

The Pacific Small Island Developing States and the BBNJ Discussions

Pacific CSO BBNJ Webinar

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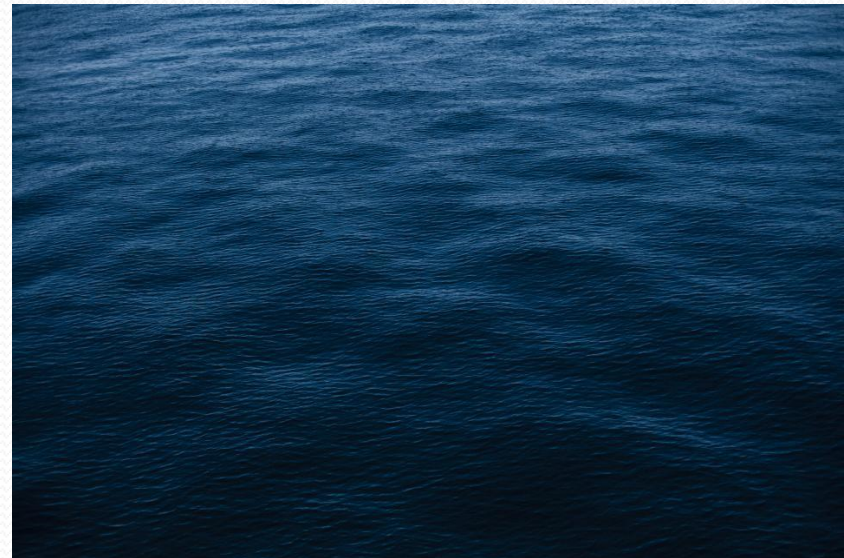
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Outline

- **What is BBNJ?**
 - The Ocean: Areas Beyond National Jurisdiction
 - Regulating ABNJ: A Patchwork of Instruments
 - History of BBNJ Discussions
- **PSIDS priorities for the BBNJ instrument?**

What is the BBNJ instrument?

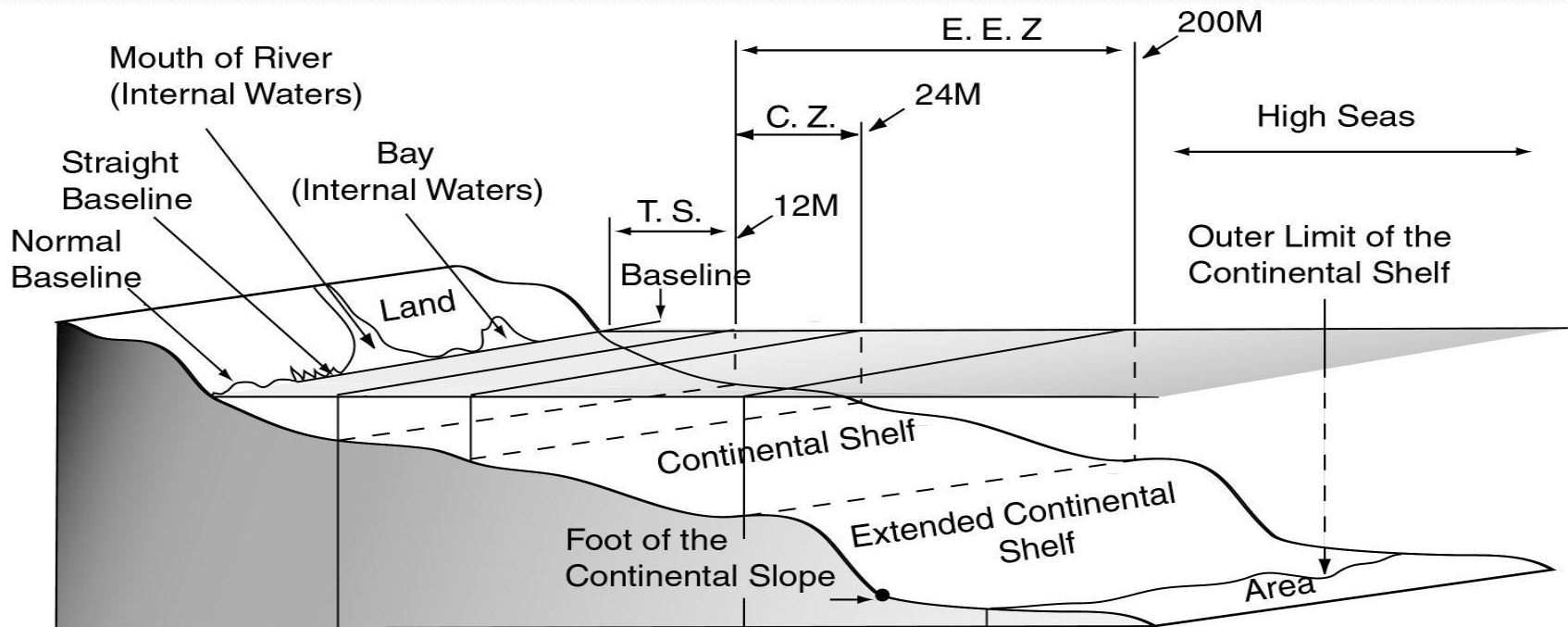
An international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction



The Ocean:

Areas Beyond National Jurisdiction

- Two main components of ABNJ (UNCLOS/CIL): High seas (water column); and the deep seabed, ocean floor, and subsoil thereof (i.e., the Area)



The Ocean: Areas Beyond National Jurisdiction

- 2/3 of Ocean is ABNJ, with about half of total biological productivity of the Ocean
- Major regulator of climate system, sequestering half a billion tonnes of CO₂ annually
- 70% of global fish harvest is of fish that range b/w EEZs and high seas, w/high seas fisheries worth \$16 billion annually
- Genetic resources of marine life in ABNJ are poorly understood but highly sought
- EEZ-HS ranging by cetaceans, whales, sea turtles, salmon, sharks, etc., of cultural and historical significance for PSIDS

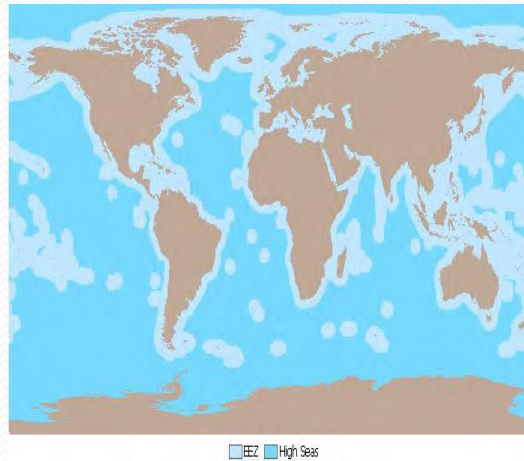
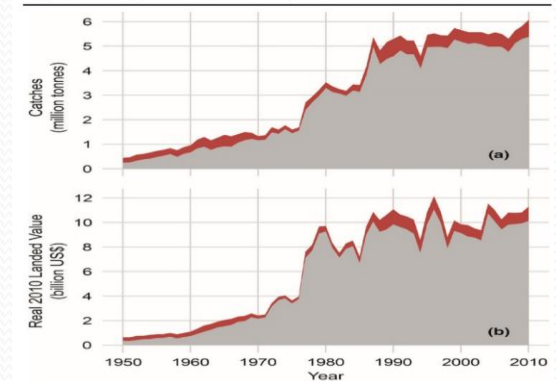
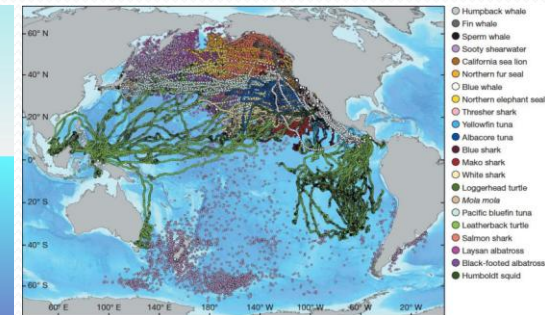
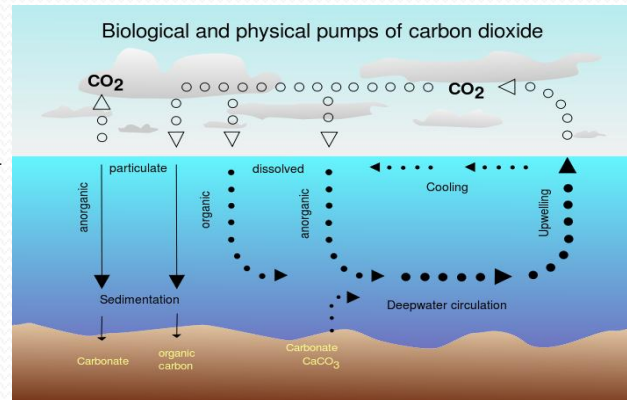


Figure 7. High seas fisheries production and value

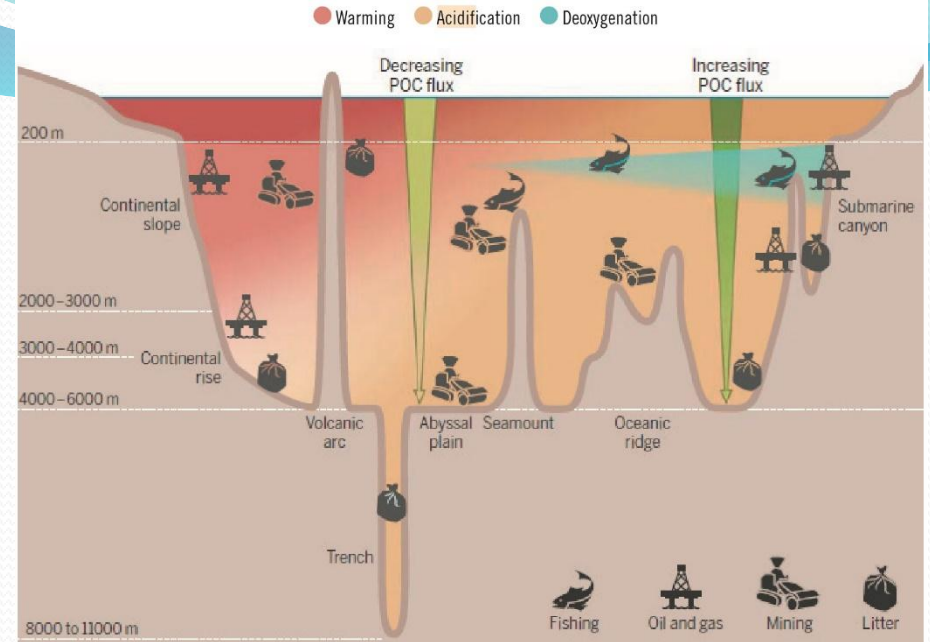


Source: Dunn et al., 2018



Major burdens on the Ocean:

- Marine debris/pollution
- Overfishing, including through IUU fishing
- Ocean warming, acidification, deoxygenation, noise pollution

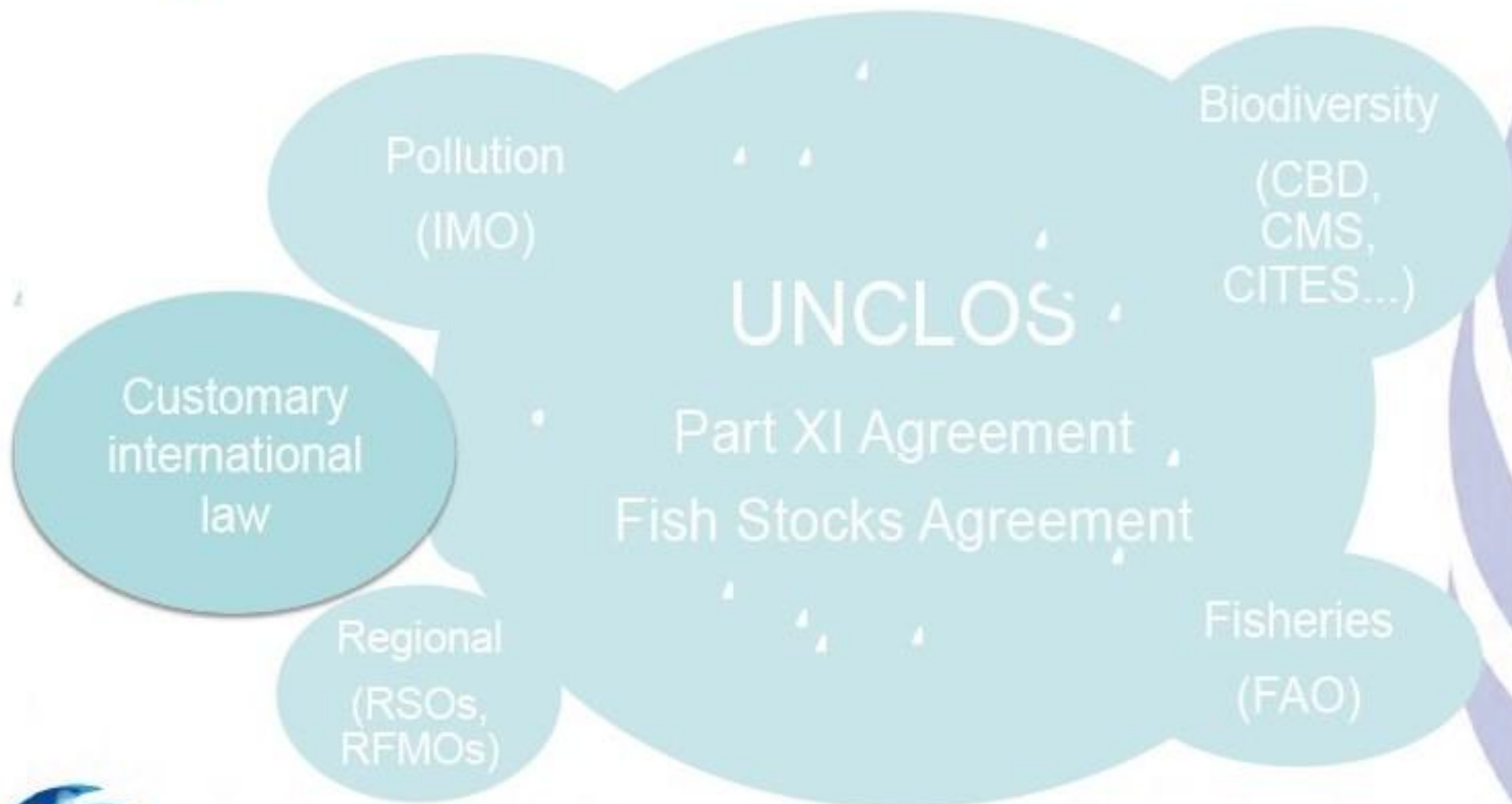


Source: Levin and Le Bris, 2015

*POC flux refers to the transportation of particulate organic carbon (POC) from the sea surface to the deep ocean, thereby playing an important role in regulating atmospheric carbon dioxide concentrations.

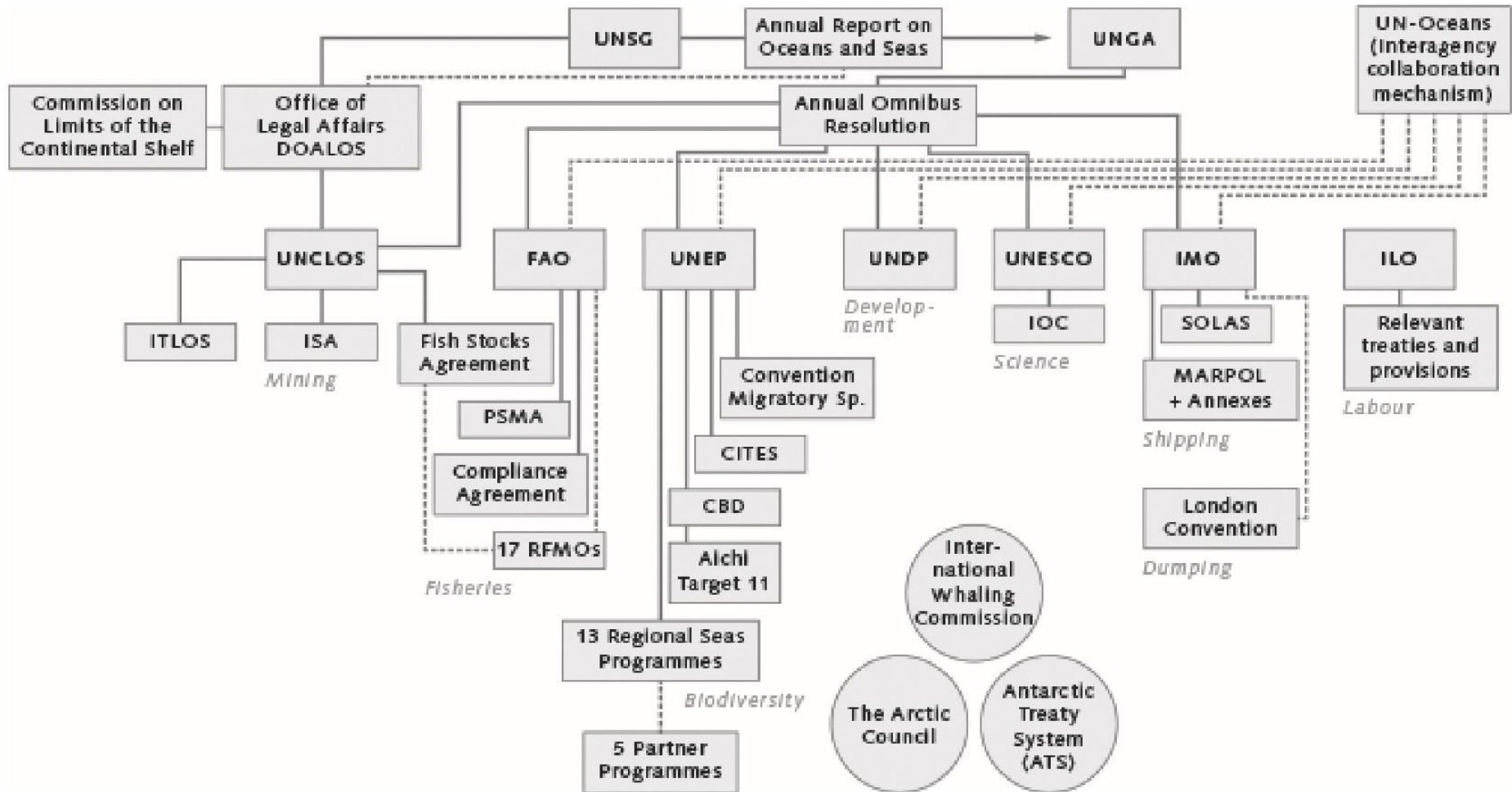


Legal framework for ABNJ



DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA
UNITED NATIONS

“Simplified” international marine use and governance framework



Source: World Ocean Review (<https://worldoceanreview.com/en/wor-4/politics-and-the-oceans/on-the-difficulty-of-governing-the-sea/ocean-governance-in-a-wide-arena/>)

2011 AHWG meeting recommended:

- Process to **identify gaps** in the legal framework for the conservation and sustainable use of BBNJ

- Implement existing instruments and possibly develop a **multilateral agreement under UNCLOS**

- Adopted **“package”** of issues for consideration going forward, “together and as a whole”:

- **Marine genetic resources**, including questions on sharing of benefits

- **Area-based management tools**, including marine protected areas

- **Environmental impact assessments**

- **Capacity building and transfer of marine technology**



Legal and implementation gaps for ABNJ

- **Fragmentation**: No overarching legal framework to ensure cooperation, coordination, coherence, and consistency between multiple ABNJ regimes (fisheries, shipping, regional seas programmes, seabed mining, sanctuaries, heritage sites, etc.)
- **Principles**: No consolidation of core principles applicable to ABNJ (precaution, polluter pays, intra- and intergenerational equity, ecosystem approach, etc.)
- **MPAs**: No global framework for establishing ecologically connected networks of MPAs (IMO PSSAs, ISA APEIs, RFMO VMEs, etc.)
- **MGRs**: Define? Common heritage of mankind? Access/benefits?
- **EIAs**: No global standards/rules for EIAs impacting ABNJ
- **Capacity-building and marine tech transfer**: UNCLOS provisions poorly operationalized, especially for ABNJ



- January 2015 AHWG Meeting adopted recommendations for UNGA (eventually became **UNGA resolution 69/292**):
 - Stress need for **comprehensive global regime** to better address BBNJ
 - Develop **international legally binding BBNJ instrument under UNCLOS based on 2011 package deal of elements, while respecting existing arrangements**
 - Establish a **Preparatory Committee** to meet twice in 2016 (28 March – 8 April, and 29 August-12 September) and at least twice in 2017 to **recommend elements of draft text of BBNJ instrument**
 - Decide on **convening of intergovernmental conference** by end of 72nd UNGA Session (i.e., September 2018)
 - Major push by **Group of 77 and China**, along with the EU



- **Recommendations of the PrepComm process**
(21 July 2017, A/AC.287/2017/PC.4/2)
 - **Two sets of elements** to “be considered with a view to the development of a draft text of a [BBNJ] instrument”:
 - **Section A** on “non-exclusive elements that generated convergence among most delegations”;
 - **Section B** on “some of the main issues on which there is divergence of views”
 - **Neither section reflects consensus**
 - UNGA should “**take a decision, as soon as possible, on the convening**” of an IGC to consider the recommendations and elaborate text of a BBNJ instrument
 - **Robust PSIDS participation**, as bloc and individually



- **UNGA resolution 72/249** (24 December 2017)
 - Convene an **intergovernmental conference** to consider the recommendations of the PrepComm and elaborate the text of BBNJ instrument, **“with a view to developing the instrument as soon as possible”**
 - Address the **2011 package**
 - **Four substantive sessions of 10 days each**: 1 session in 2018, two in 2019, one in 2020
 - IGC and its result **“should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies”**
 - **Possibility of voting on substantive matters** if IGC has “exhaust[ed] every effort in good faith to reach agreement on substantive matters by consensus”



● IGC-1 (4 to 17 September 2018)

- President's Aid to Discussions document
- Focus on the 2011 package, in informal working groups
- Some discussion of **cross-cutting issues** in those IWGs, including **institutional arrangements**
- **Insertion and clarification of existing and new positions**; some retreat, some progress
- **President promised to prepare a document to facilitate discussions and text-based negotiations**, containing treaty language and **reflecting options** on the four elements of the package, taking into account all inputs during IGC-1, as well as the PrepComm recommendations





- IGC-2 (25 March to 5 April 2019)
 - President's Aid to Negotiations document
 - Long document, containing **multiple sets of options** for each major Part/element; discussions on options
 - Growing convergence on the importance of **coherence, complementarity, and synergy** between BBNJ-related bodies/instruments/frameworks and the BBNJ instrument itself
 - **Major divergences persist** on core issues
 - President Lee tasked with producing new draft containing **treaty text (rather than options)** to enable **textual negotiations** in IGC-3



- **IGC-3 (19-30 August 2019)**
 - President Lee's **“zero draft” treaty text**
 - **Focused textual negotiations**, in informal (informal) working groups with **some progress made** across all major Parts/elements
 - **PSIDS spoke solely as a bloc**
 - Delegates bemoaned **severe lack of time remaining** in the negotiations
 - President Lee tasked with producing **revised draft treaty text** for IGC-4



IGC-4

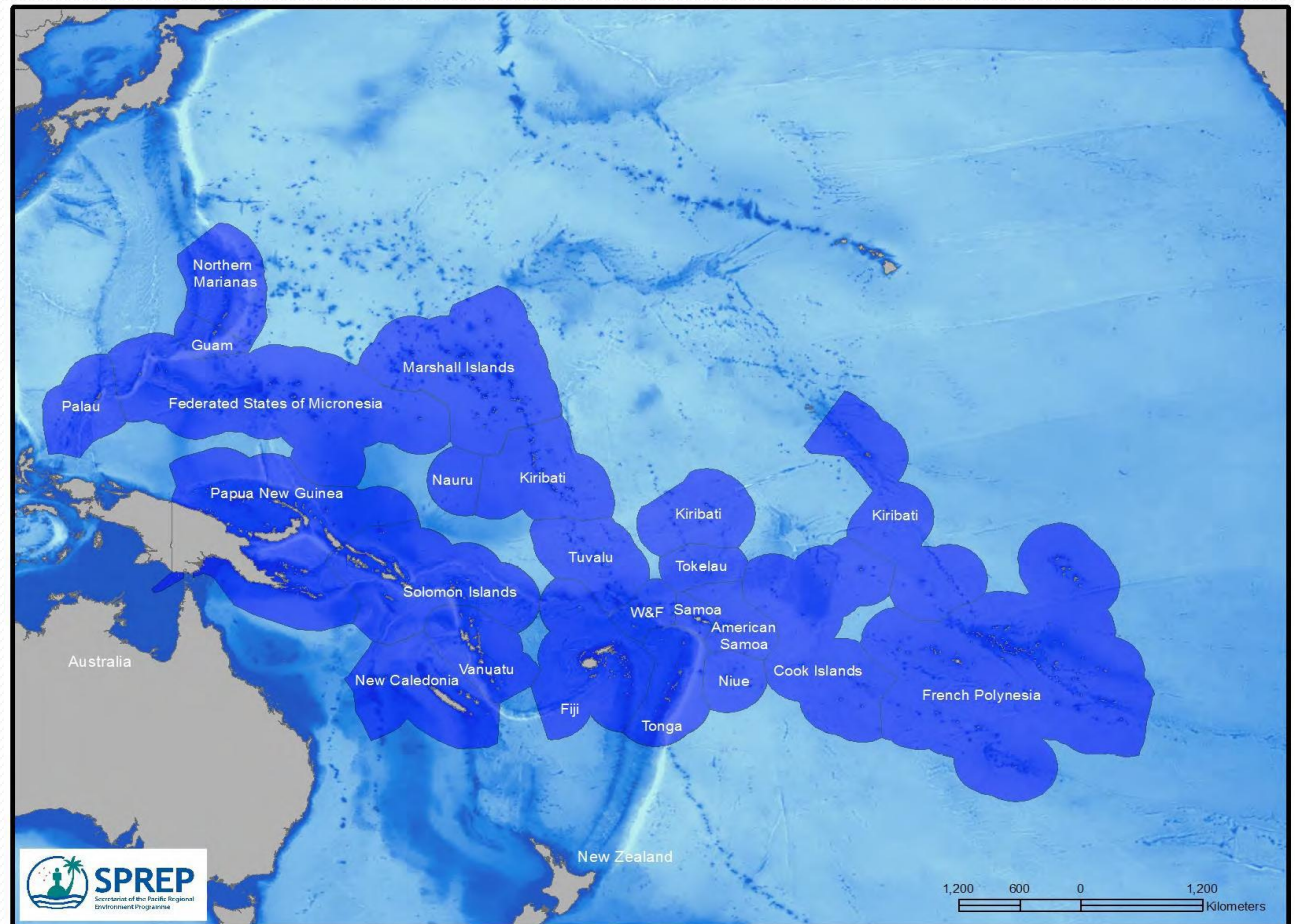
- **Multiple online intersessional dialogues/discussions/fora**
 - **Discussion forum** organized by the UN DOALOS
 - **High Seas Treaty Dialogues**, sponsored by the Nobel Institute in Oslo, Norway
 - **Various written publications**, including from IDDRI, IUCN, High Seas Alliance, scientists/experts/practitioners
 - Virtual spaces not a substitute for in-person discussions (coffee chats, etc.), but such spaces allow for broader participation
- **Tentatively scheduled for March 2022**
 - Fingers crossed!



The Ocean: Areas Beyond National Jurisdiction

Pacific Oceanscape

- 23 Pacific Island Countries and Territories (including 14 PSIDS)
- 30 million square kilometers, with world's largest tuna fishery worth over \$4 billion annually (60% from Western and Central Pacific Ocean alone)
- Several ABNJ pockets



PSIDS Priorities for the BBNJ Instrument:

Major objectives

- **Protection and restoration** of the health, productivity and resilience of the Ocean as a whole through, e.g., robust ABMTs and comprehensive EIAs addressed at the **global level**
- **Strengthen implementation** of UNCLOS, especially for ABNJ/BBNJ
- **Cooperation and coordination** between all ABNJ/BBNJ-related sectors, without undermining them, including fisheries and DSM
- Respect/recognize the **common heritage of mankind** pertaining to MGRs and associated ABS approach(es)
- Facilitate **effective and meaningful CBTMT**
- Intra- and intergenerational **equity**
- **Special case of SIDS**
- **Adjacency**
- **Ecosystem-based approach and precaution**
- **Stewardship**
- Decision-making based on **best available scientific information and the relevant traditional knowledge of Indigenous Peoples and local communities**



Thank You!

