

PACIFIC SMALL ISLAND DEVELOPING STATES

United Nations Member States



Permanent Mission of the Republic of Fiji to the United Nations Phone: +1 (212) 687 - 4130
801 Second Avenue, 10th Floor Fax: +1 (212) 687 - 3963
New York, N.Y. 10017 Email: psidsnyc@gmail.com

Intervention by Fiji on behalf of the Pacific Small Island Developing States for Part II (3) “Marine genetic resources, including questions on the sharing of benefits” of the President’s Aid to Negotiations

At the

2nd Session of the Intergovernmental Conference on an International Legally Binding
Instrument under UNCLOS on the Conservation and Sustainable Use of Marine Biological
Diversity Beyond Areas of National Jurisdiction at the UNHQ

27/03/19

3.2.1 Access

For sub-para (1) PSIDS prefer **OPTION II** in particular **Option C** in line with our position that the instrument should only govern access to MGRs in ABNJ. With regards to access in situ sub-para (5) the PSIDS prefer both **Option C & D** which are positions that PSIDS have previously advanced, calling for a more stringent access mechanism ensuring that there is at least some form of monetary benefit sharing to States either derived from a permit or licensing scheme.

Both permits and licenses would thus allow for better management, monitoring and review as State parties would be able to set conditions on access to MGRs through the established body especially for any access in the high seas that is adjacent to our national jurisdiction.

Permits and licenses will also allow for proper traceability and ensure the inclusion of all relevant stakeholders, including holders of traditional knowledge.

For sub-para (b) of the same section PSIDS supports **Option A**. For sub-para (c) PSIDS supports **Option A** to ensure that we are future-proofing the instrument to allow for additional requirements on access to be introduced as and when needed and agreed to in the future.

Further to this section, PSIDS would like to suggest **amendments to sub-para (6) and (7)**, the PSIDS would like both provisions to end the with the sentence “ **subject to benefit sharing provisions in 3.2.2 and monitoring provisions in 3.3**” ensuring that among other things, *ex situ and in silico* access should accrue some form of benefit-sharing rather than be “free” and merely facilitative.

Additionally, **for sub-para (8)**, and to perhaps help address the question posed by the EU yesterday afternoon, the PSIDS commends its inclusion into the text as this provision attempts to capture the PSIDS and AOSIS views on how traditional knowledge applies to MGRs in the BBNJ

instrument. However, the language here is different from the original language proposed by PSIDS and AOSIS, as the language here seems to be a slightly modified version of similar language in the Nagoya Protocol, and the differences could be consequential. The PSIDS would like to see the provision sub-para (8) read as follows:

“States parties shall take measures with the aim of ensuring that traditional knowledge of indigenous peoples and local communities that is useful for unlocking the value of marine genetic resources of areas beyond national jurisdiction is accessed with the prior and informed consent or approval and involvement of these indigenous peoples and local communities, and that mutually agreed terms have been established.”

The amendment is meant to ensure consistency with the rest of the Aid to Negotiations document by saying "indigenous peoples and local communities" rather than "indigenous and local communities." In international law, "indigenous peoples" is a more accurate term that has meaning. The amendment is also meant to clarify that it is the traditional knowledge that the indigenous peoples and local communities possess/hold and that is subject to access; PSIDS want to avoid the impression/misunderstanding in the original language from the Aid to Negotiations document that indigenous peoples and local communities hold or own the MGRs.

The modalities/process for operationalizing this approach for sub-para(8) can include working with established organizations of Indigenous Peoples who have regularly contributed to Ocean governance, including in the EBSA process under the CBD, in order to see whether they might have relevant traditional knowledge to contribute to MGR researchers. This is a function that a Secretariat can play, as in the CBD process. If there is an indication of available relevant traditional knowledge, the Secretariat can notify the clearing-house mechanism that such traditional knowledge exists, without explicitly saying what the actual content of that knowledge is. States Parties can also work with their own local communities as well as Indigenous Peoples, in line with existing practice, to identify relevant traditional knowledge and then notify the Secretariat or perhaps the clearing-house mechanism that a particular type of traditional knowledge exists. Either way, these two approaches will trigger a process whereby interested parties can reach out to the traditional knowledge holders and seek their prior and informed consent or approval and involvement prior to utilizing that traditional knowledge in order to unlock the value of MGRs of ABNJ.

END