Cooperation, competence and coherence: The role of regional ocean governance in the South West Pacific for the conservation and sustainable use of biodiversity beyond national jurisdiction

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Abstract
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Cooperation, Competence and Coherence: The Role of Regional Ocean Governance in the South West Pacific for the Conservation and Sustainable Use of Biodiversity beyond National Jurisdiction

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Abstract

UNGA Resolution 69/292 requires that the development of an international legally binding instrument (ILBI) for the conservation and sustainable use of biodiversity in areas beyond national jurisdiction (ABNJ) under the United Nations Convention on the Law of the Sea should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. The South West Pacific regional oceans governance framework is reviewed, highlighting the importance of dedicated mechanisms for cooperation in the integration of regional institutions and in collective diplomacy for the development of an ILBI. It is argued a sufficiently inclusive description of existing arrangements under an ILBI is needed to not undermine the competence or integration of the regional architecture for oceans’ governance. Shared governance principles between an ILBI and existing regional governance architecture could play an important role in preserving coherence and contribute to ensuring regional standards for conservation of BBNJ are not diminished.

* Acknowledgements: The authors are grateful for the review and insightful information on the contemporary regional ocean governance framework from Dr Elizabeth Brierley at the Office of the Pacific Ocean Commissioner. The authors wish to thank Professor Clive Schofield and Dr I. Made Andi Arsana for the map of the SW Pacific regional boundaries and high seas enclaves. Genevieve Quirk would like to thank the Australian Department of Foreign Affairs and Trade for the opportunity to join the Australian delegation to the UN Ocean Conference and final BBNJ Preparatory Committee. The authors are grateful for the useful comments from two anonymous reviewers which substantially improved the article. This research has been conducted with the support of the Australian Government Research Training Program Scholarship and the University of Wollongong Global Challenges Program.
Keywords

biodiversity beyond national jurisdiction (BBNJ) – Pacific Island Countries – regional governance – governance principles

Introduction

The South West Pacific is a region of immense biological and ecological diversity integral to the economy, diverse cultures and food security of Pacific Island Countries and Territories (PICTS). This region is distinguished as a community of Small Island Developing States (SIDS) united and linked by the high seas enclaves and the surrounding areas beyond national jurisdiction (ABNJ) (see Fig. 1). The development of a new international legally binding instrument (ILBI) for the conservation and sustainable use of marine biological diversity in ABNJ (BBNJ) under the 1982 United Nations Convention on the Law of the Sea (LOSC) presents an historic opportunity to address legal gaps in the governance of BBNJ that is welcomed by PICTs. However, the relationship of an ILBI with existing institutional arrangements remains an area of considerable divergence among delegations. Under an ILBI, a sufficiently inclusive descrip-
tion of existing arrangements is needed to not undermine the competence and integration of regional institutions with a mandate for BBNJ governance, or diminish the high biodiversity conservation standards that characterise regional practice in the South West Pacific. The adoption of shared governance principles between an ILBI and the existing regional governance architecture could also play an important role in preserving the coherence of existing regional practice.

The Report of the Preparatory Committee established by General Assembly Resolution 69/292 reflected the broad convergence between delegations at the Preparatory Committee that the ILBI would promote greater coherence with and complement existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies (...) [and] be interpreted and applied in a manner which would not undermine these instruments, frameworks and bodies.⁶

According to the Pacific Small Island Developing States (PSIDS), an ad-hoc negotiating body established by PICs for the purpose of collective diplomacy,⁷ the ILBI should contribute to improving the cooperation and coordination among States and relevant and competent organizations (...) [and] therefore, complement the existing patchwork of instruments and frameworks and aim to facilitate coordination and cooperation among the many different actors.⁸

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⁶ Ibid., at p. 9.
⁷ The PSIDS have developed as the primary advocacy group at the UN for PICs furthering PIC-specific interests which may be aligned with or independent of traditional alliances with Pacific Island Forum members Australia and New Zealand or non-Pacific-based Alliance of Small Island Developing States (AOSIS) members; see generally F Monoa, ‘The New Pacific Diplomacy at the United Nations: The Rise of the PSIDS’ in G Fry and S Tarte (eds), The New Pacific Diplomacy (ANU Press, Canberra, 2016) 89–91.
Between delegations, however, was a fundamental lack of consensus as to the understanding of what was meant by “not undermining”. The PSIDS made important interventions to clarify that their interpretation of “not undermining” was not reducing or eroding the effectiveness of existing instruments. Given the prospect of the convening of an intergovernmental conference for the development of an ILBI, it is therefore timely to consider the implications of the development of an ILBI for the South West Pacific region.

In this article, the existing South West Pacific regional framework for BBNJ is examined and considerations to strengthen and not undermine its coherence, competence and cooperative mechanisms in the development of the ILBI are identified. The role of regional ocean governance is introduced and the uncertainties shrouding the relationship of the ILBI with existing regional arrangements are discussed. The existing regional oceans governance framework is introduced and aspects important to regional practice are highlighted, including: the role of unique regional coordination mechanisms in facilitating collective diplomacy and integration; the significant role of soft law regimes; and the high standards for biodiversity conservation (as illustrated by existing area-based management tools). This article contends that a sufficiently inclusive description of existing arrangements is needed under an ILBI in order not to undermine the interdependent function between the South West Pacific’s diverse regional institutions (and their subsidiary instruments, frameworks and policies) with a mandate for BBNJ governance. Finally, it is argued that shared governance principles between an ILBI and the existing governance architecture could play an important role in preserving coherence and contribute to ensuring regional standards for conservation of BBNJ are not diminished (see Fig. 1).

The Role of Regional Oceans Governance

The requirement for the development of the ILBI not to undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies highlights the fact that whereas much has been written to

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endorse regional implementation of the law of the sea,12 less attention has been given to the diversity, interaction and authority of regional instruments to implement the LOSC. Obligations to protect and preserve the marine environment establish a duty to cooperate for which a regional approach dominates the global oceans architecture.13 Globally, a mosaic of existing regional instruments, frameworks and bodies have competence for the implementation of

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BBNJ governance. Within regions, however, efforts to cooperate and integrate remain varied; the South West Pacific is among the most integrated.14

As an Implementing Agreement under the LOSC, an ILBI would be dependent upon the interpretation of existing obligations in relation to cooperation at the regional level to protect and preserve the marine environment. Regarding the general protection and preservation of the marine environment, the 1989 Law of the Sea report on the protection and preservation of the marine environment states “Part XII expressly recognized and, indeed, mandated regional approaches”.15 The provisions under Part VII of the LOSC on the conservation and management of the living resources the high seas also make particular mention of a regional approach.16 Part XII provides an umbrella for the elaboration of technical rules and regulations at the regional level considered necessary to address the dynamics inherent in effective environmental protection.17 Boyle (2005) highlights this flexibility as important to accommodate the variable regional requirements related to the diversity of oceanographic and ecological characteristics.18

The LOSC does not provide a prescriptive definition of what constitutes a region other than for enclosed or semi-enclosed seas.19 Stephens’s (2017) commentary on Article 197 adduces the element ‘on a global or regional basis’ which confers an obligation on States to cooperate at a scale appropriate to threats to the preservation and protection of the marine environment and qualifies the application of a regional approach (beyond that specified in Article 123) to areas distinguished by ‘characteristic regional features’.20 The PSIDS argue that

15 Report of the Secretary-General, Protection and preservation of the marine environment, UNGA 44th session, 18 September 1989, UN Doc A/44/461, at p. 5, para 7.
16 LOSC (n 3), Arts. 118, 119.
19 LOSC (n 5) Arts. 197, 122.
such regional features could include the community of islands linked and surrounded by the high seas that characterise the South West Pacific.\textsuperscript{21}

In the context of regional protection of the marine environment, however, a region does not have to be defined on an ecological basis. Birnie and Boyle outline political, geographic or common interests as the basis for existing regional arrangements under the LOSC.\textsuperscript{22} Kimball emphasises that the rationale for regional oceans governance is aligned with the scale and linkages of oceans challenges and considers that bases for collaboration include: duties for integrated and ecosystem approaches; political collaboration; scientific and technical collaboration; and economies of scale.\textsuperscript{23} All of these are drivers for regional cooperation between PICTs.\textsuperscript{24}

Since 1947 the PICs have developed an increasingly dense series of instruments, frameworks and policies that prescribe the SW Pacific as a region; cumulatively, their reach into ABNJ governance has greatly increased in density and spatial extent.\textsuperscript{25} The PSIDS submission to the Preparatory Committee Chair on Institutional Arrangements states: “for the PSIDS, the region comprises a combination of existing political arrangements through existing regional organizations as well as a cultural region defined by common history and civilisations ...”.\textsuperscript{26}

The development of these arrangements represents hard-won political authority in a region with significant colonial powers and external interests in

\begin{footnotes}
\item[25] See Section on ‘Existing regional oceans governance arrangements’.
\item[26] PSIDS Submission (n 21).
\end{footnotes}
their marine resources, particularly fishery resources.\textsuperscript{27} Political integration and concerted efforts to deepen regionalism play important roles in strengthening the integration of oceans governance in the South West Pacific.\textsuperscript{28}

The territorial integrity of any region will depend on the delimitation of state boundaries, in accordance with the LOSC. For many PICs, these claims are incomplete, (Figure 1) despite their integral role in the determination of these States’ natural resources, and indicative of the ongoing resourcing challenges for oceans governance. Their completion is considered an urgent regional priority by PICTs in the context of the development of the ILBI.\textsuperscript{29}

### Institutional Arrangements under an ILBI

The Report of the Preparatory Committee established by UNGA Resolution 69/292 outlined the main issues on which there is a divergence of views between delegations, noting that “further discussions are required on institutional arrangements and the relationship between the institutions established under an international instrument and relevant global, regional and sectoral bodies.”\textsuperscript{30}

The relationship of an ILBI with existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies will be a key determinant of the extent to which the ILBI prevents “reducing or eroding” existing arrangements in the South West Pacific.

The Chair’s overview of the third Preparatory Committee proposed a summary of three models on how an ILBI could interact with existing arrangements. The global model places authority and functions of the ILBI at the international level, the regional model devolves authority to existing regional and sectoral bodies and the hybrid model is a combination of global and regional approaches.\textsuperscript{31}

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\textsuperscript{27} PSIDS Submission (n 8).


\textsuperscript{29} Dame Meg Taylor, ‘Pacific Ocean Commissioner says World Oceans Day is a Call to Action!’ Island Life, 8 June 2015.

\textsuperscript{30} Report of the Preparatory Committee (n 5).

\textsuperscript{31} Ambassador Duarte, ‘Chair’s overview of the third session of the Preparatory Committee—Appendix 5 Informal working groups on cross-cutting issues’; available at http://www.un.org/depts/los/biodiversity/prepcom_files/Chair_Overview.pdf; accessed 12 August 2017, p. 27.
Pacific region and their interdependent operation through existing collaboration and coordination mechanisms could be challenged under a global or hybrid model. Yet, the PSIDS highlight that a regional model that extends the remit of existing organisations would place a significant burden on their strained capacity.\textsuperscript{32} This highlights the resourcing and capacity challenges that characterize SIDS and make intra-regional cooperation essential to give effect to their duties under the LOSC.\textsuperscript{33}

The PSIDS highlighted the importance of a comprehensive overarching global framework with some regional decision-making and implementation “to adequately reflect regional and sub-regional specificities”.\textsuperscript{34} The PSIDS support a new regional BBNJ governance forum with membership extended to regional parties and all signatories to an ILBI.\textsuperscript{35} Given the advantage PICs have enjoyed from their dominant membership in their existing regional fora, the lack of reluctance to engage a new regional forum that could impinge on their influence is notable.\textsuperscript{36} However, when considered with the PSIDS demands for recognition of the special case of SIDS, and as adjacent States, together with the requirement of avoiding a disproportionate transfer of a conservation burden to SIDS, principles and approaches listed as those generating convergence among most delegations, it suggests potential for sustained influence by PICs in BBNJ governance.

**Existing Institutional Arrangements in the South-West Pacific**

Cooperation has been described as the “Achilles heel” of the existing international governance arrangements in ABNJ.\textsuperscript{37} For the SW Pacific, however, the outstanding features of the regional architecture are collective membership

\begin{itemize}
\item \textsuperscript{32} PSIDS Submission (n 21), p. 8.
\item \textsuperscript{34} PSIDS Submission (n 21), p. 2.
\item \textsuperscript{35} Ibid., p. 8.
\item \textsuperscript{36} See generally P Drankier and AG Oude Elferink ‘Summary of discussions at the symposium’ (2012) 27(2) \textit{International Journal of Marine and Coastal Law} (IJMCL) 501–514, at p. 501.
\end{itemize}
and overarching mechanisms for political cooperation and integration.\textsuperscript{38} The vast jurisdiction of the regional oceans governance framework—inclusive of ABNJ—empowers the collective diplomacy by PICs on BBNJ governance which forms part of a renewed assertiveness as stewards of a region PICs characterise as the “world’s largest ocean continent”.\textsuperscript{39}

The overarching framework for regional oceans governance in the South West Pacific has established strong coordination mechanisms to integrate between its composite regional organisations (see Fig. 2).\textsuperscript{40} Coordination and collaboration between regional organisations is established through the unique overarching regional oceans policy,\textsuperscript{41} shared oceans governance objectives set by Leaders at the Pacific Island Forum (PIF),\textsuperscript{42} and coordination through the Council of Regional Organisations of the Pacific (CROP); cooperation is also promoted through Memoranda of Understanding between organisations and regular multi-agency consultative arrangements and joint work programmes.\textsuperscript{43}

\textsuperscript{38} Mahon et al. (n 14).


\textsuperscript{43} Wright et al. (n 24) at pp.754–755. “Several CROP agencies maintain a formal bilateral Memorandum of Understanding ... The FFA and SPC, SPC and SPREP, SPC and USP maintain such agreements—all of which, whether implicitly or explicitly, refer to marine, coastal and watershed activities at the regional and national levels”. See, e.g., Collaboration on the International Waters Programme between SPREP, SPC and FFA: PA Verlaan, and
The integration is essential to fulfil international duties and prevent competition and overlap between regional organisations where aspects of their mandates for oceans governance may be shared.44

The PIF sets the regional political agenda and is guided by the CROP. The key regional organisations of the CROP with mandates that include ocean issues are: the PIF Secretariat (PIFS), which houses the Office of the Pacific Ocean Commissioner (OPOC) and supports economic and political oversight of regional natural resource management; Secretariat of the Pacific Regional Environment Program (SPREP) for environment and conservation; Forum Fisheries Agency (FFA) for advice on fisheries; and the Secretariat of the Pacific Community (SPC) and the University of the South Pacific (USP) for scientific and technical advice.

The following discussion introduces the regional institutions and constitutive instruments unique to the South West Pacific, including Regional Fisheries

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44 Wright et al. (n 24), at p. 754.
Management Organisations (RFMOs), Regional Seas Organisations (RSOs) and other Regional Organisations (ROS), as well as their subsidiary instruments, frameworks and policies, that form the existing regional framework relevant to the conservation and sustainable use of BBNJ. It also highlights the diverse range of existing Area-Based Management Tools (ABMTs) in the South West Pacific, which set a high existing standard for compatible policies for biodiversity conservation in ABNJ (Table 1).

**Pacific Islands Forum (PIF)**
The PIF was established in 1971. Their first communiqué outlined the constitutive arrangements for joint diplomatic representation and regional cooperation. In 2005 the Agreement Establishing the Pacific Islands Forum formalised the PIF as an international organisation, now with eighteen members and a Secretariat (PIFS). The Agreement Establishing the Pacific Islands Forum aims to strengthen regional cooperation and integration for common goals through the pooling of regional governance resourcing and alignment of policies. The PIF Pacific Plan for strengthening regional cooperation and integration 2005 was designed to further guide the integration and cooperation of PIF members. In 2014 the Framework for Pacific Regionalism replaced the Pacific Plan to deepen regionalism by streamlining regional objectives and improving access to regional processes.

**Council for Regional Organisations in the Pacific (CROP)**
The PIF leaders established the CROP in 1988 to improve cooperation, coordination, and collaboration between intergovernmental regional organisations. The Forum mandates the Secretary-General of the PIFS as the permanent Chair of CROP. The 2004 CROP Charter provides the constitutive arrangements. The CROP provides a functional mechanism for cooperation, integration and coordination in the region guiding the pooling and sharing of resources and expertise between CROP member agencies.

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47 PIFS (n 28).

Table 1  The South West Pacific region contains a diversity of area based management tools with high standards for biodiversity conservation

<table>
<thead>
<tr>
<th>Type of Regional Organisation</th>
<th>Relevant instruments, frameworks or policies</th>
<th>Area Based Management Tool (existing/ proposed/ potential)</th>
<th>Features, implementation opportunities/ challenges and relevance to BBNJ conservation</th>
</tr>
</thead>
</table>
| Regional Seas Organisation    | Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea Convention) | Specially Protected Areas | • Aim to protect rare, fragile, depleted, threatened or endangered biodiversity, ecosystem functions and integrity, but none established in ABNJ  
• Jurisdictional scope for ABNJ limited to high seas enclaves  
• None yet established in ABNJ |
| Pacific Regional Environment Programme (SPREP) | Shark Sanctuaries | Pacific Regional Environment Programme Strategic Plan 2011–2015 (an Action Plan under the 1993 Agreement Establishing the South Pacific Regional Environment Programme); Pacific Islands Regional Plan of Action for Sharks (RPOA Sharks) | • The RPOA Sharks was a collaboration between SPREP, FFA and SPC to provide guidance and align with WCPFC CMMs for sharks  
• The EEZs of the Republic of the Marshall Islands, Palau, Guam, the Northern Mariana Islands, FSM, |
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</tr>
</thead>
<tbody>
<tr>
<td>Tokelau, French Polynesia and the Cook Islands</td>
<td>designated Shark Sanctuaries</td>
<td>• Scope exists for compatible ABMTs in ABNJ under requirements for compatible measures between EEZs and the high seas under the WCPFC</td>
<td></td>
</tr>
<tr>
<td>Pacific Regional Environment Programme Strategic Plan 2011–2015 (an Action Plan under the 1993 Agreement Establishing the South Pacific Regional Environment Programme); Convention on the Conservation of Migratory Species of Wild Animals (CMS) CMS Memorandum</td>
<td>Whale Sanctuaries</td>
<td>• Scope exists to revive the proposal SPREP supported for a South Pacific Whale Sanctuary at the 2000 International Whale Commission</td>
<td>• Whale Sanctuaries have been announced or declared for the EEZ of American Samoa, Cook</td>
</tr>
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<tr>
<td>Area Based Management Tool</td>
<td>of Understanding for the Conservation of Cetaceans and Their Habitats in The Pacific Islands that is adopted as the Whales and Dolphins Action Plan 2013–2017</td>
<td>Islands, Fiji, French Polynesia, New Caledonia, Niue, Papua New Guinea, Samoa and Tonga</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Scope exists for compatible Sanctuaries in ABNJ as the Whale and Dolphin Action Plan 2013–2017 aims to identify and protect critical habitat and migratory pathways</td>
<td>• Only 4 PICS are signatories to the CMS yet 15 SPREP members are signatories to the CMS MOU for Pacific Island Cetaceans indicating the importance of regional instruments to the PICS</td>
<td></td>
</tr>
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</tr>
<tr>
<td>Regional Political Body Pacific Island Forum (PIF)</td>
<td>1993 Agreement Establishing the Pacific Islands Forum; Pacific Island Regional Ocean Policy; Framework for a Pacific Oceanscape</td>
<td>Marine Protected and Managed Areas</td>
<td>• Jurisdictional scope of the PIROP and FPO inclusive of the high seas enclaves and surrounding high seas&lt;br&gt;• PIROP and FPO promote MPAs and MMAs for biodiversity conservation&lt;br&gt;• Coverage of Large scale MPAs globally is dominated by LS MPAs in Pacific EEZs and Locally Managed Marine Areas (LMMAs) cover more than 12,000km² in 15 Pacific Island EEZs&lt;br&gt;• Scope exists for compatible MPAs and MMAs in ABNJ as the PIROP promotes the application of compatible policies in areas subject to their jurisdiction and surrounding waters</td>
</tr>
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| Regional Fisheries Advisory Body | 1979 FFA South Pacific Forum Fisheries Agency Convention; Regional Roadmap for Sustainable Pacific Fisheries | Zone-based and fishing type limits to fishing | • The Regional Roadmap for Sustainable Pacific Fisheries of the FFA, SPC and PNA aims to “progressively restrict fishing on the high seas by foreign fleets” and ABMTS could be part of the suite of measure to fulfil this goal.  
• This idea is supported by mention in WCPFC (CMM) 2015–01 that it is the intention of the FFA to implement zone-based limits to fishing  
• The efforts of the FFA for zone based limits to fishing are reflected in WCPFC CMM 2016–01 which limits high seas fishing effort |

The South West Pacific region contains a diversity of area based management tools with high standards for biodiversity conservation (cont.)
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<tr>
<th>Type of Regional Organisation</th>
<th>Relevant instruments, frameworks or policies</th>
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</thead>
<tbody>
<tr>
<td>Sub-regional Fisheries Organisation</td>
<td>1982 PNA Nauru Agreement Concerning Cooperation in the management of fisheries of common interest; 2008 Third Arrangement Implementing The Nauru Agreement Setting Forth Additional Terms And Conditions Of Access To The Fisheries Zones Of The Parties; A Third Arrangement Implementing The Nauru Agreement Setting Forth Additional Terms And Conditions Of Access To The Fisheries Zones Of The Parties (Koror, 16 May 2008) Palau Arrangement for the management of the Western Pacific Fishery as amended management scheme (Purse Seine Fishing Vessel Day Scheme)</td>
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<tr>
<th>Area Based Management Tool (existing/ proposed/ potential)</th>
<th>Features, implementation opportunities/ challenges and relevance to BBNJ conservation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone-based and fishing type limits to fishing</td>
<td>• The largest catches of tuna are taken in the EEZ of the PNA countries</td>
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<tr>
<td></td>
<td>• Zone-based and fishing type limits high seas fishing between 10°N to 20°S of the Western Central Pacific for those vessels licensed to fishing the EEZ of PNA member States</td>
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</table>
The South West Pacific region contains a diversity of area based management tools with high standards for biodiversity conservation (cont.)

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<tbody>
<tr>
<td>Regional Fisheries Management</td>
<td>Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific</td>
<td>Zone-based and fishing type limits to fishing</td>
<td>• WCPFC CMM 2016–01 limits high seas fishing effort by zone and type</td>
</tr>
<tr>
<td>Western and Central Pacific Fisheries Commission (WCPFC)</td>
<td>Pacific Ocean (WCPF Convention)</td>
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**Marine Sector Working Group (MSWG)**

The MSWG is an enduring coordination mechanism between regional institutions with a mandate for ocean issues. The 2004 CROP Charter specifies the establishment of working groups with guiding principles to improve understanding of cross-cutting issues toward regional policy and strategy development to benefit members of CROP organisations.49 The MSWG provides comprehensive technical advice for the development of cross-cutting policies like the Pacific Island Regional Ocean Policy (PIROP) and its subsequent companion Framework for a Pacific Oceanscape (FPO). The MSWG played a pivotal technical advisory role to PICs in the Preparatory Committee process for the ILBI.

**Pacific Islands Regional Ocean Policy (PIROP)**

In 2002, the leaders of the PIF endorsed the PIROP.50 The PIROP marked a shift from the ad hoc development of regional institutions vested with an...
oceans governance mandate. Instead the PIROP was designed with the aim of integrating the oceans governance framework for Oceania. The PIROP uses an ecosystem-based approach as the basis for coherence between regional organisations and institutions to better harmonise their roles and responsibilities for oceans governance.51 The jurisdictional scope of the PIROP encompasses ABNJ, defining the scope as

the extent of the region includes not only the area within the 200 nautical miles Exclusive Economic Zone (EEZ) boundaries circumscribing these island countries, but also the ocean and coastal areas that encompass the extent of the marine ecosystems that support the region.52

The PIROP is devised to develop regional positions and improve influence as a regional power bloc for international advocacy on ocean governance.53 A requirement under the PIROP is “to promote the application of compatible policies by those partners in areas subject to their jurisdiction and surrounding waters, and with all other countries having interests in the region”.54 However, the implementation of the PIROP has been slow and delivery on the subsequent 2010 FPO, which followed the 2005 PIROP Framework for Integrated Strategic Action, remains constrained by resourcing challenges.

Framework for a Pacific Oceanscape (FPO)
The FPO55 enshrines a recognition that, as stewards of the Pacific Islands region, PICTs’ interests transcend EEZs, directing regional institutions to explore conditions “to conserve and manage high seas resources and deep sea ecosystems for the common good”.56 The FPO was designed to catalyse action on implementation of the PIROP by addressing institutional barriers to effective regional oceans governance57 and obtaining political and financial

52 PIROP (n 41) at paras. 13–14.
53 Ibid., at para. 38.
54 Ibid., at para. 24.
55 The FPO was endorsed at the Pacific Island Forum in 2010; Pacific Island Forum Secretariat, ‘Forum Communiqué’, 41st Pacific Island Forum (Port Vila, Pacific Island Forum Secretariat, 4–5 August 2010) 1–15, at para. 68; FPO (n 41).
56 Ibid., at pp. 60–61, Action 3(c).
57 Ibid., at pp. 54, 59.
support to address technical and institutional expertise capacity challenges.\textsuperscript{58} The FPO highlights a need for novel management approaches in ABNJ, for example, establishing and managing representative networks of marine protected areas, prior environmental assessments and protecting vulnerable marine ecosystems.\textsuperscript{59} The FPO, like the PIROP, also establishes requirements for compatible measures between PICT EEZs and ABNJ. The declaration of large-scale marine protected areas endorsed as part of the Oceanscape vision has made the greatest contribution to global coverage of areas managed for conservation (Table 1).\textsuperscript{60} This sets a high existing standard for compatible policies for biodiversity conservation in ABNJ. The FPO also established the Pacific Ocean Commissioner to ensure dedicated attention to the integration of ocean governance at the regional scale,\textsuperscript{61} with a particular emphasis on biodiversity conservation.\textsuperscript{62} The Commissioner provides high-level representation and dedicated advocacy on priority ocean issues like BBNJ and facilitates regional coordination on high seas governance.\textsuperscript{63}

\textit{Office of the Pacific Ocean Commissioner (OPOC)}

The OPOC is constituted under the FPO to support the Pacific Ocean Commissioner in strengthening the policy coordination of the regional oceans governance architecture.\textsuperscript{64} The Office is mandated to improve advocacy on ocean governance at the international, regional and national governance scales toward the fulfilment of the PIROP vision. The operation of the OPOC is also guided by the decisions at the PIF and responsibilities to deliver on cross-cutting issues as a member of the MSWG.

The MSWG and the OPOC are both mandated to strengthen coordination, integration and coherence in regional oceans governance. The decision to allocate coordination for BBNJ to the OPOC provided the MSWG with support to facilitate the provision of consistent advice to Member States on BBNJ. This decision positions the OPOC, together with the MSWG, focal points from CROP

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\item[58] Power and Solofa (n 40), at p. 515.
\item[59] FPO (n 41).
\item[61] FPO (n 41) at p. 59, Action 2(a).
\item[62] Ibid., at p. 55.
\item[63] Ibid., at pp. 59–64, Actions 2(a)-(c), 2(b)-(c), 3(c), 4(b), 6(b).
\item[64] Ibid., at p. 59, Action 2(a).
\end{footnotes}
agencies as significant advisors for Member Countries in the ongoing international negotiations for an ILBI.65

**Secretariat of the Pacific Regional Environment Programme (SPREP)**
The 1993 Agreement Establishing the South Pacific Regional Environment Programme formalised SPREP as an international organisation which today has twenty-six members and a Secretariat.66 The Pacific Regional Environment Programme Strategic Plan 2011–2015 fulfils the current iteration of the requirement for an Action Plan under the 1993 Agreement Establishing the South Pacific Regional Environment Programme. To meet the goals under the Pacific Regional Environment Programme Strategic Plan 2011–2015, SPREP focuses on providing technical and advisory support to their members. This is to support delivery of the Convention on Biological Diversity Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets with the Framework for Nature Conservation and Protected Areas in the Pacific Island Region 2014–2020.67 The work of the SPREP Strategic Plan 2011–2015 is, however, largely limited to areas within national jurisdiction, with the Whales and Dolphins Action Plan 2013–201768 and Pacific Islands Regional Plan of Action for Sharks69 referring to migratory species; hence they are relevant to BBNJ (Table 1).

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65 PIFS, ‘Forum Communiqué’, 47th Pacific Island Forum (Pohnpei, PIFS, 8–10 September 2016) para. 27; “[PIF leaders] ... reaffirmed their support to the OPOC, given its central coordination role with respect to ocean governance and integrated ocean management in the region, under the Framework for a Pacific Oceanscape”.

66 Agreement Establishing the South Pacific Regional Environment Programme (SPREP) available at http://www.sprep.org/attachments/Legal/AgreementEstablishingSPREP_000.pdf; accessed 1 March 2017 Art. 2.

67 The Convention on Conservation of Nature in the South Pacific 1976 (Apia Convention) (Apia, 12 July 1976, in force 25 June 1990) PITSE 7, was administered by SPREP. The operation of the Apia Convention was suspended in 2006 as the provisions of the CBD 1992 were considered to govern the same subject matter as the Apia Convention. See also GC Quirk, ‘Does Oceania have the institutional capacity to meet marine spatial protection targets under the Convention on Biological Diversity?’ (2013) 5(3) Australian Journal of Maritime & Ocean Affairs 97–103, at p. 98.


The 1986 Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Nouméa Convention) was among the first instruments adopted under the Regional Seas Programme (RSP).\textsuperscript{70} The Nouméa Convention is administered by SPREP\textsuperscript{71} and includes provisions on protected areas\textsuperscript{72} and environmental impact assessments\textsuperscript{73} of direct relevance to the ILBI. The Nouméa Convention Area includes the high seas enclaves bordered by the PICTs in its area of responsibility.\textsuperscript{74} The small number of Member Parties to the Nouméa Convention, however, together with its limited jurisdictional scope for ABNJ, highlights the need for an ILBI to set an international framework that comprehensively supports conservation of BBNJ in the South West Pacific region.\textsuperscript{75}

**Forum Fisheries Agency (FFA)**

The FFA is a regional advisory institution constituted under the South Pacific Forum Fisheries Agency Convention 1979 (FFA Convention) to promote effective co-operation between PICS and Distant Water Fishing Nations (DWFNs) in the exploitation of wild tuna populations in PIC EEZs and the high seas.\textsuperscript{76} As early as 1976, the PICS had recognised the benefits of regional coordination and agreed to consult with one another to harmonise fisheries policy across the region and cooperate in negotiations. The language in the FFA Convention is focused on the optimum use of living marine resources and in particular highly migratory species toward securing the maximum benefits for the region.\textsuperscript{77}

It is important to note with regard to the living resources of ABNJ that with respect to highly migratory stocks the LOSC already provides conditional freedom of fishing on the high seas in Article 116. This is on the basis of existing rights and duties of coastal States under Articles 63 and 64, which confer a duty

\textsuperscript{70} Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Nouméa Convention) (Nouméa, 24 November 1986, in force 22 August 1990) PITSE 15; The LOSC refers specifically to the United Nations Environment Programme (UNEP) in relation to its competence and expertise in the field of the protection and preservation of the marine environment. From 1974 UNEP introduced a global program for regional implementation of oceans governance directed under UNEP’s RSP.

\textsuperscript{71} Nouméa Convention Art. 2.

\textsuperscript{72} Ibid., at Art. 14.

\textsuperscript{73} Ibid., at Art. 16.

\textsuperscript{74} Ibid., at Art. 2(a)(ii).

\textsuperscript{75} Druel et al. (n 12), at p. 75.

\textsuperscript{76} South Pacific Forum Fisheries Agency Convention (Honiara, 10 July 1979; in force 9 August 1979) PITSE 2. Arts. III, V.

\textsuperscript{77} Ibid., at Art. III.
Cooperation, Competence and Coherence


to cooperate “either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks.” Article 63 deals specifically with the case of the area beyond and adjacent to the EEZ of coastal States. Goodman (2017) suggests that Article 116 could be considered as establishing preferential rights for coastal States regarding highly migratory fish stocks by imposing a duty on DWFNs fishing in the high seas to cooperate with adjacent coastal states.78 Today the Regional Roadmap for Sustainable Pacific Fisheries sets and reports on clear goals for oceanic and coastal fisheries and was endorsed by leaders at the PIF.79 The FFA, Parties to the Nauru Agreement (PNA) and SPC work together to fulfil its objectives, including the strategy to “progressively restrict fishing on the high seas by foreign fleets.”80

Since the ratification of the FFA Convention, the FFA members have worked together in the Multi-lateral High Level Conference toward the establishment of the Western Central Pacific Fisheries Commission (WCPFC), a Commission which embodies a significantly more progressive mandate aligned with the provisions of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA).81

Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean

The Western Central Pacific Fisheries Commission (WCPFC) is established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention) to conserve and manage tuna and billfish populations in the Convention Area that includes both PICT EEZs and a vast region of the high

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78 Goodman (n 33), at p. 218.  
seas. Like the FSA, the WCPF Convention contains a requirement for compatible measures between EEZs and the high seas.83

Solidarity between FFA members on the issue of high seas governance at the WCPFC culminated in a powerful conservation and management measure (CMM) to address overfishing. It sets a high standard for the sustainable use of target tuna populations, caps fishing effort at historical levels, and closes high seas enclaves to fishing, thereby driving vessels into the regulated areas of PICT EEZs (CMM 2008–01).84 The final measure was substantially weakened by DWFN members of the WCPFC. Given this context, it is also relevant to consider the role of a sub-regional institution, the PNA, in responding to regional aspirations to restrict high seas fishing by foreign fleets.

**Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest**

The PNA was established in 1982 to set multilateral standards for access to fish in the EEZs of member States.85 PNA members are home to the largest tuna catches among PICTs and aimed to secure greater economic benefits from tuna exploitation by coordinating and harmonising conditions for access to their EEZs. The 1992 PNA Palau Arrangement was a sub-regional mechanism to tackle overfishing of tuna and enhance access revenue by limiting vessel numbers.86

The novel PNA arrangement sets unique licensing conditions for exploitation in member States’ EEZs and since 2007 it uses a transferable rights-based

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83 FSA Art. 7; WCPFC Convention Art. 8.
84 Conservation and Management Measure (CMM) 2008–01, ‘Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean’ 5th session, WCPFC Commission Meeting (Busan, WCPFC, 8–12 December 2008); now replaced by CMM 2016–01.
management scheme to limit fishing days. The 2008 iteration of the PNA prevented purse seine vessels licensed by PNA countries from fishing the high seas between 10°N to 20°S of the Western Central Pacific. This was a substantial extension to requirements under CMM 2008–01, as the majority of the fisheries catch is taken by purse seine vessels under PNA licences, and this measure effectively closed 4.5 million km² of the high seas to the fishery. The contemporary CMM 2016–01 for the most valuable tuna species relate to effort reduction and acknowledge the PNA effort and zone-based limits on purse seine fishing and the FFA’s right to implement zone-based limits on fishing.

Secretariat of the Pacific Community (SPC)

In 1947 the Pacific Community (formerly the South Pacific Commission until 1997 and retaining the acronym SPC) was constituted under the Canberra Agreement (Agreement establishing the South Pacific Commission) and is the principal scientific and technical organisation for the Pacific region. SPC facilitates coordination with research bodies, organisations, States with common research interests and the United Nations. The Pacific Community Strategic Plan 2016–2020 characterises the scientific and technical services of the SPC as regional public goods. The SPC’s provision of public goods important to BBNJ relates to oceanic fisheries management, environmental conservation, and expertise in the regulation of deep sea minerals, maritime boundary delimitation, tuna and plant genetic resources.

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89 A Ride, ‘PNA Announces Date For Closure Of 4.5 Million Sq Km High Seas Areas To Purse Seine Fishing’ FFA News, 29 April 2010.
91 Canberra Agreement (Agreement establishing the South Pacific Commission) (Canberra, 6 February 1947, in force 29 July 1948) PITSE 2.
92 Ibid., at Arts. IV, XV.
Ensuring Existing South West Pacific Institutional Arrangements Are Not Undermined

To prevent an ILBI undermining existing arrangements, the scope of “existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies” 94 is an issue of particular importance to the South West Pacific region. A number of unique ROs and soft law regimes are important components of and contribute to maintaining a coherent oceans governance architecture for the South West Pacific region. This section explores the competence of these ROs for the protection and preservation of the marine environment. The importance of soft law regimes in the South West Pacific region highlights the significance of scholarship on soft law instruments 95 in the context of the development of the ILBI. It is contended that their inclusion in the scope of existing arrangements is important to the developing country context of the South West Pacific in which these soft law instruments have a strength latent in the more formal architecture of developed countries. Finally, the role of cooperation between coastal States adjacent to ABNJ is discussed in relation to ensuring that the standards under an ILBI are not lower than those under PIC EEZs.

The competence of regional organisations is first established in the context of the duty under Article 197 of the LOSC to cooperate on a global or regional basis to protect and preserve the marine environment. Article 197 stipulates that States are to cooperate directly or through competent international organisations. By specifying the role of international organisations, the LOSC promotes an institutional approach to the protection and preservation of the marine environment. The competence of organisations to fulfil the general obligation to protect and preserve the marine environment is dependent on the interpretation of the (textual) element of Article 197 ‘through competent international organizations’. Nordquist considers the meaning of this element in its plural expression “depends upon time, place and circumstance” and also extends the scope of organisations beyond that of the International Maritime Organization (IMO) to cases in which the basic instruments of established regional arrangements indicate their relationship and “the extent to which the regional arrangement is the “competent international organization”

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94 Report of the Preparatory Committee (n 5).
for that particular region”. The UNCLOS III Drafting Committee determined the qualification of the term ‘competent international organisations’ in Part XII with terms ‘global and regional’ to be unnecessary as “[i]n principle, ...the term ‘competent international organisations’ is sufficient to refer to global organizations or to both global and other organisations”.

Prominent among these competent international organisations at the regional scale are the RFMOS specified under the FSA (WCPFC) and RSOS under UNEP’s RSP (SPREP) that operate as regional components of global programmes. Hinds (2003) distinguishes these competent international organisations operating at the regional scale as part of global programmes from those ROs which belong to Member States of regions. These Pacific ROs, (the PIF, SPC, FFA) are formally established as International Organisations. In the 1989 Law of the Sea report on the protection and preservation of the marine environment the UNSG envisaged that ROs would perform a role in elaborating technical rules and regulations in the implementation of the LOSC alongside the IMO and RSOS. Furthermore, Article 237 contains provisions relating to the relationship between obligations under Part XII on the preservation and protection of the marine environment and those under existing and future agreements which “should be carried out in a manner consistent with the general principles and objectives of this Convention”. This is of specific relevance to the South West Pacific region for which many of their ROs’ constitutive instruments pre-date the LOSC: the SPC (1947), PIF (1971) and FFA (1979). On this basis, it can be argued that the existing regional organisations of the South West Pacific qualify as performing the role of ‘competent international organisations’. For the ILBI to “not compromise the significant advances and interests of the Pacific region”, this understanding of the Pacific ROs as competent regional organisations is of fundamental importance for PICs.

The PSIDS Submission to the Chair stated: “The new instrument should not compromise the significant advances and interests of the Pacific region, including fisheries-related gains in existing frameworks” and specifically that “Standards applied in ABNJ should not be lower than those from EEZs.” The
PSIDS found guidance from the ITLOS Case 21 Advisory Opinion on the issue of their rights as adjacent States in relation to the duty to cooperate with respect to highly migratory stocks. The PSIDS in their submission suggest that specific consideration be accorded to PICs under an ILBI. The PSIDS envisage that this specific consideration could operate similarly to the application of the ITLOS Case 21 Advisory Opinion on the duty and right to cooperate between adjacent States established under LOSC Article 63(2), "the cooperation regime" for highly migratory fish stocks.\(^{102}\) In their Submission to the Preparatory Committee Chair, the PSIDS suggest that a cooperation regime for adjacent States under an ILBI could not just apply to States where stocks occur within the EEZ of two or more coastal stocks, as per the ITLOS opinion, but also to coastal States adjacent to ABNJ.\(^{103}\) The PSIDS submission also can be read as a recommendation for the extension of the “cooperation regime” for the conservation of highly migratory fish stocks to the conservation and conduct of all activities in ABNJ. This innovative interpretation could provide PICs with the potential for participation in decision-making to prevent the application of standards in ABNJ lower than those in PIC EEZs.

The functional interdependence created by the integration and collaboration between existing regional arrangements (with their subsidiary instruments, policies and frameworks) demands an inclusive and encompassing description under an ILBI. This is needed to adequately accommodate the full range of existing BBNJ governance arrangements for the South West Pacific region and ensure that existing arrangements are not undermined. This does not mean that a devolved regional approach would be appropriate necessarily. Rather, an ILBI should: address the existing legal gaps for BBNJ governance; ensure that the institutional arrangements under a global, hybrid or regional model adequately encompass existing arrangements in the South West Pacific; and not lower existing regional standards for conservation. In summary, a sufficiently inclusive description of existing arrangements is needed so that the integrated regional architecture for oceans governance is not undermined.

Outstanding questions will remain for the intergovernmental conference regarding the competence of regional organisations and legitimacy of existing instruments, frameworks and policies.


\(^{103}\) PSIDS Submission (n 8), pp. 4–5.
Fostering Coherence with an ILBI: A Role for Oceans Governance Principles

Implementation of the LOSC is fragmented—by sector, by region and within regions—and forms a complex global oceans governance architecture, especially in ABNJ. The systematic integration of the existing regional ocean governance framework for BBNJ in the South West Pacific highlights the particular importance for this region of not undermining its interdependent functioning in the development of an ILBI.

Existing regional coordination mechanisms, especially those of the CROP MSWG and OPOC, enable regional cooperation in the conservation and sustainable use of BBNJ. These dedicated regional mechanisms for cooperation and coordination play an important role in institutional integration and operate in collective intra- and extra-regional diplomacy by PICs toward the development of an ILBI. This is illustrated by their facilitation of coordinated regional advice to the PSIDS, contributing to the PSIDS orchestration of joint interventions and submissions to the Chair in the Preparatory Committee process.

A principles-based approach is considered of value to provide a consolidating framework to build consensus for coherence of the disparate elements of the package deal in the development of the ILBI. In 1972, Principle 21 of the Declaration of the United Nations Conference on the Human Environment (UNCED) challenged States to acknowledge, adapt and evolve to prevent environmental damage within and beyond national jurisdiction. Subsequently the body of international environmental law has evolved important new principles with application to ABNJ. Rose and Milligan (2010) consider compatible and consistent normative frameworks for oceans governance to be essential to effective coordination and integration at the regional level. Tanaka identifies the valuable role performed by oceans governance principles in developing normative frameworks for integration in environmental governance, in guiding the interpretation of conflicting rules, and in developing new law.

Although many of these principles are already binding under international and

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customary law, their articulation is still regarded as important in building a unified approach to the development of an ILBI.  

An analysis of the coherence of the existing law and policy framework in the South West Pacific against a set of the IUCN recommended principles for high seas governance reveals that the South West Pacific regional oceans governance framework collectively enshrines these principles (Table 2).


110 The IUCN-recommended principles for high seas governance were first developed following D Freestone’s 2007 keynote address on eight “General Principles of Modern Ocean Governance” to the IUCN Workshop on High Seas Governance for the 21st Century in which his list of principles was identified as possible elements of a new global instrument: see D Freestone, KM Gjerde, RG Rayfuse, and D VanderZwaag, ‘Current Legal Developments: International Union for The Conservation of Nature’ (2008) 23 The International Journal of Marine and Coastal Law at pp. 362–363; Freestone (n 109) at pp. 191–204; Freestone (n 108). The principles were subsequently endorsed by the Global Forum on Oceans, Coasts, and Islands: B Cicin-Sain and D Freestone, Global Forum on Oceans, Coasts, and Islands, Moving toward Ecosystem-Based Management and Integrated Coastal and Ocean Management in Marine Areas Beyond National Jurisdiction, Report from the Strategic Planning Workshop on Global Ocean Issues in Marine Areas beyond National Jurisdiction in the Context of Climate Change (Executive Summary), 23–25 January 2008 Nice, France), pp. 4–5, available at https://globaleanforumdotcom.files.wordpress.com/2013/05/high-seas-pb-april9–2.pdf; accessed 1 September 2017. The IUCN further developed the list to enshrine ten IUCN-recommended principles for high seas governance, IUCN, ‘Ten Principles for High Seas Governance’, available at https://cmsdata.iucn.org/downloads/10_principles_for_high_seas_governance___final.pdf; accessed 1 September 2017.

111 Ibid.; see also Freestone, 2009 (n 108); Oude Elferink (n 109); RA Barnes, ‘Consolidating governance principles for areas beyond national jurisdiction’ (2012) 27(2) The International Journal of Marine and Coastal Law 261–290; Barnes (n 109) at pp. 583–619.

112 The analysis of the principles for high seas governance undertaken on the instruments and policies listed in Table 2 is preliminary in that it did not extend to an analysis of the development of the principles by subsequent practice.
The principles support further coherence in the regional oceans governance framework, functioning to maintain consistency between diverse institutional arrangements and their subsidiary instruments, frameworks and policies. For the South West Pacific, the inclusion of the principles in an ILBI would provide a basis to foster coherence and forge constructive links between the existing oceans governance framework in the South West Pacific and the institutional arrangements under an ILBI.

The IUCN principles perform an important role in setting common standards for the equitable participation in and regulation of activities in ABNJ between South West Pacific regional organisations in an area of common concern.113,114 As noted by Barnes (2016), principles promote “substantive integration by shaping the conduct of States, RFMOs and other institutions with mandates in ABNJ”.115 The inclusion of most of the IUCN principles in the Report of the Preparatory Committee that generated convergence among delegations holds promise for their inclusion under an ILBI. The recommendation of an integrated approach under an ILBI in the Report from the Preparatory Committee to the UNGA provides impetus to consider the inclusion of all the IUCN principles to promote coherence with the existing regional architecture.

Conclusion

The diverse instruments and institutions governing the South West Pacific create a dense regional oceans governance framework. The PIF and CROP support integration across the regional governance architecture, and the unique coordination mechanisms provided by the MSWG and OPOC better enable collaboration. Given that the existing regional oceans governance architecture facilitates cooperation at the regional level, it will be important for the development of the ILBI to adopt a sufficiently inclusive description to encompass the diverse range of governance arrangements in the region, including soft law regimes, so as not to undermine existing regional approaches.

In the South West Pacific, an integrated approach is a regional priority for biodiversity conservation and sustainable use. This is underscored by the PIROP, which aims to strengthen the framework for integrated oceans governance in the region, inclusive of ABNJ. The existing regional oceans governance

113 See for example Houghton (n 104), at p. 122.
114 But see Barnes (n 111), at p. 285.
115 Barnes (n 109), at p. 595.
<table>
<thead>
<tr>
<th>Instrument</th>
<th>(a) Conditional freedom on high seas</th>
<th>(b) Protection and preservation of marine env.</th>
<th>(c) International cooperation</th>
<th>(d) Science-based approach</th>
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**Table 2** The IUCN principles for high seas governance are reflected in a diverse range of South West Pacific Regional Organisations, instruments, frameworks and policies.
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TABLE 2  The IUCN principles for high seas governance are reflected in a diverse range of South West Pacific Regional Organisations, instruments, frameworks and policies (cont.)

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Notes:
Regional instruments: Agreement Establishing the Pacific Islands Forum (PIF Agreement); Framework for Pacific Regionalism; Pacific Islands Regional Ocean Policy; Framework for a Pacific Oceanscape; Council of Regional Organisations of the Pacific Charter (CROP Charter); Agreement Establishing the South Pacific Regional Environment Programme (SPREP Agreement); Pacific Regional Environmental Programme Strategic Plan 2011–2015 (PREP Strategic Plan); Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea Convention); South Pacific Forum Fisheries Agency Convention (FFA Convention); Nauru Agreement Concerning Cooperation in the management of fisheries of common interest (Nauru Agreement); Convention on the Conservation and Management of High Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention); Agreement establishing the South Pacific Commission (Canberra Agreement).

Principles: (a) Conditional freedom of activity on the high seas; (b) Protection and preservation of the marine environment; (c) International cooperation; (d) Science-based approach to management; (e) Public availability of information; (f) Transparent and open decision making processes; (g) Precautionary approach; (h) Ecosystem approach; (i) Sustainable and equitable use; (j) Responsibility of States as stewards of the global marine environment.
### Frameworks and Instruments

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<tr>
<td>Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea Convention)</td>
<td>Art 10(1), 13(3), Art 21, Art 5(c), 6</td>
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<tr>
<td>South Pacific Commission (Canberra Agreement)</td>
<td>Preamble, Art 5, 7(2), 8</td>
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### Principles

- Conditional freedom of activity on the high seas
- Protection and preservation of the marine environment
- International cooperation
- Science-based approach to management
- Public availability of information
- Transparent and open decision making processes
- Precautionary approach
- Ecosystem approach
- Sustainable and equitable use
- Responsibility of States as stewards of the global marine environment

The framework enshrines and collectively implements the [IUCN](https://www.iucn.org) recommended principles for high seas governance, promoting coherence within the region. The inclusion of these principles in an *ILBI* could provide support for coherence with the existing regional ocean governance framework. In the South West Pacific, the high standards for biodiversity conservation under a diverse and often novel range of ABMTs also set a high existing standard for compatible policies for biodiversity conservation under an *ILBI* (Table 1).

The inclusion of the integrated approach under the general principles and approaches in the Report of the Preparatory Committee creates a substantial opportunity to achieve coherence between an *ILBI* and existing regional arrangements. However, the lack of consensus between delegations on the relationship of the *ILBI* with existing instruments suggests that questions remain as to whether the development of the *ILBI* will provide sufficient latitude to encompass, devolve authority to, or harmonise with existing arrangements. In addition to the uncertainty over the meaning of “not undermine”, there is lack of clarity as to what the scope of “existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies” would...

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116 Report of the Preparatory Committee (n 5), at pp. 20–21.
be. This will be an important issue to address in order to uphold the coherence and interdependent functioning of the SW Pacific regional oceans governance framework. The existing overarching mechanisms for collaboration and coordination in the region will form an important ongoing role for collective diplomacy by the PSIDS in addressing this question.