



Synthesis Report of stakeholder engagement on the BBNJ Agreement for conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction

under the project
Supporting the Implementation of CARICOM'S BBNJ Preparatory Work Programme:
An Integrated Approach to Regional Engagement

1. INTRODUCTION

The members of the United Nations are currently negotiating an international legally binding instrument under United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the BBNJ Agreement). This will provide the legal framework which will guide the expansion of economic activity in the world's oceans in areas beyond national jurisdiction (ABNJ).

The main areas being addressed in the BBNJ Agreement are:

- marine genetic resources (MGRs), including questions on access and benefit-sharing (ABS)
- area-based management tools (ABMTs) including marine protected areas (MPAs)
- environmental impact assessments (EIAs)
- capacity building and marine technology transfer (CBTT)

The Caribbean Community (CARICOM) with its many Small Island Developing States (SIDS) and 'large ocean' states, recognises the importance of advocating for a legal instrument that considers our unique vulnerabilities and contributes meaningfully to Caribbean sustainable development. CARICOM negotiators want to be well informed of the interests, rights and views of stakeholders throughout the region to better inform their negotiations at the upcoming intergovernmental conference to be held in New York March 23 –April 3, 2020, and beyond.

The Caribbean Natural Resources Institute (CANARI) is providing technical assistance to CARICOM negotiators with stakeholder consultations to support negotiations for development of the BBNJ Agreement, with support from the Oak Foundation. This work is guided by the Co-Chairs of the CARICOM negotiation team – Ambassador Janine Felson from Belize and Ambassador Juliette Babb-Riley from Barbados.

This report presents a synthesis of stakeholder engagement activities on the BBNJ Agreement conducted within the CARICOM Region over the period January – March 2020.

2. STAKEHOLDERS

A total of 226 stakeholders were engaged through multiple platforms: national workshops in Guyana, Jamaica¹ and Trinidad and Tobago; key informant interviews and an online survey. These stakeholders belonged to government agencies, civil society organisations, private sector, academia, regional / international agencies or were private individuals or resource users (see Appendix 1). All Member States of CARICOM were represented in this stakeholder engagement process except for Suriname.

3. STAKEHOLDER ENGAGEMENT GOALS AND OBJECTIVES

The goal of this process was to enhance stakeholder engagement to strengthen CARICOM's negotiation positions on the BBNJ Agreement with the specific objectives being to ensure key stakeholders:

- are aware of the BBNJ process and issues, and how these are relevant to their rights, responsibilities and interests;
- give feedback on their perspectives and priorities to support CARICOM negotiators;
- build ownership of the BBNJ process and readiness for implementation of the Agreement produced.

4. METHODOLOGY

a) Workshops

The Guyana and Trinidad and Tobago workshops were hosted by the Ministries of Foreign Affairs and facilitated by CANARI. Workshops began with an opening plenary session to provide an overview of the BBNJ Agreement and negotiations. In Guyana, technical experts on the BBNJ negotiation team (Mr. Randy Bumbury on MGRs, Mr. Saeed Hamid on EIAs, Ms. Odacy Davis on ABMTs and Dr. Patrick Chesney on CBTT) gave an introduction to key issues under the four work packages of the Agreement whilst in Trinidad and Tobago, CARICOM technical experts for the negotiations (Ms. Mary Tang Yew and Ms. Ruqayyah Thompson), served as resource persons.

Interactive sessions followed, which comprised of a mix of presentations, small group exercises and plenary discussions. In closing, the facilitator reviewed the workshop objectives and what had been accomplished in the workshop. An outline of the next steps for the project was shared. This included producing the workshop report, refining the stakeholder feedback into synthesised analysis reports (which would be submitted to CARICOM negotiators to ensure they are well-informed of the stakeholders' positions on the various topics), and production of communication materials for during the negotiations as well as beyond to build awareness and ownership of the BBNJ Agreement. An evaluation was conducted using individual written evaluations. The workshop facilitator was Ms. Nicole Leotaud from CANARI, and the rapporteurs were Ms. Deanna Albert and Ms. Fadilah Ali.

¹ The workshop in Jamaica was co-organised by the Government of Jamaica and the Pew Charitable Trusts.

The Jamaica workshop was facilitated by the Ministry of Foreign Affairs and Foreign Trade and the Pew Charitable Trusts. The key findings were shared with CANARI as part of the overall regional stakeholder consultations.

b) Key Informant Interviews

Based on the analysis of issues and potential questions, CANARI identified technical and scientific experts from varying sectors within the CARICOM region to be consulted through targeted key informant interviews for input on EIAs, MGRs, ABMTS and CBTT. Identified individuals were contacted by email to schedule the interview that lasted between 30-60 minutes according to the individual. A semi-structured interview instrument was developed. The interview was arranged into four groups of questions according to the main areas being addressed in the BBNJ Agreement and individuals were given the option to choose which subsets of questions they wished to answer.

c) Online Survey

To gather diverse stakeholder perspectives, an electronic survey (using SurveyMonkey) was created and disseminated through email and email distribution lists, social media and targeted workshops. The survey was open between February 18 and March 3, 2020 and consisted of 26 questions related to the four areas of focus in the Agreement.

5. KEY FINDINGS ON STAKEHOLDER PERSPECTIVES

Key findings synthesised from stakeholder input via the workshops, survey and interviews are presented below. For each statement, the source is provided:

- (G) Guyana workshop
- (J) Jamaica workshop
- (T) Trinidad and Tobago workshop
- (S) Survey
- (K) Key informant interviews

a) General overarching findings

Engagement in the process

1. There seemed to be a general lack of familiarity or engagement with the BBNJ Agreement negotiation process even among key government agencies with regulatory responsibilities relevant to ocean use and management. (T)
2. State parties within CARICOM may have different national priorities and so a unified single CARICOM position in negotiation, and implementation, will not always be possible. Regardless, a joint voice in negotiation gives strength. (T)

Scope

3. Defining the scope of where the Agreement applies to is important. The freedom of the high seas really concerns only the water column whilst from a common heritage perspective, the focus is only on the seabed (and addresses only mineral resources). A comprehensive definition is needed in the Agreement. (G)

4. Boundaries need to be defined and distinguished to understand who has jurisdiction. (K)
5. There should be scope in the document to facilitate the elaboration of further details at a future date whilst still ensuring that the Agreement is ambitious and implementable. (J)
6. There is need for coherence and inter-linkages among work packages in the Agreement. (G)

Regimes

7. There were mixed views of regimes. Some respondents offered a preference for freedom of the seas approach i.e. if you do the work and research you should receive the benefits. Others believed in the common heritage approach i.e. resources belong to everyone and benefits should be shared. (K, J, T, G) Here the principle of 'common heritage of mankind' was seen as a critical foundation for the Agreement. This establishes that ocean resources should benefit humanity whereas the 'freedom of the seas' adopts a first come, first served approach and would therefore restrict the ability of developing countries to benefit. (G)

Implementation

8. Funding that is both mandatory and voluntary is important. The text of the Agreement will need to be significantly improved for it to be clear regarding the funding that will be provided to effectively support the implementation of the BBNJ Agreement. (J)
9. Financing is essential to the success of the four focus areas and needs to be reasonable, affordable and shared. (K)
10. Implementation of all aspects of the Agreement (ABMTs, EIAs and MGRs) require capacity building. (G, J, T)
11. Equitable access and sharing of benefits are priority issues that should be addressed by this Agreement. The current belief is that developing countries are less able to access and optimise the possibility of resources in ABNJ due to lack of technology and knowledge and there is hope that this Agreement can help to address this inequality. (G, S)

b) Environmental Impact Assessments

Scope of EIAs

12. EIAs were recognised as guiding documents and an essential instrument to facilitate the other aspects of this Agreement since they are often the first step and are important for informing and establishing baselines. (G)
13. Cumulative impact is a critical aspect to include within the Agreement. (T, K)

Stakeholder involvement

14. With regards to stakeholder involvement in the EIA process there was broad agreement that all stakeholders were equally important (i.e. national stakeholders, coastal community stakeholders, regional agencies and private entities). (S)

Standards / templates / principles

15. The Agreement should define EIAs and explicitly require that EIAs not only focus on environmental aspects but also include other aspects such as social, economic, cultural etc. However, it is important to ensure that economic benefits do not outweigh the environmental impacts. The use of Environmental and Social Impact Assessments (ESIAs) was suggested as a more comprehensive option. (T, G, K, S)

16. Strategic environmental assessments (SEAs) should also be included in the Agreement. However, there were considerable concerns over preventing redundancy and unnecessary expenditures. (G, T, S)
17. The Agreement needs to specify a definition of what constitutes an impact and the conditions under which mitigation would be required. (K)
18. There is a need to define whether an activity or impact approach would be taken (i.e. should all activities in ABNJ be subjected to EIAs or only ones that are in territorial waters but have impacts in ABNJ) and also whether this should be obligatory or voluntary. (G)
19. There are multiple EIA standards being used across the world and the Agreement should reference that a list of standards will be developed to ensure quality and consistency. (T)
20. An EIA template, as well as a detailed procedure, should be provided in the Agreement or an accessory document. This would ensure consistency and comparability (an EIA template is currently being drafted by the International Seabed Authority for all mineral-related activities in international waters). Deep-sea mining exploitation regulations, including Environmental Impact Statement templates and guidelines for Environmental Monitoring and Management Plans, are currently being drafted. (K)
21. A greater premium should be placed on defining processes related to EIAs, MPAs, SEAs and cumulative impacts rather than simply defining these terminologies. (J)

Implementation mechanisms

22. Including lists of activities that do and do not require EIAs in the Agreement is not recommended. (T)
23. The principle of adjacency should be included in the Agreement. (G, K)
24. Clear language is needed that would serve the purpose of consultation, cooperation and collaboration, especially to ensure that work being undertaken by existing institutions like the International Seabed Authority (ISA) and International Maritime Organisation (IMO) are fully taken into account. (J)
25. The Agreement should include text to address needed capacities and also include a financing mechanism which assists developing states to conduct monitoring in ABNJ. (G)
26. A redress mechanism should be explicitly included in this Agreement. (G)
27. The Agreement should address data access and sharing (e.g. baseline data and identified social and environmental impacts). (K)
28. It is expected that EIA processes for activities taking place on land or sea in national jurisdiction will have an additional level of requirements and control regarding impacts on international waters, in line with the new Agreement. (T)

Decision-making

29. A new body (e.g. Scientific and Technical Body) is needed for this Agreement, but with input from existing bodies. (K)
30. The operation of regional fisheries management organisations (RFMOs) is a model that can be considered, where technical review and recommendations are presented to Parties for decision-making. (T)
31. Decision-making should be multi-tiered and based on best available science and facilitate and build the capacity for national and regional levels to feed into the instrument. (G)

c) Marine Genetic Resources

Stakeholder involvement

32. Amongst stakeholders, there seemed to be a general lack of knowledge about MGRs and thus an attributed lack of value and indecision about whether there was actually a demand for these resources and who may benefit. (G, T, K, S)
33. There was consensus that stakeholder involvement is important for sharing benefits from MGRs and compliance with regulations since this could facilitate a multidisciplinary form of knowledge sharing and enable stakeholder awareness, equitable benefit sharing, buy-in and reduce conflicts. (S)

Financing

34. A lack of financial resources was identified as being the biggest limitation to marine scientific research in the Caribbean. (S, G, T, K)

Limitations

35. Marine scientific research and exploration is severely limited by the high costs (through technology needed, especially regarding the deep ocean). (K, S)
36. There is a shortage of personnel with appropriate expertise; individuals are needed not just with scientific expertise (biological, chemical, geological, physical) but also with knowledge to effectively operate technology. (K)

Implementation mechanisms

37. Existing benefit sharing mechanisms could be used for this Agreement (e.g. under the Plant Treaty and the Pandemic Influenza Preparedness (PIP) Benefit Sharing System under the World Health Organisation (WHO). (J)
38. Intellectual property rights mechanisms need to be developed for resources in ABNJ. (G)

Principles

39. MGR is one area that CARICOM negotiators need to be strong on. SIDS especially need to have a strong sense of identity and ownership. (K)

d) Area Based Management Tools

Stakeholder engagement

40. Mechanisms for multi-stakeholder engagement at different stages (proposals, designation, implementation monitoring and compliance) are needed to ensure that different interests and perspectives are addressed and there is coordination and collaboration. (T, S)

Proposals for designation/criteria

41. A range of stakeholders (global, regional and sectoral bodies, State Parties, and other stakeholders) should be able to submit proposals. (S)
42. Noting the current text of the Agreement mandates that only States may submit proposals for designations, participants queried whether stakeholders who were not able to effectively engage their own State could therefore potentially engage a State where they were not located to submit a proposal. (T)
43. Any proposals submitted should be based on best available science, traditional and local knowledge and apply the precautionary principle. (G, K, S)

Implementation mechanisms

44. Criteria need to be used when applying these ABMTs, including whether it will be an ecosystem versus species approach, whether the focus will be strictly to conserve biodiversity or to facilitate multiple uses and reduce conflict, and also to ensure that the objectives of new protected areas are compatible with other existing protected areas. (G, S)
45. Implementation should be done at the global / regional level since leaving MPA implementation to existing sectoral bodies would be ineffective because most of them lack a mandate to protect biodiversity (K, S)
46. It is critically important that the Agreement provide a legal framework through which States can establish high seas MPAs with meaningful conservation objectives and enforceable management measures. (K)
47. Monitoring systems would be needed and should not entail just the capacity to monitor areas in high seas but should also monitor the impacts of activities in the high seas and their impacts on territorial waters. (G)

Compliance

48. A compliance framework is needed, including mechanisms for negotiation and conflict resolution among multiple (sometimes conflicting) uses. Stakeholders reiterated the importance of monitoring and compliance for these tools to be successful, particularly as it relates to State Parties who may not be signatories to this Agreement. (T)

Best practices for management

49. A channel or mechanism is needed for non-governmental stakeholders to engage and be part of the designation, monitoring and management of these areas. (T, S)
50. MPAs should be places of ecological, cultural, or species importance, should have buy-in by the community, should have defined boundaries, and should work to maintain and improve biodiversity around the world. Stakeholder involvement should be through the entirety of the process. (K)
51. Representation, connectivity, socio-economic criteria, adequacy and inclusion of critical areas were all equally important criteria for designating ABMTs in international waters. (S)

e) Capacity Building for Technology Transfer

Who needs CBTT?

52. Capacity building and transfer of technology was seen as a potential incentive for developing countries and some other State Parties to sign on to the Agreement. (T)
53. There was consensus that multiple stakeholders (government, private sector, civil society, resource users, academia and regional or international agencies) would benefit from CBTT in the region. (T, G, K, S)
54. The ranking of stakeholders most in need of capacity building for implementation were (1) Government, (2) Resource users, (3) Civil society, (4) Private sector, (5) Academia and (6) Regional or international agencies. (S)

Financing

55. A High Seas Biodiversity Fund should be developed to provide funding to support implementation of the Agreement and sharing of benefits. Mechanisms will be needed to support access by non-governmental stakeholders, including research institutes and civil society. (T)

Access to data

56. Access to credible databases, baseline data and research information is needed. (J, T)
57. The proposed clearinghouse will need to include scientific data and information (e.g. to support review of EIAs and designation of MPAs), information about the obligations under the Agreement, tools and best practice examples. Effective communication of information appropriate to the needs and capacities of different stakeholders (including non-technical audiences) will be needed. Dissemination of information (e.g. via bulletins) will be needed. (T)

Types of capacities needed

58. The capacities of CARICOM nations are highly variable and dependent upon the individual nation. (K)
59. Capacity was understood to be more than simply possessing knowledge; rather it was how that knowledge was applied and combined with technology, international cooperation and financial resources. It was recognised that many different types of capacities are needed to implement the Agreement, and they will need to work in synergy (Figure 1). (G)

Figure 1: Identified areas for CBTT (K)

- Deep sea ecology and biology
- Taxonomic capabilities (morphological and genetic)
- Deep sea fisheries – fish stock surveys
- Metrics to characterise fauna, processes and the environment
- Marine biotechnology
- Oceanography and oceanographic monitoring
- Reproduction, life history and dispersal of marine invertebrates
- Fundamentals of sampling design
- Sampling methods and approaches
- Sample processing and analysis
- Statistics and data management (related to deep sea exploration)
- Data analysis techniques
- Knowledge to effectively operate technology
- Deep sea mineral resources and types of resource extraction
- Marine spatial planning and habitat mapping
- Preparation of EIAs
- Law and policy
- Scenario forecasting
- Satellite technology
- Equipment capable of withstanding extreme conditions (e.g. landers, ROVs, AUVs, gliders, corers)

Implementation mechanisms

60. CARICOM should establish a High Seas Research Center, possibly housed at the University of the West Indies (UWI)-Cave Hill, Barbados or at the Caribbean Maritime University, Jamaica, to spur research interest, retain graduate students, as well as to forge linkages with other countries who are well advanced in high seas research. (J, G)
61. A regional roster of experts should be developed to support transfer of knowledge and technical cooperation at the regional level. Regional centres of excellence can be developed and utilised to deliver capacity across the region. (T, G, J)

62. The role of educational institutions like UWI was stressed with an emphasis on targeted research and stronger partnerships that recognise the mutual benefits to both governments and the University. (J)
63. CARICOM needs to negotiate up front so that they are part of the ownership process/structure so that they don't only transfer technology but also co-develop/adapt and own technology. (K)
64. Modalities should be specified in the Agreement, i.e. who is responsible for determining a country's capacity and therefore what they are entitled to receive. Will this be done by a specified international agency or within a country? (G)
65. Capacity development should be at the CARICOM level so that there can be enrichment that can be adopted nationally and also so there could be transfer of knowledge and technical cooperation at the regional level. (G)
66. Participants reviewed Annex II of the draft text of the Agreement and identified that Sections A (Part i and ii) D and E should be mandatory under the Agreement (Figure 2).

Figure 2: Identification of priority capacity needs from draft text of the Agreement (G, J, T)

<p>Participants reviewed Annex II of the draft text of the Agreement concerning capacity building and transfer of marine technology and identified what they saw as priority capacity needs that they believe should be mandatory under the Agreement. There was consensus that</p> <ol style="list-style-type: none"> a) Section (a), Part (i) and (ii) of Annex II be mandatory, namely: <i>The sharing of relevant data, information, knowledge and research, in user-friendly formats, including:</i> <ol style="list-style-type: none"> i. <i>The sharing of marine scientific and technological knowledge;</i> ii. <i>The exchange of information on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.</i> b) Section (d) of Annex II be mandatory, namely: <i>The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms including:</i> <ol style="list-style-type: none"> i. <i>Governance, policy and legal frameworks and mechanisms;</i> ii. <i>Assistance in the development, implementation and enforcement of national legislation, administrative or policy measures, including associated regulatory, scientific and technical requirements at the national, sub-regional or regional level;</i> iii. <i>Technical support for the implementation of the provisions of this Agreement including for data monitoring and reporting;</i> iv. <i>Capacity to translate data and information into effective and efficient policies, including by facilitating access to and the acquisition of knowledge necessary to inform decision makers in developing State Parties;</i> v. <i>The establishment or strengthening of the institutional capacities of relevant and regional organisations and institutions;</i> vi. <i>The establishment of national and regional scientific centres, including as data repositories;</i> vii. <i>The development of regional centres of excellence;</i> viii. <i>The development of regional centres for skills development;</i> ix. <i>Increasing cooperative links between regional institutions, for example, North-South and South-South collaboration and collaboration among regional seas organisations and regional fisheries management organisations;</i> c) Part (e), which focused on development and strengthening of human resources and technical expertise via exchanges, partnerships, collaboration and other technical support, education and training, was also seen as important and closely linked to part (d). d) Overall, the Annex requires tightening as some parts were closely linked and not detailed clearly enough.
