



*FEDERATED STATES OF
MICRONESIA*

**Capacity Assessment on Access and Benefit
Sharing (ABS) and Protection of Traditional
Knowledge (TK) relating to Biodiversity**



Prepared by
Pacific Environment Consultants Ltd.

for

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FSM DEPARTMENT OF ECONOMIC AFFAIRS

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Cover Photo is provided by the FSM Visitors Bureau and depicts a traditional pathway into the forest in Yap State, FSM.

Executive Summary

The Convention on Biological Diversity (CBD) was ratified by the Federated States of Micronesia (FSM) Congress in 1994 as part of its commitments to the Earth Summit in 1992 and national efforts to promoting the conservation and sustainable use of biodiversity.

Since its ratification of the CBD, the FSM has developed and endorsed its National Biodiversity Strategy and Action Plan (NBSAP) in March 2002 as the blueprint for national actions to promote the conservation and sustainable use of biodiversity, and the equitable sharing of benefits from the use of genetic resources. Included within the NBSAP are themes on access and benefit sharing from the use of genetic resources (ABS) and traditional knowledge, practices and innovation (TK).

The phase two for the NBSAP development approved by the Global Environment Facility in 2003 and managed by UNDP provided the FSM National Government with the opportunity to address some of the capacity needs for priority areas within the NBSAP. The report of this consultancy is the result of the consultations undertaken to assess and identify the capacity needs for addressing TK and ABS within the FSM.

Based on the wide consultations at the State and National level through informal interviews, questionnaire and workshops, four outputs were produced as required within the contract. These included a capacity needs assessment and a subsequent capacity building action plan, a review of TK and ABS existing policy measures with a proposed elements for a ABS national legal framework.

In summary, the capacity assessment showed traditional knowledge, practices and innovation and an integral part of life in the FSM. TK is still used throughout the country but more so in the outer islands where it is still more dependent on nature to support the livelihood. The urban centers of the main islands in each of the four States show evidence that TK is slowly receding in its prominence as people spend less time in traditional gatherings and cultural activities which was amongst the main forms of transferring traditional knowledge. The Yap ecoforestry program, the Pohnpei Watershed Management Project, and the Island Food Communities traditional plant and food preparation project are a few examples of initiatives currently integrating TK to promote the conservation and sustainable use of biodiversity.

The assessment identified the absence of appropriate legal instruments to effectively facilitate access and benefit sharing from the use of TK and genetic resources. Additionally, the absence of a central coordinating agency or national process facilitating access and benefit sharing has contributed to the loss of considerable biological and genetic material outside of the FSM without appropriate much benefit to the people and Government of the FSM. This lack of central agency and process has seen several Departments both at the national and State level issuing research permits with little or no benefit sharing arrangements or monitoring of what is taken out of the FSM.

Throughout the consultations, there was positive enthusiasm amongst all the local stakeholders and government officials as a priority to put in place legal instruments for ABS and TK, with capacity building plans for the government departments and communities to support the implementation of the instruments.

The identified capacity needs within the FSM centered around improving awareness of the general public to effectively participate in the development and implementation of any policies. For the State and National Government Departments, the focus of capacity building is on improving technical skills for reviewing applications, negotiating access and benefit sharing arrangements, and the management of TK, biological and genetic material movement. There is also an important need to build the capacity of local institutions such as the College of Micronesia as a center of biodiversity for research and depository for information and specimens in close consultation with the regulating Environmental and Natural Resource Use agencies in each State. The Museum subsequently is identified as the center of traditional knowledge preservation through close collaboration with the Office of Historic and Cultural Preservation which can regulate the collection and documentation of TK.

The final output of the consultancy included the preparation of the Elements for a National ABS legal framework which provides the policy guidance for future ABS and TK work within the FSM. The ABS framework as proposed emphasizes the importance of having a lead agency working with a National committee to facilitate access and benefit sharing. Within the process, the National Government, through the Department of Economic Affairs is the main coordinating agency for issuance of permits for survey and export of material, as well as monitoring the movement and use of biological and genetic material exported. The State governments are responsible for facilitating consultations with local stakeholders to obtain prior informed consent, and benefit sharing arrangements, as well as monitoring the activities of the researchers within the State. The elements emphasizes the importance of having a agreements that includes protection of traditional knowledge, practices and innovations as intellectual property rights and equitable benefit sharing mechanisms from the utilization of TK and genetic resource.

In conclusion, the consultancy report highlights the existing capacity within the FSM which should be strengthened and identifying areas in need of capacity building if the FSM is to fully and effectively respect and preserve its traditional knowledge, practices and innovation, and facilitate a transparent process for access and benefit sharing from the use of genetic resources.

List of Acronyms

ABS	Access and Benefit Sharing
CBD	Convention on Biological Diversity
COM	College of Micronesia
COP	Conference of the Parties
CSP	Conservation Society of Pohnpei
DEA	Department of Economic Affairs
EIA	Environmental Impact Assessment
EEZ	Exclusive Economic Zone
EPA	Environmental Protection Agency
FSM	Federated States of Micronesia
NCI	National Cancer Institute
NBSAP	National Biodiversity Strategy and Action Plan
PECL	Pacific Environment Consultants Ltd
SPC	Secretariat for the Pacific Community
SPREP	South Pacific Regional Environment Programme
TK	Traditional Knowledge
TNC	The Nature Conservancy
TTPI	Trust Territory of the Pacific Islands
USA	United States of America
USP	University of the South Pacific
WWF	World Wide Fund for Nature

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1. Introduction

The Federated States of Micronesia (FSM), a former United Nations Trust Territory of the Pacific Islands (TTPI) and administered by the United States of America, gained independence in 1991. FSM is made up of four island states (Yap, Pohnpei, Chuuk and Kosrae) which function as semi-autonomous governments, but in collaboration with the FSM National Government that coordinates affairs of national significance.

The FSM has a total landmass of 438m² from over 607 islands and covering over 1.6 million km² of declared Exclusive Economic Zone (EEZ). The archipelago is spread out on the north of the equator between 1.00-9.9⁰N and 138.2-162.6⁰E. The northeast trade belt heavily influences the tropical weather of the FSM with prevailing trade winds from December to April and weaker winds and doldrums from May to November. Rainfall can be extremely high on the high islands of Kosrae, Chuuk and Pohnpei where it can reach up to 1016cm annually.

The population of the FSM in the 2000 census totaled 107,000, which is spread over the four states with Pohnpei where the national capital is located, and Chuuk having the highest populations. The majority of the population is indigenous with the main languages being English and each state language. Micronesian society is based on extended families, which preside over the customary land tenure system which varies between the states. In Pohnpei and Kosrae, land is either privately or state owned, while in Chuuk, land is either privately owned or acquired through inheritance, gift or freehold purchase. In Yap, land and aquatic areas are owned or managed by individual estates and usage is subject to traditional control. With the land tenure systems where traditional land cannot be sold to non-FSM citizens, decisions on the use of the land and aquatic resources depend on the traditional ownership and controls.

The economy of the FSM is largely dependent on funding from the Compact of Free Association with the USA. This provides most of the funding for government services with commercial tuna fishery being the second highest revenue earner. Tourism is small with the majority of tourist's being SCUBA divers and for coming to the excellent diving sites such as the World War II dive wrecks and some of the best coral reefs ecosystems in the world.

The management of environmental issues within the FSM is shared between the National and State governments. The National Government coordinates affairs of national significance such as Foreign Affairs relations, and management of resources beyond the States territorial waters. In terms of implementing environmental programmes, it only provides guidance and technical assistance to the states when needed on matters related to planning, economic development, natural resources, fisheries, and the environment. The State government's primary responsibilities include land management, natural resource management and development planning.

2. Methodology

The methodology utilized to compile the information and facilitate consultations to produce the outputs identified included:

1. Literature review of existing information including decisions and guidelines produced as part of the activities of the CBD;
2. Literature review of existing information including assessments, plans and previous work undertaken in the FSM addressing the related outputs;
3. A questionnaire for local stakeholders on issues and views relating to TK and ABS;
4. State and national consultations workshops for public awareness and information gathering; and
5. Report writing with review by the National and State Biodiversity Committee's and other local stakeholders.

The literature review was undertaken utilizing the various reports produced by the FSM for the preparation of the NBSAP, reports of regional and international meetings produced by organizations including the South Pacific Regional Environment Programme (SPREP), the Secretariat for the Pacific Community (SPC), the Convention on Biological Diversity (CBD) Secretariat and others. Consultations were also undertaken with the NBSAP Coordinator to obtain additional information on issues relating to ABS and TK that have been done within the FSM. A comprehensive internet search was also done to obtain the latest information on the CBD's ABS Expert Panel and the TK Ad-hoc Working group.

At the completion of the literature review, meetings were conducted with some of the ABS and TK practitioners at some of the regional and national agencies addressing ABS issues in the Pacific such as SPREP, the SPC, and Samoan Government. Following this, a draft questionnaire was developed to obtain additional information on ABS and TK from the practitioners within the FSM. The draft was finalized after consultations with the NBSAP Project Manager and the NBSAP Committee before circulation to FSM stakeholders. The questionnaires were explained further as part of the State Workshops.

Three State workshops were conducted in Chuuk, Kosrae and Pohnpei with State officials to promote understanding and discuss possible policy measures and capacity building issues relating to ABS and TK. Due to the cyclone devastation on Yap during the consultancy visit, a State workshop was cancelled, but the questionnaire responses were used as input from people of Yap State.

At the completion of the State workshops, a one day National workshop was conducted in Pohnpei to present a collation in the form of draft elements for a national ABS framework, a draft capacity building assessment for ABS and TK, and a draft capacity building action plan for ABS and TK. The national workshop provided the opportunity for the National Government officials with the opportunity to contribute to the process.

The final phase of the consultancy included the preparation of the report with a draft circulated amongst the State, National and NGO officials before finalization at a National workshop.

3. Background

The Government of the Federated States of Micronesia (FSM) through Global Environment Facility's Enabling Activity window received financial assistance as Add-on for the development of the National Biodiversity Strategy and Action Plan (NBSAP). The funding enabled the FSM Government to contract Pacific Environment Consultants Ltd of Samoa to produce the following reports:

1. A comprehensive report relating to the current status of the capacity needs of key stakeholders in FSM of issues and developments of the convention on biological diversity's articles on access and benefit sharing and the protection of traditional knowledge innovations and practices and recommending appropriate actions.
2. A statement stating national policies, measures and management plans for the sustainable management of access and benefit sharing and the protection of traditional knowledge, practices and innovations on the conservation and use of biological resources.
3. A capacity building action plan to promote the preservation of traditional knowledge, practices and innovations relevant to the conservation and use of biological resources in FSM.
4. Elements of a legal framework for ABS in FSM with a focus on intellectual property are identified based on national consultations and a process defined to complete a framework.

The consultancy is part of the Add-on funding activities to assess the capacity needs for the implementation of the NBSAP.

3.1 Capacity Development

Capacity building has been defined as the process by which individuals, institutions and systems increase their individual and collective abilities, (a) to perform core functions, resolve problems, and define and achieve objectives, and (b) to understand and deal with their development needs within a broad context and in a sustainable manner.

Capacity development is a process of change that aims to induce various actors to adopt new responsibilities, skills, behaviors, values, and policies. Managing change, and with it changing capacity, in an effective manner is thus imperative for sustainable development of organizations and societies.

Capacity building intervention is usually gauged within the following groupings:

- At the *individual* level, capacity building refers to the process of changing attitudes and behaviors, through imparting knowledge and developing skills through training. However it also involves learning by doing, participation, ownership, and processes

associated with increasing performance through changes in management, motivation, morale, and levels of accountability and responsibility.

- Capacity building at the *organizational* level focuses on overall performance and functioning capabilities, such as developing mandates, tools, guidelines and information management systems for the ability of the organization to adapt to change. It aims to develop its constituent individuals and groups, as well as its relationship to the outside.
- At the *systemic* level capacity building is concerned with the creation of “enabling environments”, i.e. the overall policy, economic, regulatory, and accountability frameworks within which institutions and individuals operate. Relationships and processes between institutions, both formal and informal, as well as their mandates, are important.

Capacity building opportunities can generally be categorized as creating new opportunities, mobilizing or redeploying existing capacity, and enhancing existing capacities

Therefore, to identify the capacity needs and develop a capacity building plan for traditional knowledge and access and benefit sharing from the use of genetic resources within the FSM, the report is framed in the context on the three components of capacity development.

3.2 Issues

To identify the issues that are to be assessed in terms of capacity needs, a clear breakdown was needed on the provisions of the CBD relating to the access and benefit sharing from the use of genetic resources and as well as the preservation and traditional knowledge, practices and innovation relevant to the conservation and sustainable use of biodiversity

For **traditional knowledge** Article 8j of the CBD states that:

Each contracting Party shall, as far as possible and as appropriate:

Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices

While Article 10c states that:

Promote and support customary use of biological resources in accordance with traditional practices that are compatible with conservation and sustainable use of conservation

Through the Ad-hoc Working Group on Traditional Knowledge established by the CBD Conference of the Parties (COP), guidelines were developed to interpret the articles in terms of actions at the national, regional and global level. As such, the following four

areas were identified as the central components for actions addressing traditional knowledge, practices and innovation:

- Ensure the effective participation of indigenous and local communities in decision-making and policy planning;
- Respect, preserve and maintain traditional knowledge relevant to the conservation and sustainable use of biological diversity;
- Promote wider application of traditional knowledge, practices and innovations with the approval and involvement of local communities concerned
- Encourage the equitable sharing of the benefits arising from the utilization of such traditional knowledge

Articles 15 of the Convention provide a framework to **facilitate access and benefit sharing** from the utilization of genetic resources. These include the need to have a National legal regime for access that is based on obtaining prior informed consent from the country of origin and specific stakeholders as well as having mutually agreed terms on the equitable sharing of benefits from the use of genetic material. Associated Articles also include provisions for action relating to genetic resources such as access to, and transfer of technology (Article 16), exchange of information (Article 17), technical and scientific cooperation (Article 18), the handling of biotechnology and distribution of its benefits (Article 19) paragraphs 1 and 2), and financial resources and financial mechanism (Articles 20 and 21).

To elaborate on the framework as set out in the Convention, The CBD Conference of the Parties (COP) established an Expert Panel on ABS to provide guidance for the Parties on the implementation of the relevant articles of the Convention relating to ABS issues

The Expert Panel has since produced the Bonn guidelines which have been revised and endorsed by the COP as the general guideline for issues that Parties can take into consideration when developing and implementing strategies and action plans for ABS in the National Biodiversity Strategy and Action Plan (NBSAP). Within these guidelines, some important issues are identified for actions to be addressed at the national level such as

- Development of a national measure for ABS which also support the protection of traditional knowledge, practices and innovation
- Development of relevant prior informed consent process that is inclusive to all stakeholders, and having the relevant information for decision making
- Development of suitable mutually agreed terms and conditions which can be used for negotiations on benefit sharing from the use of genetic resources
- Development of national capability to conduct, inventory, assess, and monitor biodiversity, and if possible conduct bioprospecting

3.3 FSM NBSAP

Whilst the CBD through its working groups and expert panels were developing the guidelines and other modalities, FSM had produced through a widely consultative and participatory process, its NBSAP. The NBSAP undertook a comprehensive stocktaking and assessment process which resulted in the development of strategies and actions plans

that included ones for access and benefit sharing and protection of traditional knowledge, practices and innovations. These are;

- **Theme 3: Genetic resources:** identifies the strategy to develop national measures to facilitate access to and benefits derived from the utilization of genetic resources while recognizing the ownership of traditional knowledge, and resources by the local stakeholders.
- **Theme 9: Resource Owners:** identifies the strategy for the empowerment of traditional resource owners and communities to fully participate in decision-making processes as well as the protection and preservation of traditional knowledge, practices and innovations relevant to the conservation and sustainable use of biodiversity.

Additionally,

- *Capacity building* issues relating to genetic resources and traditional knowledge are also mentioned in **Theme 8 on Human Resources and Institutional Development**, and
- *Legislative frameworks and national coordination* issues are identified in the action plan in **Theme 10 on Mainstreaming**.

This report supports and expands on actions and activities relating to capacity building identified in the NBSAP.

4. Capacity Needs Assessment

Output 1: A comprehensive report relating to the current status of the capacity needs of key stakeholders in FSM of issues and developments of the Convention on biological diversity's articles on access and benefit sharing and the protection of traditional knowledge innovations and practices and recommending appropriate actions

4.1 Capacity Assessment

The capacity assessment was conducted through a literature review of existing national reports such as the National Biodiversity Strategy and Action Plan (NBSAP), Economic Summit Reports, National Assessment Report for the World Summit on Sustainable Development, and reports from previous access and benefit sharing (ABS) national and regional workshop where information on the FSM were produced. Additionally, a series of State workshops were conducted and questionnaires were distributed to stakeholders in each State. Informal discussions were also held.

The local stakeholders identified in the report are:

- Local communities, traditional leaders, traditional healers, traditional knowledge and practices experts
- Local and State Governments
- National Government

- Civil Society organizations

From the consultations and broader review undertaken, the following issues emerged as important ones in providing context to the capacity needs of key stakeholders within the FSM on access and benefit sharing and the protection of traditional knowledge in the context of the CBD.

4.1.1 Understanding ABS and TK within the context of the CBD

- The capacity assessment through the workshops and questionnaire responses that showed that there was a very good understanding of traditional knowledge and the usefulness of plants and animals for making medicines. There are also strong traditional systems established to protect and preserve the ownership rights of the knowledge holders from exploitations by other community members. Despite this, there was general consensus that a lot of the TK has been shared with researchers which bypassed the traditional protective protocols. This has partially been attributed to the limited knowledge on the provisions of the CBD on mechanisms for protecting TK and genetic resources from exploitation. There was some level of awareness on the issues mainly from those involved with the development of the National Biodiversity Strategy and Action Plan, and/or ABS workshops organized by WWF in 2003 and one organized by Palau in 2004. Participants in either of the workshops were mostly familiar with the ABS issues such as the need for an ABS regime, prior informed consent and mutually agreed terms. Since traditional knowledge was not well explored in either workshop, the limited understanding of people within the FSM as expressed during the consultations and in the questionnaires is based on their involvement in the NBSAP.
- The lack of understanding on the CBD is partly due to lack of resource materials available for the public and an information dissemination mechanism.

4.1.2 Use of traditional knowledge, practices and innovation

- Traditional knowledge, practices and innovation are still very strongly practiced within the FSM. Numerous examples were available of knowledge and practices are still being used in the areas of fishing, farming, navigation, healing, dancing, chanting, food preparation, construction, initiation rites and others.
- Traditional knowledge was separated into two types from the assessment. The first one was considered *specialized traditional knowledge*. This included knowledge held by specific individuals within the community for activities such as fishing, farming, medicinal, family history, navigation, construction, initiation, and others. These specialized knowledge, were seen as being very secretive and passed only to people the current custodians deemed to be suitable, which in most cases are direct descendants. The second one is *common traditional knowledge*, which is passed on to everyone and make up the fabric of custom and traditions. Common traditional knowledge include dancing, carving, handcraft making, several of the farming and fishing practices, different forms of constructions, plant and animal

names, navigation, some of the traditional rituals such as initiation rites, and behaviors.

- Although there are numerous examples of traditional knowledge and practices relevant to the conservation and sustainable use of biodiversity, these were either not used statewide or nationally but only in either project sites, or some communities. Nevertheless, some of these knowledge and practices could benefit other communities if they were shared or integrated. Some of the programs undertaken to assist in these area are;
 - Work in Yap where traditional knowledge and practices are being revived and utilized for the ecoforestry program, while elements of prior informed consent and benefit sharing arrangements were adhered.
 - Documentation of traditional fishing practices by one of the Fisheries Officers in Kosrae, although these have not been explored much in terms of promoting conservation and sustainable use of biodiversity.
 - Island Food Communities of Pohnpei documenting and reviving some of the traditional food preservation and preparation knowledge along with preservation of traditional plants.
 - The Nature Conservancy (TNC) documentation and integration of traditional knowledge relevant for conservation in its programs within the FSM.
 - Use of sea navigation skills from Chuuk traditional sailors in reviving traditional sailing techniques by the famous Kontiki expedition of Hawaii
 - Tourism Department in Chuuk promoting traditional dances as tourism promotion activities
- Despite the continuous use of traditional knowledge, there was growing concern that less of the younger generations are being trained on specialized knowledge and are willing to continue traditional practices due to several factors such as;
 - lack of interest from younger generations on learning the knowledge,
 - refusal of knowledge holders to document or share their knowledge openly while preferring the traditional apprentice systems
 - absence of family relatives to receive the knowledge
 - lack of available time for sharing of traditional knowledge amongst clans such as storytelling and family gatherings
 - lack of appropriate measures to protect and compensate the holders of the knowledge from sharing them
 - the general assumption that such important matters will always be maintained and preserved by the communities

4.1.3 Preservation of traditional knowledge, practices and innovation

- Efforts at the National and State levels have been on-going for the past years on collecting, documenting and sharing of these knowledge to younger generations but with mixed results. Examples include Yap state's programs to transfer knowledge onto younger generations through schools and ecoforestry programs, while Pohnpei, Kosrae and Chuuk are restarting programs in conjunction with the

National Office of Historical Preservation to document some of the knowledge. Other notable programs for the preservation of traditional practices in the past include teaching traditional handicrafts making, knowledge and practices to youth groups had discontinued due to several factors

- To preserve specialized knowledge and practices, the custodians continue to only transfer such knowledge to assigned personnel such as immediate family members, or apprentices that are deemed suitable to receive the knowledge after receiving the required traditional training. But with the decreasing availability of potential trainees, efforts must be done as priority to ensure the knowledge are properly protected and mechanisms are put in place to ensure they are preserved either through traditional methods or through the use of modern legislative frameworks such as access and benefit sharing agreements.
- Despite the constant use of traditional knowledge, there has been little effort to integrate them with modern approaches and technology so they can still be improved and preserved. This has led to some of the knowledge being lost when not required. Therefore, efforts must be done to promote the traditional forms of preservation or integration with modern practices especially for the conservation and sustainable use of biodiversity. Some few examples of the integration have been quite successful such as the ecoforestry program in Yap and Watershed Management Project in Pohnpei. Despite their success, such practices have not been nationally used due to the limitation of resources to the project sites. Thus effort is needed for these programmes and activities to be spread to other areas of the FSM.
- The assessment showed that Micronesian culture and language is not widely taught in schools, which is usually the alternative to having the children exposed to traditional knowledge and practices since formal education now dominates their lives as opposed to the past, where such knowledge were passed through learning by observing and doing it with the elders and traditional experts.

4.1.4 Protection of TK and Genetic resources

- The only existing system for protecting the use and exploitation of traditional knowledge and genetic resources within the FSM is that used for keeping specialized traditional knowledge. There is concern amongst the stakeholders that despite the efforts by specialized traditional knowledge holders to control the sharing of their traditional knowledge, a vast amount of TK has already been collected and documented by outside and some local researchers, without the use of prior informed consent and benefit sharing arrangements identified in the CBD including the recognition of property rights.
- The Office of Historical and Cultural Preservation currently have the only legislation that is able to protect the use of traditional knowledge through the issuance of a permit only if outside researchers are in the FSM for more than 30 days. Activities outside of this requirement, and those relating to quarantine and trade of

endangered species, seem to be able to collect traditional knowledge and export biological specimens.

- Current practice in all the States and at the national level is that government officials under their existing powers had issued permits to bioprospectors and researchers and even assisted them in obtaining the genetic material or traditional knowledge. In all cases, the permits, if any were issued, were limited to the powers and scope of the corresponding or issuing agency, and usually with little or no benefits to the knowledge holders or the owners of the genetic resources.
- There was a shortage of capacity at all levels within the FSM to develop legal regimes to regulate access and benefit sharing from the use of traditional knowledge and genetic resources. Nevertheless, all States and the national government showed keen interest on putting in place such measures at the earliest so that access to TK and genetic resources can be immediately regulated. Need was also expressed for capacity building program once a legal framework is enacted to familiarize the regulating agencies and the public on their roles and actions to regulate and monitor legal and illegal activities.

4.1.5 Mainstreaming ABS and TK

- The assessment concluded that limited effort is being done to make ABS and TK more relevant to other sectors such as assessing the relevance of some of the TK to improving the implementation of work in areas such as education, construction, fishing, farming, and healing. Additionally, to protect the loss of biological resources without adequate control system, other Departments such as customs and quarantine, need to understand the relevance of their duties as checking points for researchers and export of biological and genetic materials. The existing capacity to undertake such an initiative is limited due to the lack of information and experience in exploring the potential areas of integration.

4.1.6 Participation of local communities in policy planning and decision-making processes

- Existing laws and governance structures within the FSM provide sufficient enabling environment for communities and stakeholders to participate in all levels of policy planning and decision-making. Examples of the NBSAP committees at the national and State levels shows strong and effective participation of local stakeholders. The concern raised is regarding the lack of information provided for communities to make sound and informed decisions.

4.1.7. Research and development

- There is limited capacity at the local, State and National level to undertake assessment, inventory and monitoring of biological resources, while no capacity was evident for conducting bioprospecting, screening, DNA sequencing, characterization, and product development. Additionally there was limited

infrastructure to effectively conduct this work within the FSM, although there was keenness from the local institutions, including the College of Micronesia, to explore opportunities in this area. The assessment concluded that the costs for conducting such work within the FSM would be very expensive although some of these activities can be negotiated as part of technology transfer for any bioprospecting or biodiversity research application.

4.2 Capacity Needs

Based on the assessment of the current capacity and status of TK and ABS work within the FSM, the following are identified as capacity needs at the different levels.

4.2.1 Awareness

a. Raising general public awareness

- To ensure that people within the FSM at all levels, (communities, NGO's, government agencies, and private sector) are aware of the TK and ABS issues, a comprehensive public awareness program must be developed. Such a public awareness program can include the production of a video, posters, and pamphlets articulating the importance of protecting and preserving TK and genetic resources and provide information on the national TK and ABS regulatory framework. Furthermore, workshops and radio programs are needed so that the information on the video and pamphlets can be further explained.

b. Improve awareness on policy framework

- Special training and information sharing programs such as workshops are needed specifically for the National and State officials to have a better understanding of a National ABS and TK framework. There is also a need for an ABS and TK pamphlet on the policy framework for public use. In having this firm understanding of the national policy and procedures, the agencies staff will be in a better position to support the policy implementation and also assist the communities in monitoring the activities required under the policy framework

c. Improve understanding on the global processes

- There is a lack of diversification of State and national personnel participation in TK and ABS working group and expert panel meetings organized by the CBD. To build capacity for other local stakeholders at the state and national level, it would be useful for them to participate and represent FSM at specific meetings which they have expertise rather than the usual national representative attending the majority of the meetings.

4.2.2 Access and utilization of information

a. Improve access of information

- A national web-based clearinghouse facility should be established where information is stored for FSM citizens and interested parties to obtain information on the ABS and TK as well as general CBD related information. This facility should complement the audio visual and print materials available for the public.
- The clearinghouse mechanisms needs to include a clear process for the transfer of information to potential users, regulators and the public, international and national, on their obligations regarding access and benefit sharing from the use of traditional knowledge and genetic resources.

b. Improve transfer and storage of information

- There is an absence of an effective clearinghouse mechanism to ensure the concerns stakeholders at all levels are transmitted to FSM representatives attending the related meeting of the CBD, and the results and outcomes of these CBD meeting are repackaged to suit local needs and then passed on through the appropriate channels.
- For the ABS and TK frameworks to operate effectively and also for the knowledge holders and landowners as well as the community at large to ensure the protection of their knowledge and resources, a national registry is needed. Such a registry, as used by countries like Vanuatu and India, can be protected by the law and also ensure knowledge is available for other work in the country such as promoting the conservation and sustainable use of biodiversity.

4.2.3 Technical and resource capacity

a. Improve the capacity of communities to preserve and protect TK

- Although there is an abundance of traditional knowledge, practices and innovation within the FSM, there are limited activities promoting approaches for the preservation of such knowledge. There is also an apparent lack of capacity especially for the knowledge holders on approaches where they can share, protect and preserve such knowledge. Therefore it is important that a program is developed where training is provided for knowledge holders to record, document and collect, traditional knowledge practices and innovations.

b. Improve biodiversity and bioprospecting research capacity

- With apparent lack of technical capacity within the FSM to conduct biodiversity and bioprospecting research, there is a need to provide appropriate trainings for government officials, or staff at the College of Micronesia and some of the NGO's to enable them to undertake such research. Additionally, the benefit sharing agreements with potential researchers should also include components to build the local capacity in these areas. Some of these technical training should include
 - Training for local staff and communities on assessment, inventory and monitoring of biological resources including taxonomic capacity, within the

- context of the Global Taxonomy Initiative and other national and regional initiatives;
 - Development of national capability in conducting initial DNA screening
 - Increased capacity to undertake valuation of genetic resources and market information, including production and marketing strategies;
- To improve the capacity for biodiversity and bioprospecting research national institutions such as the College of Micronesia or the Museum facilities and will need improved to store biodiversity specimens, and create a link to the Global Taxonomy Initiative and other regional initiatives to identify and describe plants and animals

4.2.4 Regulation of Policies and Legal Instruments

a. Improve capacity of regulating agencies

- The capacity of the Office of Historic and Cultural Preservation, Department of Economic Affairs, Customs, Immigration and State EPA's will need to be strengthened through the allocation of appropriate human and financial resources, and providing appropriate training for the designated staff to effectively manage the use of FSM's TK and genetic resources.

b. Strengthen the NBSAP committee

- The NBSAP committee as identified within the NBSAP will be the main multisectoral group responsible with coordinating the implementation of the NBSAP including ABS and TK. Since the current capacity of the NBSAP committee at the national and state levels are limited on ABS and TK, a program must be developed to build this capacity both on understanding and also to effectively explore opportunities in which ABS and TK issues can best be managed.

c. Improve capacity to preserve TK

- Development of a national register of traditional knowledge and their owners with all the proper conditions to protect the intellectual property rights from being shared without prior informed consent, and benefits sharing mechanisms
- Strengthen programs of the Institute of Micronesian history and Culture and other Ministries as well as efforts of NGO's to collect and document traditional knowledge, practices and innovations
- Integrate traditional knowledge and practices relevant to the conservation and sustainable use of biodiversity into environmental management and conservation programs
- Establish effective linkages between the different ministries and organizations associated with several of the more common traditional knowledge and practices which are relevant to the conservation and sustainable use of biodiversity and be shared and integrated into modern development systems
- Develop a national register that can be used for collection and documentation of traditional knowledge, practices and innovations important for conservation of biodiversity

d. Improve capacity to review and monitor research relating to ABS and TK

- Specific training will be needed for staff of the Competent Authority for ABS and Office of Historical and Cultural preservation as competent authority for TK to enable review proposals, support the processes for obtaining prior informed consent and devising appropriate benefit sharing arrangements for the people of the FSM.
- The Departments of Immigration, Customs and Quarantine staff will need supporting mechanisms such as information relating to potential activities relating to TK and ABS on the arrival and departure forms.

e. Strengthen legal and policy instruments to regulate TK and ABS

- Legal instruments should be developed at the State and National level through legislation and policies to regulate access and benefit sharing from the use of traditional knowledge and genetic resources. These instruments are elaborated more in Output 4.
- Strengthen institutional and policy frameworks that enable communities to effectively participate in decision-making and policy planning at all levels
- ABS and TK national and state regimes should be developed to recognize traditional knowledge as having intellectual property rights, and to promote prior informed consent and mutually agreed terms for the use of traditional knowledge and genetic resources.
- Review of State and National Constitution to ensure the protection and preservation of traditional knowledge, practices and innovation, and protection of genetic resources are specifically recognized
- Strengthen the capacity of Government institutions to effectively engage communities to participate in policy planning and decision-making process by including the necessary costs for such consultations as part of planning processes
- Incorporate social assessments as important components of EIA for all development projects within the FSM.

5. National Policies and Measures

Output 2: A statement stating national policies, measures and management plans for the sustainable management of access and benefit sharing and the protection of traditional knowledge, practices and innovations on the conservation and use of biological resources

Introduction

The consultancy reviewed the existing information on legal instruments within the FSM that had provisions for the implementation of activities within the CBD and the NBSAP relating to traditional knowledge and genetic resources utilization. The review of National and State laws were dependent on the information generated from the questionnaire,

information from the State workshops, and legal documents obtained either through the internet or hard copies from the different Ministries.

The review found that FSM does not have any legal frameworks that facilitate access and benefit sharing from the utilization of genetic resources. In the past, bioprospecting or biodiversity research conducted in the FSM was authorized by different regulating agencies either at the State or National level. The decisions were based mostly on the agency that the researcher was associated with or directed to by their local counterparts. Examples include the Micronesia Fisheries Authority issuing permits under their legislation, while in some cases, the State Fisheries Department or Environment Protection Agency issued permits as well. In other cases, collections were undertaken and exported without permits. These situations have occurred mainly due to the lack of a clear process on making applications to conduct research through a designated national competent authority. The absence of a monitoring mechanism further complicates the issue, as there is not a clear idea of who has conducted research in the FSM, nor the species or biological specimens that have been removed from the country.

Based on the information gathered from the consultancy below is a list of some known collections that have been undertaken over the last two decades. It is generally recognized that this is only a very small fraction of what has actually been collected and sent overseas.

- 1985-92 –by SmithKline Pharmaceuticals plant collection in through the College of Micronesia
- 1987-89 –Traditional agroforestry research for a Masters degree by one of the Pohnpei residents which included the documentation of plant use information and knowledge
- 1989-present – The Coral Reef Research Foundation (based in Palau) through the National Cancer Institute have undertaken bioprospecting in Micronesia, focusing on marine organisms
- 1991 – Japan’s Marine Biological Institute received permission from Pohnpei State to collect marine organisms (focusing on alga and corals) for several months on Pohnpei’s reefs and lagoon.
- 1992- “Tuhke en Pohnpei: Plants of Pohnpei” book was produced and distributed to the local schools for educational purposes (East-West Center and Packard-funded)
- 1995-present – New York Botanical Garden, the Nature Conservancy, and the Pohnpei Traditional Leaders’ Council are cooperating on a comprehensive ethnobotany project using 4-6 local ethnobotanists to interview local healers, collect voucher specimens, and otherwise document traditional medicinal knowledge on Pohnpei

To effectively implement provisions of the CBD relating to ABS and TK, an enabling environment is needed through appropriate legislative and policy frameworks. Such a framework should clearly articulate the process for obtaining access to the resources and knowledge and define the parameters of the access through mutually agreed terms that include benefit-sharing mechanisms. These legal frameworks have been discussed in the State Workshops and follow the Bonn guidelines and other decisions from the CBD

Conference of the Parties and are presented as the elements for ABS national framework. A draft traditional knowledge, practices and innovation Act is also included for review by the FSM. Both regimes are in compliance with the provisions of the CBD.

5.1 Review of Existing Laws relating to Genetic Resources and Traditional knowledge

FSM Code Title 26 – Historical Sites and Antiquities

Promotion and preservation of TK is currently hosted within the Institute of Micronesian History and Culture. Chapter 2 of Title 26 establishes the Institute for Micronesian History and Culture: The Institute is responsible for the oversight, identification, conservation and protection of historical properties and cultural attributes within the FSM. The Institute reviews all development proposals and is required to take all steps reasonable and necessary to determine the nature and magnitude of the impact and to eliminate or mitigate any harmful effects. In practice, these duties are performed by the Office of Historic Preservation, which works closely with the historic preservation offices in each State.

The Office requests that prospective researchers sign a form for Sciences and Humanities Research in the FSM with the FSM National Government, through the Division of Archives and Historic Preservation Office. The "Permit and Agreement" is based on the information provided by the Researchers regarding the nature, scope, timeframe and approach taken to compile and collect the information. Copies of preliminary reports and final reports are submitted to the Historic Preservation Office of the State where the research is conducted and to the National Office. Upon completion of the project, the Project Coordinator is to furnish the State with a duplicate original and a copy of the finished work, including reports, photographs, sketches, drawings, pointing, motion pictures, images, video tapes or recording audio tapes or recordings.

Under the agreement, the parties agree that the FSM National Government and the State within which the research is conducted shall share the rights in and authority to reproduce, publish, display or exhibit the finished work product of the project in any manner of the Nation's choosing. But there is no protection for the contents of the report, but just for the report itself.

FSM Code Title 50 -- Customs and Immigration

Those entering the FSM are required to obtain an entry permit. Research permits are one category of entry permit issued. The FSM Office of Historic Preservation reviews all requests for research permits.

Title 50, Section 103(8) of the Customs Act provides that researcher's entry permits are issued for research in the fields of endeavor that the President deems in the best interest of the citizens of the FSM. The President must receive permission from the place the researcher intends to stay before granting permission to enter the FSM. The President may also attach conditions or restrictions to researcher's entry permits.

The FSM's entry permit application asks for information on the applicant's "purpose of entry, description of business to be transacted, names and address of company, firm or business you represent and products or services involved, and names and addresses of persons or firms to be contacted (in detail)." Permit applications must be accompanied by a statement that the facts set out are true and correct to the best of the applicant's knowledge and belief and that the entrant understands that throughout the period of the visit he or she is subject to the rules, regulations and laws of the FSM.

The difficulty with law, as written, is that no entry permit is needed for visits of up to 30 days. Those who enter on visitors' permits are able to obtain extensions of up to 60 days, and U.S. citizens may enter for up to one year, until the expiration of the Compact Agreement.

FSM Code Title 35 – Copyright

The FSM Constitution expressly provides for intellectual property matters and delegates to the FSM Congress the power to regulate patents and copyrights. Title 35 of the FSM Code is titled "Copyrights, Patents and Trademarks." However, while Title 35 has a chapter addressing copyrights, no legislation has yet been developed in the areas of patents and trademarks.

Existing copyright protection extends to "original works of authorship fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a device." These categories of authorship include literary works; musical works and accompanying words; dramatic works and accompanying music; pantomimes and choreographic works; pictorial, graphic and sculptural works, motion pictures and other audio visual works; and sound recordings.

Significantly, copyright protection does not extend to any "idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated or embodied in the work of authorship."

Protection for published works exists when on the date of first publication, one or more of the authors is a national or a domiciliary of the FSM or is a national or a domiciliary of a country that is a party to a copyright treaty to which the FSM is also a party. 35 F.S.M.C. 102(4)(a). The FSM has not yet entered into any copyright treaties with other nations. Title 35 permits the President to extend copyright protection on a case-by-case basis yet to authors from other nations that extend similar protection to FSM authors.

The owner of a copyright has the exclusive right to reproduce the copyrighted work, to prepare derivative works based upon the copyrighted material, to distribute copies of the copyrighted work to the public by sale, transfer or lease, and for audiovisual work, to perform the copyrighted work publicly and to display the copyrighted work publicly.

There is a provision for fair use and limitations on exclusive rights that are to be set forth in regulations. No regulations have yet been drafted.

FSM Code Title 23 – Resource Conservation – Marine Resources

Title 23 has two chapters, one addressing marine species protection and a second addressing endangered species of plants and animals.

Chapter 1, "Marine-Species Preservation," prohibits the use of certain destructive fishing practices, such as the use of explosives and poisons or chemicals to catch fish or other marine life. It also places time and size limitations on the taking of hawksbill turtles, green turtles, sea turtles, trochus and black-lip mother of pearl oyster shell, and prohibits the taking or molesting of artificially planted sponges.

FSM Code Title 23 – Resource Conservation – Endangered Species Act

Chapter 3 of Title 23, entitled the "Trust Territory Endangered Species Act of 1975," provides for the protection of species of plants and animals that are threatened with or in danger of becoming extinct. Chapter 3 declares the indigenous plants and animals of the Trust Territory to be of aesthetic, ecological, historical, recreational, scientific, and economic value, and states that the government's policy is to foster the well-being of these plants and animals and to prevent the extinction of any species.

FSM Code Title 22 – Quarantine Control

Under Title 22, Section 410 of the FSM Code, all animals and plants or parts thereof, including seeds, fruits, vegetables, cuttings, etc., entering or transported within the FSM are subject to inspection by agricultural quarantine inspectors and may be refused entry into or movement within the FSM if they are known to be, or are suspected of being, infected or infested with disease or pests.

All aircraft and vessels or their cargoes, including baggage, ship's stores, and Ballast, that either enter or move within the FSM, are subject to inspection by agricultural quarantine inspectors to enforce quarantine controls and regulations. It is a crime (petty misdemeanor) for anyone to interfere with or refuse to submit to the inspections authorized by Section 410.

Title 22, Section 413 of the FSM Code provides that materials that are brought into the FSM illegally, or that are transported within the FSM illegally or in a manner inconsistent with quarantine regulations, may be seized and destroyed, or seized and returned their place of origin, depending on the pest risk involved.

The FSM's Plant and Animal Quarantine regulations were amended in June 2000 and contain detailed provisions regarding import restrictions.

Agriculture Unit of the Department of Economic Affairs

The Unit is primarily to facilitate between the four FSM States and donors or other partners. The FSM Economic Summit outlines the policies and activities expected of the Unit. In terms of ABS, the unit issues permits for bringing plants, animals and plant products and animal products from outside FSM. The FSM States issue permits for interstate traffic. The Agriculture Unit collaborates with the History & Archives Unit of the Department of Health, Education and Social Affairs in the research application process,

especially if related to agriculture. There are a lot of gaps in the process and some issues include lack of expertise to review proposals and the lack of coordination between States and the National Government.

5.2 Recommendation on National Policies and Measures

1. Strengthen the **FSM Code Title 26 – Historical Sites and Antiquities** to expand the role of the Office of Historic Preservation (OHP) to include the preservation and protection of traditional knowledge, practices and innovation through the enactment of a traditional knowledge, practices and innovation law which facilitates access and benefit sharing from the use of traditional knowledge, practices and innovation. A draft Traditional Knowledge, Practices and Innovation Law is attached as Annex 3 to provide guidance for the FSM.
2. A National ABS framework should be enacted to facilitate access and benefit sharing from the utilization of genetic resources. The DEA as the National focal point for CBD and ABS issues should facilitate along with the Office of the Attorney General the completion of this ABS framework. The elements for the ABS framework are detailed in output 4 including areas that need finalization and a proposed process for completion.
3. Legislation for Agencies and Departments that will be affected by the TK and ABS laws will need to be reviewed to ensure compatibility and also facilitate the effective management of the FSM's TK and genetic resources.

6. Capacity Building Action Plan

Output 3: A capacity building action plan to promote the preservation of traditional knowledge, practices and innovations relevant to the conservation and use of biological resources in FSM

Introduction

The capacity needs of the stakeholders identified in the capacity assessment provide the basis for the Capacity-building Action Plan thus constituting an integral part of efforts to build in-country capacity to manage and develop its genetic resources while contributing to the conservation and sustainable use of biological diversity.

The Action Plan is to facilitate and support the development and strengthening of capacities of individuals, institutions and communities for the effective implementation of the NBSAP and associated actions relevant for the preservation of traditional knowledge, practices and innovations as well as facilitating access and benefit-sharing from the utilization of genetic resources.

The Capacity Building Action plan has been divided into four main themes:

1. *Improving awareness and understanding of the general public on TK and ABS issues*
2. *Strengthening the capacity of institutions and organizations involved with regulating the legislation and policies*
3. *Strengthening the systems through legislative frameworks that provide the guidance for ABS and TK work within the FSM and,*
4. *Strengthening the scientific capacity of to conduct, monitor and review TK and genetic resources work*

Strengthen public awareness and understanding of ABS and TK issues and policies

1. A national public awareness campaign should be developed by the DEA and the NBSAP Committee in collaboration with the State Agencies dealing with ABS issues to produce pamphlets, posters, and videos, along with workshops and possibly hosting talkback shows for the communities, local and state governments to improve understanding on the national policies and regulatory frameworks relating to access and benefit sharing from the use of genetic resources and traditional knowledge.
2. The Office of Historic Preservation should develop public awareness materials for TK in collaboration with the State equivalent agencies that will improve the understanding of policies and empower the communities to better preserve and protect the sharing of traditional knowledge, practices and innovations.
3. The identified Competent Authorities on ABS and TK to develop a tentative list of appropriate benefits that can be used by communities when negotiating for benefit sharing agreements from the use of genetic resources and TK.
4. Establish programs to integrate traditional knowledge, practices and innovations into education curriculum at all levels including vocational and tertiary level
5. Support the continued participation of the FSM in the CBD working groups and expert panels designated to address traditional knowledge and access and benefit sharing issues
6. Promotion of traditional family and community activities that encourages the transfer of traditional knowledge to younger generations

Strengthen capacity to preserve and increase utilization of traditional knowledge relevant to the conservation and sustainable use of biodiversity

1. Develop a national registry for traditional knowledge, practices and innovations within the Office of Historical and Cultural Preservation to collect, store and regulate access and benefit sharing from the use of TK and genetic resources.
2. Develop a program through the Office of Historical and Cultural Preservation that identifies people with specialized traditional knowledge and supports them in ensuring such knowledge is passed onto younger generations using transfer methods that are supportive of their needs

3. A national program coordinated by the Department of Economic Affairs and the Office of Historical and Cultural Preservation should be developed in partnership with the State Environment Agencies and other natural resources agencies to identify traditional knowledge, practices and innovations relevant for the conservation and sustainable use of biodiversity and develop programs to facilitate their integration into current implementation programs
4. Develop a research permit process that includes provisions for hiring local associates in order to assure that local capacity is developed and supported in conjunction with research on traditional knowledge and genetic resources
5. Strengthen collection and documentation of TK programs by the different Agencies within the State and National Departments by establishing linkages amongst them through the national registry as the main depository
6. Establish a national biodiversity database where all biodiversity and bioprospecting research information is entered and managed to improve the understanding on the location and status of biodiversity. Such a database will also be very useful in determining possible locations for proposed research.

Strengthen capacity to control and regulate the access and benefit sharing from the utilization of traditional knowledge, practices and genetic resources

1. Finalize and enact ABS and TK legal frameworks using local counterparts from the National and State legal departments in partnership with international legal experts in these areas
2. Establish Competent Authority at the National and State levels with appropriate trainings provided for the staff to effectively regulate the access and benefit sharing from the use of traditional knowledge and genetic resources law
3. Conduct training for border control agencies such as Customs, Immigration and Quarantine to build capacity to monitor the export of biological and genetic material within the ABS and TK legal frameworks
4. Establish an ABS and TK national expert panel within the framework of the NBSAP Committee at the National and State levels to review applications for research and export of genetic materials and collection and utilization of traditional knowledge, practices and innovations.
5. Establish a process for permitting the collection of biological specimens needed for scientific studies in order to comply with international regulations on the transport of biological specimens.
6. Develop ABS and TK model agreements and codes of conduct for specific uses, users and sectors to assist communities and regulating agency staff when reviewing applications and agreements.
7. Compile an inventory of all biological surveys and bioprospecting activities undertaken within the FSM prior and post CBD to clearly identify biological and genetic specimens already taken out of the FSM.
8. Develop, implement and enforce a scientific code of conduct for all biodiversity and bioprospecting research in the FSM
9. Establish a national information clearinghouse mechanism that facilitates the collation and dissemination of information relevant to improving participation of communities in decision-making and policy planning

Strengthen capacity within the FSM to conduct TK, biodiversity and bioprospecting research

1. Identify and support relevant training opportunities for staff on scientific and technical areas, including biological and social surveys, assessment, inventory and monitoring of genetic resources, and traditional knowledge including taxonomic capacity
2. Strengthen the capacity of a national center of biodiversity research (either the Museum or College of Micronesia) to conduct biodiversity survey and assist with bioprospecting research by providing the necessary equipment to undertake the work.

The Capacity Building Action Plan should be implemented within the framework of the NBSAP as several of the actions have been identified by the NBSAP.

7. Elements for an Access and Benefit Sharing Legal Framework

Output 4: Elements of a legal framework for ABS in FSM with a focus on intellectual property are identified based on national consultations and a process defined to complete a framework

7.1 ABS Framework Development Process

Based on the national consultations and workshops, the legal elements for a national ABS framework are proposed below. Within the elements are some specific actions that need follow up discussions at the national level on consensus for them to incorporate into a legal document. It is therefore recommended that the following process be undertaken to advance this forward:

1. Review of the proposed Elements for ABS legal framework
2. Recruitment of an ABS expert to incorporate the elements into a Bill form with a local legal officer
3. Facilitate a national workshop for the legal instruments as drafted to be reviewed and make final amendments
4. Finalize the Draft Bill for submission into the appropriate legislative process for enactment

7.2 ABS Legal Framework Elements

To facilitate the access and benefit sharing from the utilization of genetic resources within the FSM, a national legal framework should be established. This Access and Benefit Sharing legal framework should be a Stand Alone Act to give it the prominence that is

needed. The legal framework should elaborate and define the following elements of an ABS regime

1. Principle and objectives
2. Definitions
3. Scope of the regime
4. Roles and responsibilities of the different parties
5. Application process
6. Transparency and accountability
7. Dispute settlement

The proposed elements is utilizes substantial information in the Bonn Guidelines which has been endorsed by the COP of the CBD.

7.2.1 Principle and objectives

The legislation will need to define the key principles upon which the Act is founded. These can include, but not exclusively be:

- Sovereignty over natural resources within its jurisdiction (if at State level, then only that encompassing State jurisdiction compared to National law)
- The authority of the government to determine access to genetic resources and requirements of prior informed consent and mutually agreed terms and rights of communities

The objective of the regime specifies the goals such as the establishment of a permanent planning process to address ABS issues, equitable sharing of benefits from the use of genetic resources and associated knowledge; scientific and technological capacity building; biodiversity conservation and socio-economic progress

7.2.2. Definitions

The terms as defined in Article 2 of the Convention shall apply in addition to any other terms that will be deemed necessary at the national level. These include: biological diversity, biological resources, biotechnology, and country of origin of genetic resources, country providing genetic resources, *ex situ* conservation, *in situ* conservation, genetic material, genetic resources, and *in situ* conditions.

7.2.3. Scope

Properly defining the scope of the legislation is critical to its future effectiveness. Some of the more important dimensions to review for inclusion in the scope of the regime could be

- What materials and associated knowledge are covered: example: All genetic resources, its derivatives, and associated traditional knowledge, innovations and practices and benefits arising from the commercial and other utilization of such resources should be covered, with the exclusion of human genetic resources.
- What geographic locales are included: all State lands, territorial waters, total exclusive economic zone.

- Specific activities covered: application, permitting, reporting, monitoring, dispute resolution, and transfer of technology.
- Which stakeholders fall within the scope of the regime: outside researchers, all researchers, bioprospectors and biodiversity researchers
- The different types of research as viewed in the framework such as taxonomic and biodiversity research compared to bioprospecting.

7.2.4. Roles and Responsibilities:

7.2.4.1 National Competent Authority: A national competent authority should be identified at the National level where the applications can be lodged. This national authority will be the coordinating authority for liaison with the applicants as well as issuance of a permit. The national authority can be a new agency or an existing agency which the role and responsibilities for bioprospecting and biodiversity research can be added. Additional powers of the authority may include

1. Conducting the negotiations with applicant on behalf of country and stakeholders
2. Obtaining prior informed consent and entering into mutually agreed terms;
3. Monitoring and evaluation of access and benefit-sharing agreements;
4. Implementation/enforcement of access and benefit-sharing agreements;
5. Processing of applications and approval of agreements;
6. The conservation and sustainable use of the genetic resources accessed;
7. Coordinate the participation of different stakeholders at different levels in the process of access and benefit-sharing,

Based on the review, the Department of Economic Affairs, which includes several of the resource management agencies, would be an option for the national competent authority. This would then be in liaison with the Environment Lead Agencies in each of state depending on the proposed location of the research.

7.2.4.2 National Biodiversity Research Technical committee: A smaller but more technical arm of the NBSAP Committee can be established to review applications for recommendation to the National Authority on approval or refusal of application. The committee can include members of the main Government agencies dealing with biological resources and some specialized technical people that can provide advice on the nature of applications. Additionally, such a committee can also include a boarder group or regional expertise to assist with reviewing of applications such as SPREP, USP, SPC or bioprospecting experts.

A possible Biodiversity Technical committee could be the current NBSAP Steering Committee, with each state represented by its Environmental Lead Agency.

7.2.4.3 National Biodiversity database: It is important for the implementation of such the legal framework that a national biodiversity database is developed which will house important information on location of biodiversity, holders of

knowledge, and landowners which could be related to biological resources being sought. Should a central biodiversity not be possible, links must be made with existing databases from which the necessary information can be assessed. The database can also provide a reporting and monitoring system for tracking the compliance to the agreement of both parties

The proposed national biodiversity database and clearinghouse mechanism for the implementation of the NBSAP can include the information needed for ABS and TK use regulation

7.2.4.4 Stakeholders: The regime will need to define the different stakeholders and their roles in the process. This includes:

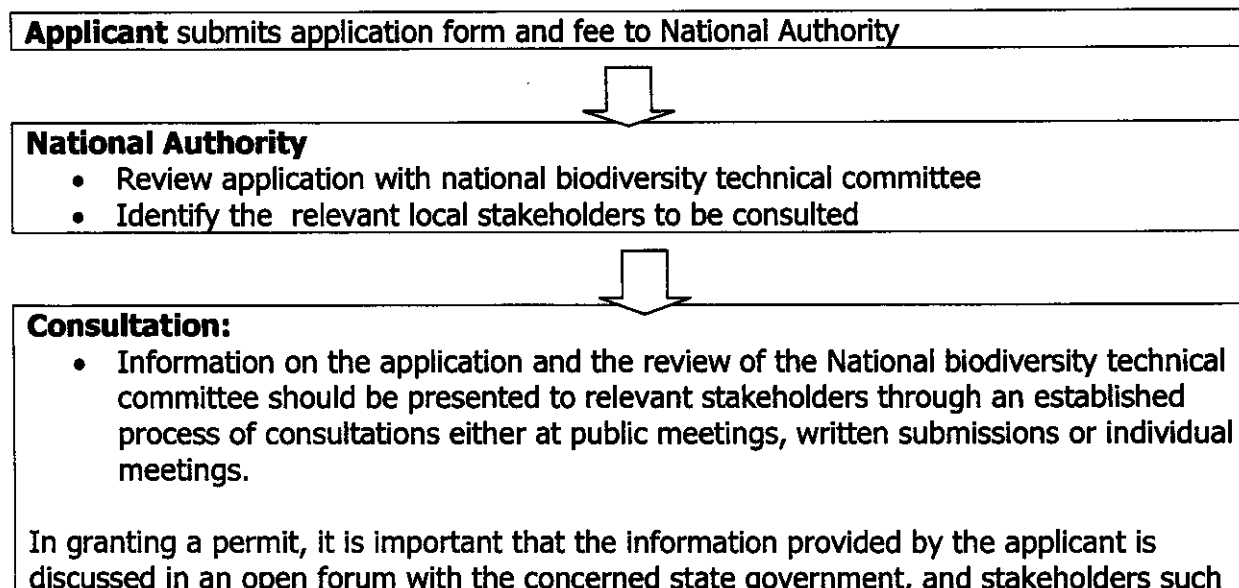
- appropriate location of the national authority,
- who determines the access
- who conducts the consultations for prior informed consent, and negotiates for mutually agreed terms,
- who issues the permits, and conducts the monitoring

On the community side, the regime needs to define the different types of stakeholders required for consultations, such as traditional knowledge holders, landowners, traditional leaders, and NGO's.

The ownership of resources and traditional knowledge will need to be determined and recognized in the national database for the purposes of consultations on prior informed consent and subsequent benefit sharing mechanisms.

5. Application Process

The following is a diagrammatic example of a possible process for the ABS regime:



as landowners, knowledge holders and government departments.

A possible process is to have the Competent Authority and National Committee review the proposal and then submit to the State governments its views and recommendations so the State Government Agencies would conduct the consultation with the identified stakeholders that will be involved in the proposed activity. The prior informed consent and access agreement could then be between the State governments and the stakeholders. The permit therefore issued by the Competent authority is based on the results of the State government consultations.

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Agreements

- Applicant must reach an agreement with the national authority on logistical issues such as reporting, deposit of materials, technology transfer, capacity building, intellectual property rights and benefit sharing arrangements
- Prior Informed Consent: upon completion of consultation with relevant stakeholders, a prior informed consent agreement on access rights, collection and removal of samples and ownership of intellectual property rights can be reached directly by the applicant, State or national authority
- Mutually agreed terms agreement need to be agreed



Permit:

- The permit should be issued by the Secretary of the National Authority and must reflect the access and benefit sharing agreements
- The permit further stipulates the timelines, specification on use, amounts to be extracted, and length of permit validity



Enforcement: The National Authority officers and the regulating state agency to monitor and enforce the permits



Export: A separate permit should be issued on any specimens that need to be exported. The export permit will define the amount and details of materials being exported to ensure they are inline with existing domestic laws and satisfy importing country law as well.

7.2.5. Accountability and Transparency

To promote accountability and transparency, the regime could establish requirements regarding:

1. Reporting; and
2. Disclosure of information.

The individual collector or institution on whose behalf the collector is operating should, where appropriate, be responsible and accountable for the compliance of the collector.

7.2.6. Settlement of Disputes

As most obligations arising under mutually agreed arrangements will be between providers and users, disputes arising in these arrangements should be solved in accordance with the relevant contractual arrangements on access and benefit-sharing and the applicable law and practices.

In cases where the access and benefit-sharing agreements consistent with the Convention on Biological Diversity and national legal instruments of the country of origin of genetic resources have not been complied with, the use of sanctions could be considered, such as penalty fees set out in contractual agreements.

7.3 Agreements

The access and benefit sharing process should consist of two main agreements:

- 7.3.1 An **access permit** that is issued by a national authority allowing researchers to conduct research or bioprospecting within the FSM. The access permits are issued following review and consultation process between the local stakeholders (landowners and knowledge holders) and the relevant State and National Government of the information provided by the researchers, whereby a prior informed consent is given. The permit shall include conditions on access to the resources and any benefit to be forthcoming to the national or state government as well as the local stakeholders such landowners or knowledge holders.
- 7.3.2 A **benefit sharing agreement** that specifies the details on the benefit sharing mechanisms. The agreement can either be one or two agreements.
- a. If one agreement is preferred, then it would be between the researcher and all local stakeholders including the different levels of government.
 - b. If two agreements are preferred, the first agreement would then be between the researcher and the national authority on behalf of the FSM government. The second agreement is between the government and the local stakeholders on the equitable sharing on any benefits to be forthcoming from the bioprospecting.

7.4 Agreement Requirements

7.4.1 Application:

The process is initiated when a researcher submits an application to the national authority. The application should provide all the details needed by the national authority and stakeholders to make a decision, thus the application form will need to include all the necessary information. These could include information such as

- a. Legal entity and affiliation of the applicant and/or collector and contact person when the applicant is an institution;
- b. Type and quantity of genetic resources to which access is sought;
- c. Starting date and duration of the activity;
- d. Geographical prospecting area;
- e. Evaluation of how the access activity may impact on conservation and sustainable use of biodiversity, to determine the relative costs and benefits of granting access;
- f. Accurate information regarding intended use (e.g.: taxonomy, collection, research, commercialization);
- g. Identification of where the research and development will take place;
- h. Information on how the research and development is to be carried out;
- i. Identification of local bodies for collaboration in research and development;
- j. Possible third party involvement;
- k. Purpose of the collection, research and expected results;
- l. Kinds/types of benefits that could come from obtaining access to the resource, including benefits from derivatives and products arising from the commercial and other utilization of the genetic resource;
- m. Indication of benefit-sharing arrangements;
- n. Budget;
- o. Treatment of confidential information.

The National Authority reviews the applications for validity before submission to the National Committee for the technical review. The National Authority further identifies through the national biodiversity database the relevant stakeholders for the consultation process on obtaining prior informed consent and mutually agreed terms

7.4.2 Prior Informed consent

The prior informed consent is given by the national and local stakeholders for the researchers to conduct research. It should also provide clear directions on the timing and deadlines for the research, specific description on the use of material and identify the specific locations and stakeholders to be involved in the research. The prior informed consent process should be facilitated at minimum costs, transparent and not counter to the objectives of the CBD

To obtain prior informed consent, the national authority or the applicant will need to undertake consultation with the identified stakeholders. Consultations could be in the form of workshops, public notices, or individual meetings whereby the information on the application and the domestic law are explained.

7.4.3 Mutually agreed terms

Mutually agreed terms is the agreement between the researcher and the national and local stakeholders governing access and benefit sharing from the utilization of the resources. The agreement could cover the conditions, obligations, procedures, types,

timing, distribution and mechanisms of benefits to be shared. These will vary depending on what is regarded as fair and equitable in light of the circumstances

The following is an indicative list of typical mutually agreed terms:

1. Type and quantity of genetic resources, and the geographical/ecological area of activity;
2. Any limitations on the possible use of the material;
3. Recognition of the sovereign rights of the FSM;
4. Capacity-building in various areas to be identified in the agreement;
5. A clause on whether the terms of the agreement in certain circumstances (e.g. change of use) can be renegotiated;
6. Whether the genetic resources can be transferred to third parties and conditions to be imposed in such cases, e.g. whether or not to pass genetic resources to third parties without ensuring that the third parties enter into similar agreements except for taxonomic and systematic research that is not related to commercialization;
7. Whether the knowledge, innovations and practices of indigenous and local communities have been respected, preserved and maintained, and whether the customary use of biological resources in accordance with traditional practices has been protected and encouraged;
8. Treatment of confidential information;
9. Provisions regarding the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products.

7.4.4. Benefit-sharing

Benefit sharing mechanisms from the agreement could either be in monetary or non-monetary form. The following is a non-exhaustive list, which can be included in the agreements. The timing of the benefits whether short or long term and when they should be applied will also need to be clearly identified in the agreement.

a. Monetary benefits may include, but not be limited to:

- a. Access fees/fee per sample collected or otherwise acquired;
- b. Up-front payments;
- c. Milestone payments;
- d. Payment of royalties;
- e. License fees in case of commercialization;
- f. Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
- g. Salaries and preferential terms where mutually agreed;
- h. Research funding;
- i. Joint ventures;
- j. Joint ownership of relevant intellectual property rights.

b. Non-monetary benefits may include, but not be limited to:

- a. Sharing of research and development results;
- b. Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the provider country;

- c. Collaboration, cooperation and contribution in education and training;
- d. Admittance to *ex situ* facilities of genetic resources and to databases;
- e. Strengthening capacities for technology transfer to user developing country Parties and to Parties that are countries with economies in transition and technology development in the country of origin that provides genetic resources. Also to facilitate abilities of indigenous and local communities to conserve and sustainably use their genetic resources;
- f. Training related to genetic resources with participation in the research and product development
- g. Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
- h. Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
- i. Joint ownership of relevant intellectual property rights.

c. Mechanisms for benefit-sharing

- a. Mechanisms for benefit-sharing may vary depending upon the type of benefits, the specific conditions and the stakeholders involved. The benefit-sharing mechanism should be flexible as it should be determined by the partners involved in benefit-sharing and will vary on a case-by-case basis.
- b. Mechanisms for sharing benefits should include full cooperation in scientific research and technology development, as well as those that derive from commercial products including trust funds, joint ventures and licenses with preferential terms.

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Annex 1: List of People Consulted

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Ronna Jack	Pohnpei State EPA
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Lois Englberger	Island Food Community of Pohnpei
Rufino Mauricio	Division of Social Affairs HESA
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Molly Hunt Bill Raynor	The Nature Conservancy
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Mary-Rose Nakayama	CoM-Chuuk Campus
Mason Fritz	Chuuk Visitors Bureau
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Kosrae	
Alokoa Talley	Cultural Division, OCA

Arthur Jonas	Kosrae BSAP
Erick Waguk	Forestry and Wildlife
Josela M Alik	Utwe Women Organisation
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Alokoa Joe	VP, Kosrae Senior Citizen
Oliver Worel	TNC
Tulen Kinere Nimos Salik	Tafunsak RMC
Mason Timothy	Malem RMC
Salik Talley	VChair DRC Board
Yosiwo George	Chief Justice

Annex 2: Capacity Needs assessment

Summary of Workshop and questionnaires

Issues	Current capacity	Capacity Needs	Action Plan
<p>Effective participation of communities in decision-making and policy planning;</p>	<ul style="list-style-type: none"> • Communities and individuals are participating in policy planning through committees such as the NBSAP, and other forums. Communities do not participate when they do not have a clear understanding of some of the issues discussed. • The existing institution frameworks allow stakeholders at the local, state and national level to participate in policy planning and decision-making. 	<ul style="list-style-type: none"> • Making information available for the communities in a format that is understandable so they are able to effectively participate in decision-making and policy planning • Strengthening the existing institutional and policy frameworks for ensure more effective participation of communities in decision-making and policy planning • Empowering the communities through training and public awareness programs to improve understanding on issues relating to the protections and preservation of traditional knowledge, and access and benefit sharing from the use of genetic resources 	<ul style="list-style-type: none"> • Produce information pamphlets and awareness programs to inform communities on issues requiring their input and participation • Continue to include community representatives on local state and national committee where they can participate in policy planning and decision-making • Incorporate social assessments as important components of EIA for all development projects within the FSM.
<p>Respect, preserve and maintain traditional knowledge relevant to the conservation and sustainable use of biological diversity;</p>	<ul style="list-style-type: none"> • Traditional knowledge, practices and innovations are still very strong within the FSM, with most of them currently being practiced throughout the country. But these important knowledge are not being passed on to younger generations due to several factors • Some states have established institutional systems to preserve and maintain traditional knowledge, such as staff collecting knowledge, integration in school curriculum, compensating knowledge holders 	<ul style="list-style-type: none"> • Enabling environment for the traditional knowledge to be transferred to younger generation • Capacity to collect and document TK • Promotion of traditional family and community activities that encourages the transfer of traditional knowledge to younger generations 	<ul style="list-style-type: none"> • Strengthen and reintroduce programs that encourage traditional methods of knowledge transfer from older to younger generations • Develop a national register that can be used for collection and documentation of traditional knowledge, practices and innovations important for conservation of biodiversity • Develop an ABS regime and Traditional Biological Knowledge, Innovations and Practice legislation to protect traditional knowledge,

	<p>for sharing the knowledge</p> <ul style="list-style-type: none"> • The Office of Historic Preservation is conducting programs to document traditional knowledge. • Specialized traditional knowledge is still only passed traditionally by current custodians to identified individuals 		<p>practices and innovations and provide a mechanisms for benefit sharing to appropriate knowledge holders</p> <ul style="list-style-type: none"> • Strengthen existing legislation for the Office of Historic Preservation to review and issue permits for all research on traditional knowledge, practices and innovation within the FSM
<p>Promote wider application of traditional knowledge, practices and innovations with the approval and involvement of communities concerned</p>	<ul style="list-style-type: none"> • TK being utilized for some of the projects including ecoforestry, watershed management, food preparation and preservation • Use of traditional taboo systems for some of harvesting such as fishing and farming 	<ul style="list-style-type: none"> • Assessing and integrating TK relevant for the conservation and sustainable use of biodiversity 	<ul style="list-style-type: none"> • Develop programs that integrate traditional knowledge, practice and innovation with modern scientific technologies and methodologies to promote conservation and sustainable use of biodiversity
<p>Equitable sharing of the benefits arising from the utilization of such traditional knowledge</p>	<ul style="list-style-type: none"> • There is a definite lack of capacity within the FSM amongst the traditional knowledge holders, government agencies and NGO's on skills to assist with the negotiation of equitable benefits from the use of traditional knowledge • There is no current legislative capacity to facilitate access and benefit sharing from the use of TK and genetic resources 	<ul style="list-style-type: none"> • Legislative capacity to provide guidance on access and benefit sharing from the use of genetic resources and traditional knowledge • Technical capacity for the regulating agencies to effectively implement ABS and TK laws • Capacity to negotiate appropriate benefit sharing arrangements from the use of TK and genetic resources 	<ul style="list-style-type: none"> • Develop ABS and TK laws consistent with the requirements of the Bonn guidelines and CBD COP decisions on TK • Provide necessary capacity training for regulating agency staff on the implementation of ABS and TK laws

Annex 3: Traditional Knowledge, Practices and Innovation Model Law

TRADITIONAL BIOLOGICAL KNOWLEDGE, INNOVATIONS AND PRACTICES ACT

- 1 Short title
- 2 Commencement
- 3 Application
- 4 Definitions
- 5 Competent National Authority
- 6 Ownership
- 7 Database of traditional biological knowledge, innovations and practices
- 8 Economic rights
- 9 Moral rights
- 10 Identity of owner and prior informed consent
- 11 Access and Benefit Sharing Agreement
- 12 Ownership enquiry
- 13 The Traditional Ownership Tribunal
- 14 Appeal
- 15 Legal proceedings
- 16 Offence by a company
- 17 Reciprocal agreements
- 18 Regulations

TRADITIONAL BIOLOGICAL KNOWLEDGE, INNOVATIONS
AND PRACTICES ACT 200X

An Act to protect the rights of owners of traditional biological knowledge, innovations, and practices.

1 Short title

This Act may be cited as the Traditional Biological Knowledge, Innovations and Practices Act [date].

2 Commencement

This Act commences on [date].

3 Application

(1) Where there is an inconsistency with intellectual property laws, this Act, is to the extent of the inconsistency, to prevail.

(2) Section 9(1) of this Act (Moral rights) has retrospective effect.

4 Definitions

In this Act, unless the context otherwise requires:

biological material means any part of a plant, animal or microorganism.

database means the database of traditional biological knowledge, innovations and practices established under section 7 of the Act;

innovation means traditional biological innovation.

knowledge means traditional biological knowledge.

own in relation to knowledge, innovations and practices, includes the following:

(a) own as a trustee;

(b) own as a custodian;

(c) own as a steward;

and its meaning in any particular context is to be determined according to the history and traditions and customs and usages of the social group which claims ownership over that knowledge, innovation or practice.

practice means traditional biological practice.

social group means a family, clan, tribe, village or similar social organisation.

traditional biological innovation means a product, belonging to a social group, which has resulted from biological material whose usefulness has been enhanced by the application of traditional biological knowledge.

traditional biological knowledge means knowledge whether embodied in tangible form or not, belonging to a social group and gained from having lived in close contact with nature, regarding:

(a) living things, their spiritual significance, their constituent parts, their life cycles, behavior and functions, and their effects on and interactions with other living things, including humans, and with their physical environment;

(b) the physical environment;

(c) the obtaining and utilizing of living or non-living things for the purpose of maintaining, facilitating or improving human life.

traditional biological practice means a process, method or way of doing things, belonging to a social group and gained from having lived in close contact with nature.

Tribunal means the Traditional Ownership Tribunal convened under section 13 of the Act.

5 Competent National Authority

The Competent National Authority for the purposes of this Act is the [insert body] which shall carry out the functions described in this Act.

6 Ownership

(1) For the purposes of this Act, ownership by a social group over an item of knowledge or an innovation or a practice is established according to the history and traditions and customs and usages of that social group.

(2) The [Competent National Authority] may assert ownership over an item of knowledge or an innovation or a practice in either of the following situations:

(a) where it is satisfied there is no immediately verifiable owner of that knowledge or innovation or practice. The [Competent National Authority] will be considered to be the owner for the purposes of this Act of that knowledge or innovation or practice as trustee on behalf of the eventual owner.

(b) where it is satisfied, after having made extensive efforts to locate an owner of an item of knowledge or an innovation or a practice, that an owner will not be found. The [Competent National Authority] will be considered to be the owner for the purposes of this Act of that knowledge or innovation or practice as trustee on behalf of [the enacting country].

7 Database of traditional biological knowledge, innovations and practices

(1) The [Competent National Authority] is to establish and maintain a database of knowledge, innovations and practices and shall enter into it such information as it receives or collects pertaining to knowledge, innovations and practices.

(2) An owner may enter its knowledge, innovations and practices in the database.

(3) Where the owner does not specify who can access the information, access will be limited to the owner. The [Competent National Authority] may also access the information for the purpose only of seeking the identity of an owner pursuant to section 10 of this Act.

(4) Any person wanting access to information in the database must write to the [Competent National Authority]. The [Competent National Authority] shall consider the request and may refuse access, grant access unconditionally or grant access with conditions attached.

(5) Any person who knowingly provides false information for entry into the database commits an offence and is liable upon conviction to a fine not exceeding [\$].

8 Economic rights

(1) In addition to any rights available under applicable intellectual property laws an owner of an item of knowledge, an innovation or a practice has the exclusive right to use or to authorize the use of its knowledge, innovation or practice:

- (a) for a commercial purpose, or
- (b) for an activity that is likely to assist in achieving a commercial purpose.

(2) Any person wanting to use an item of knowledge, an innovation or a practice for a commercial purpose, or an activity that is likely to assist in achieving a commercial purpose, must comply with sections 10 and 11 of this Act.

(3) Subsection (2) shall not apply to plant genetic resources for food and agriculture whose collection, holding, transfer and use are covered by a policy approved by the Secretariat of the Pacific Community.

(4) Any person who contravenes subsection (2) commits an offence and is liable upon conviction to a fine not exceeding [\$].

9 Moral rights

(1) Owners of knowledge, innovations and practices have the following moral rights:

- (a) the right of attribution of ownership in relation to their knowledge, innovations or practices;
- (b) the right not to have ownership over an item of knowledge, an innovation or practice falsely attributed to them; and
- (c) the right not to have their knowledge, innovations and practices subject to derogatory treatment.

(2) Any person who, upon the commencement of this Act, contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding [\$].

10 Identity of owner and prior informed consent

(1) A prospective user wanting to use an item of knowledge, an innovation or a practice for a commercial purpose, or an activity that is likely to assist in achieving a commercial purpose,

must in all cases apply to the [Competent National Authority] in the form prescribed by the [Competent National Authority].

(2) The [Competent National Authority] must give a copy of the application to the social group they believe to be the owner of the knowledge, innovation or practice applied for and at the same time publicize the application locally, or where warranted, overseas.

(3) Any social group claiming ownership must identify itself to the [Competent National Authority] within 30 days from the date the application is publicized and satisfy the [Competent National Authority] of its claim to ownership.

(4) Where the [Competent National Authority] is satisfied as to the identity of an owner it must inform the prospective user of the identity, publicize the identity nationally and enter it into the database along with the information used to prove ownership.

(5) After the expiration of twenty one days from the time the prospective user is informed of the identity of the owner he must ensure the owner is fully informed of the use proposed to be made of its knowledge, innovation or practice.

11 Access and Benefit Sharing Agreement

(1) Where the owner gives its prior informed consent to the proposed use, an agreement between the owner and the user, to be known as an Access and Benefit-Sharing Agreement, must be negotiated under the supervision of the [Competent National Authority] setting out the terms under which use is permitted and having regard to the following matters, amongst others:

Knowledge, innovations and practices:

- (a) restrictions on using knowledge in any other material form
- (b) restrictions on reproduction, publication, translation, or broadcasting of knowledge
- (c) restrictions on the quantity of an innovation to be obtained
- (d) requirement for progress reports to be supplied at each stage of testing of an innovation
- (e) rights regarding anything derived from research on an innovation.

General:

- (a) fees or compensation for using the knowledge, innovation or practice
- (b) obtaining of relevant permits
- (c) duration of the Agreement
- (d) choice of law upon breach of a term of the Agreement
- (e) options upon breach of a term of the Agreement
- (f) limits on transfer to third parties
- (g) restrictions on fixation through any process such as making a sound recording or taking a photograph
- (h) intellectual property rights
- (i) recognition of moral rights
- (j) benefit sharing, monetary and non-monetary, on the successful commercialization

of any aspect of the knowledge, innovation or practice

(2) The [Competent National Authority] is to ensure that the Agreement is not to the detriment of the owner.

(3) Nothing in subsection (1) is to be construed as preventing the promulgation of more detailed access and benefit regimes for knowledge or for innovations or for practices or for any combination of these elements.

12 Ownership enquiry

(1) Any person may lodge an enquiry at any time with the [Competent National Authority] regarding ownership of an item of knowledge, an innovation or a practice. He must specify the owner of as well as the knowledge, innovation or practice being enquired about and the basis for the enquiry. He may present such other submissions as he considers relevant.

(2) The owner being challenged is to be given a copy of the enquiry by the [Competent National Authority] and must within thirty days provide a written reply along with any other submissions it considers relevant to the [Competent National Authority] and to the enquiring party.

(3) The [Competent National Authority] will publicize the enquiry in summary form and invite submissions from the public.

(4) The [Competent National Authority], acting as mediator, after it has considered all submissions and when it is satisfied that the issues in dispute have been clarified, must call a conference between the parties at which the following matters are to be discussed:

(a) whether there is any merit in the enquiry and if not, then the enquiring party is to be requested to withdraw its enquiry and where this is done then the enquiry will terminate upon the entry of that information in the database.

(b) whether the parties are owners of different items of knowledge, innovations or practices and if the parties agree that this is the case then the enquiry will terminate upon the entry of that information in the database.

(c) whether the parties are co-owners of the knowledge, innovation or practice in dispute and if the parties agree that this is the case then the enquiry will terminate upon the entry of that information in the database.

(d) whether only one of the parties is the owner of the knowledge, innovation or practice in dispute because the other party agrees that this is the case or do not answer the enquiry then the enquiry will terminate and the appropriate information entered in the database.

(e) such other matters as the [Competent National Authority] or parties consider relevant.

13 The Traditional Ownership Tribunal

(1) In the event that a consensual decision pursuant to section 12, or any other additional means, is not reached either of the parties may then request the [Competent National

Authority] to convene a body, to be known as the Traditional Ownership Tribunal, to adjudicate on the dispute.

- (2) Where, pursuant to subsection (1), a party requests the [Competent National Authority] to convene the Tribunal, the [Competent National Authority] shall do so within 30 days.
- (3) The Tribunal shall consist of three people with expertise in the area under dispute.
- (4) The Tribunal shall:
 - (a) select a chairperson;
 - (b) model its rules of procedure as closely as practicable to those of the [principal] Court;
 - (c) hear all such evidence as it considers necessary to hear;
 - (d) consider the evidence and dispose of the dispute by deciding:
 - (i) that there is no merit in the enquiry, or
 - (ii) that the parties are owners of different items of knowledge, innovations or practices, or
 - (iii) that the parties are co-owners of the knowledge, innovation or practice, or
 - (iv) that only one of the parties is the owner of the knowledge, innovation or practice, or
 - (v) that none of the foregoing decisions can be made and that the matter will be referred back to the [Competent National Authority],

and shall have all such powers as are required to carry out these functions.

(7) The [Competent National Authority] shall make available all documents in its possession or control pertaining to the dispute to the Tribunal and shall act as the secretariat to the Tribunal.

14 Appeal

A party may, within twenty-one days of having received the decision of the Tribunal, appeal against the decision to the principal [Court] whose decision shall be final.

15 Legal proceedings

(1) The [principal] Court shall have full jurisdiction to hear and determine any proceedings for infringement or otherwise relating to knowledge, innovations and practices in [the enacting country], and may grant in addition to any other relief any one or more of the following remedies:

- (a) an injunction;
- (b) damages;
- (c) a declaration that a right has been contravened;
- (d) an order for a public apology;
- (e) an order that any false attribution or derogatory treatment cease or be reversed;
- (f) an order for an account of profits;
- (g) an order for the seizure of any object made contrary to this Act;
- (h) an order for the impounding and destruction of any object used in the commission

of an offence under this Act.

- (2) The [principal] Court in deciding what relief is to be granted may take into account all or any of the following factors:
- (a) whether the defendant was aware or ought reasonably to have been aware of the rights of the owner;
 - (b) the effect on the reputation of the owner resulting from the unauthorized use;
 - (c) anything done by the defendant to mitigate the effects of the unauthorized use;
 - (d) any cost or difficulty that may have been associated with identifying the owner;
 - (e) any cost or difficulty in ceasing or reversing any false attribution of ownership, or derogatory treatment of the knowledge, innovation or practice;
 - (f) whether the parties have undertaken any other action to resolve the dispute.

16 Offence by a company

Where a company commits an offence under this Act, any officer, director, employee or agent of the company who directed, authorized, assented to, or acquiesced in the commission of the offence is a party to and guilty of the offence, and is personally liable to the punishment provided for the offence, whether or not the company has been prosecuted or convicted.

17 Reciprocal agreements

In accordance with reciprocal agreements entered into with other countries or territories, this Act may provide the same protection for knowledge, innovations and practices originating in those countries or territories as it provides for knowledge, innovations and practices originating in [the enacting country].

18 Regulations

The [insert] acting upon the advice of [insert] may make regulations for giving full effect to the provisions of this Act and for its due administration.

This Act is administered in the [Competent National Authority]

NOTES TO THE ACT

GENERAL FEATURES OF THE REVISED VERSION

The previous version that was distributed to Forum member countries in 2002 resulted in responses from the following countries: Australia, Cook Islands, Federated States of Micronesia, Fiji, Marshall Islands, New Zealand, Palau, Samoa and Vanuatu. Their comments are gratefully acknowledged.

All comments were of value even though they sometimes conflicted. Most changes were therefore made according to the "least common denominator", ie, where one country

disagreed with the majority view, the minority view was adopted, eg, as regards points 3, 4, and 5 (retrospectivity not to extend to economic rights), below.

1. The Act is now more in the character of a domestic law than a regional treaty. The only indication of its regional dimension is section 16 (reciprocal agreements). Section 5 also uses the term "competent national authority" in anticipation of a time when a regional agreement may be concluded.
2. The Act is now more in line with the "*Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture*". The distinguishing feature between the two is that this Act targets infringements of a commercial nature while the latter targets infringements arising through non-customary uses.
3. The State is no longer bound by this Act, given that the Act charts new territory and the extent of State liability needs to be properly assessed beforehand.
4. There are no longer penalties of imprisonment for any of the offence provisions. The penalties are all by way of monetary fines.
5. The Act only has retrospective effect regarding moral rights, not economic rights. Commercial interests established before the Act will therefore be unaffected. While this is not an entirely satisfactory resolution from the viewpoint of traditional peoples the infringement of a moral right may often be the more distressing injury. As a moral right infringement will often not be in dispute and as infringers will more likely than not feel morally obliged to rectify the infringement, a retrospective civil sanction has been considered appropriate.

EXPLANATORY MEMORANDUM

PREAMBLE

1. Article 8(j) of the Convention on Biological Diversity (CBD) uses the phrase "knowledge, innovations and practices" which is followed in this Act.
2. The Act encompasses not only knowledge, but products (ie, innovations) and practices, thus differing from Peru's recent law (2002) which focuses only on knowledge.
3. The term "biological" is used in preference to "ecological" which has a narrower meaning and has less usage in the provisions of the CBD.

SECTION 3 Application

1. The Act extends to knowledge, innovations and practices in the so called "public domain". It is generally thought that anything in the public domain is not subject to ownership rights and can therefore be used by anyone. Despite this there are instances where European, Japanese and US legislators have each found occasion to extend intellectual property protection to information in the public domain in order to secure protection over databases, architectural designs and publications, respectively (B. Tobin, 2000). In addition, the French concept of *domaine public payant* requires

payment of royalties for the use of literary and musical works in the public domain (K. Puri, 2000). There are therefore precedents upon which rights may be attached to knowledge in the public domain.

2. The Act prevails over IPR laws when there is an inconsistency between the two. The previous version of this Act included suggested amendments to copyright, patent and trademark legislation, however these have been omitted from this version. Their implementation will have to be left to a later time. New Zealand in recent years has amended its copyright and trademark laws to take into account the concerns of their indigenous people and it would be useful if they could share their experience with the region. Pending such developments however, the supremacy formula should serve as a useful stopgap measure. It may not have affect the status quo as severely as first impressions may suggest given that most "abuses" (from the viewpoint of Pacific island countries) of copyright right and patent law are perpetrated in jurisdictions outside of the Pacific region to which this law will have no application.

3. The Act is not retrospective regarding economic rights, only as regards moral rights. There is no criminal sanction (see section 9(2)) only a civil one. Further, the mitigating factors in section 14(2) should alert a plaintiff to seek a non-legal resolution regarding the infringement of a moral right prior to commencing legal action.

SECTION 4 Definitions

1. "*Traditional biological innovation, means a product...*". The focus of the Act is not only plants (eg, kava) but includes animals and microorganisms. The Act, which is partly inspired by the Third World Network's Community Intellectual Rights Act 1994 is therefore broader inasmuch as the focus of the latter is solely plant varieties.

2. The need for a generational time span has been dispensed with allowing recent yet still traditional knowledge, innovations or practices to be protected by the Act.

SECTION 6 Ownership

1. All knowledge, innovations and practices are owned, so foreclosing any argument that any item of any of these elements may be ownerless.

2. The Act does not extend to individual ownership as such. Individuals may own knowledge, innovations or practices only to the extent that they do so on behalf of a social group.

3. A trust instrument will set out the terms of the trust: its purpose, holding and distribution of trust funds, rights of beneficiaries, duties of trustees etc. Trustee duties will include safeguarding the knowledge, innovations or practices by legal action where necessary. Most jurisdictions also have Trustees Acts which set out in detail the duties of trustees.

SECTION 7 Database

A database is used in preference to a register for these reasons:

- A register is formal. Owners who have reservations about disclosing their knowledge may be totally discouraged if there are too many requirements to be complied with. It may be that certain knowledge has become fragmented and different people will come forward with different pieces of the puzzle: a formal system may not cope well with such a piece-meal situation.
- A register is open. Owners may not wish to reveal their information but merely to record it for their descendants.
- A register imparts legitimacy. An adversarial ownership process at the outset will again discourage owners from coming forward with their information.

On the other hand, a database primarily records information and there is a great need to record as much traditional knowledge as quickly as possible before it become unobtainable. This means few formal requirements and an assurance of confidentiality. A detailed examination as to the veracity of ownership can be raised later but only when a challenge is brought or an enquiry by a prospective user made.

The urgent need to record the information it is felt overrides the possibility of a flood of spurious claims being made because of the initial lack of formal requirements. The task of sorting out the chaff from the wheat will be made later.

2. The offence provision is needed to deter individuals from bringing spurious or false claims. Who will bring the prosecution? A prosecution is almost always brought by the Police through the laying of an information or charge. Citizens can also lay an information but instances of this happening are rare. Government departments often prosecute offences in a subordinate court under an Act it administers, eg, the Environment Department prosecuting an infringement of the Environment Act in the Magistrates Court. More serious offences under an Act are handled by lawyers in the government legal office. Depending on the amount of the fines proposed under this Act the [Competent National Authority] may be the most appropriate body to bring prosecutions.

SECTION 8 Economic rights

1. There are two economic rights. No definition of commercial purpose is attempted to keep that term as open as possible.
2. The exception in subsection (2) is made because plant genetic resources for food and agriculture are dealt with under a specific regime. Other exceptions may be added to this subsection in due course.
3. How effective is enforcement against an offender that resides or has fled overseas? Although subsection (4) is in the nature of a criminal sanction, extradition of the offender will not be possible unless:
 - there exists an extradition treaty between the two countries involved;
 - within the treaty the offence needs to be referred to either explicitly or by reference to length of imprisonment (eg, not less than 12 months) - usually only the more serious offences are covered;

- the offence needs to be recognised as such in both countries.

In some jurisdictions however, judgment can be given in the accused's absence (eg, Vanuatu: Criminal Procedure Code, sections 34-36 and 44; and Samoa: Criminal Procedure Act 1972, section 42) if the punishment is a fine only, or a period of imprisonment of not more than 3 months.

Although the threat of imprisonment has great deterrent value, this Act adopts the fine as the only sanction. A fine alone is more easily imposed by judges than a term of imprisonment. A fine against an overseas offender still represents a moral victory and has the added advantage that an offender that has repented can still return to the country, pay the fine and start afresh.

SECTION 9 Moral rights

See the discussion under Section 3 above, on the retrospective effect of this Act regarding moral rights.

SECTION 10 Identity of owner and prior informed consent

1. This procedure needs to be complied with even where prior informed consent has already been obtained.

2. Subsection (5) requires a 21-day wait in case an enquiry is brought in response to the publicised information.

SECTION 11 Access and Benefit Sharing Agreement

Subsection (3) recognises that separate work may be in progress regarding knowledge or innovations or practices. For example SPREP, WWF (South Pacific) and FIELD have held Access and Benefit-sharing workshops regarding genetic resources in Samoa, the Cook Islands and Vanuatu with more workshops planned for the Solomon Islands and the Federated States of Micronesia. A model law on access to genetic resources, (whether associated with traditional knowledge or not) has been drafted which details the procedures and requirements that need to be met by a potential user.

SECTION 12 Ownership enquiry

No time bar exists regarding the lodging of a challenge.

SECTION 15 Legal proceedings

Civil proceedings are always available in addition to criminal prosecutions. Some national laws make this explicit, eg, section 172 of Samoa's Criminal Procedure Act 1972 provides "No civil remedy for any act or omission shall be suspended by reason that such act or omission amounts to an offence".

The aim of civil proceedings might be to prevent continued non-compliance, to seek damages for wrongful use (conversion) of the knowledge, innovation or practice or alternatively to request that the monetary gain by the offender be surrendered to the owner (account of profits).

The owner would be expected to bring a civil action in contrast to the [Competent National Authority] which would be expected to initiate prosecutions.

Which office should administer this Act?

- a Department of Culture has expertise in traditional knowledge and may provide expert and impartial advice in ownership disputes;
- a Department of Environment has expertise on biological materials, Access and Benefit Sharing laws and the Convention on Biological Diversity;
- a Department of Justice looks after intellectual property matters, has experience with registration procedures, and may facilitate dispute resolution through the Court system.

Annex 4: FSM State Workshops on ABS and TK Report

Introduction

A major component of the consultancy by Pacific Environment Consultants Ltd was to conduct public awareness and consultation workshops for the four States on the FSM on access and benefit sharing (ABS) and traditional knowledge, practices and innovations (TK). Due to the cyclone impacts on the Yap when the workshops were been conducted, the workshops were only held for Chuuk, Kosrae and Pohnpei States.

The workshops were conducted over one day each for Kosrae and Chuuk while a two day workshop was conducted in Pohnpei, with one day being for public awareness and State consultations while the second day was focused on the national level and pulling together the outcomes from the State workshops.

The workshops were coordinated in each State by the State NBSAP lead agencies which included Chuuk EPA, Kosrae DRC and Pohnpei CSP.

The workshops were conducted on June 8th in Chuuk, June 10th in Kosrae and June 14-15th in Pohnpei. The same agenda in Annex 1 was used for all the States except the final day in Pohnpei.

Opening Sessions

The workshops started in each state with opening prayers by local dignitaries, followed by opening remarks by the Director of the local lead agency.

General introductions were done for the participants to familiarize everyone and to gauge the level of understanding on the issues to be discussed at the workshops.

Session 1:

The first session was always a general overview of the CBD and its objectives, including an explanation of the specific provisions of the Convention on TK and ABS. A summary of the issues in the presentation are presented below

Principles

- National sovereignty over its resources
- Develop national measures to govern biological and genetic resources

Objectives

- Conservation of biological diversity
- Sustainable use of its components
- fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding".

Articles

- 8(j): develop national measures to respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity and
- 15: develop national measures to facilitate access to genetic resources and equitable sharing of benefits for its utilization

Actions

- National Biodiversity Strategy and Action Plans
- Bonn guidelines
- Development of an International Regime
- Agwé: Kon guidelines

Following the presentation, plenary discussions were conducted to ensure the participants are well versed on the CBD and the context in which Abs and TK are presented.

Session 2:

The second session focused on the presentation of the scope of TK provisions within the Convention. This include discussion on the definition of TK in the context of the CBD, the rationale for need to protect, preserve and maintain TK while acknowledging them a forms of intellectual property rights. The presentations further explored ways in which TK and be respected, protected and preserved as well as integrating them into programs relevant to the conservation and sustainable use of biodiversity and the need for greater acknowledgement and involvement of communities in the national and stake planning processes.

Below is a summary of the presentation

- **What is traditional knowledge**
 - knowledge developed from experience gained over the centuries and adapted to the local culture and environment:
 - Usually orally passed from generation to generation.
 - Tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds.
 - Mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, and forestry.
- **Why do we need to protect it**
 - From being lost
 - International recognition of ownership
 - From exploitation by outside interests
 - From destruction through development
 - To conserve biodiversity and sustainably manage the environment
 - Provide solutions for health, food security, and other development needs
 - To be integrated/mainstreamed into national and international decision-making processes
- **Forms of protection**
 - International mechanisms: Agwé: Kon guidelines
 - Intellectual Property rights;

- Sui generis laws,
- Family secrets, oral tradition
- **Mechanisms to protect and preserve it**
 - Registration
 - Documentation
 - Oral tradition
 - integrated/mainstreamed into national and international decision-making processes
 - Impact assessment
 - Participation
 - Work plans
 - School curriculum and youth programs

Following the presentation, plenary discussion were held for the participation to seek clarification and also share some of the activities that they have been involved with or aware off that either support the protection of TK or had contributed to the possible loss of TK without proper benefit sharing mechanisms or recognition of ownership.

Lunch was usually served at the conclusion of the plenary session on TK

In Pohnpei and Chuuk, working group sessions were held to further identify if there were any existing systems for preservation and protection of TK, benefits generated for the utilization of TK, and options for improving the situations after understanding the issues and options as identified in the Convention. The groups also presented view on the current capacity needs in the state levels to ensure effective implementation of any TK activities. The compilation of the State workshop working groups were used for the overall report as and presented as Annex 2 of the Consultancy final report.

For Kosrae, the working group discussions were conducted as a plenary session with the same outputs generated as well.

Session 3:

The third session focused on ABS, in which the presentation explained the background on why the Convention emphasized the need to develop national measures, the types of genetic resources and the critical components to ABS measures which are obtaining prior informed consent and mutually agreed terms. The presentation further identified and explained the important components for a national ABS measure. Following the presentation, plenary discussions preceded to clarify questions for the participants and also provide the chance for participants to explain some of the situations they were either involved with or aware off where some of the genetic materials have been taken out of the country and measures if they were used to regulate these.

What are genetic resources?

- Chemical compounds that form plant, animal and microbial organisms

Why is it important to protect them?

- Retain ownership from exploitation by outside interests (eg. sakau, pwanang, mamala)

- Obtain benefits to original scientists (traditional knowledge holders) and resource owners
- Support conservation and sustainable use of biodiversity for present and future generations

How to facilitate access and benefit sharing

- National measures (legislation, regulating agency, procedures, benefits)
- Identifying the owners (clan, community, state, national)

Issues to be covered in ABS measures

Prior informed consent

- *Prior*: before access takes place
- *Informed*: truthful information, nature of proposed activities, and potential benefits from use of genetic resources
- *Consent*: agreement given by the stakeholders on sharing the resources

Elements of PIC

- Competent authority(ies) granting or providing for evidence of prior informed consent;
- Timing and deadlines;
- Specification of use;
- Procedures for obtaining prior informed consent;
- Mechanism for consultation of relevant stakeholders;
- Process.

Mutually agreed terms

- Mutually agreed terms should cover the conditions, obligations, procedures, types, timing, distribution and mechanisms of benefits to be shared. These will vary depending on what is regarded as fair and equitable in light of the circumstances

Working group sessions were also held in Chuuk and Pohnpei based on the presentation for the participants to identify issues, which need to be addressed, as well as possible agencies and options which can be used in the development of a national ABS regime. The results of these discussions have been collated and included in the development of output 4 in the Consultancy Report.

The workshops in Chuuk and Kosrae were closed at the end of the ABS sessions, while the Pohnpei workshop reconvened for a second day.

Session 4:

The second day of the workshop started with a recap of the issues that had been collected from all the State workshops which are

- TK strongly practiced and transferred to younger generations, although some are being lost in certain areas due to changes
- Strong participation and input to decision-making due to traditional systems being the foundation of government

- Not very strong (state and national) government programs to support the preservation and protection of traditional knowledge
- Lack of understanding on ABS issues
- Strong willingness to push forward on activities to preserve and protect TK as well as regulating access to biological and genetic resources
- Some existing institutions undertaking TK preservation, but limited to documentation
- Strong willingness to integrate TK into decision-making processes and state programs
- Need for ABS measures at the state level with National government providing overview
- Current access to biological and genetic resources facilitated by various agencies and no benefit sharing mechanisms
- TK need stronger reflection for preservation and protection in constitution and legislation
- Specialized traditional knowledge holders reluctant to share knowledge

A plenary discussion was held to review this information and possibly adding a few additions on areas that were missing. At the conclusion of the sessions, the workshop organizers were entrusted with the notion of ensuring the issues will be reflected in the outcomes of the consultancy report.

Session 5:

Based on the information gathered from the state workshops, a draft Capacity Building Action Plan was presented to the workshop participants for discussion and commenting. The participants went through the proposed draft plan making comments and change, as well and adding additional information and actions.

Draft Capacity Building Action Plan

1. Lack of awareness on the benefits and options for preserving and protecting traditional knowledge
 - Implement public awareness programs on the benefits and options for preserving and protecting traditional knowledge
 - Conduct economic valuation of traditional knowledge
 - Develop appropriate benefit sharing mechanisms for sharing, protecting and preserving traditional knowledge
2. Loss of traditional knowledge
 - Strengthen traditional gatherings which promote the passing and sharing of knowledge
 - Family gatherings
 - Community gatherings
 - District and municipal gatherings
 - Promotion of cultural activities that encourage the sharing of traditional knowledge
 - Statewide and national fairs and associated programs
 - Strengthen existing cultural programs documenting traditional knowledge

3. Absence of cohesive legislative and regulatory frameworks to support the preservation and protection of traditional knowledge and practices
 - Integrate TK protection in constitution
 - Strengthen legislative frameworks or develop new Traditional knowledge legislation
 - Increase budgetary appropriations for activities that promote the preservation and protection of traditional knowledge
 - Establish interagency coordinating committee for the preservation and protection of traditional knowledge and practices
 - Establish administrative orders to regulate/stop access to genetic resources until ABS legal measures have been developed
 - Develop traditional knowledge and practices legislation
 - Develop ABS regulatory measures at National and State levels
4. Lack of traditional knowledge being integrated into decision-making processes and government programs
 - Integrate traditional knowledge into decision-making and activities
 - Include social impact assessment as part of review for proposed developments
 - Document and integrate traditional knowledge relating to development practices that promote the conservation and sustainable use of biodiversity
 - Strengthen programs integrating traditional knowledge and practices into school curriculum
5. Absence of working biodiversity database and effectively functioning clearinghouse mechanism
 - Develop a biodiversity database and clearinghouse mechanism
 - Put application forms and procedures for ABS and TK onto FSM website
6. Improve public awareness and appreciation of TK
 - Produce CD-ROM and videos of traditional knowledge practices
 - Implement a public awareness programmed for
 - Micronesian traditional leaders conference
 - General public
 - Develop a national storage facility for TK (museum)
 - Compile existing information on TK available in various storage facilities (museums, universities, libraries, archives, etc)

At the conclusion of the session, the participants entrusted the consultant with ensuring the amendments, changes and additional presented at the discussion will be included in the final action plan part of the consultancy report

Session 6:

The final session of the workshop included a presentation of the a draft elements for ABS measures based on the information gathered from the State workshop, NBSAP and previous workshops on ABS at the national and regional level.

Terms and definitions

- The terms as defined in Article 2 of the Convention shall apply to these Guidelines.
- Include derivatives and synthetic derivatives as part of genetic resources definition

Scope

- All genetic resources and associated traditional knowledge, innovations and practices covered by the Convention on Biological Diversity and benefits arising from the commercial and other utilization of such resources should be covered, with the inclusion/exclusion of human genetic resources

ROLES AND RESPONSIBILITIES IN ACCESS AND BENEFIT-SHARING

A. National focal point (Federal Government)

- The national focal point should inform applicants on procedures for acquiring prior informed consent and mutually agreed terms, including benefit-sharing, and on competent national authorities

B. Competent national authority (ies) (state level)

- Competent national/state authorities, shall be responsible for granting access and responsible for advising applicants on all necessary procedures for granting access:

C. ABS technical Committee

- An ABS technical committee shall be established to include the main agencies associated with the use and access to genetic resources, representatives of communities, and traditional knowledge holders, with a special technical advisor

D. Fees

- Application processing fee, Export permit
- Consent permit
- Access fees
- Bond

Plenary discussions resumed whereby the participant discussed and commented on the draft elements. At the conclusions of the discussions, the consultant was entrusted to ensure the comments and views expressed at the workshop will be incorporated in the final elements to be presented in the consultancy report.

The workshop closed at the conclusion of the session.

Annex 5: Questionnaire Summary Responses

Traditional Knowledge and Access and Benefit Sharing Questionnaire

Introduction

This questionnaire is designed to compile background information on the traditional knowledge issues in Micronesia. Based on the results of the questionnaire and community workshops in each of the four states, it is anticipated that an action plan along with appropriate legal frameworks can be developed to preserve and protect traditional knowledge from being lost and more importantly and exploitation by outside interests with out proper benefit sharing mechanisms..

We therefore seek your assistance in filling out the forms honestly. A follow up workshop is being planned that will further elaborate on this questionnaire as well as providing the opportunities for the stakeholders to discuss ways to preserve and protect traditional knowledge and facilitate access and benefit sharing for the owners and holders of knowledge from the use of genetic resources.

In this study, traditional knowledge is simply traditional understanding of the plants, animals, marinelife both in names and their functions in the environment as ornamental, medicinal, cultural or otherwise.

Traditional Knowledge:

1. Please list down the types of traditional knowledge and people you are aware about (eg. Joan-healer; John- fishing methods)

Initiation rites, dancing, chanting, weaving, navigation, farming, fishing, lunar cycles, construction (house, canoe, weapons, utensils), handcrafts, healing , gardening, traditional massages,

2. How is/are this/these traditional knowledge protected and preserved

Held by the owners and only passed through traditional apprentice; chants only passed to relatives; some of the knowledge is only shared during family community gathering; some have been collected and documented

3. Please list the people that have such knowledge (eg. Joan-medicinal plants; John: fishing)

Most considered that it was not appropriate to list the names of those with traditional knowledge for the purposes of such a public document, although indicated willingness to share upon having the right conditions for protection

4. Please list some of the methods traditionally used or new methods being used to preserve and pass on this traditional knowledge to future generations

Performing arts such as dances are being recorded and taught through community or special groups

Individual knowledge secrets as still kept within the family or community and only passed through either families or those approved by the current knowledge holders

Common traditional knowledge are being documented and collected by different government agencies and NGO's or outside researchers. Some knowledge are being distributed within the FSM while some are taken away by the researchers and not shared with the locals

5. Are there methods of protecting and preserving traditional knowledge working or not. Please comment on any ways you feel can be used to better protect and preserve traditional knowledge

Many felt that some of the traditional ways of preserving family and professional secrets are working, but felt that if they are to be shared, than appropriate compensation/ benefit sharing agreements should be reached prior to sharing them.

More common traditional knowledge were considered to be important for sharing with everyone within the FSM to assist with development, but if they are to be used for other purposes, than proper acknowledge of ownership with benefit sharing agreement will need to be reached prior to use.

Access to genetic resources

1. How is information on plants and animals being passed to present and future generations of FSM and foreigners

Some are being taught at schools and the College of Micronesia; some are being passed orally through the traditional ways, while are done through learning by doing. The State and National government as well as NGO's are sharing the information through the work in communities and outreach programs

2. Can you please list any cases you are aware off when knowledge on plants and animals were given to researchers or tourist

Many felt that there have been numerous occasions when knowledge had been shared by locals with researchers, outsiders and even other locals due to the hospitable nature of FSM people.

3. Do you know of any cases where plants, animals or marine life were collected from your island

Yes

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If yes, please list if you can remember what these animals, plants or marine life were

- *Marine algae and soft corals, Scripps Institute of Oceanography, University of Oklahoma*
- *1985-92 – A College of Micronesia instructor (US citizen) was contracted by SmithKline Pharmaceuticals to do plant collection in Pohnpei*
- *1987-89 – Bill Raynor produced an M.Sc. on traditional agroforestry that documented a lot of plant use information and knowledge*
- *1989-present – The Coral Reef Research Foundation (based in Palau) has a grant from the National Cancer Institute to do bioprospecting in Micronesia, focusing on marine organisms*
- *1991 – Japan's Marine Biological Institute is given permission from Pohnpei State to collect marine organisms (focusing on alga and corals) for several months on Pohnpei's reefs and lagoon.*
- *1992- Mark Merlin and Tom Keene (with help of Bill Raynor) produced "Tuhke en Pohnpei: Plants of Pohnpei" based on numerous interviews with Pohnpei plant experts. The book was distributed to the local schools for educational purposes (East-West Center and Packard-funded)*
- *1995-present – New York Botanical Garden, the Nature Conservancy, and the Pohnpei Traditional Leaders' Council are cooperating on a comprehensive ethnobotany project using 4-6 local ethnobotanists to interview local healers, collect voucher specimens, and otherwise document traditional medicinal knowledge on Pohnpei*
- *Some Japanese research ships have been collecting marine specimens in Yap*
- *some botanical collections have been done on Yap but details on whom they were and the extent of permission given were not known*

Was permission given (either through a permit from government, or permissions from the landowners or knowledge holders) prior to collection of biodiversity materials or traditional knowledge

Permissions were given by different agencies for different purposes either the National or State government, while some without permission could not be verified

4. Please list if there were any benefits given by the collectors for the information or biodiversity material

In most cases the only benefits identified were copies of the publications presented to the owners, although some of the anecdotal information indicated that there have been some benefit sharing agreements being discussed by the collecting agency and the locals or State government.