



**Te Ohu Kaimoana's response to
the Secretariat for the
Convention on Biological
Diversity's draft documents for
the Post-2020 global biodiversity
framework in preparation for
SBSTTA-24.**

Te Ohu
Kaimoana


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This is our response on the draft documents for the Post-2020 global biodiversity framework in preparation for SBSTTA-24.

1. Thank you for providing us with the opportunity to comment on the draft documents for the Post-2020 global biodiversity framework in preparation for the twenty-fourth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 24). Including the following;
 - The Post-2020 Global Biodiversity Monitoring Framework
 - Indicators for the Post-2020 Global Biodiversity Framework
 - Linkages between the Post-2020 Global Biodiversity Framework and the 2030 Agenda for Sustainable Development
2. Our response builds on the responses we provided to:
 - the Secretariat of the Convention on Biological Diversity ('the Secretariat') in April 2019 on matters to consider in a new Global Framework ([see here](#))
 - Aotearoa/New Zealand's Ministry of Foreign Affairs and Trade (MFAT) on 10th January 2020 on area-based conservation measures ([see here](#)).
 - Aotearoa/New Zealand's Ministry of Foreign Affairs and Trade (MFAT) on 5th February 2020 on the zero draft of the global biodiversity framework (see [here](#)).
3. We have structured our response as follows:
 - First, we set out who we are and the reasons for our interest
 - Second, we describe the Te Hā o Tangaroa kia ora ai taua, as the foundation of our advice.
 - Third, we outline our view and general comments on the draft documents
 - To conclude, we provide our recommendations using the review templates provided by the Secretariat.
4. Limited time means we have not been able provide you with more comprehensive comments and suggestions on alternative monitoring elements and indicators. If you have any questions or comments, please contact Te Taiawatea Moko-Mead (TeTaiawatea.MokoMead@teohu.maori.nz) or Kirsty Woods (kirsty.woods@teohu.maori.nz).
5. We do not intend our response to conflict with or override any response provided independently by Iwi (the indigenous tribes in Aotearoa/New Zealand), through their Mandated Iwi Organisations (MIOs) and/or Asset Holding Companies (AHCs).

We are Te Ohu Kaimoana

6. Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) was established to protect and enhance the Deed of Settlement. The Deed of Settlement and the Maori Fisheries Act 2004¹ express the legal obligations of the government of Aotearoa/New Zealand ('the Crown') to uphold Te Tiriti o Waitangi which is the constitutional foundation for Aotearoa/New Zealand, including the rights of Māori as indigenous peoples
7. Our purpose, set out in section 32 of the Maori Fisheries Act, is to "advance the interests of iwi (the indigenous tribes in Aotearoa), individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, in order to:
 - a) ultimately benefit the members of Iwi and Maori (Indigenous peoples in Aotearoa) generally
 - b) further the agreements made in the Deed of Settlement
 - c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi
 - d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."
8. We work on behalf of 58 mandated Iwi organisations (MIOs)² who represent Iwi throughout Aotearoa. Asset Holding Companies (AHCs) hold Fisheries Settlement Assets on behalf of their MIOs. The assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group.
9. MIOs have approved our Māori Fisheries Strategy and three-year strategic plan, which has as its goal "that MIOs collectively lead the development of Aotearoa's marine and environmental policy affecting fisheries management through Te Ohu Kaimoana as their mandated agent". We play a key role in assisting MIOs to achieve that goal.

Summary

1. Te Ohu Kaimoana is aware that a lot of work has been done by the Expert Mechanism on the Rights of Indigenous peoples, the UN Permanent Forum on Indigenous Issues and the CBD's own working groups on the effective participation and recognition of the rights of Indigenous Peoples and Local Communities. We are disappointed that the draft Post 2020 Global Biodiversity Monitoring Framework documents do not include nor reflect the recommendations and the

¹ Māori Fisheries Deed of Settlement 1992. The Deed is given effect to by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and the Māori Fisheries Act 2004.

² MIO as referred to in The Maori Fisheries Act 2004: in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 13(1) as the representative organisation of that iwi under this Act, and a reference to a mandated iwi organisation includes a reference to a recognised iwi organisation to the extent provided for by section 27.

decisions that were agreed by these fora and working groups. This is both a historical and a contemporary issue of Indigenous Peoples being marginalised in International processes. We provide recommendations in this report in support of the recommendations made by the Expert Mechanism on the Rights of Indigenous peoples, the UN Permanent Forum on Indigenous Issues and the CBD's own working groups so that they are effectively reflected in the Post-2020 Global Framework.

2. We assessed several matters as being fundamental to ensuring the Convention on Biological Diversity (the Convention) supports Māori in the exercise of their fishing rights within Aotearoa's fisheries management system:
 - a. The obligations of the Convention in relation to indigenous peoples, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
 - b. Recognition of indigenous knowledge systems and world views. We note [Te Hā o Tangaroa kia ora ai tāua](#)³ as an expression of a Māori World View to sustainable management of the marine environment. This approach is enshrined in Te Tiriti o Waitangi and the Fisheries Settlement⁴ and is reflected in the purpose and principles of Aotearoa/New Zealand's fisheries legislation.
 - c. Māori rights in fisheries are an integral part of our fisheries management system. Our fisheries legislation contains obligations in relation to the Fisheries Settlement, and is guided by its purpose of sustainable utilisation, along with a set of environmental principles that include maintenance of aquatic biodiversity. In our view this is consistent with the objectives of the Convention and we would be concerned if the international framework – even if unintentionally – served to undermine this carefully constructed balance.
 - d. Marine protection initiatives agreed at the international level should support, and not undermine, the way our fisheries regime provides for protection of aquatic biodiversity from the undue adverse effects of fishing. Management of fisheries effects is integrated through Aotearoa/New Zealand's fisheries management system. International agreements around marine protection should support rather than undermine this approach.
 - e. Aotearoa/New Zealand has a rights and responsibilities-based approach to fisheries management. This framework creates the incentive for rights holders to take

³ Translated to the breath of Tangaroa sustains us.

⁴ The Fisheries Settlement was a settlement of Fisheries claims under Te Tiriti o Waitangi. It was enshrined in the Deed of Settlement, signed in 1992 and implemented through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1996 and the Maori Fisheries Act 2004.

responsibility for managing the effects of fishing on all aquatic biodiversity. As part of this Maori, in particular, have a share in the productive potential of all aquatic life.

- f. In Aotearoa/New Zealand we need to do a better job of ensuring the impacts of other activities – such as land use - on fisheries and aquatic biodiversity are more effectively managed. We support international initiatives that encourage greater integration between management of land, fresh water and the marine environment, in a way that is appropriate for each country.
3. These matters remain pertinent to the discussions to be held on the development of the Post-2020 Global Framework.

Te Ohu Kaimoana's interest

10. Our interest arises from our responsibility to protect the rights and interests of Iwi in the Deed of Settlement and assist the Crown to discharge its obligations under the Deed and the Te Tiriti o Waitangi.
11. Te Tiriti o Waitangi guaranteed Māori tino rangatiratanga (sovereignty) over their taonga (treasures), including fisheries. Tino rangatiratanga is about Māori acting with authority and independence over their own affairs. It is practiced through living according to tikanga (Māori protocols and values) and mātauranga Māori (Māori knowledge), and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti o Waitangi are protected for the use and enjoyment of future generations. This view endures today and is embodied within our framework Te Hā o Tangaroa kia ora ai tāua (the breath of Tangaroa sustains us).
12. The obligations under Te Tiriti o Waitangi apply to the Crown generally, whether there is an explicit reference to the Treaty in the governing statute, in this case the Fisheries Act 1996. Of particular note are the comments in the Barton–Prescott case, that “since the Treaty of Waitangi was designed to have general application, that general application must colour all matters to which it has relevance, whether public or private and...whether or not there is a reference to the treaty in the statute.”⁵

⁵ Barton-Prescott v Director-General of Social Welfare [1997] 3 NZLR 179, 184.

Our advice is based on Māori principles

We base our advice on Te hā o Tangaroa kia ora ai tāua

13. Te Hā o Tangaroa kia ora ai tāua is an expression of the unique and lasting connection Māori have with the environment. It contains the principles we use to analyse and develop modern fisheries policy, and other policies that may affect the rights of Iwi under the Deed of Settlement (see Figure 1). In essence, Te Hā o Tangaroa kia ora ai tāua highlights the importance of humanity's interdependent relationship with Tangaroa (God of the sea) to ensure our mutual health and wellbeing.
14. Māori rights in fisheries can be expressed as a share of the productive potential of all aquatic life in Aotearoa/New Zealand waters. They are not just a right to harvest, but also to use the resource in a way that provides for social, cultural and economic wellbeing.
15. Te Hā o Tangaroa kia ora ai tāua does not mean that Māori have a right to use fisheries resources to the detriment of other children of Tangaroa: rights are an extension of responsibility. It speaks to striking an appropriate balance between people and those we share the environment with.
16. In accordance with this view, "conservation" is part of "sustainable use", that is, it is carried out in order to sustainably use resources for the benefit of current and future generations. The Fisheries Act's purpose is to "provide for the utilisation of fisheries resources while ensuring sustainability." The purpose and principles of the Act echo Te Hā o Tangaroa kia ora ai tāua. This view contrasts with the idea that people and nature are separate from one another but rather interconnected.

Leading the recovery of seafood sector in a post-Covid environment

17.

The Covid-19 pandemic has showcased the leadership of Iwi/Māori and their commitment to ensuring the health and well-being of their communities. Iwi across the country mobilised to stop the spread of Covid-19 in their tribal territories and protect their most vulnerable. This was achieved through the provision of financial support, food and health and social services to their whānau (families) and hapū (sub-tribes) – and although Aotearoa/New Zealand is now in Alert Level One, a lot of this support is continuing.

18. Māori food sovereignty has been a topic of debate in discussions about Covid-19 impacts. Ensuring continued access to kaimoana (seafood) is a core concern for Iwi/Māori. We continue to seek out other opportunities for Iwi/Māori to provide kai to their hapū and whānau through customary arrangements (commercial and non-commercial) and the need to do so informs our response.

19. Maintaining seafood supplies throughout Aotearoa/New Zealand and worldwide is essential to food security and will be an important contributor to our economic recovery. The restrictions resulting from Covid-19 have placed increased attention on the food sector, and the seafood sector in particular. Aotearoa/New Zealand is well placed to provide global leadership in developing policies to recover and maintain seafood systems by applying the experience drawn from the 30 plus years of operating the Quota Management System (QMS). This period has been characterised by ongoing innovation in the way seafood is collected from the marine environment and is evidenced by the reduction in both the number of vessels and the size of industry's environmental footprint. This innovation is set to continue with vastly improved information gathering systems playing a key part.

Figure 1: Te hā o Tangaroa kia ora ai tāua

MATAPONO - VALUES
Tangaroa whititua, Tangaroa whitiaro, Tangaroa kopu, Tangaroa nau mai kia piri, nau mai kia tata.

RECIPROCITY
Tangaroa kai atu, Tangaroa kai mai
First fish to Tangaroa and Tangaroa provides back. An expression which relates to the reciprocal relationship between Maori and Tangaroa. Receiving is giving. Tangaroa is the god whom we give the first fish to and speaks to the long-term sustainability of Tangaroa.

POTENTIAL
He hiringa a nuku, hiringa a rangi, he hiringa tai ki te whaiao ki te ao marama
This speaks to the current and future potential of our relationship with Tangaroa for Māori and Aotearoa as a nation. The potential and energy that exists and how this can be realised in a positive way.

TE HĀ O TANGAROA KIA ORA AI TĀUA

RELATIONSHIPS
Rukutia te mouri o Tangaroa, Tangaroa tu ki uta, Tangaroa tu ki tai
Maintaining the life force of Tangaroa both inshore and out at sea. Recognises the interconnected nature of maintaining the mauri of Tangaroa and the role we play.

SUSTAINABILITY
Ka mate kai horo, ka ora kai whakatonu
The glutton perishes while those that conserve survive. This whakatauki speaks of maintaining appropriate balance and sustainability as one with Tangaroa to survive for today and into the future.

Our view on the draft documents for the Post-2020 global biodiversity framework

20. In this section we provide general comments on the draft documents. Including;

- The Post-2020 Global Biodiversity Monitoring Framework
- Indicators for the Post-2020 Global Biodiversity Framework

We then provide more specific comments on Post-2020 Global Biodiversity Monitoring Framework.

21. Te Ohu Kaimoana is aware that a lot of work has been done by the Expert Mechanism on the Rights of Indigenous peoples, the UN Permanent Forum on Indigenous Issues and the CBD's own working groups on the effective participation and recognition of the rights of Indigenous Peoples and Local Communities. We are disappointed that the draft Post 2020 Global Biodiversity Monitoring Framework documents do not include nor reflect the recommendations and the decisions that were agreed by these fora and working groups. We provide recommendations in this report in support of the recommendations made by the Expert Mechanism on the Rights of Indigenous peoples, the UN Permanent Forum on Indigenous Issues and the CBD's own working groups so that they are effectively reflected in the Post-2020 Global Framework.

22. In our January response on area-based conservation measures, we made the following recommendations for the new global framework:

- a. Focus on environmental outcomes as opposed to the application of specific management tools
- b. We do not support the use of fixed targets for the use of particular management tools such as MPAs. Instead, promote development of sustainable management regimes over 100% of the global oceans and retain flexibility on the use of area-based management measures as part of the management approach
- c. Allocation decisions on the form of resource use (including non use) should be left to individual countries to determine in light of the risks they are managing, the status of information on biodiversity in their jurisdictions, their commitments to their indigenous peoples and their economies and cultural and social values.

The Post-2020 Global Biodiversity Monitoring Framework

Our main concerns

23. **The peer review process for the draft Post-2020 Global Biodiversity Monitoring Framework is back-to-front.** It is counter intuitive for us to provide comprehensive feedback on the components of the 2030 targets and goals, the monitoring elements, the indicators and the period of availability of baseline data and frequency updates without first assessing the overarching goals and targets.

24. The proposed goals contained in the draft state what outcomes the new Global Framework is intended to achieve. While we think there is more work to do to set measurable targets, this is a good start. However, we remain concerned about the inclusion of:
- a. more and more detailed area-based targets within the action targets, such as percentage land and sea areas under strict protection
 - b. the interpretation of particular values, which are at odds with the relationship indigenous peoples have with their environment.

Our comments on related monitoring elements and indicators should be seen in that light.

25. Fixed percentage targets for the implementation of management tools is unhelpful

Prescribing a percentage coverage of specific management tools, as proposed in target 2 is unhelpful. In the case of the existing Aichi targets, it has already led to a kind of “race” to establish large MPAs that do not target biodiversity at highest risk with appropriate management measures. Action targets should retain enough flexibility on the use of different tools, including different effective area-based management measures – to ensure that risks and threats to biodiversity are identified and managed.

26. For example, key elements of a new set of action targets could include an increase in area covered by marine management regimes that:
- a. Manage risks to biodiversity/structure and function of marine ecosystems (through appropriately targeted area-based conservation measures) by Integrating specific area-based conservation measures across the seascape
 - a. Manage the cumulative effects of different activities in the marine environment
 - b. Recognise indigenous approaches to management
 - c. Are based on weaving the best available science and traditional knowledge of indigenous peoples and local communities.
 - d. Provide for adaptive approaches as new information comes to hand

- 27. Replace references to “traditional knowledge” with “knowledge of indigenous peoples and local communities”.** The framework makes reference to “traditional knowledge”. These words convey a sense that indigenous knowledge is something frozen in time. Article 8(j) refers to “knowledge, innovations and practices of indigenous peoples and local communities” which conveys the idea that practices adapt in light of experience and new information, based on indigenous world views and principles. For example, Māori fiercely protect their world view but continually question how that world view informs modern management challenges.

28. A definition of Mātauranga Maori (Maori indigenous knowledge) by Professor Whatarangi Winiata⁶ provides an explanation of Mātauranga Māori, emphasising that it is much more than an archive, and allows for growth and development over time.

A body of knowledge that seeks to explain phenomena by drawing on concepts handed from one generation to another. Accordingly, Mātauranga Māori has no beginning and is without end. It is constantly enhanced and refined. Each passing generation of Māori make their own contribution to Mātauranga Māori.

29. We recommend that the dynamic nature of indigenous knowledge is recognised and provided for. This would be assisted by amending references to “traditional knowledge” to “indigenous knowledge” or “knowledge of indigenous peoples...”.

Indicators for the Post-2020 Global Biodiversity Framework

30. We recommend that following principles should guide the development of the framework and the indicators.

- a. The indicators should provide the flexibility needed for national circumstances
- b. The indicators and responsible institutions should have enough neutrality, so as to not provide an organisational bias on the way global targets are monitored and measured. In many cases this approach can undermine the rights of Indigenous Peoples and Local Communities.

31. **Ensure the effective participation of indigenous peoples.** The Waitangi Tribunal⁷ in Aotearoa/New Zealand is a standing commission of inquiry. It makes recommendations on claims brought by Māori relating to legislation, policies, actions or omissions of the Crown that are alleged to breach the promises made in the Te Tiriti o Waitangi. A claim was lodged in 1991 and related to;

te tino rangatiratanga o te Iwi Māori (Sovereignty of the tribes in Aotearoa) in respect of indigenous flora and fauna me ō rātou taonga katoa (and all their treasures) including but not limited to mātauranga (their knowledge), whakairo (carvings), wāhi tapu (sacred places), biodiversity, genetics, Māori symbols and designs and their use and development and associated indigenous cultural and customary heritage rights in relation to such taonga (treasures).⁸

⁶ Mead, H. M. (2016). Tikanga Maori (revised edition): Living by Maori values. Huia publishers.

⁷ <https://waitangitribunal.govt.nz/about-waitangi-tribunal/>

⁸ Tribunal, W. (2011). Ko Aotearoa tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity. Wellington: Waitangi Tribunal.

32. The Waitangi Tribunal provided recommendations which could be used to inform the indicators to ensure the full and effective participation of indigenous peoples⁹. They include:
- a. control by Indigenous peoples of environmental management in respect of treasures, where it is found that the kaitiaki (indigenous guardians of the environment) interest should be accorded priority;
 - b. partnership models for environmental management in respect of taonga (treasures), where it is found that kaitiaki should have a say in decision-making but other voices should also be heard; and
 - c. effective influence and appropriate priority to the kaitiaki interests in all areas of environmental management when the decisions are made by others
33. We have provided more specific recommendations for wording in our comments on the Post 2020-Global Biodiversity Monitoring Framework.

Our recommendations

This section provides our specific feedback on the monitoring framework.

| Specific Comments | | | | |
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| Table | Page | Column letter | Row number | Comment |
| 1 | 3 | c | 25 | Note our comments on ensuring neutrality in the monitoring systems applied. We are not familiar with the Ocean Health index in any detail or the parties who have developed it but note on its website some of its findings in relation to Aotearoa appear positive but others are at odds with our understanding – particularly the score relating to food provision and sustainability of fisheries resources, which doesn't align with our the status of our fisheries in Aotearoa. |
| 1 | 5 | B | 68 | Suggest that cultural values are not solely included in 'natures non-material use' but rather a culmination of 'natures non-material and natures material contribution". Cultures interact with the environment, are of the environment and this interaction/connection can be expressed through food gathering and hands on resource-use (whether for non-commercial purposes or trade). |
| 1 | 6 | B | 72 | Suggest the specific inclusion and reference to the knowledge of indigenous peoples and local communities on the basis that they are granted free prior informed consent, and that the benefits of accessing such knowledge is shared. |
| 2 | 8 | A | 1 | Suggest the inclusion of change in extent of biodiversity managed by Indigenous peoples and local communities. |
| 2 | 8 | A | 1 | We suggest the use of integrated management regimes rather than spatial planning. We have concerns about what constitutes « spatial planning » and recommend use of the term integrated management regimes instead. This is more flexible and would avoid the prospect that Aotearoa/New Zealand signs up to spatial planning exercises such as in the Hauraki Gulf (northern Aotearoa/New Zealand), where there is no principled basis for recognising existing Te Tiriti o Waitangi rights. |
| 2 | 8 | B | 1 | Specific targets could include; |

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| | | | | <ul style="list-style-type: none"> • Proportion of land and sea area under management regimes that adequately integrate management of biodiversity. • Change in the number of countries implementing integrated management regimes (see some of the indicators under Target 3 as an approach) • Change in the number of countries enabling indigenous peoples to manage indigenous biodiversity |
| 2 | 8 | B | 23 | The use of the term "wilderness" risks imposing a western view of the environment on indigenous peoples |
| 2 | 10 | A | 35 | <p>Specific elements should include the following;</p> <ul style="list-style-type: none"> • Change in extent of areas at risk, which are under effective area-based conservation. • Change in extent of areas managed according to indigenous management principles and approaches <p>Additional options:</p> <ul style="list-style-type: none"> ○ Change in number of countries with systems in place to manage risks to terrestrial/marine biodiversity ○ Number of countries with processes in place to assess risks to terrestrial/marine biodiversity |
| 2 | 11 | A | 39 | Suggest "Areas of particular importance for biodiversity are actively managed" |
| 2 | 11 | B | 39 | Suggest "Trends in proportion of areas of particular importance for biodiversity are actively managed" |
| 2 | 11 | C | 39 | <p>Specific indicators could include the following;</p> <ul style="list-style-type: none"> • Management Coverage of Key Biodiversity Areas • Representativeness Index • Management effectiveness of areas subject to area-based measures |
| 2 | 11 | A | 43 | Suggest "Representative system of effective area-based management measures" |
| 2 | 11 | C | 43 | <p>Specific indicators could include the following;</p> <ul style="list-style-type: none"> • Management Coverage of Key Biodiversity Areas • Representativeness Index • Management effectiveness of areas subject to area-based management measures |

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| 2 | 11 | A | 46 | Suggest “effective management and equitable governance of the management of area-based management measures” |
| 2 | 11 | C | 46 | Suggest the following indicators; <ul style="list-style-type: none"> • Governance of areas under area-based management conservation measures (including governance arrangements by Indigenous Peoples and Local Community” • Number of countries with a statutory recognition of co-governance arrangements with Indigenous Peoples and Local Communities. |
| 2 | 17 | C | 108 | If a nation has demonstrated leadership in their fisheries management through ‘integrated’ management regimes they should not be tied to the costs of certification such as MSC when there is no benefit. |
| 2 | 18 | C | 113 | Same note as above |
| 2 | 22 | C | 140,146 and 150 | Suggest that specific references to the free prior informed consent of indigenous peoples and local communities and benefit sharing with Indigenous Peoples and Local Communities are included as indicators in these sections. |
| 2 | 29 | C | 179 | If a nation has demonstrated leadership in their fisheries management through ‘integrated’ management regimes they should not be tied to the costs of certification such as MSC when there is no benefit. |
| 2 | 38 | B | 239 | Suggest “Trends in the number of countries with legislation supporting involvement of indigenous peoples and local communities in decision-making processes.” |
| 2 | 38 | B | 239 | In relation to the monitoring element above we suggest the use of the indicators recommended by UNPFII: <ul style="list-style-type: none"> • number of financial mechanisms developed, • statutory recognition of IPLCs • land and water rights returned to indigenous peoples, • percentage representation of indigenous peoples in sectors • specific environmental governance bodies (including communal land governance bodies, forest groups, water governance bodies and fisheries management bodies). |

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| 2 | 39 | B | 241 | <p>Suggest the inclusion of these monitoring elements</p> <ul style="list-style-type: none"> • Change in the number of countries recognising indigenous knowledge, practices and innovations, traditional occupations and customary use. • Change in the number of countries supporting indigenous peoples in the exercise of their authority over their resources |
| 2 | 39 | C | 241 | <p>In relation to the monitoring element above we suggest the use of this indicator; Number of countries with laws and policies supporting indigenous rights, knowledge and practices.</p> |



