

**PSIDS Submission to the
Second Meeting of the Preparatory Committee for the Development of an international
legally binding instrument under the United Nations Convention on the Law of the Sea on
the conservation and sustainable use of marine biological diversity of areas beyond
national jurisdiction (BBNJ PrepCom)
August 2016**

The Pacific Small Island Developing States (PSIDS) at the United Nations have the honour to refer to annex 2 of the BBNJ PrepCom Chair's overview of the first session of the Preparatory Committee encouraging Member States to submit contributions.

1. OVERALL OBJECTIVE

The objective of UNCLOS is to establish a legal order for the oceans and seas, including to promote the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment. The PSIDS have championed the **protection and restoration of the health, productivity and resilience of the ocean and the marine environment as a whole**. This overarching objective has motivated the strong involvement of the PSIDS group on ocean-related issues, including in negotiations of The Future We Want, the SIDS Accelerated Modalities Of Action (SAMOA) Pathway, and through their role in the design and adoption of a dedicated sustainable development goal (SDG) on oceans and seas in the 2030 Agenda for Sustainable Development.

The PSIDS support the position that the new implementing agreement (IA) should provide a comprehensive global regime to better address the **conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction**, in accordance with UNGA resolution 69/292.

As such, the new implementing agreement would strengthen the implementation of the UNCLOS, including through resolving legal gaps and improving cooperation and coordination among States and relevant organizations and mechanisms. This requires adopting an integrated approach in the conservation of marine resources as well as the management of maritime activities. UNCLOS recognizes that all problems of ocean spaces are interrelated and need to be considered as a whole, as expressed in the preamble. Our discussions aim to enrich the UNCLOS package by reflecting the evolution of international law and scientific knowledge on our oceans.

In order to achieve these objectives, universal participation in the future agreement will be crucial. It is important that all States and relevant actors be part of the discussions and decision-making.

2. RELATIONSHIP TO OTHER INSTRUMENTS AND FRAMEWORK

2.1. Relationship to UNCLOS

The PSIDS reaffirm that UNCLOS is the legal framework for all activities in the oceans and seas and that the Convention aims to contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in

particular, the special interests and needs of developing countries.¹ Consequently, the new international legally binding instrument should be an implementing agreement of UNCLOS.

2.2. Relationship to other instruments and frameworks

The new internationally legally binding instrument should contribute to improving the cooperation and coordination among States and relevant and competent organizations. The new instrument should, therefore, complement the existing patchwork of instruments and frameworks and aim to facilitate coordination and cooperation among the many different actors that operate through specific and sectoral objectives.

Consistent with resolution 69/292, PSIDS support that the new instrument should not undermine existing instruments and frameworks.

Of particular interest for the PSIDS is the issue of fisheries. In that regard, the PSIDS suggest:

- Complementary arrangements could focus on gaps in the current regime, such as general biodiversity protection. For instance, this new instrument could provide agreed general biodiversity protection guidelines or methodology to take into account the impact on fish stocks of emerging issues such as the adverse impacts of climate change, pollution, or ocean acidification. This could help improve the implementation of the precautionary approach under which RFMOs are to operate.
- The new instrument should not compromise the significant advances and interests of the Pacific region, including fisheries-related gains in existing frameworks. Standards applied in ABNJ should not be lower than those from EEZs.

3. GUIDING APPROACHES AND PRINCIPLES:

3.1. Instruments

- UNCLOS principles
- Rio principles
- General principles under (Art. 5) of the UN Fish Stocks Agreement (FSA)

3.2. Specific principles

- **Protect and preserve marine environment:** At the start of the negotiations at UNCLOS III, it was agreed that the Convention should establish general rules to serve as the legal framework for specific global or regional agreements. This coordinating role of the Convention as the basic universal legal instrument, with respect to obligations arising out of different international instruments dealing with specific sources of marine pollution or applicable to various maritime zones, is substantiated in article 237. This is a fundamental principle and obligation of UNCLOS, as provided for in the preamble and in particular article 192. The importance of protecting and preserving the marine environment constitutes a building block of UNCLOS and is developed in Part XII. This principle has been well established and is now enshrined in international customary law.
- **Maintain the rights and obligations of States:** UNCLOS strikes a careful balance between the rights, freedoms and obligations of States through the various regimes provided. This balance should be respected and upheld in order to continue contributing to the realization of a just and equitable economic order². Furthermore, other international legal

¹ UNCLOS, para 5 preamble

² UNCLOS, preamble, para 5

frameworks or instruments also confer particular rights and obligations to these States, and these should be given due regard.

- **Cooperation and coordination:** UNCLOS provides for the obligation for States to cooperate on a global basis, and regional basis when appropriate, for the protection and preservation of the marine environment (Article 197), which is further reiterated in Principle 7 of the Rio Declaration and which has been recognized by both the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS). In addition, UNCLOS extends the duty to cooperate to the management of living resources, marine research, and transfer of marine technology among others. This cooperation extends also to non-State actors, including international organizations. Cooperation should not therefore be restricted to States. While UNCLOS only provides coordination among international organizations for the conduct of international programs on the conduct of transfer of marine technology, the current situation in ABNJ requires that coordination be extended to all sectors. Therefore, this instrument would operationalize the cooperation and coordination of all relevant actors while not undermining existing frameworks and instruments.
- **Common Heritage of Mankind** in accordance with UNCLOS and in the spirit of UNGA resolution **2749** of 17 December 1970.
- **Intra and intergenerational equity:** Equity in this context implies first equity between nations and people. It aims to improve fairness among those relevant actors in consideration. The special case of SIDS, for instance, is directly related to this principle.
 - Equity is also applied across generations, in particular to take into account the interests and wellbeing of future generations. The intergenerational equity is directly related to sustainable development and further supports the obligation to protect the marine environment and its resources for future generations' rights to benefit from them; the underlying objective is to not leave future generations worse off by the choices made by the present generation.
- **Special case of SIDS:** Related to the above principle of equity, the special case of SIDS needs to be recognized as a principle in this instrument. The international community has repeatedly recognized the special case of SIDS for environment, development and sustainable development, and their intrinsic relationship with the oceans and seas. For a group of countries whose economic, social, and cultural dependence on oceans and their resources has been recognized and whose limited capacity and financial constraints have been repeatedly identified as impediments to their sustainable development, it is critical that the special case of SIDS in the context of the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction is recognized.
 - The application of this principle will be elaborated in the subsequent sections of this submission.
- **Adjacency:** This principle speaks to the rights and obligations in terms of cooperation between coastal States adjacent to the high seas and to those States including entities using the adjacent high seas. This in turn, also relates to the issue of compatibility, as addressed in Article 7 of FSA, which states that measures established in the high seas and those in national jurisdiction of adjacent coastal states should be compatible. In particular, it provides that measures implemented in the high seas not undermine the effectiveness of those implemented by coastal states within their national jurisdiction.
 - As it relates to the special case of SIDS, PSIDS proposes that specific consideration be accorded to adjacent coastal states in the management, conservation and conduct of activities in ABNJ. The new implementing agreement could establish a cooperation regime, as described in the ITLOS case no 21 (Para 199). Such provisions would be consistent with Article 197 of UNCLOS, which provides for the

consideration of regional characteristics related to cooperation for the protection and preservation of the marine environment.

- **Precautionary principle/approach:**
 - Principle 15 of the Rio Declaration 1992 states that: "in order to protect the environment, the **precautionary approach** shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall be not used as a reason for postponing cost-effective measures to prevent environmental degradation."
 - The precautionary approach is now widely accepted in international law. Article 6 of FSA provides for the application of this approach in the context of straddling fish stocks and highly migratory fish stocks. Furthermore, international courts and tribunals, including ITLOS (cases 3 and 4) have taken its implementation into account as a duty for States.
- **Polluter pays principle:** Principle 16 for the Rio Declaration states that national authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.
- **Transparency:** While respecting adequately-defined and agreed confidential information, BBNJ related processes and decision making need to be done in a transparent manner, with full participation by the public and other relevant stakeholders, including local and indigenous populations with historical links to BBNJ. This is in accordance with the good governance principle, which should be an underpinning principle of the new instrument.
- **Peaceful purposes:** The high seas and the Area are to be reserved for peaceful purposes (Articles 88 and 141 of UNCLOS).
- **Reciprocal principle of duty not to transfer damage or hazards or transform one type of pollution into another** (Article 195 UNCLOS and Principle 21 of the Stockholm Declaration)
 - each state has responsibility of activities under their control not to cause damage to environment;
 - activities undertaken within the limits of the national jurisdiction do not cause damage to the environment in ABNJ

3.3. Approaches

- **Ecosystem-based approach:** Decision V/6 of the COP 5 of CBD provides for the definition and description of the ecosystem approach.
 - The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way (...)(CBD, V/6; A1a).
 - An ecosystem approach is based on the application of appropriate scientific methodologies focused on levels of biological organization, which encompass the essential structure, processes, functions and interactions among organisms and their environment. It recognizes that humans, with their cultural diversity, are an integral component of many ecosystems (CBD, V/6; A1b).
 - Decision CBD V/6 further emphasizes that the ecosystem approach requires adaptive management (CBD, V/6; A4) and provides for a list of 12 principles attached to this approach (CBD V/6; B).
 - Related to the ecosystem approach is taking into account the ecological connectivity among different ecosystems, including when establishing MPAs (thus the Aichi target for networks of well-connected MPAs).

- **Adaptive management:** Adaptive management is linked to the use of the ecosystem approach. “(...) Ecosystem processes are often non-linear, and the outcome of such processes often shows time-lags. Management must be adaptive in order to be able to respond to such uncertainties and contain elements of "learning-by-doing" or research feedback. Measures may need to be taken even when some cause-and-effect relationships are not yet fully established scientifically” (CBD; V/6; A4). This principle requires that robust monitoring be put in place and regular assessments of management measures of activities or mechanisms are in place.
- **Flexibility:** This concept relates to the special case of SIDS to ensure that the challenges faced by SIDS as well as our needs and development priorities are duly taken in consideration in the design of the future international regime for the conservation and sustainable use of marine biodiversity of ABNJ. In the context of the development of a new legally binding agreement for the conservation and sustainable use of marine biodiversity of ABNJ under UNCLOS, flexibility of the regime is seen as a means to manage the many uncertainties from insufficient information and the potential adverse impacts of activities that may be undertaken, the equitable sharing of benefits for developing States – and notably for SIDS – how this new regime may be effectively implemented for the common good.
- **Decision based on best available scientific information and technical information:** This is linked to the precautionary principle, recognizing that scientific information and knowledge of ABNJ biodiversity is incomplete but the most accurate, reliable and relevant available science at the time should be used in decision making.
 - The PSIDS recognize the importance of including traditional knowledge as well as relevant social and economic information into decision-making. For this reason, our preference is that decision making processes are based on best available scientific and technical information and the traditional, scientific, technical, and technological knowledge of indigenous Peoples and local communities (CBD, decision IX/20). Should there not be sufficient information, the precautionary approach should prevail.
- **Avoiding disproportionate transfer of burden of conservation to SIDS:** the disproportionate burden of conservation action is a concept recorded in Article 24 (2) (c) of UNFSA and recognizes the special requirements of developing states. SIDS face particular circumstances that have been recognized internationally. The SAMOA Pathway, SIDS’ blueprint of sustainable development, recognizes the importance to ensure that the burden of conservation and management of ocean resources is not disproportionately transferred to them (SAMOA Pathway, 58I).

4. SCOPE

Personal scope

The PSIDS support that the new legally binding instrument under UNCLOS that should aim for universal participation. Consistent with resolution 69/292, the group further supports that it should be open to both States Parties and States non-Parties to UNCLOS.

Geographical scope

The scope of implementation of the new instrument is areas beyond national jurisdiction as defined by UNCLOS. Precisely, it must encompass the seabed, the ocean floor, and the subsoil thereof beyond the limits of national jurisdiction, as well as the water column beyond the limits of national jurisdiction.

The new instrument must not regulate a Continental Shelf, including an Extended Continental Shelf, where a coastal state has sovereign rights for the exploration and exploitation of its natural resources. Furthermore, the instrument should not prejudice the rights of coastal States

in their claims for extended continental shelf.

Material scope: The future implementing agreement applies to any activity or development that has the potential to impact on BBNJ, including on ocean processes (e.g. physical, chemical, biological) relating to the health and viability of BBNJ. Adequate conservation and sustainable use of marine biodiversity requires an integrated and inclusive approach; therefore, it is important to have effective consultations in the decision-making process regarding the management of ABNJ.

5. MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

Introduction

The PSIDS supports the common heritage of mankind as the main guiding principle to govern marine genetic resources (MGRs) under this regime. The following section focuses on the regime of access and benefit sharing.

On access

- Regulate activities
 - The implementing agreement should provide for a mechanism to regulate *in-situ* access to MGRs in ABNJ, which would enable equitable conditions for subsequent access and use. The importance of the distinction between marine scientific research (MSR) and bioprospecting will influence the regulation of such activities.
 - A global and universal system should be designed, developed and implemented so as to enable identification of the origins for resources used in the development of products.
- *Equitable access:* Developing countries, in particular SIDS, have limited capacity and capability to engage in MGR research and exploitation. This is inhibiting the achievement of the realization of a just and equitable economic order. Therefore, special consideration for developing countries, in particular SIDS, in the access to MGRs activities is important. This requires capacity to undertake such research and prospecting activity or research *ex-situ*. It also requires appropriate technology. Furthermore, access to the data gathered from accessing these resources should also be provided. This requires capacity to understand and use the data. Therefore, the concepts of transparency and traceability of MGRs are important.

On benefit sharing:

In line with the internationally recognized special case of SIDS, the PSIDS suggest the following elements for benefit sharing could be considered in the new implementing agreement:

- *Monetary:*
- A trust fund could be created to fund capacity building initiatives for developing countries, in particular SIDS. Given our special circumstances, this trust fund could provide a special allocation to SIDS.
- This trust fund could be funded by both:
 - Royalties or milestones payments from the exploitation of MGRs could be transferred to a trust fund. Not all MGR-related research lead to lucrative outcomes. Therefore, a system focusing solely on royalties or milestones payments will not suffice.
 - Mandatory fees: Proponents of MGR related activities could be required to financially contribute to a trust fund.

- *Non-monetary:*
- *Technology transfer* refers to instruments, equipment, vessels, processes and methodologies to produce and use knowledge to improve study and understanding of ocean/coastal nature/resources
 - Proponents of MGR related activities could be required to transfer specific technology.
 - In the SAMOA Pathway it was agreed that Marine technology transfer should consist of appropriate, reliable, affordable, modern and environmentally sound technologies (including software and equipment) and know-how (based on SAMOA Pathway, para 111).
- *Knowledge sharing and access to information:* Possible consideration for a clearinghouse mechanism.
- *Capacity building:* Proponents of MGR related activities could be required to provide capacity building to SIDS. Elements of capacity building could include as an initial matter:
 - the provision of education/training in science and technologies, policy and governance, including through joint research efforts supported through the establishment of a global scholarship fund, and enhanced through collaboration in research and development on marine genetic resources;
 - support for and development of regional centres of excellence (such as the University of South Pacific) to address regional needs and provide long-term education and training.

Marine scientific research (MSR) to be promoted for the benefit of humankind. MSR is regulated under UNCLOS, in particular stating that all States and competent international organizations have the right to conduct MSR subject to the rights and duties of other States as provided for in UNCLOS. This right extends in the High Seas and the Area. Furthermore, the Convention also provides that States and competent IGOs are responsible and liable for damage caused by pollution of the marine environment arising out of MSR. The Convention also provides for the obligation of States and competent international organizations to promote the flow of scientific data and information and the transfer of knowledge resulting from MSR, especially to developing States. This obligation includes “strengthening the autonomous MSR capabilities of developing States”.

6. MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

ABNJ are characterized by a patchwork of sectoral management with limited coordination and cooperation. This is one of the major gaps that has been identified. Area-based management measures developed and coordinated under this agreement would therefore resolve this lack of coordination and reduce the possible conflicts of uses among various sectors as well as ensuring that commitments to intergenerational equity are upheld. To do so, the new implementing agreement could develop international standards and a framework for integrated measures in ABNJ.

Area-based management tools (ABMTs) identify the ecological, biological, cultural, economic, and social values of a particular area and ecosystem, as well as its vulnerability to adverse

impacts of activities or global changes. ABMTs also identify the relevant stressors or threats that jeopardize the integrity of a given ecosystem.

Existing tools include ecologically and biologically significant areas (EBSAs), vulnerable marine ecosystems (VMEs), particularly sensitive sea areas (PSSAs), EIAs and SEAs. Each of these tools contains a specific set of criteria that are relevant to the particular sector they are developed under. In addition, EIAs and SEAs can also be considered ABMTs in so far as they could identify the values as well as threats/stressors of an activity in a given geographical area. EIAs/SEAs will be discussed in more detail in the following section.

Once values and threats are assessed, appropriate response measures are identified to address a set objective. While the overall objective would be the conservation and sustainable use of biodiversity, a given measure should balance the need for sustainable use with the importance of conservation depending on the level of threat and/or the objective to achieve.

Current sectoral area-based management measures are limited in scope by being only applicable to their sector. They do not adopt an integrated approach. They only focus on the threats caused by activities of their sector without considering activities from other sectors or cumulative impacts.

Marine protected areas (MPAs) are measures that aim to achieve a conservation objective. There are different sub-categories of MPAs with varied protection levels. The sub-category of an MPA aims to respond to specific pre-agreed conservation objectives. These objectives can vary from regulating a specific activity all the way to closing the area to all human activities and establishing therefore a marine reserve or sanctuary. An MPA based on best available scientific information, and implement the ecosystem, precautionary and integrated approaches. It needs to take into account, therefore, all activities that can have an impact on the ecosystem considered, as well as the need to plan for the adverse effects of climate change and ocean acidification on ocean resilience. While UNCLOS requires States to cooperate for the protection and preservation of the marine environment and for the conservation and management of living resources, the Convention is silent on the establishment of MPAs in ABNJ.

Another category of measures can be considered “sustainable use focused” in the sense that they may not be conservation focused. This category includes existing sectoral area-based management measures as well as other types, such as managed areas. Note that while some of these do not have specific conservation objectives, they can lead to conservation outcomes, such as in the case of the locally managed marine areas (LMMAs), whose management models could be further considered in the context of the future implementing agreement.

The new implementing agreement should establish a regime for area based management measures. Each area-based management measure should have clear objective(s) and/or address identified threat(s) and stressor(s). The agreement would enable in particular the creation and implementation of representative and well-connected MPAs in ABNJ, including reserves. The proposal here is not to advocate for the closure of all high seas; rather it is to enable the international community to be equipped with an adequate set of tools to respond efficiently and in a timely manner to BBNJ degradation and fill the legal and governance gaps that are a threat to the conservation and sustainable use of BBNJ.

A possible way forward could be Marine Spatial Planning (MSP), which aims to bring coherence in the allocation of a set marine area so as to meet collective pre-agreed objectives. It does so by involving all sectors both in the decision making process (where zones are established) as

well as the implementation (management of certain areas). Therefore, the new agreement could set an MSP governance structure to orchestrate, in an inclusive manner, marine zoning and provide for the designation of protected and managed areas. In addition, this agreement could further aim to mainstream standards on the implementation of the precautionary approach as well as conservation considerations in existing sectoral instruments.

Criteria and considerations

A set of international criteria could be agreed to identify the values of ecosystems, their vulnerability and threats/stressors. The new instrument could consider criteria from existing mechanisms, such as EBSAs, VMEs, PSSAs. In particular, key criteria and factors to consider are as follows:

- Uniqueness
- Special importance for species
- Importance for threatened, endangered or declining species or habitat
- Vulnerability, fragility or sensitivity
- Biological productivity and/or diversity
- Cumulative and trans-boundary impacts
- Adverse impacts of climate change and ocean acidification

Process

The selection of the particular measure to adopt should be based on the following considerations:

- **Identify the objective:** Understand the value of the ecosystem, its vulnerability and the threats.
- **Integrated:**
 - ABMTs, should be considered in the broader marine ecosystem context. Where conservation measures have been put in place by coastal states in their EEZ, it should complement and not undermine their national efforts. Furthermore, efforts should promote the establishment of a connected and representative network of MPA in line with commitments made by Leaders.
 - All relevant stakeholders should be consulted in the process.
- **Cumulative and transboundary impacts:** EIAs, SEAs and TEIAs could contribute to the identification of measures to adopt for particular areas to address such impacts.
- **Adaptive management:** ABMTs, including MPAs should be responsive to evaluation outcomes of the effectiveness of measures in achieving their objectives.
- **Enforceable:** Measures will be effective if they are enforced.
- **Achievable and cost-effective:** Measures should not be developed in isolation of supporting governance arrangements and consideration of implementation requirements including sustainable financing. Indeed, financing, monitoring and compliance need to be considered as essential aspects for the measure to be effective. Models need to be cost-effective and take into account special circumstances of SIDS in order to avoid transfer of disproportionate burden.

The role of relevant actors in this regime is important to identifying their activities as well as their responsibilities.

Role of States

States to have a central role in the decision-making process.

- Special consideration of coastal States:

- Measures to be taken in ABNJ should not prejudice the rights of coastal States. Therefore, measures taken by coastal States for the conservation and sustainable use of marine biodiversity within their national jurisdiction should be taken into account.
- Adjacent States should be given particular consideration so that measures taken do not undermine their sustainable development.
- The consideration of the special circumstances of SIDS, in particular their limited capacity in mobilizing necessary means for the design and implementation of ABMTs, in particular MPAs, should be taken into account. Provisions to avoid the transfer of disproportionate conservation burden on these countries are needed.

7. ENVIRONMENTAL IMPACT ASSESSMENTS

The conduct of environmental impact assessments is an obligation under UNCLOS and international customary law (a.204-206 UNCLOS; ITLOS, report 2011, para 145) to ensure that any project, activity, planning or policy with the potential to have significant adverse impacts on the marine environment is evaluated to address or avoid such impacts.

Threshold for EIAs, TEIAs, SEAs

EIAs/SEAs for high seas activities should follow internationally accepted standards, processes and protocols. The CBD voluntary guidelines, the ISA guidelines, or FAO guidelines for deep sea fisheries could provide further insights.

PSIDS consider these options towards developing a robust international standard:

- Listing of activities: possibly to include in the instrument an annex defining or listing specific activities that trigger the need for an EIA or on the contrary, the list of activities that do not require EIAs. The option should provide for flexibility to consider, in a timely manner, new and emerging activities.
- Listing of areas: Based on internationally agreed areas of interests, such as for instance EBSAs, VMEs, PSSAs, or existing protected areas... any projects of activity to be undertaken could trigger an EIAs.
- Defining threshold values: The current thresholds vary among States. However, it generally constitutes a level of significant harm to the environment, or a quantifiable area/volume of impact/removal of resources. This would necessitate “an expert judgment”.

Abiding by the precautionary, ecosystem and integrated approach, EIAs as well as SEAs ought to adopt a broader view, beyond the activity or policy considered so as to take into account cumulative impacts as well as transboundary impacts that such activity might have. The process should, therefore, not necessarily focus on the specific area in question but should, when relevant, take into account possible impacts in adjacent areas.

Assessment reports

The PSIDS suggest that assessment reports should present, at a minimum, the following common elements:

- description of the proposed activity
- location of proposed activity
- description of the natural environment where the said activity will take place
- assessment of possible environmental consequences of the said activity

- possible steps to address or minimize those consequences

Process

An effective EIA and SEA process should be grounded on a good governance mechanism that clearly outlines the:

- Roles, authority and responsibilities of States, proponents, related bodies and stakeholders and must be linked to a decision making process.
- A clear scope of terms of reference that will define the content of assessment and the standards that need to be met throughout the EIA/SEA process, especially in the preparation of the reports.
- Timelines that need to be followed for different stages of the EIA/SEA process to ensure decisions are delivered within a reasonable timeframe.
- Enforcement and compliance provisions.

Further elements for consideration in the process:

- A Panel or committee of experts³ could provide comments and advice to the appropriate entity/body.
- An effective process must be participatory and engage all stakeholders.
- IA/SEA legislation and regulations should be transparent and publically-available, in easily-accessible formats, so that proponents, CSOs and other stakeholders are fully aware of how to participate in, and contribute to the process.
- Consideration should be given to the role and interlinkages between EIAs and SEAs and ABMTs, especially in the context of limited information in some areas of ABNJ.
- EIA/SEA can be an expensive process: It is useful to have formal policies that specify who is responsible for bearing different costs, particularly costs associated with public notifications, hiring consultants and undertaking environmental monitoring, etc. The PSIDS suggest that the proponent should bear the cost. The ISA could serve as a model.
- Creation of a central repository to capture information gathered by EIA processes is needed, with due regard to confidential information.
- In developing a new regime, the special circumstances of small island developing states who have limited resources to engage in new processes or governing bodies have to be adequately addressed. Consequently, developing countries could be given an opportunity to submit joint EIAs.
- Adjacent States should be given due attention in the conduct of a project planning and EIA, in particular with regard to activities with transboundary impacts.
- Consideration for the establishment of a rehabilitation fund could be further explored.

Consequently, a possible process could be as follows:

- Screening of activities based on set thresholds.
- Scoping: development of project/activity-specific terms of reference for all EIA reports
- Impact assessment and EIA report preparation:
 - A proponent of a proposal for an activity is sponsored by a State. The proponent is responsible for the cost of the EIA process (including consultation)
 - The sponsoring State notifies a/the panel of experts
 - The panel of experts appoints an independent consultant to review the EIA report
- Adjacent States are consulted, as well as the general public, regional and international

³ This panel or committee of experts could also be technical and/or scientific committee

organizations.

- The proponent submits the EIA report for review by the independent consultant/panel of experts.
- The independent consultant provides recommendations to the panel of experts.
- The panel of experts makes a recommendation. Review of the EIA report could require alternative measures be implemented or that the initial project be modified. The proponent could be given an opportunity to submit an updated project proposal to take into account the recommendations.
- An Environmental management plan is prepared and implemented. Note: the sponsoring state has the obligation to report on the implementation periodically

8. CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

The objective is to operationalize article 266 of UNCLOS. It aims to provide adequate means for developing countries, in particular SIDS, to implement their obligations under UNCLOS and to achieve UNCLOS objectives, including that of a just and equitable international economic order.

As recognized by the international community, financing from all sources, domestic and international, public and private, the development and transfer of reliable, affordable, modern technology on mutually agreed terms, capacity-building assistance and enabling institutional and policy environments at all levels are critically important means of advancing sustainable development in SIDS (SAMOA Pathway, para 102). Therefore, recognition of the special case of SIDS needs to be promoted and specific measures provided for SIDS in the new agreement.

Therefore, the new implementing agreement should:

- Take into account priorities set by States
- Support the long term institutional strengthening of an administration, agency or organization, including with regards to their reporting requirements
- Facilitate transfer from regional to national levels
- Coordinate different capacity building and transfer of technology mechanisms in place: the instrument could set general guidelines to be mainstreamed in all relevant capacity building mechanisms. The underpinning idea is to make capacity building initiatives coherent and efficient

Capacity building:

Capacity building measures should be open to all stakeholders, not just governments. They could, for instance, include civil society organizations. Furthermore, private sector and other stakeholders should be encouraged to contribute to the capacity development of SIDS.

Some possible provisions include:

- The provision of education/training in science and technologies, policy and governance, including through joint research efforts supported through the establishment of a global scholarship fund, and enhanced through collaboration in research and development on marine genetic resources
- Support for and development of regional centres of excellence (such as the University of South Pacific) to address regional needs and provide long-term education and training
- Sharing information and technologies through a central repository or clearinghouse of ABNJ information, capacity building and research collaboration opportunities, and opportunities for facilitated access to technologies, knowledge and funding

- Increasing cooperative links between regional institutions, for example North-South, South-South collaboration, and collaboration between Regional Seas organizations and RFMOs; and
- Designating/creating a financial mechanism to support implementation of activities
- Open access and wide dissemination of environmental (including biological) information collected by research conducted in ABNJ as well as in the Area (collected by all companies during prospecting and exploration activities conducted in the Area) is critical for establishing regional and global baselines that can be used to inform appropriate development of conservation priorities
- Participation of PSIDS nationals in MSR projects conducted in ABNJ would provide cost-effective access to MSR in ABNJ. Maximizing benefit in the context of needs for management and MSR within EEZs will be important so as not to overburden already stretched administrations.

Funding for capacity building initiatives could be from mandatory sources (including through royalties from MGR exploitation, percentage of EIA processing fees), stakeholder contribution to the use of ABNJ, or from voluntary sources (including States or private sector contribution). Non-monetary capacity building from the ABS regime should be implemented to enable developing countries to fully engage in all relevant activities in the context of this instrument.

Transfer of marine technology

The new implementing agreement should support the efforts of SIDS to gain access, on mutually agreed terms, to appropriate, reliable, affordable, modern and environmentally sound technologies and know-how (SAMOA Pathway, para 111).

In addition to MGR-related technologies, this agreement should provide for relevant technologies for SIDS to implement their obligations under UNCLOS and this agreement in particular in relation to area-based management measures, including the establishment, monitoring, surveillance and enforcement of marine protected areas and other measures, as well as the conduct, review and reporting on EIAs/SEAs/TEIAs.