



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**

**(19 – 30 August 2019)**

Agenda Item 5

Madam Chairperson,

Excellencies,

Ladies and Gentlemen,

The Food and Agriculture Organization of the United Nations (FAO) is grateful for the opportunity to address the 3<sup>rd</sup> session of the Intergovernmental Conference and contribute to this important process by sharing knowledge and experiences.

FAO wishes to congratulate Madam President for her note and for the draft text of an agreement submitted to Members in support of negotiations, which represents an important starting point towards the formulation of a final text.

As you know, FAO has worked with States, regional bodies and other stakeholders to achieve sustainable use by balancing utilization and biodiversity conservation in all fisheries, including those in areas beyond national jurisdiction (ABNJ). We do so by facilitating the development and implementation of international instruments and mechanisms, providing technical advice, facilitating the development of implementation systems and tools, and compiling and sharing knowledge and good practices for fisheries sustainability.

Many of the instruments and guidelines developed by FAO Member States and partners (e.g. the Ecosystem Approach to Fisheries) are tangible proof of FAO's commitment to biodiversity as a

“key component” in any strategy aimed to make sustainable use of natural resources, recognizing the importance of minimizing biodiversity impacts. Building on these foundations, the FAO Conference at its 40<sup>th</sup> Session welcomed FAO’s initiative to create a Biodiversity Mainstreaming Platform, in close consultation with its partners, such as the Convention on Biological Diversity (CBD) and other UN organizations. As a result the FAO has developed a draft strategy on mainstreaming Biodiversity which is currently under review by its Member States, and is intended to be tabled at the 163<sup>rd</sup> Session of the FAO Council.

In this context, allow us to make the following preliminary remarks on the draft text, reserving more detailed specific comments and suggestions to the working sessions of the intergovernmental conference.

As stated earlier, the draft text marks a good start towards formulation of an agreement. There is a rich context to the negotiations and the evolution of the text, including the aspirations expressed and guidance provided since the convening of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, and the recommendations of the Preparatory Committee established by UNGA resolution 69/292. It would be fitting to reflect and recall relevant aspirations and guidance from previous processes and its outcomes in the operational provisions and, if not and at the very least, in the preamble of the draft text.

FAO commends the effort made to address certain directives of resolution 69/292 in the previous IGC discussions and in the Chairpersons notes and the draft text, in particular, in ensuring that the process and outcome of the IGC should strengthen and not undermine existing relevant legal instruments and frameworks, or relevant global, regional and sectoral bodies. This effort is reflected in different contexts in various draft articles (e.g. articles 4, 15, 19, 20, 23 and 43). FAO notes that much of the text in relation to coordination with existing agreements and mechanisms is currently in square brackets. Connected to this issue is the proposed non application of the Agreement when fish is treated as a commodity. This interesting proposal which is limited to Marine Genetic Resources (MGRs), raises questions such as the collateral impact of fishing on the environment, who determines the threshold above which fisheries resources are considered a commodity, and the composition of the subsidiary body that will make such determinations.

Regarding the text on **marine genetic resources (MGR)**, it may be of benefit to reflect or mimic the text of relevant existing agreements in particular, the text in relation to benefit sharing arising from the use of genetic resources and to emphasize that benefits arising from the use of genetic resources should ultimately contribute to the conservation of biological diversity and the sustainable use of its components.

Concerning the text on area-based management tools (ABMTs), there appears to be difficulty in the text in distinguishing between ABMTs, in general, and MPAs, with the related need to clarify where certain requirements apply to all ABMTs, and what and where the specific requirements are for MPAs. FAO re-iterates that different ABMTs are in use in fisheries (e.g. VMEs) and notes that the recent definition and criteria for Other Effective Area Based Conservation Measures (OECM) by the CBD recognizes the importance of other avenues in addition to MPAs, to protect biodiversity including in areas beyond national jurisdiction. Regarding straddling and highly migratory fish stocks which, as delegations are aware, are managed under an UNCLOS implementation agreement, a range of management tools, including but not limited to ABMTs, have been used for conservation of living renewable resources in the ABNJ.

With reference to the **Environmental Impact Assessments (EIAs)**, in particular their thresholds and criteria, FAO believes that sector specific criteria for EIAs will be necessary. FAO appreciates the effort reflected in the draft text to recognize and allow existing EIAs frameworks, e.g. FAO's Deep Sea Fisheries Guidelines, to operate and prevail in specified circumstances. However, there are details that need to be elaborated concerning related issues, including how consultation or coordination with existing legal instruments and frameworks will take place.

With reference to **capacity building and transfer of technology**, FAO reiterates its commitment to capacity development, and notes that the experiences of entities already engaged, including FAO, in these activities could contribute to this thematic area. FAO recognises the difficulty in operationalizing these programs and notes that the draft text will need further elaboration on practical aspects including the precise definition of capacity building and transfer of marine technology.

On **general and crosscutting issues**, the texts on institutional arrangements, financial resources and mechanisms and implementation are important. Whilst their elaboration is vital, the institutional framework must not be top-heavy and, where appropriate, should enable sectors and

States, through existing frameworks and agreements, to implement the principles, requirements and measures set out in the agreement as could be accommodated in a hybrid approach.

With regards to the discussion on technical advisory bodies, the Conference might wish to note that many RFMOs have scientific and compliance committees comprised of State experts and representatives that provide advice to the governing bodies of the RFMOs. These bodies must be able to continue to have space to act, as appropriate, on sectoral matters relevant to the BBNJ agreement. RFMOs have developed ground breaking arrangements whereby non-parties to an RFMO and other entities can participate in the work of the RFMO. To undermine the operation of such arrangements in implementing the future BBNJ agreement will reverse many gains made in international law and State practice in participation of non-parties, thus undermining existing sectoral frameworks under other agreements and instruments contrary to the directives of UNGA resolution 69/292.

Madam Chairperson,

During its last Session in 2018 FAO's member States, gathered under the Committee of Fisheries (COFI), the largest global inter-governmental forum for fisheries issues, expressed their appreciation for the ongoing work to establish a new legally binding agreement covering both the sustainable use and conservation of marine biodiversity in ABNJ which we all agree is the foundation of our past and present and, no doubt, is a necessity for our future.

Thank you