

Options for a Pacific regional framework to address plastic pollution

This paper provides background for SPREP members considering what kind of a regional framework is suitable to address marine plastic pollution. It sets out for the various legal options available to SPREP for the adoption a regional framework. It is supported by an explanatory online video available here

[\[https://drive.google.com/drive/folders/1eFITQzOGELAIF3jTbMh-v9XTTUSTyyAM\]](https://drive.google.com/drive/folders/1eFITQzOGELAIF3jTbMh-v9XTTUSTyyAM).

Support for a holistic regional framework in the Pacific

The vision of the Pacific Regional Marine Litter Action Plan (2018-2025) is to move towards a circular economy, particularly for land-based waste. The action plan recognises that this must be achieved by working with those countries that manufacture and import goods into the region, while also exporting waste back to key manufacturing countries for recycling. In addition, private sector investment must be supported by an ‘enabling policy and legislative environment’ to foster a shift in import systems and promote extended producer responsibility (pg12). Drafting of model legislation for problematic items, such as single-use plastics, Styrofoam and packaging, is suggested.

Strategic Goal 2 of the Cleaner Pacific 2025 supports the recovery of resources from wastes and pollutants through recycling. Application of Resource Recovery Schemes and Extended Producer Responsibility schemes is also promoted in the Cleaner Pacific Implementation Plan (Activities 6.1 & 6.4).

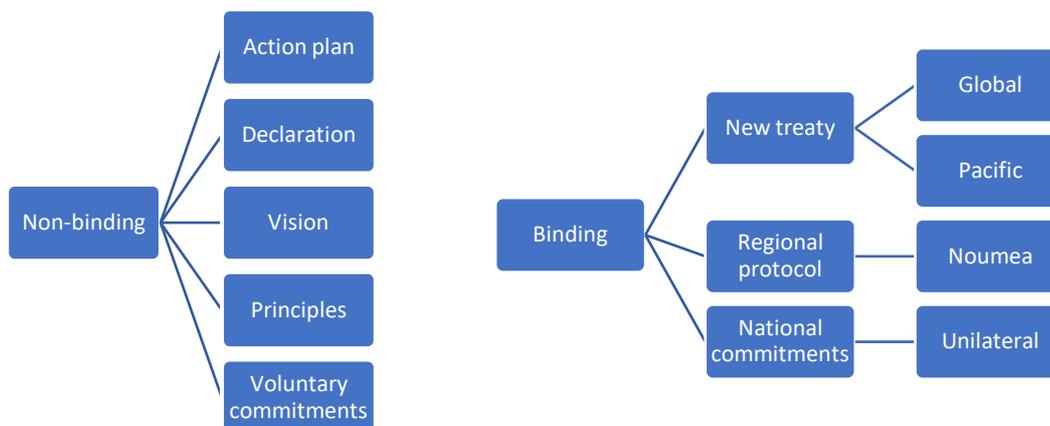
The **Pacific Regional Declaration on the Prevention of Marine Litter and Plastic Pollution and its Impacts** acknowledges the need for more ambitious action, including global and regional policy frameworks such as extended producer responsibility and container deposit systems. It calls for discussions on a global agreement to consider measures for the reduction of virgin plastic production, as well as the phasing out of toxic and avoidable plastics, problematic and single-use plastic products and harmful additives, and the development of harmonised labelling standards, to support transition to a “safe circular global economy.”

These Pacific regional initiatives, in the form of an action plan, vision and declaration, provide the context and antecedents to developing a more sophisticated Pacific regional framework to combat marine plastic pollution. That framework could be developed in a binding or in a non-binding form as discussed below.

Options for a regional legal framework on marine plastic pollution

The legal options for a regional framework to address marine plastic pollution are simple to conceptualise as they form a small set, represented in diagram one. The **first question** that SPREP members might ask is whether the preferred Pacific collective action is to be either binding or non-binding. The **second question** is whether the collective action instrument will be freestanding or placed within in the current Pacific regional law and policy architecture. Flowing down from these two questions are subsidiary issues concerning mixes and types of binding and non-binding commitments.

Diagram 1: Binding or non-binding?



Non-binding options

Non-binding options may take the forms of action plans, vision statements, optional national commitments and other collective or national declarations. These offer advantages of flexibility, time-bound commitments, ambitious approaches, and freedom from compliance constraints. For example, a holistic life cycle approach to plastics management in the Pacific region can be articulated as an aspirational goal in an action plan whereas it might be difficult to formulate as a legally binding obligation. Formal statements can be adopted at intergovernmental conferences by the collective decision of participating governments at the time. Such statements are approved at national executive rather than legislative level.

Action Plan

SPREP already has a non-binding marine litter action plan. The current plan runs until 2025 and will need to be superseded by a plan to be adopted in 2024-25, for the period 2025-2030/35. However, the current plan could be superseded early by a revised plan that strengthens its commitments.

Declaration of Principles

A declaration that sets out guiding principles for regional action to eliminate marine plastic pollution can be formulated to create a framework for such action. For example, relevant to marine plastic pollution are the environmental principles of polluter pays, extended producer responsibility, waste minimisation, life-cycle management, proximity of disposal to source, and progression of targets and activities. Subsequent meetings can elaborate specific steps to implement those principles within the framework.

Vision Statement

A vision statement is a declaration that describes the ideal situation that the parties aspire to. It commits countries to perform their best endeavours according to the aspirational vision. The vision is general and lacks specific targets or performance accountability. It could be linked to environmental principles, setting out the vision to be attained by their

implementation, such as optimal recycling, zero waste, hazard elimination, circular economy, and sustainable environmental management.

Voluntary national objectives

A non-binding framework may also provide a vehicle for voluntary national objectives, made unilaterally by participating governments. Unilateral national voluntary objectives have been used under the UN Framework Convention on Climate Change in the form of mitigation action plans or ‘intended and nationally determined contributions’ to reduce greenhouse gas emissions. They enable parties to voluntarily commit to non-binding targets and actions. (Non-binding objectives might transform into binding obligations at a later stage, as they did under the Paris Agreement on climate change.)

Binding options

If binding elements are to be adopted, then a legally binding instrument is required. It can be a new treaty or an addition to an existing agreement (e.g. a protocol or annex). The commitments formulated under it can combine soft obligations and specific ones, and be supported by a cascade of non-binding commitments.

National unilateral obligations

Unilateral commitments to individual national targets and actions can be adopted within a legally binding framework. Within this framework, countries unilaterally select or negotiate individually their national targets and actions and agree to be legally bound by them. The individualisation of commitments allows for differentiated national responsibilities, based upon national circumstances, capacities and needs. (Nationally determined obligations to mitigation of greenhouse gas emissions under the Paris Agreement on climate change provide an example of unilateral national commitments with binding actions and targets.)

Noumea Protocol

The principal existing Pacific regional agreement for prevention of environmental pollution is the 1986 Noumea Convention. It sets out general principles and aspirational best endeavours obligations, as a framework for subsequent more specific commitments. Its two original protocols (on waste dumping and oil spill cooperation) were adopted and entered into force during the same period as the Noumea Convention. However, two protocols developed three decades ago to update the 1986 versions never entered into force. Thus, the Noumea Convention might be considered as moribund, although a marine plastic pollution protocol to it might be hoped to rejuvenate it as a regional vehicle for environmental obligations. A marine plastics protocol might set out collective actions or individually differentiated ones. The Noumea Convention limits on its geographic scope and participating parties (limited to the original signatories) would require attention to these matters in a protocol.

Regional treaty

A standalone treaty agreement is an open slate. It allows free development of a marine plastic pollution regime customised and suited to the preferences of the parties. For example, it can be designed for an appropriate geographical scope, inclusion of parties of

differentiated (regional/non-regional) status, include both common and individual commitments, and set out obligations that mix specific targets and actions with aspirational ones.

Global Treaty

The UN Environment Assembly recently, 2 March 2022, adopted a resolution (UNEP/EA.5/L.23/Rev.1) that requests the UN Environment Programme (UNEP) to convene an intergovernmental negotiating committee to formulate a new global treaty on plastic pollution, especially in the marine environment. UNEP is to convene an open-ended working group to meet soon, in the first half of 2022, to set out the terms for the intergovernmental negotiating committee to begin its work during the second half of 2022, aiming to complete negotiations by the end of 2024. Therefore, SPREP members might consider maximising the efficiency and effectiveness of their participation in a global treaty through a coordinated regional approach to the negotiations. These might include the preparation of regional position papers on: goals and targets, sustainability indicators, milestones to track progress, scientific and financial supports, and plastic product design to enable a circular economy. This action could be an alternative to developing a regional treaty that would take as long to negotiate and be potentially duplicative or inconsistent.