing marine genetic resources in the future IA will affect the role of RFMOs in regulating fishing inputs and outputs in areas beyond national jurisdiction. Even if RFMOs are identified as the authorising institutions for accessing marine genetic resources, the very fact that they will be performing additional functions (subject to amendments to constitutive instruments) under the IA, subjects them to an additional framework.
15. Key issues that remain to be addressed include: (i) Definition of “fish”; (ii) Definition of MGRs vis-à-vis “fish” (significant overlaps noted); (iii) Whether “fish” is included in the MGRs part? There appears to be convergence that fish as a commodity is to be excluded but the use of fish genetics is to be included within the scope of the IA; (iv) Should “fish” be excluded from the MGRs part? (v) Should “fish” be excluded from the MGRs part but other parts of the IA apply to “fish”?

(d) Capacity building and transfer of technology

16. The LOSC provides for the transfer of technology in Part XIV (Development and Transfer of Marine Technology). If the transfer of technology is to be realised, these provisions in the LOSC need to be implemented through operational mechanisms in the future IA. Capacity building and transfer of technology provisions are to build upon LOSC and other implementing agreements such as the UN Fish Stocks Agreement.
17. In the fisheries sector, capacity building provisions are contained in various instruments including the UN Fish Stocks Agreement and the constituent instruments of RFMOs. Articles 24 – 26 of the UN Fish Stocks Agreement contain the fundamental framework for the recognition of the special requirements of developing States. This has been followed in the constituent instruments of RFMOs such as the Western and Central Pacific Fisheries Commission, the South Pacific Regional Fisheries Management Organisation (article 19), and the Inter-American Tropical Tuna Commission. Provisions are also found in article 21 of the Port State Measures Agreement.
18. The future IA must provide adequately for capacity building including the special requirements of developing States (in particular SIDS) and the transfer of marine technology taking into account the need to operationalise fundamental obligations that are contained in the LOSC and various fisheries treaties.
19. Negotiators are encouraged to, among other things: (i) Ensure that the special requirements of developing States, in particular the least developed among them and Small Island Developing States, is captured appropriately; (ii) Provide for a mechanism to operationalise the disproportionate burden envisaged under the IA.

(e) Cross-cutting matters

20. There are various matters to be considered including: the area of application, definitions, and compliance and implementation provisions. The compliance provisions in the President's revised text are general and considerably weak. It is noted that the fisheries sector has the strongest monitoring, control and surveillance regime in the world and introducing a weaker compliance framework would effectively undermine existing efforts. The future IA must include an effective monitoring, control, surveillance and enforcement framework that is compatible with what is in place for the fisheries sector.

Strengthened Engagement

21. It is imperative that FFA Members continue to engage meaningfully in the Fourth Session of the BBNJ Intergovernmental Conference and ensure that risks and implications upon the fisheries sector identified above are appropriately addressed. To this end: (i) FFA Members are encouraged to ensure that there is substantive fisheries technical input into respective delegations in preparation for and during IGC4; (ii) Ensure that such technical input is provided in the pre-IGC4 and IGC4 PSIDS meetings to ensure that the issues and provisions identified above are appropriately addressed. In preparation for the BBNJ IGC4, the Secretariat has made arrangements for the delivery of Law of the Sea training by the Australian National Centre for Ocean Resources and Security (ANCORS) for Members from 7 – 11 June 2021.

B. Palau Our Ocean Conference

22. Our Ocean 2020 will focus on six Areas of Action, convening partners from across the globe to identify solutions to manage marine resources, increase the ocean's resilience to climate change and safeguard its health for generations to come. The six areas are: (i) Protected Areas; (ii) A clean Ocean; (iii) Climate change; (iv) Sustainable Blue Economies; (v) Sustainable Food from the Ocean; and (vi) Maritime Security. Our Ocean 2020 has been postponed to 2021 but the dates are yet to be confirmed.

23. In the Sustainable Blue Economies area of action, a panel will be convened to examine options to optimise artisanal fishing and mariculture, especially for developing countries, for the benefit of coastal communities closest to fishery resources. For the Climate change area of action there will be a panel that considers aspects of how the carbon value of blue ecosystems can be enhanced, so that the mitigation and adaptation potential of the ocean can be fully realised, and a panel to discuss strengthened measures that increase the resilience of fishing and coastal communities to adverse climate impacts. Further, the Protected Areas panel is expected to highlight that fully protected Marine Protected Areas (MPAs) can contribute to the 'triple bottom-line' of biodiversity, climate, and nutrition, and the panel will consider strategies to maximise their effectiveness. Additional information is available at:

<https://www.ourocean2020.pw/>

C. United Nations Oceans Conference

24. The United Nations Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development (informally referred to as the Ocean Conference) was convened at United Nations Headquarters in New York from 5 to 9 June 2017. The 2017 Conference adopted a concise, focussed declaration entitled "Our Ocean, Our Future: Call for Action" to support the implementation of SDG 14 and a report containing the co-chairs' summaries of the partnership dialogues, as well as a list of voluntary commitments for the implementation of SDG 14.
25. In summary, SDG14 emphasises the need to conserve and sustainably use the world's oceans, seas and marine resources. Implementation of SDG14 is guided by specific targets that focus on an array of ocean issues, including reducing marine pollution, protecting marine and coastal ecosystems, minimising acidification, ending illegal unreported and unregulated fishing and overfishing, increasing investment in scientific knowledge and marine technology, and respecting international law that calls for the safe and sustainable use of the ocean and its resources.
26. The theme of the next UN Oceans Conference is "Scaling up Ocean Action Based on Science and Innovation for the Implementation of Goal 14: Stocktaking, Partnerships and Solutions"
27. Due to the pandemic, the 2020 United Nations Ocean Conference Co-hosts, Kenya and Portugal, in consultation with the President of the General Assembly, have concluded that the UN Ocean Conference cannot take place in 2021. The Conference is to happen in 2022 as soon as public health conditions allow. Further information is available at: <https://www.un.org/en/conferences/ocean2020>

D. UN Framework Convention on Climate Change

28. To progress the call by Pacific Fisheries Ministers in August 2020 for closer Pacific regional organisations collaboration that firmly places fisheries issues on the wider climate change agenda, including in the context of the Pacific's engagement in the UNFCCC, the Secretariat together with other regional organisations, participated in a regional roundtable with Lord Goldsmith, Minister of State responsible for the Pacific and the Environment of the United Kingdom on 1 September 2020. The United Kingdom is co-chair with Italy for the COP26 UN climate change conference.
29. The Secretariat shared developments in the region and indicated the Agency's interest in exploring a partnership with the United Kingdom with the view to: (i) address the impacts of climate change and potential opportunities for members at COP26 and within Regional Fisheries Management Organisations; (ii) support domestic initiatives to enhance policy and legislation to accommodate climate change

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considerations; and (iii) enhance institutional capacity to achieve long term sustainable fisheries. In addition, the Honourable Minister expressed interest in collaborating to strengthen efforts to combat illegal, unreported and unregulated fishing.

30. Minister Lord Goldsmith has since reaffirmed interest in collaborating with FFA in the areas identified above. The Secretariat will work with the relevant UK agencies to identify projects or activities that can be supported.
31. The Secretariat is also working in coordination with other CROP agencies in preparation for COP26. SPREP, as the coordinator for Pacific countries' engagement in COP26, recently delivered an introductory workshop on the conference.
32. The COP26 UN climate change conference is to take place from **1 - 12 November 2021**, and will be hosted in Glasgow by the UK in partnership with Italy.

E. COP15 Convention on Biodiversity Diversity

33. The CBD COP has adopted various decisions directly related to fisheries. In 2010 the CBD COP adopted Decision X/29 which identified means to achieve Aichi target 6, including by implementing the ecosystem approach, eliminating illegal, unreported and unregulated fishing, minimising the detrimental impacts of fishing practices, and mitigating and managing by-catch. Further, COP in 2012 adopted Decision XI/18, in which COP encouraged inter-agency collaboration between biodiversity and fisheries bodies and the participation by a range of experts on biodiversity, indigenous and local communities in fisheries management, and invited fisheries management bodies to integrate biodiversity considerations into their work. In 2014, Parties adopted Decision XII/22 to facilitate technical training on scientific methodologies and approaches of applying the Ecologically or Biologically Significant Marine Areas (EBSA) criteria as well as the compilation and use of scientific and technical information contained in the EBSA repository and information-sharing mechanism.
34. Within the framework of the CBD, Parties have included fisheries specific goals within the Aichi Biodiversity Targets. Target 6 provides for sustainable fisheries and provides that: By 2020, all fish and invertebrate stocks and aquatic plants are managed and harvested sustainably, legally and applying ecosystem based approaches, so that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems and the impacts of fisheries on stocks, species and ecosystems are within safe ecological limits.
35. Target 11 of the Aichi Targets is also relevant for fisheries, and urges countries to expedite their current efforts to protect important fish habitat and restore depleted fish stocks, as it focuses on achieving, by 2020, conservation, through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes. Other targets of relevance to fisheries include targets 8, 9 and 10.
36. The Fifteenth meeting of the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) is scheduled to be held from 11 – 24 October 2021 in Kunming, China. Further information is available at: <https://www.cbd.int/meetings/COP-15>

Key issues/challenges:

37. The key issues and challenges that are noteworthy include:

- Effectively addressing the legal, policy and institutional implications of the proposed BBNJ IA on fisheries governance.
- Ensuring FFA interests are taken into account in the development of international policy on fisheries governance, and that there is increased participation of fisheries representatives in the UN Climate Change conference and related processes.
- Promoting FFA interests in the upcoming Ocean Conference in Palau, UN Ocean conference and related meetings.