

DRAFT MEMORANDUM OF UNDERSTANDING
Enabling the Creation of a
Coordination Mechanism
to Support Integrated Ocean Governance in the
Caribbean and North Brazil Shelf Large Marine Ecosystems

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PREAMBLE

The Signatories:

Noting that the Caribbean and the North Brazil Shelf Large Marine Ecosystems (hereinafter jointly referred to as the “MoU Area”) are two of the sixty-six (66) globally defined Large Marine Ecosystems (“LMEs”) which are considered as meaningful geospatial units for the management of the ocean;

Recognizing the vast potential that the ocean space holds for the wellbeing of the populations and for the economic activity in the MoU Area, while also recognizing increasing threats to the marine and coastal ecosystems, whose health plays a fundamental role for the achievement of sustainable ocean-based economies;

Acknowledging past and ongoing efforts by Signatories in the MoU Area to support integrated regional ocean governance, to strengthen collaboration among countries and among organisations and to implement Ecosystem-Based Management (“EBM”) and an Ecosystem Approach to Fisheries (“EAF”);

Acknowledging the important role of the 1982 *United Nations Convention on the Law of the Sea* in promoting sustainable ocean governance;

Recalling that, with support from the United Nations Development Programme/Global Environment Facility (“UNDP/GEF”) Project, “Sustainable Management of the Shared Living Marine Resources of the Caribbean Large Marine Ecosystem and Adjacent Regions” (CLME Project) (2009-2014), a 10-year “Strategic Action Programme for the Sustainable Management of the Shared Living Marine Resources of the CLME+ region” (2015-2025) (hereinafter referred to as the “CLME+ SAP”) was delivered and by September 2020 had been endorsed by thirty-five ministers representing twenty-six States and eight Overseas Territories in the MoU Area, and which provided a comprehensive roadmap towards the conservation and sustainable use of living marine resources through strengthened regional cooperation and the implementation of EBM/EAF;

Recalling that the CLME+ SAP Interim Coordination Mechanism (“SAP ICM”) was created by the 2017 *Memorandum of Understanding Establishing the Interim Coordination Mechanism for the Sustainable Management, Use and Protection of shared Living Marine Resources in the Caribbean and North Brazil Shelf Large Marine Ecosystems* signed by eight intergovernmental organizations with mandates on marine pollution, biodiversity and fisheries, and that another interim coordination mechanism was put in place in January 2016 to facilitate, support and strengthen the coordination of actions for sustainable fisheries (“Fisheries ICM”) through a Memorandum of Understanding signed by three regional fisheries bodies, which are also members of the SAP ICM;

Noting that the CLME+ SAP under Strategy 3 calls for the creation of a permanent coordination mechanism with a mandate to promote sustainable fisheries and for the protection of the marine environment in the CLME+ region and acknowledging that an assessment of potential options for such a mechanism has been carried out under the CLME+ Project with close engagement of countries and intergovernmental organisations (“IGOs”);

Noting that the Signatories to this Memorandum of Understanding (“MoU”) share common objectives and recognize the importance of coordinating their actions through a mechanism that facilitates and strengthens the coordinated implementation of existing initiatives and actions in the region and thereby supports Signatory IGOs in achieving their respective mandates, creating synergies and avoiding duplication of efforts by the Signatories and other stakeholders;

Respecting the distinct mandates, functions and competences of the IGOs that are Signatories to this MoU;

Noting that the mobilization of wide-ranging, multi-stakeholder partnerships involving the donor community, private sector and civil society, in line with UN Sustainable Development Goal (“SDG”) 17.16, may be conducive to achieving sustainable ocean-based economies in the MoU Area;

Intend the following:

PURPOSE OF THE MEMORANDUM OF UNDERSTANDING

1. The purpose of this MoU is to create a Coordination Mechanism to Support Integrated Ocean Governance by strengthening collaboration among countries and among organisations in the MoU Area (“Coordination Mechanism”) as part of the efforts by the Signatories to achieve and safeguard healthy marine and coastal ecosystems as a key driver for human wellbeing and thriving sustainable ocean-based economies.
2. The MoU has the further purpose of defining the status, objectives and functions of the Coordination Mechanism.
3. This MoU does not impose, nor is it intended to impose, any legal commitments on the Signatories.

[This MOU is not an international agreement and does not give rise to international legal rights or obligations] [for the Signatories.]

Comentado [BDS1]: Alternative texts

OBJECTIVES

4. The objectives of the Coordination Mechanism are:

- 4.1. to support regional collaboration towards a coordinated approach to the conservation and sustainable use of marine and coastal ecosystems and their goods and services;
- 4.2. to support coordinated and interactive ocean governance in support of attaining ocean-based sustainable development;
- 4.3. to promote actions towards the achievement of the long-term vision articulated in the CLME+ SAP, and other ocean-related international and regional goals and commitments of the Signatories;
- 4.4. to promote partnerships with stakeholders from civil society and the private sector to facilitate and enhance efforts for the ecosystem based conservation and sustainable use of marine and coastal resources and to support intersectoral coordination and collaboration.

SCOPE

5. The geographic scope of the Coordination Mechanism includes the Caribbean Sea LME and the North Brazil Shelf LME (the MoU Area).
6. The thematic scope of the Coordination Mechanism includes land and marine based sources of pollution of the marine environment, marine and coastal habitats and biodiversity, and marine and coastal fisheries. It includes maintaining and enhancing the resilience of biodiversity, ecosystem services, and the human systems supported by these ecosystems to the impacts of climate change and natural disasters in support of conservation and sustainable use of the marine environment.

SIGNATORIES

7. The Signatories comprise the States and Territories of the MoU Area and IGOs with mandates that support the objectives of this MoU that sign this MoU.

OBSERVERS

8. States, Territories, and IGOs inside or outside of the MoU Area, or other relevant bodies and entities, may be invited by a decision of the Steering Group to associate themselves with this MoU as observers.

FUNCTIONS

9. The Coordination Mechanism is to promote and facilitate regional cooperation by enhancing communication and collaboration among Signatories for the conservation and sustainable use of coastal and marine resources and their ecosystems.
10. The Coordination Mechanism is to function to avoid duplication, create or enhance synergies and enable greater efficiency and effectiveness in the work of the Signatories.

CORE FUNCTIONS

11. The core functions of the Coordination Mechanism are to be performed on an ongoing basis, as the Coordination Mechanism's principal activities, subject to adequate resources. The core functions of the Coordination Mechanism are to:
 - 11.1. Facilitate programmatic coordination of ocean governance and support the monitoring of progress with ocean sustainability instruments, goals and commitments by:
 - 11.1.1. Providing a platform for cyclical Transboundary Diagnostic Analysis/Strategic Action Programme ("TDA/SAP") processes, including the coordination of the periodic assessment of and reporting on the state of the marine environment and associated economies in the MoU Area and the monitoring, periodic evaluation and revision of MoU Area SAPs;
 - 11.1.2. Facilitating efficient communication for coordination and collaboration in the development and implementation of regional programmes and SAPs by countries, IGOs and other partners;
 - 11.1.3. Supporting national monitoring and reporting on progress with regional and international ocean sustainability instruments, goals and commitments in the MoU Area through, inter alia, periodic joint reporting on the state of the marine environment and associated economies;
 - 11.1.4. Identifying gaps and overlaps and assessing the complementarity of programmes to strengthen existing regional and national efforts;

- 11.1.5. Leading the development of proposals for joint programmes that contribute to ocean sustainability and that support the transition towards sustainable ocean-based economies to be implemented by countries, IGOs and other partners;
- 11.2. Support the sustainable financing and coordinated resource mobilization for ocean governance by:
 - 11.2.1. Coordinating and monitoring the development and implementation of a sustainable financing plan for the Coordination Mechanism to achieve reliable and sufficient funding for its activities as determined by the Signatories to this MoU;
 - 11.2.2. Pursuing funding for programmes, projects and activities that contribute to ocean sustainability in the MoU Area, including those cutting across sectors;
 - 11.2.3. Engaging international funding partners to encourage their support of the priorities set out in the SAP and in the plans and programmes of member IGOs and other partners;
 - 11.2.4. Developing and implementing innovative financing mechanisms to mobilize private investment for ocean governance and for the financing of sustainable ocean-based economies;
- 11.3. Facilitate the coordination of institutional and policy frameworks for ocean governance across multiple levels by:
 - 11.3.1. Facilitating interactions among IGO Signatories to identify synergies and opportunity for collaboration;
 - 11.3.2. Identifying regional policy gaps for consideration and developing recommendations, as appropriate;
 - 11.3.3. Supporting countries in developing national sustainable ocean-based economies and providing a platform for sharing knowledge, lessons learned, and voluntary transfer of technology on mutually acceptable terms;
 - 11.3.4. Identifying policy processes that may benefit from science inputs and engaging research partners;
 - 11.3.5. Enhancing collaboration with regional integration organisations and their specialized organisations and institutions (and collaboration among Signatories, including the Caribbean Community (CARICOM), the Central American Integration System/Sistema de la Integración Centroamericana (SICA), the Organisation of Eastern Caribbean States (OECS), as well as the Association of Caribbean States (ACS) which is vested with the role of facilitating collaboration, cooperation and concerted action in the Greater Caribbean);
 - 11.3.6. Encouraging stakeholders to join the Coordination Mechanism and partner in fulfilment of the overall objectives;
- 11.4. Support, as requested, national ocean governance, including national level coordination for oceans by:
 - 11.4.1. Supporting the establishment and/or strengthening of national level inter-sectoral coordination mechanisms for oceans;
 - 11.4.2. Supporting the mobilization of resources for national level cross-sectoral policy coordination and integration;
- 11.5. Carry out such additional activities as are necessary to support the achievement of the objectives of the Coordination Mechanism, as determined by the Signatories.

COMPLEMENTARY FUNCTIONS

- 12. Complementary functions are to be performed if and when additional resources are available, as regular or time-bound activities. The Secretariat of the Coordination Mechanism and the Signatories are to support resource mobilization efforts for the complementary functions herein on an ongoing basis. The complementary functions of the Coordination Mechanism are to:
 - 12.1. Coordinate knowledge management and facilitate data and information sharing, by:
 - 12.1.1. Providing countries, IGOs and the wider stakeholder community access to data, information, knowledge and technology on voluntary and mutually acceptable terms;
 - 12.1.2. Facilitating the identification and sharing of data and information among IGOs, countries, research institutions and other partners, and supporting the harmonization of monitoring approaches;
 - 12.2. Coordinate outreach, awareness raising and stakeholder engagement, by:
 - 12.2.1. Promoting and communicating shared cross-sectoral perspectives on regional ocean governance among all stakeholders including the public;
 - 12.2.2. Reaching out to stakeholders and the wider public within and beyond the MoU Area with key messages and information related to the conservation and sustainable use of the ocean;
 - 12.2.3. Communicating the benefits of a coordinated approach to regional ocean governance and joint programmes, and the added value of the Coordination Mechanism;

12.2.4. Engaging with the broader stakeholder community and partners (such as civil society, private sector, development banks, donors, etc.) and promoting multi-stakeholder partnerships for the MoU Area;

12.3. Strengthen science-policy interfaces by:

12.3.1. Identifying research institutions, universities and other scientific organisations that carry out research with relevance to ocean sustainability in the MoU Area;

12.3.2. Establishing partnerships with research institutions to share scientific data and information, to coordinate activities and to identify opportunities for collaborative research in the natural and social sciences and technology, and review, report on and update the research agenda;

12.3.3. Encouraging and supporting precautionary actions and approaches with policy and decision makers where marine and coastal resources and ecosystems are or may become compromised or threatened;

12.4. Explore new areas for collaboration by:

12.4.1. Identifying new areas for regional collaboration for consideration and developing recommendations, as appropriate;

12.4.2. Identifying and addressing emerging issues that may benefit from regional collaboration and common approaches, including incorporation into existing and future SAPs and other regional plans and strategies;

12.5. Engage in cooperation with the Gulf of Mexico LME;

12.6. Carry out such additional activities as may be necessary to support the achievement of the objectives of the Coordination Mechanism, as determined by the Signatories.

ORGANS

13. The principal organs of the Coordination Mechanism are to be:

13.1. The Steering Group,

13.2. The Executive Group, and

13.3. The Secretariat.

14. In the performance of their functions, the principal organs may be assisted by Working Groups.

STEERING GROUP

15. The members of the Steering Group are expected to consist of one representative from each of the States and Territories that are Signatories to this MoU.

15.1. The Chair of the Executive Group and the Director of the Secretariat are to attend the meetings of the Steering Group and may participate in the discussions of the Steering Group without decision-making capacity.

15.2. The other members of the Executive Group may attend and participate in the discussions of the Steering Group without decision-making capacity.

16. The Steering Group is to function according to the following procedures:

16.1. The Chair of the Executive Group convenes the first meeting of the Steering Group, whether in person or virtual, not later than one year after the commencement of this MoU. Thereafter, ordinary meetings of the Steering Group, whether in person or virtual, are convened by the Chair of the Steering Group at regular intervals;

16.2. Extraordinary meetings of the Steering Group, whether in person or virtual, are held at such other times as may be deemed necessary by the Steering Group, or at the written request of any member of the Steering Group, provided that, as soon as practicable and no more than six months after the request being communicated to them by the Secretariat, the request is supported by at least one half of the members of the Steering Group. Extraordinary meetings held in-person include options for remote participation;

16.3. A simple majority of members of the Steering Group constitutes a quorum;

16.4. Decisions and recommendations by the Steering Group are to be made by consensus;

16.5. The Steering Group may adopt, determine and regulate its own procedures, including procedures related to decision-making, the selection and rotation of the Chair, and the attendance and participation of observers;

16.6. The Steering Group reviews and approves recommendations and decisions of the Executive Group, as set forth in the Rules of Procedure;

16.7. The Steering Group may delegate any of its functions to the Executive Group.

17. The Steering Group is to:

17.1. Provide general direction and oversight for the Coordination Mechanism;

17.2. Provide high level guidance for the Executive Group;

17.3. Approve changes to the status of the functions of the Coordination Mechanism, from complementary to core, or vice versa;

17.4. Approve the work programmes of the Coordination Mechanism;

17.5. Approve the budget of the Coordination Mechanism;

17.6. Identify and add geographic and/or thematic areas into the scope of the Coordination Mechanism;

17.7. Invite States and Territories in the MoU Area, as well as IGOs whose objectives are aligned with the purposes of this MoU and that are active in the MoU Area, to become Signatories to the MoU;

17.8. Enhance communication and collaboration among Signatories so as best to mobilise resources for and otherwise support the purpose, objectives and functions of the Coordination Mechanism;

17.9. Take decisions on entering into relationships between the Coordination Mechanism and non-Signatories;

17.10. Approve financial arrangements for the funding of the Coordination Mechanism or any of its activities;

17.11. Establish and oversee such Working Groups as it considers necessary for the achievement of the purpose, objectives and functions of the Coordination Mechanism, including termination of such Working Groups as appropriate;

17.12. Make any additional decisions or recommendations necessary to further the purpose, objectives and functions of the Coordination Mechanism, including decisions regarding the creation and operation of the Secretariat, as necessary and appropriate.

EXECUTIVE GROUP

18. The Executive Group is expected to consist of one representative from each IGO that is a Signatory to this MoU.

18.1. The Director of the Secretariat is to attend the meetings of the Executive Group and may participate in the discussions of the Executive Group without decision-making capacity.

18.2. The Chair of the Steering Group may attend and participate in the discussions of the Executive Group without decision-making capacity.

19. The Executive Group is to function according to the following procedures:

19.1. The first meeting of the Executive Group, whether in person or virtual, is to be convened by the executive director of the first IGO Signatory to sign the MoU, prior to the first meeting of the Steering Group, and no later than six months after the commencement of this MoU. Thereafter, ordinary meetings of the Executive Group, whether in person or virtual, are convened by the Chair of the Executive Group at regular intervals;

19.2. Extraordinary meetings of the Executive Group, whether in person or virtual, are held at such other times as may be deemed necessary by the Executive Group, or at the written request of any member of the Executive Group, provided that, as soon as practicable and no more than six months after the request being communicated to them by the Secretariat, the request is supported by at least one half of the members of the Executive Group. Extraordinary meetings held in-person include options for remote participation;

19.3. A simple majority of members of the Executive Group constitutes a quorum;

19.4. Decisions and recommendations by the Executive Group are to be made by consensus;

19.5. The Executive Group may adopt, determine and regulate its own procedures, including procedures related to decision-making, the selection and rotation of the Chair, and the attendance and participation of observers.

20. The Executive Group is to:

20.1. Guide and oversee the operation of the Coordination Mechanism, including the Secretariat and Working Groups, pursuant to the general direction provided by the Steering Group;

20.2. Recommend approval of the work programmes of the Coordination Mechanism to the Steering Group;

20.3. Recommend that the status of the functions of the Coordination Mechanism be changed from complementary to core or vice versa;

- 20.4. Make recommendations to the Steering Group to further the purpose, objectives and functions of the Coordination Mechanism;
- 20.5. Enhance communication and collaboration among Signatories to mobilise resources for and otherwise support the purpose, objectives and functions of the Coordination Mechanism;
- 20.6. Make recommendations to the Steering Group for financial arrangements related to funding of the Coordination Mechanism;
- 20.7. Recommend approval of the budget of the Coordination Mechanism to the Steering Group;
- 20.8. Oversee periodic independent reviews of the effectiveness of the Coordination Mechanism and report to the Steering Group;
- 20.9. Periodically conduct internal reviews and make recommendations to the Steering Group to improve the efficiency of the communication and information capacities of the Coordination Mechanism;
- 20.10. Oversee the work of the Secretariat, if appropriate for the functioning of the Coordination Mechanism;
- 20.11. Recommend to the Steering Group the creation of such Working Groups as the Executive Group considers necessary for the achievement of the purpose, objectives and functions of the Coordination Mechanism and oversee their work.

SECRETARIAT

21. The Secretariat is to comprise a Director and such other staff as the Coordination Mechanism may need, if an existing entity does not fulfil the duties of the Secretariat.
22. Consideration is to be given to securing the highest standards of efficiency, competence and integrity in the recruitment of the staff of the Secretariat, bearing in mind geographic distribution and gender balance, if an existing entity does not fulfil the duties of the Secretariat.
23. The Secretariat is to:
 - 23.1. Provide administrative and financial services to the Coordination Mechanism;
 - 23.2. Prepare, support and document meetings of the Steering Group, Executive Group and Working Groups;
 - 23.3. Prepare draft work programmes and budgets for the Coordination Mechanism and incorporate recommendations and feedback from the Steering Group and Executive Group;
 - 23.4. Implement activities as determined in the work programmes of the Coordination Mechanism;
 - 23.5. Perform the functions assigned to it under this MoU or by the Steering Group or Executive Group;
 - 23.6. Prepare performance reports on the execution of its functions and present them to the Executive Group and the Steering Group; and
 - 23.7. With the approval of the Steering Group, coordinate with other relevant international bodies and enter into such administrative and contractual arrangements on behalf of the Coordination Mechanism as may be needed for the effective discharge of its functions.
24. The Director of the Secretariat is to represent the Coordination Mechanism, as approved by the Steering Group.

WORKING GROUPS

25. Working Groups may be established by the Steering Group to address specific topics. Working Groups may operate for a period of fixed duration or indefinitely.
26. In accordance with the provisions of this MoU and any conditions of the Steering Group or Executive Group, each Working Group may establish and regulate its own procedure, and may decide to admit at its discussions observers.

[LEGAL PERSONALITY]

27. [The Secretariat may take steps under domestic legal systems to obtain juridical personality for the Coordination Mechanism.
28. Every State or Territory which is a Signatory to this MOU should, to the best of its ability, in its territory accord to the Coordination Mechanism the most extensive legal capacity accorded to legal persons under its laws, once the Secretariat has taken the actions described in paragraph 1 of this Section, including the capacity to acquire and dispose of movable and immovable property and to sue and be sued in its own name.
29. In any legal proceedings the Coordination Mechanism is to be represented by the Director of the Secretariat.
30. If so authorised by the Steering Group, the Director of the Secretariat may conclude agreements with states, regional and international organisations.]

Comentado [BDS2]: The Executive Group can only recommend the creation of Working Groups; the Steering Group establishes them.

Comentado [BDS3]: The question of legal personality is to be raised internally with legal offices before the next Steering Committee meeting. At that meeting a decision may be made about whether to (1) retain the current section on legal personality, or (2) remove it.

If the sections on legal personality are removed, the MoU would be silent on the issue. This would allow the nature and form of legal personality to be determined later, during the next Project phase. The interim secretariat of the Coordination Mechanism would already have legal personality and hence the issue would not arise unless or until the Coordination Mechanism becomes independent.

FUNDING OF COOPERATION AND COLLABORATION

31. Any action of cooperation or collaboration pursuant to this MoU is subject to the availability of staff and funding to support said action.
32. The Executive Group and the Steering Group should seek to secure and maintain the financial sustainability of the Coordination Mechanism.
33. Financial arrangements in support of the Coordination Mechanism may include:
- 33.1. A trust fund mechanism, established under international and/or national law;
 - 33.2. Grants;
 - 33.3. Donor contributions;
 - 33.4. Voluntary funding contributions by Signatories, whether general or for specific tasks;
 - 33.5. Own revenue generation;
 - 33.6. Private sector contributions.

COMMUNICATIONS

34. Any notice or request given or made under this MoU is duly made or given when addressed in writing to the official address of a Signatory and copied to the Director of the Secretariat.
35. The Secretariat maintains a list containing the official address of each Signatory and updates it continuously.

INTERPRETATION

36. The present MoU is to be interpreted in good faith and to the exclusion of any single national system of law.

CONSULTATION

37. Any question regarding the application or interpretation of this MOU should be the subject of consultation between representatives of the concerned Signatories.
- [Any disagreement between the Signatories could be resolved amicably through formal communication between Signatories.]

Comentado [BDS4]: Colombia proposed alternative text

MODIFICATION

38. This MoU may be modified by consensus decisions of both the Steering Group and the Executive Group.

COMMENCEMENT

39. This MoU is expected to commence upon signature by a minimum of twenty-three (23) Signatories, including no fewer than seventeen (17) States or Territories and six (6) IGOs.

SUCCESSION

40. When this MoU commences, Signatories that also participate in the 2017 *Memorandum of Understanding Establishing the Interim Coordination Mechanism for the Sustainable Management, Use and Protection of shared Living Marine Resources in the Caribbean and North Brazil Shelf Large Marine Ecosystems* are expected to discontinue cooperation under that MoU.

DISCONTINUANCE

41. Any Signatory may discontinue cooperation under this MoU at any time, but is expected to give three (3) months advance written notice of its intention to do so.
42. The MoU is expected to remain operative unless dissolved by simple majority decisions of both the Steering Group and the Executive Group. In such event, the Steering Group and the Executive Group are to endeavour to conclude in an orderly manner on-going activities.

NEW SIGNATORIES

43. A request to become a Signatory to this MoU by an IGO whose objectives are aligned with the objectives of this MoU and is active in the MoU Area is expected to be subject to consensus decisions of both the Steering Group and the Executive Group at the time of the request.
44. Any State or Territory whose territory falls within the geographic scope of the CM may become a Signatory to this MoU.

LANGUAGE

45. Original copies are in English and Spanish.

DONE at
on the day of

Signed by
for [State, Territory or IGO] on the day of