

How the “BBNJ” agreement could help Pacific Islands tuna fisheries managers achieve some of their joint policy aims

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“BBNJ” is shorthand for the intergovernmental process to draw up a new agreement under the United Nations Convention on the Law of the Sea (UNCLOS) to address some of the gaps in the governance of marine Biodiversity in areas Beyond National Jurisdiction.² This process has been under discussion for 18 years now, but the final meeting of the BBNJ Conference to agree a treaty-level text for consideration by the UN General Assembly should take place in August 2022.³

The gaps in the current UNCLOS legal regime include:

- the management of bioprospecting, particularly the assignation of intellectual property rights over genetic material (“marine genetic resources” or MGR) derived from organisms found in international waters;
- the ability to protect certain marine areas beyond national jurisdiction from all forms of new exploitation (through marine protected areas or MPAs), and to provide the legal basis for setting up mechanisms to manage and allocate opportunities to pursue responsible exploitation (through area-based management tools or ABMTs);
- the ability to require an environmental impact assessment before any new potentially impactful activity on the high seas or international seabed is started.

The management of fisheries on the high seas and mining of the international seabed are already covered under the two existing UNCLOS Implementing Agreements – the UN Fish Stocks Agreement (UNFSA, which came into force in 2001, and upon which the Western and Central Pacific Fisheries Convention is based), and the UNCLOS Part XI Agreement (which came into force in 1994 and is implemented by the International Seabed Authority) – while transboundary marine transport is managed by the International Maritime Organisation. However, as technology advances and economic pressures increase, new uses are being found for the high seas all the time, from carbon sequestration experiments to open-water mariculture. And many of these new uses are not yet subject to any controls or limits, nor do they have mechanisms to promote equity in sharing of any opportunities that may arise.

Some high seas fisheries figures

- Only 4.2% of world’s total marine capture fisheries landings are taken on the high seas, and the high seas provide only 2.4% of the global aquatic food supply, if aquaculture and freshwater fisheries are taken into account;
- 9% of the tuna catch in the Western and Central Pacific Ocean (WCPO) is taken on the WCPO high seas;
- 68% of the tuna catch in the Atlantic, Indian and Eastern Pacific Oceans comes from the high seas in those regions.

The BBNJ Agreement will address the allocation of rights over intellectual property resulting from Marine Genetic Resources prospected from Areas Beyond National Jurisdiction (ABNJ), and will provide mechanisms for assessing the potential benefit or harm that might result from new ways of using the high seas, and of restricting or allowing their application in certain areas under agreed conditions. The non-fishery, non-mining uses of the high seas will no longer be a free-for-all, nor will their potential impact on Pacific Island fisheries be uncontrollable.

There has been a great deal of concern expressed by some major distant water fishing nations and those to whom the “freedoms of the high seas” are sacrosanct that the BBNJ Agreement will undermine the existing powers of Regional Fisheries Management Organisations to control fishing or allocate fishing opportunities on the high seas. This is despite the fact that the UN General Assembly decision that set up the BBNJ Convention Conference specifically enjoins it to avoid undermining existing mechanisms and agreements, and the BBNJ negotiators are careful to uphold this. The continuation of relatively unfettered high seas freedoms is valuable to distant water fishing nations – something that has long been evident to Pacific Island fisheries negotiators

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² “Marine Areas Beyond National Jurisdiction” are the high seas (the water outside EEZs) and, when it concerns the seabed, the seabed area outside extended continental shelves.

³ See <https://www.un.org/bbnj/> for more details.

at the Western and Central Pacific Fisheries Commission (WCPFC) when trying to set up rules to prevent high seas fishing from undermining exclusive economic zone (EEZ) fisheries of small island developing states (SIDS) – and guarantees that there will be continued opposition to both BBNJ and to further tightening of minimum standards for high seas fishing through WCPFC.

Will BBNJ be good or bad for Pacific Island tuna fisheries aspirations?

A look at the history of Pacific Island policy positions on high seas fisheries⁴ makes it clear that Pacific Island states and territories have long sought to control and limit distant water tuna fishing on the Western and Central Pacific high seas – indeed, this was one of the main motivations for inviting distant water fishing nations (DWFNs) to the multilateral high-level consultation that eventually led to the creation of the WCPFC itself. Despite a few early wins such as the high seas boarding and inspection scheme, the high seas vessel monitoring system (VMS), and WCPFC’s temporary agreement to close the two western high seas pockets to purse-seining in compatibility with the Parties to the Nauru Agreement (PNA) 3rd Implementing Arrangement, WCPFC (not the organisation itself, but the consensus

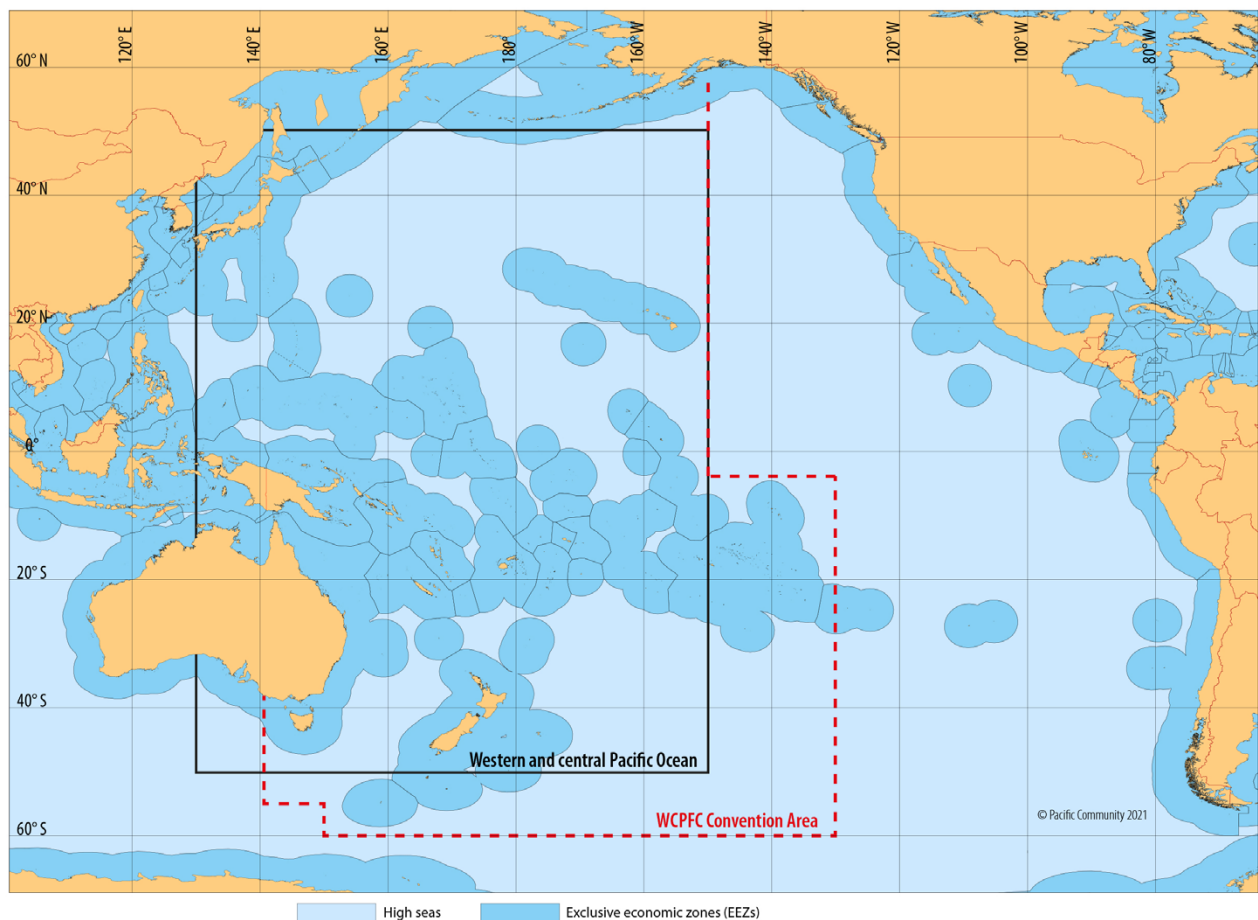
decisions of its entire membership) has generally not been able to apply minimum standards to high seas fishing that are compatible with those applied collectively by SIDS to the fisheries within their own EEZs.

This has had economic impacts on some SIDS. Examples are included below.

- Lower standards for high seas fishing have allowed some longline fleets to move their operations out of certain EEZs when those SIDS have tried to tighten up their access provisions. This particularly affected Kiribati and Solomon Islands.
- The availability of free purse-seine fishing opportunities on the high seas reduces the value of purse-seine vessel days in SIDS EEZs.

Will high seas MPAs affect SIDS’ own tuna fisheries?

The fisheries on the high seas of the western and central tropical Pacific are tuna fisheries. Tuna are defined under international law as highly migratory, and fishing for tuna is already limited on a Pacific-wide basis by agreement between WCPFC member countries, including both the high seas



⁴ See: <https://blog.gonedau.com/2022/03/how-new-bbnj-agreement-could-support.html>

and EEZs. Whether the high seas of the WCPFC tropical region are closed to exploitation or completely open, the amount of tuna that can be taken from the entire region will remain, more or less, the same under the WCPFC Harvest Strategy Approach. This requires fishing to be controlled in such a way that its impact on a tuna stock keeps the regional biomass around an agreed regional Target Reference Point. And because tuna can migrate freely across boundaries, between EEZs and the high seas, it does not much matter where that fish is caught – whether within EEZs or on the high seas.⁵ The actual catch of fish should remain the same, whether it is caught only within EEZs, or only on the high seas, or both in EEZs and on the high seas.

Currently, the great majority (90%) of the western tropical Pacific tuna catch comes from EEZs, where regulations are stricter, where monitoring is much stronger (particularly for longline fisheries) and where enforcement is generally more effective. Pushing that remaining 10% into EEZs would not put undue pressure on highly migratory tuna stocks, at least none that would not be counterbalanced by the reduction in illegal, unreported, and unregulated (IUU) fishing, including the under-reported catch of longline fisheries laundered through poorly verified high seas transshipments.

It might also be noted that the 30 × 30 initiative⁶ endorsed by more than 70 nations in the Global Ocean Alliance⁷ is only looking at protecting 30% of the ocean, and WCPFC will remain responsible for the allocation of tuna fishing opportunities outside any MPAs that are set up by the BBNJ high seas. WCPFC is already required to take into account the special requirements of SIDS in general (and of the particular circumstances of individual SIDS that have no high seas boundaries, or whose EEZ is composed of several non-contiguous areas). There are several Pacific Island nations with an interest in high seas tuna fishing themselves, but they will be able to continue to exercise that interest because BBNJ is not going to close all the high seas to fishing and because SIDS must have preferential access through the WCPFC Convention that will govern access to high seas areas that are not marine protected areas (MPAs).

Will BBNJ affect SIDS EEZ fisheries?

As mentioned earlier, the vast majority of tuna caught in the SPC region come from EEZ fisheries. The jurisdiction of the BBNJ Agreement is confined to areas beyond national jurisdiction, and there is no requirement for compatibility between EEZs and high seas in the draft text. If this remains the case, then BBNJ will not affect coastal and EEZ fisheries. The nearest that any area beyond national jurisdiction

comes to the coast of any nation is 200 nautical miles (366 km).

BBNJ may, however, have a positive effect in providing the means to reduce the disproportionate burden of conservation action that currently falls on those SIDS that have enacted massive MPAs within their EEZs, in the name of tuna conservation. Currently there are no MPAs on the high seas of the western and central Pacific, and consequently small island EEZs are bearing this entire burden which, if MPAs do indeed contribute towards the conservation of tuna stocks, is benefitting the entire region including the longliners that often congregate on the high seas just outside SIDS EEZ boundaries.

What next?

These outcomes will need to be negotiated to fruition. The BBNJ text is not yet agreed and there is still scope for major divergence from expectations, despite the number of areas of convergence. And there is little clarity about the mechanisms for implementation yet – whether through a global or several regional organisations, or a hybrid mechanism whereby a global body agrees minimum standards and regional bodies implement them in ways appropriate to each major ocean region.

The next (and hopefully final) BBNJ Conference meeting has been recommended for August 2022, subject to the approval of the UN General Assembly.

Pacific Island Forum Leaders in their 2021 Ocean Statement⁸ recognised that BBNJ and fisheries development are not mutually exclusive. If negotiated carefully, BBNJ could be of considerable assistance in helping conserve the biomass of fish stocks that will be crucial to the continued development of several Pacific Island economies, and the continued livelihoods and nutrition of rural coastal Pacific Islanders, as well as helping limit the opportunities for IUU fishing. It may also help in ensuring that some climate justice can be done as the western Pacific warm pool gets warmer and shifts the centre of abundance of tuna stocks eastwards from EEZs towards the central Pacific high seas in coming decades.



This article is a summary of an online document that can be downloaded from <https://drive.google.com/file/d/1-StyE6JS48ox-PKqQP5jwDanRgIjTe6cm/view>

⁵ This is a simplification, of course – there will be local effects caused by slower or faster migration, by variable oceanographic conditions, or by denser or more diffuse fishing effort, but these local effects already apply to WCPO tuna fisheries and we already make major decisions about fishing in EEZs and the high seas, despite these uncertainties.

⁶ See: https://en.wikipedia.org/wiki/30_by_30

⁷ Including the SPC members Australia, Federated States of Micronesia, Fiji, Kiribati, Niue, Palau, Samoa, Tonga, Vanuatu, United Kingdom and United States of America

⁸ <https://www.forumsec.org/2021/03/22/pacific-islands-forum-leaders-ocean-statement-2020-21/>