



Food and Agriculture
Organization of the
United Nations

Intergovernmental Conference on 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

(25 March – 5 April 2019)

Agenda Item 5

Madam Chairperson,
Excellencies,
Ladies and Gentlemen,

The Food and Agriculture Organization of the United Nations (FAO) is pleased to address the 2nd session of the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea of 10 December 1982, on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, and contribute to this important process by sharing knowledge and experiences.

This crucial phase of deliberations is framed by the wider context of global objectives, in particular those set out in the 2030 Agenda for Sustainable Development, in which biodiversity conservation and sustainable use have been identified as central for achieving food security and improving nutrition for all (SDG2). These goals are common denominators of all FAO's areas of work. Fisheries and aquaculture already contribute to world food security and human nutrition needs by providing more than 20 kg of fish per person per year (2016), twice the consumption rate of the 1960s, and directly support the livelihoods of about 10% of the world's population.

Yet this vital contribution is under threat due to the deterioration of many fisheries resources. According to FAO's State of Fisheries and Aquaculture Report (2018) around 33% of marine fish stocks are estimated to be fished at biologically unsustainable levels, up from 10% in 1974. FAO,

its Member States and their partners have been intensely fighting to turn this trend around, by developing global policy instruments, assisting countries in their policy and management interventions, providing value chain support, and developing capacity to make fisheries and aquaculture more ecologically, economically and socially sustainable. FAO remains convinced that natural resources can be sustainably use, in a manner that secures the food and nutritional needs of a growing global population, while addressing biodiversity conservation concerns.

The FAO Conference at its 40th Session welcomed FAO's initiative to develop a Biodiversity Mainstreaming Platform and requested FAO "to facilitate in collaboration with its partners, such as the Convention on Biological Diversity (CBD) and other UN organizations, the integration in a structured and coherent manner of actions for the conservation, sustainable use and management and restoration of biological diversity across agricultural sectors (including fisheries and forestry)". At the request of the FAO Council at its 160th Session, The FAO is developing a strategy on mainstreaming Biodiversity, and this strategy will build on, and recognize, the many instruments and guidelines developed by the FAO in relation to marine biodiversity, such as the Ecosystem Approach to Fisheries, EAF; the Ecosystem Approach to Aquaculture, EAA; the FAO Code of Conduct for Responsible Fisheries, and many others. These are testament to FAO's commitment to biodiversity conservation as an essential component in our goal to make sustainable use of natural resources now, and in the future.

Many of FAO's current areas of work have direct links to marine biodiversity. For example, our work on the deep-sea and vulnerable marine ecosystems (VMEs); on area-based management, including marine protected areas (MPAs) and other effective area-based conservation measures (OECMs); on the designation and implementation of extra-ordinary management approaches to recover species negatively impacted by fishing (in collaboration with CBD, CITES and CMS), on species level identification systems; on stock status determination, on EAF and EAA management (including the well known EAF- Nansen programme), and others. FAO is also working on minimizing the impacts of fishing gear (by-catch); marine litter (abandoned, lost or otherwise discarded fishing gear -ALDFG-); and supporting states in management of their aquatic genetic resources.

Based on its experience, FAO considers that the underlying task of this Inter-Governmental Conference is ensuring parity in the pursuit of the Sustainable Development Goals and finding a balance within the instruments and frameworks already established by international law; between

what can be achieved by hard law and soft law, between rights and responsibilities and between freedom of fishing on the high seas on the one hand, and treaty obligations, responsibilities and interests of States on the other; between guaranteeing sustainable use of fisheries resources in the high seas and the conservation and management of biodiversity beyond national jurisdictions that FAO considers to be at the core of sustainable use.

In addition to a balanced approach, to ensure that biodiversity can support sustainable use, the commitment of all biodiversity users, including those responsible for activities in areas beyond national jurisdiction, is required. With this in mind, FAO and its Member States, many of them represented here today, have been collaborating through the approximately 50 regional fishery bodies, in particular the regional fisheries management organizations (RFMOs), given their mandates in terms of sustainable fisheries management and biodiversity conservation.

Although there is much to be done to improve their effectiveness and functionality, RFMOs have evolved positively over the past decade, many of them having enhanced coverage of ABNJ issues in their mandates. The Common Oceans/ABNJ Programme is a relevant example of a close collaboration effort between FAO, RFMOs and partners on a number of issues ranging from governance of the high seas to the ecology and spatial management of vulnerable marine habitats.

FAO notes with appreciation that its contribution, concepts and options provided for the consideration of delegations in this process have been considered in the IGC working and guidance documents, as well as statements and other materials submitted for the purposes of the negotiations. This encourages FAO to continue in its commitment to this process, and the sharing of experiences and knowledge on the **four core thematic areas under consideration during this IGC**.

Regarding marine genetic resources (MGR) and associated issues of benefit sharing, technology transfer and capacity building, FAO has referred to the experience of FAO Member States in dealing with genetic resources in the context of the International Treaty on Plant Genetic Resources for Food and Agriculture. There are lessons that can be learnt and pragmatic examples in terms of crafting provisions on several aspects related to MGR, noting basic differences such as those on the scope and matters covered by the Treaty *vis a vis* an agreement on BBNJ, including the following:

- the Treaty on Plant Genetic Resources, while dealing with sources of genetic material in areas within national jurisdiction does consider, *albeit* in its non-binding preambular provisions, genetic resources for food and agriculture as *a common concern of all countries*;
- there is a need to distinguish between fish as a commodity and fish as a source of genetic material, noting that treating fish as a commodity has a precedent in the Treaty on Plant Genetic Resources and that the notion of fish as a commodity is already covered by other existing global frameworks (e.g. RFMO frameworks);
- the provisions of the Multilateral System of Access and Benefit-sharing of the Treaty on Plant Genetic Resources including capacity building and technology transfer, could be a model for consideration, *mutatis mutandis*.

Concerning the area-based management tools (ABMTs), including MPAs, particularly on the process and criteria for identification of ABMTs, FAO has noted in its statements during the Prep Com and at the plenary of IGC that ABMTs should draw, where appropriate, from the processes or elements of existing mechanisms. For example, in relation to the identification of Vulnerable Marine Ecosystems (VMEs), the FAO Deep-sea Fisheries Guidelines provide criteria based on the following characteristics: uniqueness or rarity, functional significance of the habitat, fragility, life-history traits of component species that make recovery difficult, and structural complexity. Additional valuable elements are the considerations taken by RFMOs and their Member States, such as the precautionary approach, especially if ABMTs closures are being looked at by dedicated scientific surveys; the encounter protocols for vulnerable marine ecosystems ('Vulnerable marine ecosystems - Processes and practices in the high seas', FAO, 2016, <http://www.fao.org/3/a-i5952e.pdf>); and new opportunities for meeting global biodiversity conservation goals through the identification and implementation of Other Effective Area-Based Conservation Measures (OECM) based on criteria adopted by the Parties to the CBD in November 2018 (CBD/COP/DEC/14/8/Annex III).

With reference to the Environmental Impact Assessments (EIAs), in particular their thresholds and criteria, FAO has outlined an activity-orientated approach, which suggests that generic guidelines be stated in a global framework, while sectoral criteria for EIAs applies to specific activities. In relation to deep-sea fisheries, the elements for the threshold and criteria for related

EIAs are set out in the FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas (FAO Guidelines, paragraph 47, 2009), namely:

- type(s) of fishing conducted or contemplated, including vessels and gear types, fishing areas, target and potential bycatch species, fishing effort levels and duration of fishing (harvesting plan);
- best available scientific and technical information on the current state of fishery resources and baseline information on the ecosystems, habitats and communities in the fishing area, against which future changes are to be compared;
- identification, description and mapping of VMEs known or likely to occur in the fishing area;
- data and methods used to identify, describe and assess the impacts of the fishing activity, the identification of gaps in knowledge, and an evaluation of uncertainties in the information presented in the assessment;
- identification, description and evaluation of the occurrence, scale and duration of likely impacts, including cumulative impacts of activities covered by the assessment on VMEs and low productivity fishery resources in the fishing area;
- risk assessment of likely impacts by the fishing operations to determine which are likely to be significant adverse impacts, particularly those on VMEs and low-productivity fishery resources; and
- the proposed mitigation and management measures to be used to prevent significant adverse impacts on VMEs and ensure long-term conservation and sustainable utilisation of low-productivity fishery resources, and the measures to be used to monitor effects of the fishing operations.

These criteria for a sectoral and activities-orientated approach coincide with the recommendations made by UN Members in the context of the development of guidelines for the management of deep-sea fisheries (UNGA Resolutions 61/105 and 64/72, among others).

With reference to capacity building and transfer of technology, FAO wishes to reiterate its commitment to capacity development and notes that entities already engaged in these activities could contribute significantly to this thematic area. FAO has a variety of programmes in place such as the Global Capacity Development Programme; projects for the implementation of the Port State Measures Agreement and related IUU fishing instruments; the EAF-Nansen Programme to support the application of the ecosystem approach to fisheries management, considering climate and pollution impacts; the Common Oceans/ABNJ Program; the SPONGES-Deep-sea Sponge Grounds Ecosystems of the North Atlantic; the Spatial management and guidelines for the implementation of OECMs; or the project focusing on Improved fisheries management for sustainable use of marine living resources in the face of changing systems.

Through RFMOs or individually, FAO works with States and with other stakeholders to facilitate the development and to support the implementation of international mechanisms and instruments, including binding and voluntary instruments and technical guidelines. The global capacity and technical assistance programmes, relevant to the sustainable management of marine living resources in the ABNJ, include: the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing; the Voluntary Guidelines for Flag State Performance; the Global Record of Fishing Vessels, Refrigerated Transport Vessels, and Supply Vessels; the Voluntary Guidelines on Catch Documentation Scheme that were adopted in 2017 in response to a call from the UNGA in 2013; and, the International Guidelines for the Management of Deep-sea Fisheries in the High Seas. Moreover, and with the goal to support decision making on the basis of best scientific evidence, generated with the involvement of relevant fisheries and biodiversity stakeholders, FAO has leveraged IT innovation and partnerships for the development of cross-disciplinary data and information products, such as the VME database, the Protected Areas Information Management System, the Global Atlas of Tuna and Tuna-like species, the Atlas of AIS-based fishing footprint and effort.

FAO is available to provide further details in occasion of the side event organized in collaboration with UNEP, ‘Cooperation between Regional Seas Programmes and Regional Fisheries Bodies’, to be held on 2 April.

Madam Chairperson,

The FAO Committee on Fisheries (COFI), a subsidiary body of the FAO Council, constitutes the global inter-governmental forum where major international fisheries and aquaculture problems and issues are examined and recommendations addressed to governments, regional fishery bodies, non-governmental organizations, fishworkers, FAO and the international community.

During its Thirty-third Session in July 2018, the COFI expressed appreciation for the ongoing work to establish a new legally binding agreement for the conservation of marine biodiversity of areas beyond national jurisdiction. Furthermore, the COFI recalled that the process and outcome should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, such as FAO's COFI and RFMOs, which, in the consideration of balanced approaches for the sustainable utilization and conservation of biological diversity in areas beyond national jurisdiction, must play a role and be part of the solution.

FAO stands ready, within the framework stipulated in UNGA Resolutions 69/292 and 72/249, to continue cooperating and supporting States in their negotiations and deliberations for the establishment 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. FAO wishes to emphasize its commitment in collaborating with UN Member States in the context of the IGC, sharing experiences and knowledge to that end.

Thank you