

Textual proposals submitted by delegations by 20 February 2020, for consideration at the fourth session of the Intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the Conference), in response to the invitation by the President of the Conference in her Note of 18 November 2019 (A/CONF.232/2020/3).

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**AOSIS Textual Submission
On President's Revised Text
2 February 2020**

Article 43 Bis

1. States Parties shall give full recognition to the special circumstances of Small Islands Developing States Parties in relation to the implementation of this Agreement. To this end, Parties shall, either directly or through the United Nations and other specialized agencies, and other appropriate international and regional organizations and bodies, provide assistance in order to, inter alia:

(a) enhance their ability to develop the necessary legislative, administrative or policy measures, as appropriate, for the implementation of this Agreement;

(b) facilitate their access to marine genetic resources;

(c) facilitate technical assistance including transfer of marine technology to strengthen their capacity to utilize marine genetic resources, taking into account their capacity constraints.

2. States Parties shall give due regard to the special circumstances of small island developing states to ensure that a disproportionate burden resulting from the implementation of this Agreement is not transferred directly or indirectly to them. In cases where the transfer of a disproportionate burden has been demonstrated, Parties shall cooperate to facilitate the implementation by the relevant small island developing State Parties of specific obligations under this Agreement.



19.02.2020

Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (Version of 27.11.2019)

EU textual proposals on the MGR Part for IGC4 (track changes version, followed by clean text)

PART I

GENERAL PROVISIONS

Article 1

Use of terms

For the purposes of this Agreement:

1. “Access” means, in relation to marine genetic resources, the collection of marine genetic resources ~~[, including marine genetic resources accessed in situ, ex situ [and in silico] [[and] [as digital sequence information] [as genetic sequence data]]],~~ in areas beyond national jurisdiction.

[8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity.]

[9. Alt. 1. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin; ~~[found in or] originating from areas beyond national jurisdiction and containing functional units of heredity~~ with of actual or potential value of their genetic and biochemical properties.]

[9. Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.]

~~[15. “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources [, as well as the exploitation thereof].]~~

Article 5

General [principles] [and] [approaches]

In order to achieve the objective of this Agreement, States Parties shall be guided by the following:

(...)

~~[(c) The principle of the common heritage of mankind;]~~

Article 7

Objectives

~~[The objectives of this Part are to:~~

a) Promote the scientific understanding of marine genetic resources in areas beyond national jurisdiction as a fundamental contribution to the implementation of the Agreement for the conservation and sustainable use of marine biodiversity.

~~{(eb)}~~ Promote the generation of knowledge and technological innovations, including by promoting and facilitating the development and conduct of marine scientific research in areas beyond national jurisdiction, in accordance with the Convention;}

~~{(cb)}~~ Build the capacity of developing States that might need and request technical assistance, Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to ~~{collect}~~ ~~{access}~~ and utilize and conserve marine genetic resources of areas beyond national jurisdiction;}

~~{(da)}~~ Promote the [fair and equitable] sharing of benefits arising from the ~~{collection of}~~ ~~{access to}~~ ~~{utilization of}~~ marine genetic resources of areas beyond national jurisdiction;}

~~{(ed)}~~ Promote the development and transfer of marine technology ~~{, subject to all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology}.}~~

~~{Article 8}~~

Scope of Application of the provisions of this Part~~}~~

1. The provisions of this ~~{Part}~~ ~~{Agreement}~~ shall apply to marine genetic resources collected in areas beyond national jurisdiction after the entry into force of this Agreement for the respective Party.~~;~~

~~[(a) Marine genetic resources, insofar as they are collected for the purposes of being the subject of research into their genetic properties;]~~

~~(b) — Marine genetic resources ~~{collected}~~ ~~{accessed}~~ in situ, ~~{and}~~ ~~{accessed}~~ ex situ ~~{and in silico}~~ ~~[[and]]~~ ~~{as digital sequence information}~~ ~~{as genetic sequence data}}~~ ~~{and their utilization};~~~~

~~{(c) — Derivatives.}}~~

~~[2. The provisions of this [Part] [Agreement] shall not apply to:~~

~~[(a) The use of fish and other biological resources as a commodity.]~~

~~{(b) Marine genetic resources accessed ex situ ~~{or in silico}~~ ~~[[and]]~~ ~~{as digital sequence information}~~ ~~{as genetic sequence data}}~~ ~~{and their utilization};~~~~

~~{(c) — Derivatives;}~~

~~{(d) — Marine scientific research.}}~~

~~[3. The provisions of this Agreement shall apply to marine genetic resources ~~{collected}~~ ~~{accessed}~~ in situ, ~~{and}~~ ~~{accessed}~~ ex situ ~~{and in silico}~~ ~~[[and]]~~ ~~{as digital sequence information}~~ ~~{as genetic sequence data}}~~ ~~{and their utilization}~~ after its entry into force,~~

Commented [EU1]: Internal consultations on Article 8.1 (a) are still ongoing.

Commented [EU2]: Internal consultations on Article 8.2 (a) are still ongoing.

~~including those resources [collected] [accessed] in situ before its entry into force, but accessed ex situ or [in silico] [[and] [as digital sequence information] [as genetic sequence data]] [or utilized] after it.]~~

Commented [EU3]: Moved up as para 1.

Article 9

Activities with respect to marine genetic resources of areas beyond national jurisdiction]

1. Activities with respect to marine genetic resources of areas beyond national jurisdiction may be carried out by all States, irrespectively of their geographical location, and competent international organizations in accordance with this Part and the rights, obligations and interests under the Convention.

~~[2. In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State under the jurisdiction of which such resources are found.]~~

Commented [EU4]: Internal consultations on Article 9.2 are still ongoing.

~~[3. No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction [, nor shall any State or natural or juridical person appropriate any part thereof]. No such claim or exercise of sovereignty or sovereign rights [nor such appropriation] shall be recognized.]~~

~~[4. The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of mankind as a whole, taking into consideration the interests and needs of developing States, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.]~~

Commented [EU5]: Internal consultations on Article 9.4 are still ongoing.

~~[5. Activities with respect to marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.]~~

Article 10

{Collection of} {and} {Access to} marine genetic resources of areas beyond national jurisdiction}

1. All States, irrespectively of their geographical location, and competent international organizations have the right to collect marine genetic resources of areas beyond national jurisdiction in accordance with the Convention.

~~2. [1. In situ {collection of} {access to} marine genetic resources within the scope of this Part shall be subject to {organised together with a prior} {and} {post -cruise} notification information to the secretariat Clearing House Mechanism, in accordance with article 11 para 1.2 to enhance transparency, {which shall include an indication of the location and date of {collection} {access}, the resources to be {collected} {accessed}, the purposes for which the resources will be utilized and the entity that will {collect} {access} the resources} {of {collection of} {access to} marine genetic resources of areas beyond national jurisdiction}.]~~

~~[Alt. 2. a [permit] [licence] issued in the manner and under the terms and conditions set forth in paragraph 2.]]~~

~~[2. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that in situ [collection of] [access to] marine genetic resources within the scope of this Part shall be subject to:~~

~~(a) — An indication of the geographical coordinates of the location where marine genetic resources were [collected] [accessed];~~

~~(b) — Capacity building;~~

~~(c) — The transfer of marine technology;~~

~~(d) — The deposit of samples, data and related information in open source platforms, such as databases, repositories or gene banks;~~

~~(e) — Contributions to the special fund;~~

~~(f) — Environmental impact assessments;~~

~~(g) — Other relevant terms and conditions as may be determined by the Conference of the Parties, including in relation to [the collection of] [access to] marine genetic resources in ecologically and biologically significant areas, vulnerable marine ecosystems and other specially protected areas, in order to ensure the conservation and sustainable use of the resources therein.]~~

3. States Parties shall promote cooperation on collection of marine genetic resources of areas beyond national jurisdiction.

~~[3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that ex situ access to marine genetic resources within the scope of this Part is free and open [, subject to articles 11 and 13].]~~

~~[4. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that access to [marine genetic resources in silico] [[and] [digital sequence information] [genetic sequence data]] is facilitated [, subject to articles 11 and 13].]~~

~~[5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that activities with respect to marine genetic resources of areas beyond national jurisdiction that may result in the utilization of marine genetic resources found in areas both within and beyond national jurisdiction are subject to the prior notification and consultation of the coastal States [and any other relevant State] concerned, with a view to avoiding infringement of the rights and legitimate interests of [that] [those] State[s].]~~

~~[6. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that marine genetic resources of areas beyond national jurisdiction utilized within their jurisdiction have been [collected] [and] [accessed] in accordance with this Part.]~~

~~[Article 10bis~~

Commented [EU6]: Internal consultations on Article 10.3 are still ongoing.

Commented [EU7]: Internal consultations on Article 10.5 are still ongoing.

Commented [EU8]: Internal consultations on Article 10.6 are still ongoing.

Access to traditional knowledge of indigenous peoples and local communities associated with marine genetic resources [collected] [accessed] in areas beyond national jurisdiction

[States Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources [collected] [accessed] in areas beyond national jurisdiction that is held by indigenous peoples and local communities shall only be accessed with the prior and informed consent or approval and involvement of these indigenous peoples and local communities. The clearing - house mechanism may act as an intermediary to facilitate access to such traditional knowledge. Access to such traditional knowledge shall be on mutually agreed terms.]

Commented [EU9]: Internal consultations on Article 10bis are still ongoing.

Article 11

[Fair and equitable] sharing of benefits

~~3~~¹. States Parties, ~~including their nationals,~~ that have ~~{collected}~~ ~~{accessed}~~ ~~{utilized}~~ marine genetic resources of areas beyond national jurisdiction ~~{shall ensure that }~~ ~~{may}~~ share benefits arising ~~therefrom~~ from such collection are shared ~~[in a fair and equitable manner]~~ with other States Parties, ~~with consideration for the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle income countries [in accordance with this Part].~~

Commented [EU10]: Moved below as para. 3.

~~2.~~ — Benefits ~~{shall}~~ ~~{may}~~ include ~~{monetary and}~~ non-monetary benefits.

~~1.2.~~ Benefits arising from the ~~{collection of}~~ ~~{access to}~~ ~~{utilization of}~~ marine genetic resources of areas beyond national jurisdiction ~~{shall}~~ ~~{may}~~ be shared at different stages, in accordance with the following provisions scheme:

~~{(a) Monetary benefits {shall} {may} be shared against an embargo period for {marine genetic resources in silico} {digital sequence information} {genetic sequence data} or upon the commercialization of products that are based on marine genetic resources of areas beyond national jurisdiction [in the form of milestone payments]. The rate of payments of monetary benefits shall be determined by the Conference of the Parties. [Payments shall be made to the special fund].}~~

1.2 State Parties shall ensure that prior to the collection of marine genetic resources in areas beyond national jurisdiction the following information shall be transmitted to the Clearing House Mechanism:

- a) the nature and objectives of the project;
- b) the resources to be targeted and the purpose for which the resources will be collected;
- c) the geographical areas in which the project is to be conducted;
- d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
- e) the name of the sponsoring institution, its director, and the person in charge of the project;
and

f) the extent to which it is considered that States that may need and request technical assistance, in particular developing countries, should be able to participate or to be represented in the project;

e) additionally, information concerning proposed major programs and their objectives could also be transmitted to the Clearing House Mechanism.

1.3 State Parties shall ensure that the following information shall be transmitted to the Clearing House Mechanism, as soon as it becomes available but no later than 3 years from the collection of marine genetic resources:

a) the repository or database where environmental meta-data, taxonomic information and genetic sequence data related to marine genetic resources, when available, were deposited;

b) where the original samples, if available, are held.

1.4{(b)} Non-monetary benefits ~~such as~~ including access to samples and sample collections; sharing of information, such as pre -cruise or pre -research information, post-cruise or post-research notification; and; transfer of technology and capacity - building, ~~shall~~ ~~may~~ be shared upon {collection of} {access to}, {utilization} of marine genetic resources of areas beyond national jurisdiction. Samples and; data and related information ~~shall~~ ~~may~~ be made available in open access no later than three years from the {through the clearing house mechanism} {upon {collection} of marine genetic resources. {access} {after {...} years}}. ~~{[Marine genetic resources in silico] [Digital sequence information] [Samples and gGenetic sequence data]}~~ related to marine genetic resources of areas beyond national jurisdiction ~~shall~~ ~~may~~ be stored, made available, published and used taking into account current international practice in these fields.}}

2. States Parties shall ensure that the data referred to above and samples, when available, are deposited in publicly available and open access database, biorepositories or gene banks, taking into account current international practice in these fields.

3. States Parties that have collected marine genetic resources of areas beyond national jurisdiction shall ensure that benefits arising from such collection are shared [in a fair and equitable manner] with other States Parties in accordance with this Part.

{4. Benefits shared in accordance with this Part shall be used:

~~{(a) To contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;}~~

~~{(b) To promote scientific research and facilitate { the collection of} {access to} marine genetic resources of areas beyond national jurisdiction; and }~~

~~{(c) To build capacity of States that may require and need technical assistance to {collect} {access} and utilize conserve and use marine genetic resources of areas beyond national jurisdiction [including through common funding or pool funding for research cruises and collaboration in sample collection and data access where adjacent coastal States may] be invited to participate, taking into account the varying economic circumstances of States that wish to participate};}~~

~~{(d) To create and strengthen the capacity of States Parties to conserve and use sustainably marine biological diversity of areas beyond national jurisdiction, with a focus on small island developing States;}~~

~~{(e) To support the transfer of marine technology;}~~

~~{(f) To assist developing States Parties in attending the meetings of the Conference of the Parties.}~~

~~{5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from [the collection of] [access to] [the utilization] of marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement Part.}~~

~~{Article 12~~

~~{Intellectual property rights}~~

~~{1. States Parties shall respect intellectual property rights in the implementation of this Agreement in a manner consistent with the rights and obligations of States Parties under relevant agreements, cooperate to ensure that intellectual property rights are supportive of and do not run counter to the objectives of this Agreement [, and that no action is taken in the context of intellectual property rights that would undermine benefit-sharing and the traceability of marine genetic resources of areas beyond national jurisdiction].} This provision shall be interpreted in a manner that respects the competences and does not interfere nor modify existing legal instruments.~~

~~{2. [Marine genetic resources [collected] [accessed] [utilized] in accordance with this Agreement shall not be subject to patents except where such resources are modified by human intervention resulting in a product capable of industrial application.] [Unless otherwise stated in a patent application or other official filing or recognized public registry, the origin of marine genetic resources utilized in patented applications shall be presumed to be of areas beyond national jurisdiction.]}~~

~~{3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that:~~

~~{(a) — [Users of] [Applicants for patents on inventions that utilize or have utilized] marine genetic resources of areas beyond national jurisdiction disclose the origin of the marine genetic resources that they utilize;~~

~~{(b) — Intellectual property rights applications related to the utilization of marine genetic resources of areas beyond national jurisdiction that do not comply with this Part are not approved.}~~

~~{Article 13~~

~~{Monitoring}~~Transparency system for benefit-sharing

~~{1. The Conference of the Parties shall adopt appropriate rules, guidelines or a code of conduct for the utilization of marine genetic resources of areas beyond national jurisdiction.}~~

1. The Scientific and Technical Body shall collect information on current marine genetic resources practices in areas beyond national jurisdiction to submit guidelines to the Conference of the Parties. Based on its findings, the Conference of the Parties may recognise these as voluntary guidelines or best practices on the collection and sharing of samples and data related to marine genetic resources collection of areas beyond national jurisdiction.

~~[2. Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction shall be carried out through the [clearing-house mechanism] [Scientific and Technical Body] [obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]].]~~

2. Transparency on the sharing of benefits arising of marine genetic resources collection of areas beyond national jurisdiction shall be carried out through the Clearing House Mechanism through the publication and dissemination of pre-cruise information and post-cruise notification.

~~[3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that:~~

~~[(a) An identifier is assigned to marine genetic resources [collected] [accessed] in situ. In the case of marine genetic resources accessed ex situ [and in silico] [[and] [as digital sequence information] [as genetic sequence data]], such identifier shall be assigned when databases, repositories and gene banks submit the list mentioned in article 51 (3) (b) to the clearing-house mechanism;]~~

~~[(b) Databases, repositories and gene banks within their jurisdiction are required to [notify the [clearing-house mechanism] [Scientific and Technical Body]] [send a notification through the obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]] when marine genetic resources of areas beyond national jurisdiction, including derivatives, are accessed;]~~

~~[(c) Proponents of marine scientific research in areas beyond national jurisdiction submit periodic status reports [to the clearing-house mechanism] [to the Scientific and Technical Body] [through the obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]], as well as research findings, including data collected and all associated documentation.]]~~

3. States Parties shall take the necessary measures, as appropriate, to ensure that benefits have been shared in accordance with the system described under article 11 and that following information is transmitted to the Clearing House Mechanism on:

- pre cruise-information (before the collection of marine genetic resources),
- post-cruise notification (after the collection of marine genetic resources),
- modalities foreseen to facilitate access to databases, including digital sequence data, to repositories and gene banks no later than 3 years after the marine genetic resources collection in areas beyond national jurisdiction
- scientific data and information and the transfer of knowledge.

~~[4. States Parties shall make available to the clearing-house mechanism information on the legislative, administrative and policy measures that have been adopted in accordance with this Part.]~~

~~[5. States Parties shall submit reports to the Conference of the Parties about their utilization of marine genetic resources of areas beyond national jurisdiction. The Conference shall review such reports and make recommendations.]~~

Clean text:

PART I

GENERAL PROVISIONS

Article 1

Use of terms

For the purposes of this Agreement:

1. “Access” means, in relation to marine genetic resources, the collection of marine genetic resources in areas beyond national jurisdiction.

[8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity.]

[9. Alt. 1. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value]

[9. Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.]

Article 7

Objectives

The objectives of this Part are to:

a) Promote the scientific understanding of marine genetic resources in areas beyond national jurisdiction as a fundamental contribution to the implementation of the Agreement for the conservation and sustainable use of marine biodiversity. (b) Promote the generation of knowledge and technological innovations, including by promoting and facilitating the development and conduct of marine scientific research in areas beyond national jurisdiction, in accordance with the Convention;

(c) Build the capacity of developing States that might need and request technical assistance, to collect and conserve marine genetic resources of areas beyond national jurisdiction;

(d) Promote the [fair and equitable] sharing of benefits arising from the collection of marine genetic resources of areas beyond national jurisdiction;

(e) Promote the development and transfer of marine technology

Article 8

Scope of Application of the provisions of this Part

1. The provisions of this Part shall apply to marine genetic resources collected in areas beyond national jurisdiction after the entry into force of this Agreement for the respective Party.

[(a) Marine genetic resources, insofar as they are collected for the purposes of being the subject of research into their genetic properties;]

[2. The provisions of this [Part] [Agreement] shall not apply to:

[(a) The use of fish and other biological resources as a commodity.]

Article 9

Activities with respect to marine genetic resources of areas beyond national jurisdiction]

1. Activities with respect to marine genetic resources of areas beyond national jurisdiction may be carried out by all States, irrespectively of their geographical location, and competent international organizations in accordance with this Part and the rights, obligations and interests under the Convention.

[2. In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State under the jurisdiction of which such resources are found.]

[4. The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of mankind as a whole, taking into consideration the interests and needs of developing States, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.]

Article 10

Collection of marine genetic resources of areas beyond national jurisdiction 1. All States, irrespectively of their geographical location, and competent international organizations have the right to collect marine genetic resources of areas beyond national jurisdiction in accordance with the Convention.

2. In situ collection of marine genetic resources within the scope of this Part shall be organised together with a prior information to the Clearing House Mechanism, in accordance with article 11 para 1.2 to enhance transparency.

3. States Parties shall promote cooperation on collection of marine genetic resources of areas beyond national jurisdiction.

[3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that ex situ access to marine genetic resources within the scope of this Part is free and open [, subject to articles 11 and 13].]

[5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that activities with respect to marine genetic resources of areas beyond national jurisdiction that may result in the utilization of marine genetic resources found in areas both within and beyond national jurisdiction are subject to the prior notification and

Commented [EU11]: Internal consultations on Article 8.1 (a) are still ongoing.

Commented [EU12]: Internal consultations on Article 8.2 (a) are still ongoing.

Commented [EU13]: Internal consultations on Article 9.2 are still ongoing.

Commented [EU14]: Internal consultations on Article 9.4 are still ongoing

Commented [EU15]: Internal consultations on Article 10.3 are still ongoing.

consultation of the coastal States [and any other relevant State] concerned, with a view to avoiding infringement of the rights and legitimate interests of [that] [those] State[s].]

Commented [EU16]: Internal consultations on Article 10.5 are still ongoing.

[6. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that marine genetic resources of areas beyond national jurisdiction utilized within their jurisdiction have been [collected] [and] [accessed] in accordance with this Part.]

Commented [EU17]: Internal consultations on Article 10.6 are still ongoing

[Article 10bis

Access to traditional knowledge of indigenous peoples and local communities associated with marine genetic resources [collected] [accessed] in areas beyond national jurisdiction]

[States Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources [collected] [accessed] in areas beyond national jurisdiction that is held by indigenous peoples and local communities shall only be accessed with the prior and informed consent or approval and involvement of these indigenous peoples and local communities. The clearing -house mechanism may act as an intermediary to facilitate access to such traditional knowledge. Access to such traditional knowledge shall be on mutually agreed terms.]

Commented [EU18]: Internal consultations on Article 10bis are still ongoing.

Article 11

[Fair and equitable] sharing of benefits

1. Benefits arising from the collection of marine genetic resources of areas beyond national jurisdiction shall be shared in accordance with the following scheme:

1.2 State Parties shall ensure that prior to the collection of marine genetic resources in areas beyond national jurisdiction the following information shall be transmitted to the Clearing House Mechanism:

- a) the nature and objectives of the project;
 - b) the resources to be targeted and the purpose for which the resources will be collected;
 - c) the geographical areas in which the project is to be conducted;
 - d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
 - e) the name of the sponsoring institution, its director, and the person in charge of the project; and
 - f) the extent to which it is considered that States that may need and request technical assistance, in particular developing countries, should be able to participate or to be represented in the project;
- e) additionally, information concerning proposed major programs and their objectives could also be transmitted to the Clearing House Mechanism.

1.3 State Parties shall ensure that the following information shall be transmitted to the Clearing House Mechanism, as soon as it becomes available but no later than 3 years from the collection of marine genetic resources:

a) the repository or database where environmental meta-data, taxonomic information and genetic sequence data related to marine genetic resources, when available, were deposited;

b) where the original samples, if available, are held.

1.4 Non-monetary benefits, including access to samples and sample collections; sharing of information, such as pre - cruise information, post-cruise notification; and transfer of technology and capacity - building, shall be shared upon collection of marine genetic resources of areas beyond national jurisdiction. Samples and data shall be made available in open access no later than three years from the collection of marine genetic resources. Samples and genetic sequence data related to marine genetic resources of areas beyond national jurisdiction shall be stored, made available, published and used taking into account current international practice in this field.

2. States Parties shall ensure that the data referred to above and samples, when available, are deposited in publicly available and open access database, biorepositories or gene banks, taking into account current international practice in these fields.

3. States Parties that have collected marine genetic resources of areas beyond national jurisdiction shall ensure that benefits arising from such collection are shared [in a fair and equitable manner] with other States Parties in accordance with this Part.

4. Benefits shared in accordance with this Part shall be used:

(a) To contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

(b) To promote scientific research and facilitate the collection of marine genetic resources of areas beyond national jurisdiction; and

(c) To build capacity of States that may require and need technical assistance to collect and conserve and use marine genetic resources of areas beyond national jurisdiction

(d) To create and strengthen the capacity of States Parties to conserve and use sustainably marine biological diversity of areas beyond national jurisdiction

(e) To support the transfer of marine technology;

5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits are shared in accordance with this Part.

Article 12

Intellectual property rights

1. States Parties shall respect intellectual property rights in the implementation of this Agreement in a manner consistent with the rights and obligations of States Parties under relevant agreements. This provision shall be interpreted in a manner that respects the competences and does not interfere nor modify existing legal instruments.

Article 13

Transparency system for benefit sharing

1. The Scientific and Technical Body shall collect information on current marine genetic resources practices in areas beyond national jurisdiction to submit guidelines to the Conference of Parties . Based on its findings, the Conference of Parties may recognise these as voluntary guidelines or best practices on the collection and sharing of samples and data related to marine genetic resources collection of areas beyond national jurisdiction.

2. Transparency on the sharing of benefits arising of marine genetic resources collection of areas beyond national jurisdiction shall be carried out through the Clearing House Mechanism through the publication and dissemination of pre-cruise information and post-cruise notification.

3. States Parties shall take the necessary measures, as appropriate, to ensure that benefits have been shared in accordance with the system described under article 11 and that following information is transmitted to the Clearing House Mechanism on:

- pre cruise-information (before the collection of marine genetic resources),
- post-cruise notification (after the collection of marine genetic resources),
- modalities foreseen to facilitate access to databases, including digital sequence data, to repositories and gene banks no later than 3 years after the marine genetic resources collection in areas beyond national jurisdiction
- scientific data and information and the transfer of knowledge.

19 February 2020

**Revised draft text of an agreement under the United Nations
Convention on the Law of the Sea on the conservation and
sustainable use of marine biological diversity of areas beyond
national jurisdiction**

EU textual proposals on the ABMT/MPA part for IGC4

**PART I
GENERAL PROVISIONS**

**Article 1
Use of terms**

2. “Area-based management tool” means a spatial management tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives ~~and affording higher protection than that provided in the surrounding areas~~.

10. “Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific ~~long-term biodiversity~~ conservation ~~and sustainable use objectives~~ ~~and that affords higher protection than the surrounding areas~~.

**PART III
MEASURES SUCH AS AREA-BASED MANAGEMENT
TOOLS, INCLUDING MARINE PROTECTED AREAS**

**Article 14
Objectives**

The objectives of this Part are to:

~~{(ab) Enhance cooperation and coordination in the use of area -based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, which will also in order to promote a holistic and cross-sectoral approach to {ocean management} [conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction]};~~

~~{(bc) Implement effectively obligations under the Convention and other relevant international obligations and commitments;}~~

~~{(ca) Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of area -based management tools, including a~~

~~network of ecologically representative marine protected areas that are ecologically connected and effectively as well as equitably managed;~~

~~{{(d) Establish a system of ecologically representative marine protected areas that are connected [and effectively and equitably managed];}}~~

~~{{(ed) RehabilitateMaintain and restore biodiversity and ecosystems, including with a view to enhancing securing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution;}}~~

~~{{(fe) Support food security and other socioeconomic objectives, including the protection of cultural values;}}~~

~~{{(gf) Create scientific reference areas for baseline research;}}~~
)

~~{{(hg) Safeguard aesthetic, natural or wilderness values;}}~~

~~{{(ih) Promote coherence and complementarity.}}~~

Commented [EU1]: Combined with former 1d. The EU and its Member States would recommend to put this objective first under article 14.

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Article 15
International cooperation and coordination

1. ~~{To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,}~~ States Parties shall promote the objectives of this part coherence and complementarity in the establishment of area-based management tools, including marine protected areas, through:

~~{(a) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, without prejudice to their respective mandates, in accordance with this Part;}~~

~~{(b) The process in relation to area-based management tools, including marine protected areas, set out in this Part, without prejudice to the mandates of relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies, , including by:~~

~~(i) Establishing marine protected areas;~~

~~(ii) Complementing or recognising area-based management tools, including marine protected areas, designated under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies;~~

~~(iii) Establishing area-based management tools where there are activities not managed by relevant legal instruments or frameworks or relevant global, regional, subregional or sectoral bodies.~~

~~{2. Alt. to para. 1. (b)}~~ ~~(ii c)~~ Where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body to establish area -based management tools, including marine protected areas, ~~States Parties shall cooperate to establish such an instrument, framework or body and shall participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.}~~

3. ~~Under this Agreement, the Conference of Parties~~~~States Parties~~ shall ~~make arrangements for consultation establish a and coordination and collaboration mechanism~~ to enhance cooperation ~~with and~~ among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area -based management tools, including marine protected areas, as well as coordination among associated management measures on conservation and {management} {sustainable use} ~~measures~~ adopted under such instruments and frameworks and by such bodies.

4. ~~In promoting cooperation and coordination under this article, States Parties shall not undermine relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.~~

5. ~~Measures adopted in accordance with this Part shall not undermine the effectiveness of measures adopted by coastal States in adjacent areas within national jurisdiction and shall have due regard for the rights, duties and legitimate interests of all States, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to this end, in accordance with the provisions of this Part.~~

4.6. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls under the sovereignty of the national jurisdiction of a coastal State, either wholly or in part, it shall be adapted to cover any remaining area beyond national jurisdiction or otherwise cease to be in force. It is recognised that the coastal State may decide to adopt similar measures for the maritime area concerned in its national capacity.

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Article 16

Identification of areas [requiring protection]

1. Areas requiring protection through the establishment of area -based management tools, including marine protected areas, shall be identified on the basis of the best available ~~{science}~~ ~~{scientific information and relevant traditional knowledge of indigenous peoples and local communities}~~, the precautionary ~~{approach}~~ ~~{principle}~~ and an ecosystem approach: and take into account relevant traditional knowledge of indigenous peoples and local communities

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2. Indicative ~~C~~riteria for the identification of areas requiring protection through the establishment of area-based management tools, ~~including~~ marine protected areas ~~or for the recognition of existing area-based management tools, including marine protected areas, by a relevant body~~, under this Part, ~~may~~shall include those specified in annex I.

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3. Guidance on ~~T~~he indicative criteria specified in annex I ~~{shall}~~ ~~{may}~~ be further developed and revised as necessary by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties.

Commented [EU5]: The EU and its Member States are not opposed to keeping flexibility regarding the criteria, and making sure the process is time-proof. However, whether the criteria are in the body of the text or in an annex, changing (amending/revising/...) them would require a modification of the treaty, which, for many States would be a very heavy procedure. We are suggesting this "development" to take place outside the treaty, as a lighter procedure, hence our proposal for "guidance".

{4. The indicative criteria ~~as~~ specified in annex I, as well as any ~~guidance that may be further developed and revised~~ in accordance with paragraph 3, shall be applied, as relevant, by the proponents of a proposal under this Part and shall ~~b-e taken into account as well as~~ by the Scientific and Technical Body, ~~as relevant~~, in the review of a proposal under this Part. ~~{Such criteria shall also be {applied} {taken into account} by States Parties in the establishment of area-based management tools, including marine protected areas, under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.}}~~

Article 17

Proposals in relation to Area-based Management Tools

1. Proposals in relation to the establishment of area-based management tools other than marine protected areas shall be submitted by States Parties, individually or collectively, to the secretariat.
2. States Parties may collaborate with relevant stakeholders, including relevant global, regional and sectoral bodies, as well as civil society in the development of proposals as set out in article 15 under this Agreement.
3. Proposals shall be formulated on the basis specified in paragraph 1 of article 16. Proposals shall include, at a minimum, the following elements:
 - a. A description of the area based on geographic or other characteristics that is the subject of the proposal;
 - b. Information on any of the criteria specified in annex I, as well as any guidance that may be developed in accordance with paragraph 3 of article 16, applied in identifying the area;
 - c. Specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States;
 - d. A description of the state of the marine environment and biodiversity in the identified area;
 - e. A description of the conservation and sustainable use objectives set out in paragraph 1 of article 14 that are to be applied to the area;
 - f. A description of the proposed management measures on conservation and sustainable use to be adopted to achieve the specified objectives;
 - g. A monitoring, research and review plan;
 - h. Information on any consultations, if any, undertaken with all States including the most

potentially affected States, including any States with a continental shelf subjacent or maritime area adjacent to any proposed MPA and states that carry out human activities, including economic activities, in the area. States and/or relevant global, regional, subregional and sectoral bodies that have a role and activities in the proposed area.

4. Guidance on proposals specified in paragraph 3 **may** be elaborated by the Scientific and Technical Body as considered necessary by that body and the conclusions of the review shall be reported to the Conference of the Parties for consideration.

Article 17bis

Proposals in relation to Marine Protected Areas

1. Proposals in relation to the establishment of ~~area-based management tools, including~~ marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.

[2. States Parties may collaborate with relevant stakeholders, including relevant global, regional and sectoral bodies, as well as civil society in the development of proposals as set out in article 15 under this Agreement.]

3. Proposals shall be formulated on the basis specified in paragraph 1 of article 16.

4. Proposals shall include, at a minimum, the following elements:

(a) — A geographic or spatial description of the area ~~that is~~ the subject of the

proposal;

~~(b)(a)~~ Information on any of the ~~indicative~~ criteria specified in annex I, as well as any guidance criteria that may be further developed and revised in accordance with paragraph 3 of article 16, applied in identifying the area;

~~(c)(b)~~ Specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal states.

~~(d)(c)~~ A description of the state of the marine environment and biodiversity in the identified area;

(d. bis) A description of the characteristics and biodiversity values of the area and the sensitivity of the species and/or habitats concerned, as well as, where relevant, the potential for restoration of the proposed area.

~~(e)(d)~~ A description of the proposed priority elements for a management plan, including potential conservation, and, where relevant, potential sustainable use measures, to be adopted to achieve the specified objectives in accordance with specific conservation and sustainable use objectives- paragraph 1 of article 14 that are to be applied to the area;

~~(f) — A description of the proposed [conservation and [management] [sustainable use] measures] [priority elements for a management plan] to be adopted to achieve the specified objectives;~~

~~[(g) — A duration for the proposed area and measures;]~~

~~(h) (f) Priority elements for a~~ A monitoring, research and review plan, ~~including priority elements;~~

(g) (Information on any consultations, if any, undertaken with all States including the most potentially affected States, including any States with a continental shelf subjacent or maritime area adjacent to any proposed MPA and States that carry out human activities, including economic activities, in the area, adjacent coastal

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States and/or relevant global, regional, subregional and sectoral bodies that have a role and activities in the proposed area.

5. Guidance on proposals specified in paragraph 4~~Further requirements regarding the contents of proposals [shall] [may]~~ be elaborated by the Scientific and Technical Body as considered necessary by that body and the conclusions of the review shall be reported to;~~for consideration and adoption by~~ the Conference of the Parties for consideration.

Commented [EU6]: Cfr. to article 16.3, the EU and its Member States would not be against keeping the treaty time-proof, but would want to avoid a heavy (domestic) procedure associated with the revision of a treaty.

Article 18

Consultation on and assessment of proposals

1. Consultations on proposals submitted under article 17 and 17 bis shall be inclusive, transparent and open to all relevant stakeholders, including relevant global, regional and sectoral bodies, as well as civil society.

2. Upon receipt of a proposal, at the request of the proponent(s), the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed by the secretariat to the proponent. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review of the Scientific and Technical Body.

2- 2bis. The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows:

- (a) All States, including the most potentially affected particular adjacent coastal States, including any States with a continental shelf subjacent or maritime area adjacent to any proposed marine protected area and States that carry out human activities, including economic activities, in the area shall be invited to submit, *inter*

alia:

- (i) Views on the merits and other aspects of the proposal;
 - (ii) Any relevant [additional] scientific inputs;
 - (iii) Information regarding any existing measures in adjacent areas within national jurisdiction;
 - (iv) Views on the potential implications of the proposal for areas under national jurisdiction;
 - (v) Any other relevant information;
- (b) Bodies of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be invited to submit, *inter alia:*
- (i) Views on the merits and other aspects of the proposal;
 - (ii) Any relevant [additional] scientific inputs;
 - (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;
 - (iv) Views regarding any aspects of the [conservation and management] [sustainable use] measures [priority elements for a management plan] identified in the proposal that fall within the competence of that body;
 - (v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body;
 - (vi) Any other relevant information;
- (c) Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, *inter alia:*
- (i) Views on the merits and other aspects of the proposal;
 - (ii) Any relevant [additional] scientific inputs;

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- (iii) Any relevant traditional knowledge of indigenous peoples and local communities;
- (iv) Any other relevant information.
3. Contributions received pursuant to paragraph 2 shall be made publicly available by the secretariat.
4. The proponent(s) shall consider the contributions received during the consultation period. ~~and shall either revise the proposal accordingly or~~ The proponents may continue the consultation process.
5. The consultation period shall be time-bound. ~~The procedures of bodies of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be taken into account.~~
6. ~~The revised proposal shall be submitted to the Scientific and Technical Body, which shall assess the proposal in particular against~~
- ~~(a) the objectives referred to in Article 14(1);~~
~~(b) the principles and approaches referred to in Article 16(1), as relevant;~~
~~(c) the criteria for identification of areas referred to in Article 16(2), and make recommendations to the Conference of the Parties in relation to establishing an Area-based Management Tool, including Marine Protected Areas. In conducting its assessment, the Scientific and Technical Body may as it considers necessary, gather further information about the proposal, including information from relevant global, regional and sectoral bodies.~~
7. ~~Guidance on~~ The modalities of the consultation and assessment process ~~shall may~~ be further elaborated by the [Scientific and Technical Body] [Conference of the Parties] [Secretariat], as necessary ~~and shall take into account the special circumstances of small island developing States~~ ~~The conclusions of the review shall be reported to the Conference of the Parties for consideration.~~

Article 19 Decision-making

The Conference of the Parties ~~shall~~ ~~may~~ take decisions on matters related to area-based management tools, including marine protected areas, with respect to: ~~proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, including in relation to:~~

1. ~~—~~
~~—~~

~~{(a) Objectives, criteria, modalities and requirements, as provided for under articles 14, 16, 17 and 18;}~~

~~{Alt. 1~~

~~(b) — Proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, including in relation to:~~

~~(i) (a) The identification of areas requiring protection;~~

~~(ii) (b) The establishment of area-based management tools, including marine protected areas, and related management plan, as well as a research and monitoring plan conservation and [management] [sustainable use] measures to be adopted to achieve the specified objectives, taking into account existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate;~~

~~(c) — Where there are relevant legal instruments or frameworks or relevant global, regional or sectoral bodies:~~

~~(i) (c) Whether to~~ Recommendations that States Parties to this Agreement promote the adoption of relevant ~~conservation and [management] [sustainable use]~~

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Commented [EU8]: The EU and its Member States are not against this notion, but would suggest that this would be part of the cross-cutting issues under the IA.

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Commented [EU9]: The EU and its Member States can support this provision, as long as it would not entail a two-step process, wherein first the COP decides on identification, before proceeding on deciding on actual measures (19b, c and d)

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measures through area-based management tools under relevant such instruments, frameworks and bodies, without prejudice to in accordance with their respective mandates;

(ii) ~~(d) The establishment of Whether to adopt conservation and [management] [sustainable use]— management measures on conservation and, where relevant, sustainable use, including the related management plan as well as the research and monitoring plan,~~ complementary to those adopted under such instruments, frameworks and bodies, without prejudice to their respective mandates;

(d) ~~(e)~~ Where there are no relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, the adoption of management measures on conservation and, where relevant, [management] [sustainable use] measures under a management plan;

[(f) Objectives, criteria, modalities and requirements, as provided for under articles 14, 16, 17 and 18;]

~~(b)—Matters related to identifying potential area-based management tools, including marine protected areas;~~

~~(e)(b) Recommendations relating to the implementation of related management measures, while recognizing the primary authority for the adoption of such measures within the respective mandates of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.]~~

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Article 20 Implementation

1. States Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.

2. Nothing in this Agreement shall prevent a State Party from adopting more stringent measures with respect to its vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law.

~~[3. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States Parties, directly or indirectly.]~~

~~[43. States Parties shall work in a manner that delivers promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures adopted under this Part.]~~

~~[54. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area -based management tool, including a marine protected area, in a manner that aims to deliver to adopt measures supporting the conservation and management objectives of the measures adopted and area -based management tools established under this Part.]~~

~~[65. A State Party that is not a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and management measures established under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area - based management tools, including marine protected areas, established under relevant frameworks, instruments and bodies.]]~~

Commented [EU10]: The EU and its Member States are not against this notion, but would suggest that this would be part of the cross-cutting issues under the IA.

Article 21

Monitoring and review

1. States Parties, individually or collectively, shall report to the Conference of the Parties on the implementation of the management plan and a research and monitoring plan ~~[area-based management tools, including marine protected areas]~~ as well as the relevant elements of the decisions of the Conference on area -based management tools, including marine protected areas], established under this Part. Such reports shall be made publicly available by the secretariat.

1bis. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be invited to report to the Conference of the Parties on the implementation of measures that they have established.

2. Area-based management tools, including marine protected areas, established under this Part, including related management measures on conservation and, where relevant, [management]-[sustainable use]-measures, shall be monitored and periodically reviewed by the Scientific and Technical Body, taking into account the reports referred to in paragraph 1 and 1bis.

3. The review referred to in paragraph 2 shall assess the effectiveness of measures and the progress made in achieving their objectives and provide advice and recommendations to the Conference of the Parties.

4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment or revocation of area -based management tools, including marine protected areas, including any associated management measures on conservation and, where relevant, conservation and [management]-[sustainable use]-measures, [as well as the extension of time-bound area-based management tools, including marine protected areas, which would otherwise automatically expire,] on the basis of an adaptive management approach and taking into account the best available {science}-[scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities], the precautionary [approach]-[principle] and an ecosystem approach.

~~5. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies [shall] [may] be invited to report to the Conference of the Parties on the implementation of measures that they have established.~~

[ANNEX I

Indicative ~~e~~Criteria for identification of areas]

- [(a) Uniqueness;
- [(b) Rarity;]
- (c) Special importance for the life history stages of species;
- (d) Special importance of the species found therein;
- (e) The importance for threatened, endangered or declining species or habitats;
- (f) Vulnerability, including to climate change and ocean acidification;
- (g) Fragility;
- (h) Sensitivity;
- (i) Biological diversity [and productivity];
- [(j) Representativeness;]

- (k) ~~Dependency;~~
- [(l) Exceptional naturalness;]
- (m) Ecological connectivity ~~{and/or coherence};~~
- (n) Important ecological processes occurring therein;
- ~~[(o) Economic and social factors;]~~
- [(p) Cultural factors]
- [(q) Cumulative and transboundary impacts;]
- (r) Slow recovery ~~and resilience;~~
- (s) Adequacy and viability;
- (t) Replication;
- (u) ~~Feasibility.]~~

19 February 2020

**Revised draft text of an agreement under the United Nations
Convention on the Law of the Sea on the conservation and
sustainable use of marine biological diversity of areas beyond
national jurisdiction**

EU textual proposals on the EIA part for IGC4

**PART I
GENERAL PROVISIONS**

Article 1 Use of terms

~~2. “Activity under a State’s jurisdiction or control” means an activity over which a State has effective control or exercises jurisdiction.~~

~~6. “Cumulative impacts” means impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts.~~

~~[7. Alt. 1. “Environmental impact assessment” means a process to evaluate the environmental impact of an activity [to be carried out in areas beyond national jurisdiction [, with an effect on areas within or beyond national jurisdiction]] [, taking into account [, inter alia,] interrelated [socioeconomic] [social and economic], cultural and human health impacts, both beneficial and adverse].~~

~~7. Alt. 2. “Environmental impact assessment” means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment.~~

~~13. “Strategic environmental assessment” means the evaluation of the likely environmental, including health [socioeconomic], effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.~~

PART IV ENVIRONMENTAL IMPACT ASSESSMENTS

Article 21bis Objectives

The objectives of this Part are to:

~~{(a) Operationalise the provisions of the Convention on environmental impact assessment, by establishing processes, thresholds and guidelines for conducting and reporting on such assessments by States, including with respect to cumulative impacts and strategic environmental assessments;}~~
~~{(b) Enable consideration of cumulative impacts;}~~
~~{(c) Provide for Strategic Environmental Assessments;}~~
~~{(db) Achieve a coherent}~~Promote coherence between environmental impact assessments framework for activities in areas beyond national jurisdiction.~~}~~

Article 22 Obligation to conduct environmental impact assessments

1. States Parties shall, ~~in accordance with the Convention, as far as practicable,~~ assess ~~ensure that~~ the potential effects on the marine environment of planned activities under their jurisdiction or control, which take place in areas beyond national jurisdiction, are assessed, as far as practicable, through the process for conducting environmental impact assessments set out in this Part, including the thresholds and criteria set out in Article 24 ~~[on the marine environment] [in accordance with their obligations under articles 204 to 206 of the Convention].~~

2. ~~On the basis of articles 204 to 206 of the Convention, To this end,~~ States Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement the provisions ~~{of this Part}~~ and any further measures [on the conduct of environmental impact assessments] decisions adopted by the Conference of the Parties, as set out in this Part.

3. The requirement in this Part to conduct an environmental impact assessment applies ~~{only to activities conducted in areas beyond national jurisdiction}~~ [to all activities that have an impact in areas beyond national jurisdiction].

Article 23 Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with ~~{the obligations under}~~ the Convention.

2. ~~Alt. 1.~~ The ~~Scientific and Technical Body~~ Conference of the Parties shall develop a mechanism for consultation and/or coordination ~~consult and/or coordinate~~ with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities ~~[with impacts]~~ in areas beyond national jurisdiction or to protect the marine environment.

2bis. ~~Alt. 2.~~ State Parties shall cooperate in promoting the use of environmental impact assessments in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies ~~for planned activities that meet or exceed the threshold contained in this Agreement.~~

~~[3. Alt. 1. [Global minimum standards] [and] [guidelines] for the conduct of environmental impact assessments [under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies] shall be developed [by the Scientific and Technical Body] [through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies]. [These [global minimum standards] [and] [guidelines] shall be set out in an annex to this Agreement and shall be updated periodically].]~~

~~[3. Alt. 2. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.]~~

~~[4. Alt. 1. Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate in relation to marine biological diversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in this Part.]~~

~~[4. Alt. 2. No environmental impact assessment is required under this Agreement for any activity conducted in accordance with the rules and guidelines appropriately established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.]~~

4. ~~Alt. 3.~~ No environmental impact assessment is required under this Agreement where relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies with mandates for environmental impact assessments for planned activities ~~[with impacts]~~ in areas beyond national jurisdiction already exist, regardless of whether or not an environmental impact assessment is required for the planned activity under the jurisdiction or control of a State Party.~~.]~~

~~[4. Alt. 4. Where a planned activity under the jurisdiction or control of a State Party [with impacts] in areas beyond national jurisdiction is already covered by existing environmental impact assessment obligations and agreements, it is not necessary to conduct another environmental impact assessment of that activity under this Agreement [, provided that the [State with jurisdiction or control over the planned activity] [body set forth in Part [...]] [, following consultation with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,] determines that:~~

~~[(a) The outcome of environmental impact assessment under those obligations or agreements is effectively implemented;]~~

~~[(b) The environmental impact assessment already undertaken is [[functionally] [substantively] equivalent to the one required under this Part] [comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts];]~~

~~[(c) The threshold for the conduct of environmental impact assessments meets or exceeds the threshold set out in this Part.]]~~

Commented [R.E.N.1]: The EU and its Member States are also open to working on the basis of paragraph 4. Alt. 2.

Commented [R.E.N.2]: The EU and its Member States continue to have questions about certain concepts included in Article 23, including in paragraph 4. Alt. 4 (a)-(c).

Article 24 Thresholds and criteria for environmental impact assessments

~~[1. Alt.1~~

1. When States have reasonable grounds for believing that planned activities under their jurisdiction or control ~~[may cause substantial pollution of or significant and harmful changes to]~~ ~~[are likely to have more than a minor or transitory effect on]~~ the marine environment ~~[in areas beyond national jurisdiction]~~, they shall ensure that the potential effects of such activities are, ~~[individually or collectively,]~~ as far as practicable, assessed through the conduct of an environmental impact assessment ~~[assess the potential effects of such activities on the marine environment]~~ ~~[ensure that the potential effects of such activities on the marine environment are assessed]~~.

~~[1. Alt.2~~

~~1. When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control:~~

~~(a) Are likely to have more than a minor or transitory effect on the marine environment, they shall conduct an environmental impact assessment on the potential effects of such activities on the marine environment in the manner provided in this Part;~~

~~(b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall [conduct] [ensure that] a [full] [comprehensive] environmental impact assessment [is conducted] on the potential effects of such activities on the marine environment [and ecosystems] and shall submit the results of such assessments [for technical review] in the manner provided in this Part;~~

~~[2. Environmental impact assessments shall be conducted in accordance with the threshold and criteria [set out in this Part and as further elaborated upon pursuant to the procedure set out in paragraph [...]] [, which shall be developed by the Scientific and Technical Body].]~~

2. When determining whether the planned activity may cause substantial pollution of or significant and harmful changes to the marine environment, States Parties shall consider the following non-exhaustive criteria:

(a) The type of activity;

(b) The location of the activity;

(c) The characteristics and ecosystem of the location (including areas of particular ecological or biological significance or vulnerability);

(d) The potential effects of the activity;

(e) The potential cumulative effects of the activity;

(f) The transboundary impacts;

(g) Other ecological or biological criteria.

2bis. The Conference of the Parties may develop guidance on the criteria set out in paragraph 2.

Commented [R.E.N.3]: The EU and its Member States propose adding this new paragraph in order to include a non-exhaustive list of criteria to operationalise the threshold.

[Article 25 Cumulative impacts]

1. Cumulative impacts shall ~~[as far as possible]~~ be ~~[taken into account]~~ ~~[considered]~~ in the conduct of environmental impact assessments.

2. ~~Alt. 1. Guidelines-Guidance~~ for assessing cumulative impacts in areas beyond national jurisdiction and how those impacts will be taken into account in the environmental impact assessment process for planned activities ~~shall~~ may be developed by the Conference of the Parties.

~~[2. Alt. 2. In determining cumulative impacts, the incremental effect of a planned activity under the jurisdiction or control of a State Party when added to the effects of past, present and reasonably foreseeable future activities shall be examined regardless of whether the State Party exercises jurisdiction or control over those other activities.]~~

Commented [R.E.N.4]: The EU and its Member States support the inclusion of cumulative impacts, but question the need to have a separate provision on it. The concept could also be reflected in the relevant provisions on the EIA process, including Articles 24 (Thresholds and criteria for environmental impact assessments), 31 (Scoping), 32 (Impact assessment and evaluation) and 35 (Preparation and content of environmental impact assessment reports).

[Article 26 Transboundary Impacts in areas within national jurisdiction]

~~1. Possible transboundary impacts shall be taken into account in environmental impact assessments.~~

~~2. Where relevant, the environmental impact assessment process shall also take into account possible impacts in [adjacent] [coastal States] [areas within national jurisdiction, including the continental shelf beyond 200 nautical miles].~~

A State Party shall ensure that impacts in areas within national jurisdiction are taken into account when conducting an environmental impact assessment under this Part.

Commented [R.E.N.5]: The EU and its Member States propose to change the title of Article 26 to "Impacts in areas within national jurisdiction".

The EU and its Member States support the inclusion of such impacts, but question the need to have a separate provision on it. The concept could also be reflected in the relevant provisions on the EIA process, including Articles 24 (Thresholds and criteria for environmental impact assessments), 31 (Scoping), 32 (Impact assessment and evaluation) and 35 (Preparation and content of environmental impact assessment reports).

[Article 27 Areas identified as ecologically or biologically significant or vulnerable]

~~[1. For areas identified as requiring protection [for special attention] by any other [relevant instrument or competent body] [legal instruments and frameworks or by relevant global, regional, subregional, and sectoral [bodies][organizations]], or areas [ecologically or culturally] connected to such areas, environmental impact assessments shall be required for planned activities.]~~

~~[2. Additional guidelines on the conduct of environmental impact assessments in [or adjacent to][or connected to] areas identified [by other legal instruments and frameworks or by relevant global, regional, subregional, and sectoral [bodies][organizations]] as requiring protection or special attention may be elaborated by the scientific technical and technological body in cooperation with relevant competent bodies for the consideration and adoption of the Conference of the Parties.]~~

Commented [R.E.N.6]: The EU and its Member States continue to question the need to have a specific provision on this issue.

Article 28 Strategic environmental assessments

1. States Parties, individually or in cooperation with other States Parties, shall ensure that a strategic environmental assessment is carried out for plans and programmes relating to activities ~~[under their jurisdiction or control,]~~ ~~[conducted]~~ ~~[with impacts]~~ in areas beyond national jurisdiction, which ~~meet the threshold/criteria established in article 24~~ are likely to have significant environmental [and socioeconomic] effects.

~~[2. As one type of environmental assessment, strategic environmental assessments shall follow mutatis mutandis the process set out in this Part.]~~

2. Guidance on the conduct of strategic environmental assessments as one type of environmental assessment may be developed by the Conference of the Parties.

Article 29 List of activities that ~~[require] [or] [do not require]~~ an environmental impact assessment

~~1. An indicative non-exhaustive list of activities that [normally] [require] [or] [do not require] an environmental impact assessment [is contained in annex [...]] [shall be [prepared by the Conference of the Parties as voluntary guidelines on the basis of recommendations by the Scientific and Technical Body]].]~~

~~[2. The list shall be regularly updated by the Conference of the Parties.]~~

Commented [R.E.N.7]: The EU and its Member States do not support a provision on a list of activities.

Article 30 Screening

1. A State Party shall determine whether an environmental impact assessment is required in respect of a planned activity under its jurisdiction or control.

~~[2. The initial screening of activities shall consider the characteristics of the area where the planned activity under the jurisdiction or control of a State Party is intended to take place, as well as where the potential effects are going to be felt. Should such planned activity take place in or adjacent to an area that has been identified for its significance or vulnerability, regardless of whether the impacts are expected to be minimal or not, an environmental impact assessment shall be required.]~~

3. If a State Party determines that an environmental impact assessment is not required for a planned activity under its jurisdiction or control, ~~[the approval of the Scientific and Technical Body must be obtained]~~ it shall publish/report on that conclusion/decision in accordance with the Convention, including through a dedicated registry under this Agreement ~~must provide information to support that conclusion].~~

Commented [R.E.N.8]: The EU and its Member States suggest adding this concept to further enhance transparency. Similar proposals are also made in Articles 36 (Publication of assessment reports), 38(3) (Decision-making) and 40(2) (Reporting).

Article 31 Scoping

~~[1. States Parties shall ensure that scoping is conducted for establish procedures to define the scope of the environmental impact assessments that shall be conducted [under the provisions of this Part].]~~

~~[2. Such scopeScoping shall include, the identification of key environmental [social, economic, cultural and other relevant] [impacts and] [issues], including identified cumulative impacts, using the best available scientific information and, where relevant, traditional knowledge of indigenous peoples and local communities [alternatives for analysis] [and a determination of the potential effects of the planned activity under the jurisdiction or control of a State Party, including a detailed description of potential environmental consequences].]~~

Article 32 Impact assessment and evaluation

~~1. A State Party [that has determined that a planned activity under its jurisdiction or control requires an environmental impact assessment under this Agreement] shall ensure that the identification and evaluation of impacts in such an assessment is conducted in accordance with this Part, using the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities [, and an examination of alternatives].~~

1. A State Party shall ensure that an environmental impact assessment conducted under this Part shall predict and evaluate impacts using the best available scientific information and, where relevant, traditional knowledge of indigenous peoples and local communities.

1bis. Impact assessment and evaluation shall identify and predict the likely environmental impacts of the planned activity and shall include cumulative impacts and impacts in areas within national jurisdiction.

~~2. Nothing in this Part precludes States Parties, in particular [small island] developing States, may from conducting joint environmental impact assessments, in particular developing States.~~

~~[3. A State Party may designate a third party to conduct an environmental impact assessment required under this Agreement. Such third party [shall] [may] be drawn from the pool of experts created pursuant to paragraph 4 below. Environmental impact assessments conducted by such third parties must be submitted to the State for review and decision making.]~~

~~[4. A pool of experts shall be created under the Scientific and Technical Body. States Parties with capacity constraints may commission those experts to conduct and evaluate environmental impact assessments for planned activities.]~~

Commented [R.E.N.9]: The EU and its Member States are not against this concept as such, but suggest that it is looked at also as part of the capacity building part.

Article 33 Mitigation, prevention and management of potential adverse effects

~~[States Parties shall establish procedures for the prevention, mitigation, and management of potential adverse effects of [authorized] activities under their jurisdiction or control. Such procedures shall include the identification of alternatives to the planned activity under their jurisdiction or control.]~~

1. States Parties shall ensure that procedures to mitigate, prevent and manage potential adverse effects are part of the environmental impact assessment conducted under the provisions of this Part.

2. Mitigation, prevention and management of potential adverse effects shall, as far as practicable, include the identification of alternatives to the planned activity.

Article 34 Public notification and consultation

1. States Parties shall ensure early notification to all relevant stakeholders about planned activities under their jurisdiction or control and effective, time-bound opportunities for stakeholder participation throughout the environmental impact assessment process, including through the submission of comments, before a decision is made as to whether to proceed with the activity.

[2. Stakeholders in this process include potentially affected States, where those can be identified, [in particular adjacent coastal States] [, indigenous peoples and local communities with relevant traditional knowledge in adjacent coastal States,] relevant global, regional, subregional and sectoral bodies, non-governmental organizations, the general public, academia [, scientific experts] [, affected parties,] [adjacent communities and organizations that have special expertise or jurisdiction] [, interested and relevant stakeholders] [, and those with existing interests in an area].]

Commented [R.E.N.10]: Internal consultations on Article 34(2) are still ongoing.

3. Public notification and consultation shall be transparent and inclusive ~~[, and targeted and proactive when involving adjacent small island developing States].~~

4. ~~[Substantive] comments~~ Comments received during the consultation process ~~[from adjacent coastal States]~~ shall be considered and ~~[addressed]~~ ~~[responded to]~~ by States Parties. States Parties shall give particular regard to comments concerning potential ~~transboundary~~ impacts in areas within national jurisdiction. ~~States Parties shall make public the comments received and the descriptions of how they were addressed.~~

5. States Parties ~~[undertaking an environmental impact assessment pursuant to this Agreement]~~ shall establish procedures allowing for access to information related to the environmental impact assessment process under this Agreement. ~~[Notwithstanding this, States Parties shall not be required to disclose non-public information or information that would undermine intellectual property rights or other interests].~~

~~[6. Procedures may be developed by the Conference of the Parties to facilitate consultation at the international level.]~~

Art. 34bis Guidance on the environmental impact assessment process

The Conference of the Parties may request the [subsidiary body] to develop recommendations/guidelines on the conduct of the environmental impact assessment process.

Article 35 Preparation and content of environmental impact assessment reports

1. States Parties shall ~~[be responsible for]~~ ~~[ensure]~~ ~~the preparation of that~~ an environmental impact assessment report is prepared for any such assessment undertaken pursuant to this Part.

2. Where an environmental impact assessment is required in accordance with this Part, the environmental impact assessment report ~~[shall]~~ ~~[may]~~ include ~~[as a minimum, the following information]:~~

(a) A description of the planned activity under the jurisdiction or control of a State Party and its purpose ~~[, including a description of the location of [the] [such a] planned activity];~~

(b) A description of the results of the scoping exercise;

(c) A description of the marine environment likely to be affected;

(d) A description of the potential effects of the planned activity under the jurisdiction or control of a State Party on the marine environment, including ~~[social, economic, cultural and other relevant]~~

~~impacts,} and {reasonably foreseeable potential direct, indirect,} cumulative impacts and transboundary impacts in areas within national jurisdiction, {as well as an estimation of their significance} [, including a description of the likelihood that the assessed activity will cause substantial pollution of or other significant and harmful changes to the marine environment in areas beyond national jurisdiction and its biodiversity];~~

(e) A description ~~[, where appropriate,]~~ of reasonable alternatives to the planned activity under the jurisdiction or control of a State Party, including the no-action alternative;

~~{{(f) A description of the worst case scenario that could be expected to occur as a result of the planned activity under the jurisdiction or control of a State Party;}}~~

(g) A description of any measures for avoiding, preventing ~~[, minimizing]~~ and mitigating impacts ~~{ and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment} [and other adverse social, economic, cultural and relevant impacts];~~

(h) A description of any follow-up actions, including any monitoring and management programmes; ~~any plans for post-project analysis where scientifically justified, and plans for remediation;~~

(i) Uncertainties and gaps in knowledge;

(j) ~~{A non-technical summary} [and/or a technical summary];~~

~~{{(k) The identification of the sources of the information contained in the report;}}~~

~~{{(l) An explicit indication of predictive methods and underlying assumptions, as well as the relevant environmental data used;}}~~

~~{{(m) The methodology used to identify environmental impacts;}}~~

~~{{(n) An environmental management plan, including a contingency plan for responding to incidents that have an impact on the marine environment;}}~~

~~{{(o) The environmental record of the proponent;}}~~

~~{{(p) A review of the business plan for the planned activity under the jurisdiction or control of a State Party;}}~~

(q) A description of consultations undertaken in the environmental impact assessment process, including with relevant global, regional, subregional and sectoral bodies.

~~{3. Further {details} [guidance] regarding the _required_ content of an environmental impact assessment report {shall} [may] be developed by the Conference of the Parties as an annex to this Agreement and shall be based on the best available scientific information and knowledge, including, where relevant, traditional knowledge of indigenous peoples and local communities. {{These details}} [This guidance] shall be reviewed regularly.}}~~

Article 36 Publication of [assessment] reports

States Parties shall publish ~~[and communicate]~~ the reports of the results of the assessments in accordance with ~~[articles 204 to 206 of]~~ the Convention ~~], including through the clearing-house mechanism]~~ a dedicated registry under this Agreement.

~~[Article 37 Consideration and review of [assessment] reports]~~

~~[The environmental impact assessment reports prepared pursuant to this Agreement shall be considered and reviewed on the basis of approved scientific methods by the Scientific and Technical Body.]~~

Commented [R.E.N.11]: The EU and its Member States do not support a provision on consideration and review of assessment reports.

Article 38 Decision-making

~~[1. Alt. 1. Where a planned activity is under the jurisdiction or control of a State Party, that State shall be responsible for determining whether the planned activity under its jurisdiction or control may proceed.]~~

~~[1. Alt. 2. The Conference of the Parties shall be responsible for determining whether a planned activity under the jurisdiction or control of a State Party may proceed, in accordance with the following procedural requirements:~~

~~[(a) The environmental impact assessment report shall be submitted to the Scientific and Technical Body for review, which shall, having regard to the inputs received during public consultation, review the report and make a recommendation to the Conference of the Parties on whether the planned activity under the jurisdiction or control of a State Party should proceed[;]~~

~~[(b) A revised environmental impact assessment report may be submitted to the panel of experts, appointed by the Scientific and Technical Body, for reconsideration where the Scientific and Technical Body has recommended that the planned activity under the jurisdiction or control of a State Party should not proceed.]]~~

~~[2. No decision allowing the planned activity under the jurisdiction or control of a State Party to proceed shall be made where the environmental impact assessment indicates that the planned activity under the jurisdiction or control of a State Party would have severe adverse impacts on the environment.]~~

2. When determining whether the planned activity, plan or program may proceed, States Parties shall take full account of the results of an environmental impact assessment or strategic environmental assessment conducted in accordance with this Part.

~~[3. Decision-making-related documents shall be made public, including through the clearing-house mechanism]~~ a dedicated registry under this Agreement.]

Commented [R.E.N.12]: The EU and its Member States propose adding this new paragraph in order to ensure that the outcomes of EIAs and SEAs are fully taken into account in the decision-making process.

Article 39 Monitoring

In accordance with articles 204 to 206 of the Convention, States Parties shall ~~[[continuously] monitor the effects of authorized activities]~~ ensure that the environmental impacts of the authorized activity are ~~[[continuously] monitored [and supervised]]~~ in accordance with the conditions set out in the approval of the activity in accordance with the Convention.

Article 40 Reporting

~~[1. Alt. 1. States Parties shall ensure that the [environmental impacts of the authorized activity] [the results of the monitoring required under article 39] are [periodically] reported on.]~~

~~[1. Alt. 2. [States Parties] [and] [relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies] shall periodically report on [the environmental impacts of the authorized activity] [the results of the monitoring and review required under articles 39 and 41].]~~

~~[2. Reports shall be submitted to a dedicated registry under this Agreement, [the clearing house mechanism] [the Scientific and Technical Body] [relevant legal instruments or frameworks or relevant global, regional, subregional and sectoral bodies and other States].]~~

~~[(a) The Scientific and Technical Body may request independent consultants or an expert panel to undertake a further review of the reports submitted to it;]~~

~~[(b) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and other States may [analyse the reports and highlight cases of non-compliance, the lack of information or other shortcomings] [provide recommendations regarding] the environmental assessment and review.]~~

Article 41 Review

~~[1. States Parties shall ensure that the environmental impacts of the authorized activity are reviewed.]~~

~~[(a) 2. Should the results of the monitoring required under article 39 identify adverse impacts not foreseen in the environmental impact assessment, the [State with jurisdiction or control over the activity] [Scientific and Technical [Body] [Network]] shall review its decision authorizing the activity.;~~

~~[(i) Notify the [Conference of the Parties] [other States] [the public];]~~

~~[(ii) Halt the activity;]~~

~~[(iii) Require the proponent to propose measures to mitigate and/or prevent those impacts;]~~

~~[(iv) Evaluate measures proposed under article [...] and decide whether the activity should continue;]~~

~~[(b) The Conference of the Parties shall develop guidelines on the nature and severity of the impacts that would require a supplemental environmental impact assessment.]~~

~~[2. A non-adversarial consultation process shall be established to resolve [controversies] [differences] [disagreements] in respect of monitoring, [without recourse to judicial or non-judicial bodies].]~~

[3. [All States and, in particular] Adjacent coastal States [, including small island developing States,] shall be [kept informed of] [consulted actively [, as appropriate,] in] the monitoring, reporting and review processes in respect of [an activity approved under this Agreement] [activities in areas beyond national jurisdiction].]

Commented [R.E.N.13]: Internal consultations on Article 41(3) are still ongoing.

19 February 2020

**Revised draft text of an agreement under the
United Nations Convention on the Law of the
Sea on the conservation and sustainable use
of marine biological diversity of areas
beyond national jurisdiction**

EU textual proposals on the CBTMT part for IGC4

**PART I
GENERAL PROVISIONS**

**Article 1
Use of terms**

~~[11. “Marine technology” means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for *in situ* and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]~~

~~[14. “Transfer of marine technology” means the transfer of the instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.]~~

**PART V
CAPACITY-BUILDING AND TRANSFER OF
MARINE TECHNOLOGY**

**Article 42
Objectives**

The objectives of this Part are to:

- (a) Assist States Parties, in particular developing States Parties, in implementing the provisions of this Agreement, to achieve its objectives;
- (b) Enable inclusive and effective participation in the activities undertaken under this Agreement;

~~[(c) [Promote and encourage] [Ensure] access to marine technology by and transfer of marine technology for peaceful purposes to developing States Parties for the attainment of the objectives of this Agreement;]~~

(b) Increase, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

(c) Develop the marine scientific and technological capacity of States Parties with regard to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

~~(c)(d)~~ [Promote access to and transfer of marine technology for the achievement of the objectives of this Agreement;]

~~(d) Ensure that developing States Parties have:~~

~~[(i) Access to, and benefit from, the scientific information resulting from [the collection of] [access to] resources in areas beyond national jurisdiction, in particular marine genetic resources;]~~

~~[(ii) Access to, and that their special requirements receive consideration in, the sharing of benefits from marine genetic resources and in marine scientific research;]~~

~~[(iii) [Collection of] [Access to] marine genetic resources *in situ*, *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data] [and their utilization];]~~

~~[(iv) [Endogenous] [Local] research capabilities relating to marine genetic resources and products, processes and other tools;]~~

More specifically, capacity building and the transfer of marine technology shall contribute to:

(i) Support the implementation of the provisions of this Agreement concerning marine genetic resources.

~~(i)(ii)~~ The capacity to dDevelop, implement, monitor, and manage and, including to enforce, any area-based management tools, including marine protected areas;

~~(ii)(iii)~~ The capacity to eConduct and evaluate environmental impact assessments [and strategic environmental assessments].

Article 43

Cooperation in capacity-building and transfer of marine technology

1. States Parties, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall ~~[promote]~~ ~~[ensure]~~ cooperation, ~~[in accordance with [this Agreement] [Part XIV of the Convention],]~~ ~~in accordance and~~ with their capabilities, in capacity-building and the transfer of marine technology to assist States Parties that need and request it, in particular developing States Parties in achieving the objectives of this Agreement.

2. Capacity-building and the transfer of marine technology under this Agreement shall be ~~[carried out]~~ ~~[promoted]~~ through enhanced cooperation at all levels and in all forms, including partnerships with and involving all relevant stakeholders, such as, where appropriate, ~~[the private sector,]~~ civil society and holders of traditional knowledge, and by strengthening cooperation, coordination and synergies between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, including through the clearing house mechanism established under this Agreement as set out in Article 51.

3. In giving effect to ~~the duty to [cooperate] [promote cooperation] under~~ this article, States Parties shall give full recognition to the special requirements of developing States Parties, ~~whether they are in particular~~ least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States ~~and/or~~ developing middle-income countries.

Article 44

Modalities for capacity-building and the transfer of marine technology

~~1. — States Parties, recognizing that capacity-building, access to and the transfer of marine technology, including biotechnology, among States Parties are essential elements for the attainment of the objectives of this Agreement, [undertake to provide or facilitate] [shall promote] [shall ensure] access to and the transfer of marine technology, and capacity-building, for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle income countries.~~

~~2. — Capacity-building and the transfer of marine technology [shall] [may] be provided on a [mandatory and voluntary] [voluntary] [bilateral, regional, subregional and multilateral] basis.~~

3.1. Capacity-building and the transfer of marine technology shall be transparent and ~~countryneeds-driven [, and shall not duplicate existing programmes]. Capacity-building and the transfer of marine technology shall be,~~ guided by lessons learned, ~~including those from capacity-building and the transfer of marine technology activities under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies; [and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive].~~

4.2. Capacity-building and the transfer of marine technology shall be based on and be responsive to the needs and priorities of ~~developing~~ States Parties, ~~[as determined by] [informed by] a needs assessment where appropriate, [on an individual case-by-case, subregional or regional basis]. Such needs and priorities may be self-assessed or facilitated through a mechanism, which may be established by the Conference of the Parties.~~

[5. ~~Detailed Guidance on~~ modalities, ~~procedures and guidelines~~ for capacity-building and the transfer of marine technology, including in relation to needs assessment {may} ~~[shall]~~ be developed and adopted by the Conference of the Parties.]

Article 45

Additional modalities for the transfer of marine technology

1. The [development and] transfer of marine technology shall be carried out ~~{on fair and most favourable terms, including on concessional and preferential terms} [according to mutually agreed terms and conditions].~~

~~[2. Alt. 1. The transfer of marine technology shall [take into account the need to protect intellectual property rights] [be carried out with due regard for all legitimate interests, including the rights and duties of holders, suppliers and recipients of marine technology].]~~

[2. Alt. 2. States Parties shall [protect] [respect the protection of] ensure that intellectual property rights are adequately and effectively protected when implementing the transfer of technology.]

~~{2. Alt. 3. Intellectual property rights [related to resources of areas beyond national jurisdiction] shall [not preclude the transfer of marine technology] [be subject to specific limitations in furtherance of technology transfer related to marine technology] under this Agreement.}~~

1. Marine technology transferred pursuant to this Part shall be ~~appropriate, reliable, affordable, up to date,~~ environmentally sound, ~~available in an accessible form for developing States Parties~~ and relevant to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. As far as possible, [States Parties shall ensure endeavor to avoid that such transfer is not conditional on onerous reporting requirements].

Article 46

Types of capacity-building and transfer of marine technology

1. In support of the objectives set out in article 42, the types of capacity-building and transfer of marine technology may include, and are not limited to:

- (a) The sharing of relevant data, information, knowledge and research;
- (b) Information dissemination and awareness-raising, including with respect to relevant traditional knowledge of indigenous peoples and local communities;
- (c) The development and strengthening of relevant infrastructure, including equipment;
- (d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms;
- (e) The development and strengthening of human resources and technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of technology;
- (f) The development and sharing of manuals, guidelines and standards;
- (g) The development of technical, scientific and research and development programmes, ~~including biotechnological research activities.~~

2. The Conference of the Parties may provide guidance on Further details concerning the types of capacity-building and transfer of marine technology identified in this article ~~are elaborated in annex II.~~

~~3. The types of capacity-building and transfer of marine technology set out in annex II [shall] [may] be reviewed, assessed and amended periodically by the Conference of the Parties to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, subregions and regions.~~

Article 47

Monitoring and review

1. Capacity-building and the transfer of marine technology activities undertaken in accordance with this Agreement shall be monitored and reviewed periodically.

2. The monitoring and review referred to in paragraph 1 shall be aimed at:

- (a) Reviewing the needs and priorities of developing States Parties in terms of capacity-building and transfer of marine technology, including the support required, provided and mobilized, and gaps in meeting requirements of developing States Parties in relation to this Agreement;

(b) Review progress in achieving the objectives of capacity building and the transfer of marine technology under this Agreement and effectiveness of activities undertaken;~~Measuring performance on the basis of objective indicators and reviewing results-based analyses, including the output, progress and effectiveness of capacity-building and transfer of marine technology activities, successes and challenges;~~

(c) ~~Making recommendations for proposed ways forward and follow-up activities, including~~ on how capacity-building and the transfer of marine technology could be further enhanced ~~to allow developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to fully meet their obligations and exercise their rights under this Agreement.~~

3. Monitoring and review shall be carried out by the Conference of the Parties, which shall decide upon the details and modalities of such review and monitoring,~~including with regard to any subsidiary body that it may wish to establish in this respect.~~

4. —The monitoring and review of capacity-building and transfer of marine technology activities under this Agreement shall include all relevant actors ~~involved in the process,~~ including at the national, subregional,~~and~~ regional and international levels.

5.4. ~~In supporting the monitoring and review of capacity building and the transfer of marine technology, States Parties [and regional committees on capacity building and the transfer of marine technology] may submit, on a voluntary basis, reports, which may be made publicly available, on capacity building and the transfer of marine technology given and received. States Parties shall ensure that reporting requirements for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle income countries, are streamlined and not onerous.~~

**Joint textual proposal by Australia, Maldives, New Zealand, Norway, and the
Pacific Small Island Developing States**

**[Article 10bis: Access to traditional knowledge of indigenous peoples and local
communities associated with marine genetic resources [collected] [accessed] in areas
beyond national jurisdiction]**

[States Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources [collected] [accessed] in areas beyond national jurisdiction that is held by indigenous peoples and local communities shall only be accessed with the **free** prior and informed consent or approval and involvement of these indigenous peoples and local communities. The clearing-house mechanism may act as an intermediary to facilitate access to such traditional knowledge. Access to **and utilization of** such traditional knowledge shall be on mutually agreed terms.]

Explanatory text

- The proposed amendments to article 10bis are in boldface, green, and underlined, as above.
- The proposed amendments aim to, among other things, reflect current international law and practice regarding consent from Indigenous Peoples and local communities pertaining to accessing their traditional knowledge; and ensure mutually agreed terms are established for the utilization of as well as access to such traditional knowledge, in line with current international law and practice pertaining to traditional knowledge associated with genetic resources.

Joint package of textual proposals by Australia, New Zealand, Norway, and the Pacific Small Island Developing States

Preamble

New pp: Recalling the United Nations Declaration on the Rights of Indigenous Peoples, and affirming that nothing in this Agreement shall be construed as diminishing or extinguishing the existing rights of Indigenous Peoples and local communities.

Explanatory text

- The language of this joint proposal is adapted from the preambles of the Nagoya Protocol and the Central Arctic Ocean Fisheries Agreement; as well as from the preambles of UNFCCC COP Decision 2/CP.23 (on the Local Communities and Indigenous Peoples Platform (2017)) and UNFCCC COP Decision 2/CP.24 (on the Local Communities and Indigenous Peoples Platform (2018)), both of which were adopted by consensus.
- The joint proposal aims to, among other things, safeguard the existing rights of Indigenous Peoples and local communities in the context of seeking, transmitting, and using their relevant traditional knowledge in connection with the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Article 5: General [principles] [and] [approaches]

In order to achieve the objective of this Agreement, States Parties shall be guided by the following:

(i) bis The respect, promotion and consideration of their respective obligations on the rights of Indigenous Peoples and local communities when taking action to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Explanatory text

- The language of this joint proposal is adapted from the preambles of UNFCCC COP Decision 2/CP.23 (on the Local Communities and Indigenous Peoples Platform (2017)) and of UNFCCC COP Decision 2/CP.24 (on the Local Communities and Indigenous Peoples Platform (2018)), both of which were adopted by consensus.
- The joint proposal aims to, among other things, ensure the operationalization of the obligations of States with respect to the existing rights of Indigenous Peoples and local communities in the context of seeking, transmitting, and using their relevant traditional knowledge in connection with the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

New Zealand (also on behalf of Australia, Canada, Norway, and PSIDS)

Article 50 (bis) Transparency

1. The Conference of the Parties shall promote transparency in decision making processes and other activities carried out under this Agreement.
2. All meetings of the Conference of the Parties and its subsidiary bodies shall be open to all participants and observers registered in accordance with paragraph 4 unless otherwise decided by the Conference of the Parties. The Conference of the Parties shall publish and maintain a public record of its decisions.
3. The Conference of the Parties shall promote transparency in the implementation of this Agreement, including through the public dissemination of information, and the facilitation of participation of, and consultation with, relevant global, regional and sectoral bodies, indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders as appropriate, and in accordance with the provisions of this Agreement.
4. Representatives of States not party to this Agreement, relevant global, regional and sectoral bodies, indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders with an interest in matters pertaining to the Conference of the Parties may request to participate in the meetings of the Conference of the Parties and of its subsidiary bodies, as observers or otherwise as appropriate. The rules of procedure of the Conference of the Parties shall provide modalities for such participation and shall not be unduly restrictive in this respect. The rules of procedure shall also provide for such representatives to have timely access to all relevant information.

Observaciones del Core Latin American Group (CLAM)

Proyecto de texto revisado de un acuerdo en el Marco de la Convención de las Naciones Unidas sobre el Derecho del Mar relativo a la conservación y el uso sostenible de la diversidad biológica marina de las zonas situadas fuera de la jurisdicción nacional

El Core Latin American Group (CLAM) agradece a la Presidencia por su trabajo en la publicación del último borrador del proyecto de acuerdo y presenta los siguientes comentarios al texto. Dichos comentarios se hacen de manera general. No debe interpretarse que el CLAM está de acuerdo en aquellos puntos donde no hay pronunciamiento. El grupo se reserva su derecho a hacer cualquier pronunciamiento sobre las partes 2 (Recursos Genéticos Marinos) y 4 (Evaluaciones de Impacto Ambiental) en su debida oportunidad.

Nada de lo aquí presentado limita las observaciones que CLAM y los Estados que componen el Grupo realicen posteriormente durante la celebración de la cuarta Conferencia Intergubernamental, ni en propuestas de lenguaje.

Preámbulo

El último borrador presenta la siguiente adición por parte de la Presidencia: *“Deseando actuar como administradores del océano en las zonas situadas fuera de la jurisdicción nacional en nombre de las generaciones presentes y futuras”*.

Al respecto, CLAM recibe con agrado que se haya tomado en cuenta la importancia de la equidad intergeneracional en el uso sostenible y conservación de la biodiversidad marina y se considera que tener una referencia expresa en el preámbulo resulta favorable para efectos de la interpretación y aplicación del instrumento.

No obstante, la palabra *“administradores”* tiene diversas connotaciones incluyendo aquellas de cuidador e incluso representante, lo que puede confundir la interpretación del propio instrumento y el alcance de las obligaciones de los Estados. En ese sentido, CLAM considera que la redacción debería limitarse al reconocimiento del principio de equidad intergeneracional, quedando de la siguiente manera:

“Deseando actuar de acuerdo con el principio de equidad intergeneracional en los océanos”

Parte I Disposiciones Generales

Artículo 1 Términos Empleados

3. En la definición de “mecanismo de gestión basado en zonas geográficas”, en la versión en inglés del documento CLAM sugiere utilizar la palabra *“measure”* y no *“tool”*. Además,

sugiere eliminar la última parte del texto de la definición que figura entre corchetes [y ofrecer mayor protección que en las zonas circundantes], pues pueden existir ABMTs más restrictivas en la zona contigua al área propuesta.

CLAM propone que la definición lea:

Por “mecanismo de gestión basado en zonas geográficas” se entiende cualquier medida para una zona geográficamente delimitada, mediante el cual se gestionan uno o varios sectores o actividades con el fin de alcanzar determinados objetivos de conservación y uso sostenible, de conformidad con este tratado”.

(5 Bis). El CLAM solicita nuevamente a la Presidenta la incorporación de una definición sobre el término “Creación de Capacidades”, de acuerdo a la siguiente propuesta:

“5bis. "creación de capacidad" se entiende toda actividad destinada a permitir o mejorar la formación académica, profesional y técnica; el intercambio de conocimientos y competencias; el acceso a infraestructuras físicas; el fortalecimiento institucional; la comunicación entre actores relevantes; el intercambio de información científica, de desarrollo tecnológico e innovación; y la sensibilización a través de información pública y conocimientos básicos sobre la biodiversidad marina en áreas fuera de la jurisdicción nacional.”

La definición propuesta no se encuentra reflejada de esa forma en un documento, sino que se basa en una adaptación de conceptos incluidos en la Estrategia de Desarrollo de Capacidades de la COI 2015-2021 (Documento IOC/INF-1332 disponible a través de http://www.ioc-unesco.org/index.php?option=com_oe&task=viewDocumentRecord&docID=14939), tomando parte de los "productos" y "actividades" (o "outputs" y "activities"), para los fines de este instrumento internacional legalmente vinculante.

(11.) CLAM solicita eliminar los ejemplos y la palabra “observación” sustituirla por “innovación”. De esta forma, el inciso 11 leería:

[11. Por “tecnología marina” se entienden elementos como información y datos, suministrados en un formato de fácil utilización, sobre las ciencias marinas y las operaciones y servicios marinos conexos; manuales, directrices, criterios, normas y materiales de referencia; equipo de muestreo y metodología; instalaciones ~~y equipo de observación (por ejemplo, equipo de teledetección, boyas, mareógrafos y medios de observación de los océanos a bordo de buques y de otra índole)~~; equipo para observaciones, análisis y experimentos in situ y en laboratorio; computadoras y programas informáticos, incluidos modelos y técnicas de modelización; y experiencia, conocimientos, aptitudes, conocimientos técnicos, científicos y jurídicos y métodos analíticos relacionados con la investigación ~~y la observación y la innovación~~ científicas marinas.]

(14.) CLAM solicita la eliminación del término “transferencia de tecnología marina” pues ya se cuenta con los detalles en el artículo 45 sobre modalidades.

Artículo 2 Objetivo General

Se observa con agrado la inclusión de la referencia “**objetivo general**” en tanto que permite que todas las secciones que conforman el instrumento internacionalmente vinculante, se interpreten e implementen desde la perspectiva de uso sostenible y conservación de la biodiversidad marina, a la par de la promoción de la cooperación y coordinación internacional.

CLAM considera que el objetivo de este instrumento vinculante es de aplicación y observancia constante, continua y progresiva por lo que la referencia a [*largo plazo*] en la redacción del objetivo no estaría en concordancia con esta visión. En este sentido, se sugeriría no considerar [*largo plazo*] en la redacción.

Artículo 3 Aplicación

(1) CLAM considera que el ámbito de aplicación geográfica de este instrumento debe ser las áreas marinas fuera de la jurisdicción nacional (en armonía con lo establecido en el artículo 1.4), tal como está planteado en el último borrador del proyecto de instrumento vinculante.

(2) CLAM hace una lectura de que dicha mención se refiere a la inmunidad soberana de los buques estatales en términos de lo establecido en el artículo 236 de la CONVEMAR. En este sentido CLAM se permite hacer las siguientes observaciones:

- Esta referencia a la inmunidad soberana no tiene cabida en el artículo referente a la aplicación geográfica del instrumento.
- Durante la tercera Conferencia Intergubernamental **NO** hubo consenso sobre la conveniencia de incluir esta cláusula. Varias delegaciones, entre ellas el CLAM, manifestaron reparos sobre su contenido.
- Esta inmunidad jurisdiccional de los buques ya está reconocida, no solo en el marco de la CONVEMAR sino de otros tratados y regímenes sobre los océanos. Por consiguiente, sería innecesaria la inclusión de esta cláusula en el instrumento.
- Ahora bien, dicha salvaguarda se hace en el marco de disposiciones ambientales – protección y preservación del medio marino- y el instrumento BBNJ prevé una aplicación material más amplia (acceso y uso de recursos genéticos marinos, a los que no se hace alusión ni en la CONVEMAR ni en otros instrumentos sobre la navegación, seguridad de buques y de la vida humana en el mar).

Dado que una parte considerable de la investigación científica marina se realiza con buques estatales, la aceptación de tal artículo implicaría, por ejemplo, dejar fuera de la regulación del instrumento a las actividades relacionadas a los recursos genéticos marinos, el acceso a los mismos y el consecuente reparto de utilidades que se deriven por su acceso y utilización.

Derivado de las consideraciones anteriores, CLAM solicita eliminar esta cláusula o en su caso, mantenerla en corchetes para su discusión en la cuarta conferencia y de ninguna manera darla por acordada como sugiere la versión revisada al dejarla sin corchetes.

Artículo 4 Relación entre el presente Acuerdo y la Convención y los instrumentos y marcos jurídicos pertinentes y los órganos mundiales, regionales, subregionales y sectoriales competentes

CLAM prefiere el uso de la palabra **competentes** en lugar de **existentes**, en tanto que la primera tiene un alcance más amplio que permite la inclusión de otros instrumentos, organismos y marcos no solo existentes o en vigor actualmente, sino aquellos que puedan surgir en el futuro.

BBNJ debe permitir la armonización legislativa y la participación de otros instrumentos y organismos internacionales para garantizar que no exista una sobrerregulación o interferencia en otras jurisdicciones y ámbitos de aplicación. Este tratado debe procurar la complementariedad e integralidad en la aplicación a través de la cooperación dispuesta en el artículo 6.

La negociación de BBNJ está basada, entre otros principios, en el de cooperación entre los instrumentos existentes en áreas fuera de la jurisdicción y en el de no socavar las competencias de estos. Lo anterior se deberá ver claramente reflejado en los artículos 4 y 6, buscando articular los mecanismos ya existentes con la nueva institucionalidad de BBNJ.

BBNJ debe respetar los derechos de jurisdicción y deberes de los Estados Ribereños derivados de la Convención, de manera compatible con ella y el régimen jurídico aplicable. Adicionalmente se debe garantizar el estatus jurídico de los Estados no CONVEMAR, que no podrá ser afectado por las disposiciones del instrumento BBNJ, de conformidad con el carácter universal del tratado.

(2) CLAM solicita la eliminación de las referencias a áreas geográficas específicas:

Artículo 4.2. *Los derechos y la jurisdicción de los Estados ribereños en todas las zonas bajo su jurisdicción nacional, ~~[incluida la plataforma continental dentro de las 200 millas marinas y más allá y la zona económica exclusiva,~~ se respetarán de conformidad con la Convención.*

Lo anterior por cuanto no es competencia de este instrumento la definición de límites o alcances de los espacios marítimos.

(3) CLAM considera que la clave para cumplir el mandato de no menoscabar, recae en el respeto pleno de las competencias de los foros, organismos e instrumentos pertinentes. En ese sentido se sugiere mantener la referencia fuera de los corchetes para quedar de la siguiente manera:

Artículo 4.3. El presente Acuerdo se interpretará y aplicará de manera que respete las competencias y no menoscabe los instrumentos y marcos jurídicos pertinentes ni de los órganos mundiales, regionales, subregionales y sectoriales competentes.

(4) Finalmente, CLAM está de acuerdo con mantener el artículo 4.4 que reitera la universalidad del instrumento de conformidad con lo establecido en las Resoluciones 69/292 y 72/249 y en consecuencia solicita retirar los corchetes de esta cláusula.

Artículo 5 [Principios] [y] [Enfoques] generales

Para CLAM es importante mantener aquellos principios que permitan que el fin y objeto del tratado se cumpla, garantizando el uso sostenible y conservación de la biodiversidad y del ecosistema marino.

Se debe tener en cuenta que este no es un escenario de negociación de cuáles son los principios ambientales reconocidos y vinculantes. No obstante, sería oportuno reflexionar sobre el alcance jurídico de cada uno de ellos dentro del Derecho Internacional, a saber; los principios bajo un estatus normativo -38.1.c del Estatuto CIJ- y; enfoques de carácter informativo, como guías de implementación.

Derivado de este alcance jurídico diferenciado, se sugiere que la redacción de este artículo establezca, de manera jerárquica, primero los principios, posteriormente los enfoques y concluir con las pautas de conducta. Entre los principios, enfoques y criterios a considerar en el trabajo CLAM considera importante incluir, como mínimo, los siguientes:

PRINCIPIOS

- Patrimonio común de la humanidad
- Desarrollo sostenible
- Quien contamina, paga
- Buena vecindad
- Equidad

ENFOQUES

- Ecosistémico

OTROS CRITERIOS

- Rendición de cuentas
- Flexibilidad, pertinencia y eficacia.

Finalmente, CLAM se congratula de la inclusión del principio de patrimonio común de la humanidad como principio rector de la interpretación y aplicación del instrumento BBNJ y pide mantenerse como la base para el instrumento BBNJ.

Artículo 6 Cooperación Internacional

(3) CLAM no considera que el instrumento se deba enfocar en el establecimiento de nuevas organizaciones, sino que debe favorecer la coordinación entre los organismos existentes, por lo que solicita la eliminación del numeral 3.

Parte III Mecanismos de gestión basados en zonas geográficas, incluidas las áreas marinas protegidas, y otras medidas

Artículo 14 Objetivos

CLAM entiende que debería modificarse el orden propuesto, de manera tal que la redacción refleje el orden de prioridades de los objetivos particulares de este capítulo.

(a) CLAM no está de acuerdo con la nueva redacción que incorporó al final del texto el antiguo literal c) “[Promover un enfoque holístico e intersectorial de la gestión de los océanos;]”. Se trata de dos cuestiones diferentes, por lo que CLAM sugiere mantener esta redacción en un literal separado.

(b) CLAM sugiere la eliminación del inciso b), pues su contenido ya está incluido en artículo 2 sobre “objetivo general”.

(c) Como literal a) debería figurar el actual (c), el cual es el “objetivo primordial” de la Parte III: “[c) Conservar y usar de manera sostenible las zonas que requieran protección, entre otros medios estableciendo un sistema amplio de mecanismos de gestión basados en zonas geográficas, incluidas áreas marinas protegidas;]”

(e) Se sugiere la eliminación de la palabra “*productividad*”, pues se trata de un concepto propio de la actividad pesquera. CLAM sugiere que el literal lea:

Artículo 14.1.e “[e) *Rehabilitar y restaurar la biodiversidad y los ecosistemas, entre otras cosas con miras a aumentar su resiliencia a los factores de perturbación, incluidos los relacionados con el cambio climático, la acidificación del océano y la contaminación marina;*]

(f) CLAM solicita la eliminación de este literal que se aleja de los objetivos y ámbito de competencia de este acuerdo.

Artículo 15 Cooperación y coordinación internacionales

CLAM no apoya la inclusión del punto 2. Alt. para 1. (b) (ii). CLAM se ha expresado claramente en contra de cualquier cláusula que obligue o invite a los Estados Partes a crear nuevos mecanismos, marcos u organismos en aquellas regiones o sectores donde no existan, ya que toda laguna debería ser cubierta por el nuevo tratado BBNJ.

Artículo 17 Propuestas

CLAM sugiere la eliminación del nuevo literal g), “[g] La duración de la zona y las medidas propuestas;]” pues las propuestas de ABMT no deberían estar condicionadas por su duración, sino más bien, enfocarse en los objetivos de conservación de la medida propuesta.

Artículo 19 Adopción de decisiones

CLAM propone el siguiente texto alternativo, con el fin de racionalizar el contenido.

“Artículo 19

1. Cuando no existan instrumentos o marcos jurídicos competentes u órganos mundiales, regionales, subregionales o sectoriales, la Conferencia de las Partes deberá adoptar decisiones sobre:

- (a) la determinación de las zonas que requieran protección;*
- (b) el establecimiento de mecanismos de gestión basados en zonas geográficas, incluidas áreas marinas protegidas, con respecto de las propuestas remitidas bajo esta Parte, con una base caso a caso y tomando en cuenta las recomendaciones científicas y las contribuciones recibidas durante el proceso de consulta; y*
- (c) medidas de conservación y uso sostenible relacionadas, que podrían adoptarse para alcanzar los objetivos especificados.*

2. Cuando existan instrumentos o marcos jurídicos competentes u órganos mundiales, regionales, subregionales o sectoriales, la Conferencia de las Partes deberá considerar:

- (a) La conveniencia o no de recomendar que los Estados partes en el presente Acuerdo promuevan la adopción de medidas pertinentes por conducto de esos instrumentos, marcos y órganos, de conformidad con sus respectivos mandatos;*
- (b) La conveniencia o no de adoptar medidas complementarias a las adoptadas en virtud de esos instrumentos, marcos y órganos;*

Artículo 20 Aplicación

(6) CLAM sugiere eliminar la segunda parte del texto, pues no correspondería exigir a un Estado Parte el cumplimiento de medidas tomadas por otro instrumento del cual no es parte, salvo la obligación general de cooperar prevista ya en el Artículo 15.

Así, CLAM sugiere que el inciso 6) lea:

Artículo 20.6 *“Un Estado parte que no participe en un instrumento o marco jurídico competente o no sea miembro de un órgano mundial, regional, subregional o sectorial, y que no acepte de ningún otro modo aplicar las medidas de conservación y gestión establecidas en virtud de esos instrumentos, marcos u órganos, no quedará exento de la obligación de cooperar, de conformidad con la Convención y el presente Acuerdo, en la conservación y el uso sostenible de la diversidad biológica marina de las zonas situadas fuera de la jurisdicción nacional.”*

Parte V Creación de capacidad y transferencia de tecnología marina

Artículo 42 Objetivos

(c). CLAM está de acuerdo en su inclusión y prefiere que se utilice la palabra **[asegurar]** en cuanto al acceso de los Estados partes en desarrollo, a la creación de capacidad y transferencia de tecnología marina con fines pacíficos, con miras a la consecución de los objetivos del presente Acuerdo.

(f). El grupo está de acuerdo con la inclusión de las subsecciones “i”, “ii”, “iii” y “iv”, aún en corchetes.

- Subsección “i”, el grupo apoya incluir “y utilización” después de “del acceso a”. En idioma español se leería de la siguiente manera:

Artículo 42.f.i *“Tengan acceso a la información científica resultante del acceso y utilización de los recursos de las zonas fuera de la jurisdicción nacional, en particular los recursos genéticos marinos”.*

Al final de la frase se lee “y saquen provecho de esa información”, por lo que solicitamos se elimine para que tenga coherencia con la versión en inglés.

- Subsección “iv”, consideramos que no es necesario incluir los términos “endógeno” y “locales”. Podría leerse en idioma español:

Artículo 42.f.iv *“Dispongan de capacidades de investigación en relación con los recursos genéticos marinos y sus productos, procesos y otras herramientas”.*

Artículo 43 Cooperación en materia de creación de capacidad y transferencia de tecnología marina

(1). El grupo está de acuerdo con la opción “[**asegurarán**] la cooperación [**de conformidad con [el presente Acuerdo]**]. Se solicita eliminar [**la Parte XIV de la Convención**]. En ese mismo párrafo, y en los subsiguientes donde se haya agregado el nivel “**subregional**”, el grupo no tiene objeciones al respecto.

(2). CLAM opta por la siguiente redacción “la creación de capacidades y la transferencia de tecnología marina en virtud del presente Acuerdo se [**llevará a cabo**], mediante una cooperación reforzada. En relación con la nueva inclusión de niveles de cooperación y actores involucrados, el CLAM está de acuerdo con lo propuesto y apoya incluir “**el sector privado**”.

(3). CLAM prefiere, “al hacer efectivo el deber de [**cooperar**]...”, previsto en el presente artículo.

Artículo 44 Modalidades de creación de capacidad y transferencia de tecnología marina

(1). CLAM apoya el recién agregado párrafo “1” y prefiere la opción [**asegurarán**].

(2) Asimismo en la versión en español CLAM respalda los siguientes términos [**realizarán**], [**obligatoria y voluntaria**] y la inclusión de [**bilateral, regional y multilateral**].

(3) CLAM solicita no incluir [**y no duplicarán programas existentes**].

(4) El Grupo prefiere la opción [**según determine**] una evaluación de las necesidades [**caso por caso o a nivel subregional o regional**]. Al final de ese párrafo, sustituir la palabra “establecer” por “establecerá”, de manera que se lea de la siguiente forma:

Artículo 44.4 “Esas necesidades y prioridades podrán ser objeto de una autoevaluación o facilitarse a través de un mecanismo que **establecerá** la Conferencia de las Partes.”

Es importante procurar, que este párrafo y el siguiente estén armonizados con las funciones que se le asignen a la Conferencia de las Partes (COP) correspondiente a la Parte VI sobre “Arreglos institucionales”, en el artículo 48.

(5) CLAM propone la siguiente redacción

Artículo 44.5 “la Conferencia de las Partes [**elaborará y adoptará**] procedimientos y directrices detalladas para la creación de capacidades y transferencia de tecnología marina”.

Asimismo, el CLAM apoya la idea de incluir una línea de tiempo determinada.

Artículo 45 Modalidades adicionales para la transferencia de tecnología marina

(1) CLAM solicita quitar los corchetes de la frase **[El desarrollo y]**, de manera que esté armonizado con la versión en inglés. De igual manera, apoya la inclusión de ambas modalidades: **[en condiciones justas y en los términos más favorables, incluso en condiciones concesionarias y preferenciales]** y **[en condiciones establecidas de mutuo acuerdo]**.

(3) El grupo está de acuerdo con la nueva redacción incluida y apoya la frase entre corchetes *“Los Estados partes velarán porque dicha transferencia no esté supeditada a requisitos onerosos de presentación de informes”*, **sustituyendo “velarán” por “asegurarán”**, tal como está en el texto en inglés.

Artículo 46 Tipos de creación de capacidad y transferencia de tecnología marina

(1) El grupo está de acuerdo con la redacción propuesta.

(2) El grupo está de acuerdo con la redacción propuesta.

(3) La siguiente es la preferencia del Grupo “la Conferencia de las Partes **[examinará, evaluará y ajustará]** lo incluido en los dos párrafos anteriores.

Artículo 47 Seguimiento y Examen

(1) CLAM apoya la redacción propuesta por la Presidenta.

(2) CLAM apoya la redacción propuesta por la Presidenta

(3) CLAM apoya la redacción propuesta por la Presidenta.

(4) CLAM apoya la redacción propuesta por la Presidenta.

(5) CLAM solicita que se incluya la frase **“y cuando aplique”**, en la primera oración, leyéndose de la siguiente manera:

Artículo 47.5 *“En apoyo del seguimiento y examen de la creación de capacidad y la transferencia de tecnología marina, los Estados partes **“y cuando aplique”**, los comités regionales sobre creación de capacidad y transferencia de tecnología marina podrán presentar, con carácter voluntario, informes sobre las actividades de creación de capacidad y transferencia de tecnología marina en las que hayan participado como suministradores o receptores, que podrán hacerse públicos”.*

Parte VI Arreglos Institucionales

En términos generales, los arreglos institucionales deben de cumplir con: 1) relación costo-beneficio; 2) evitar la duplicidad de procesos, la extrema burocratización de los mismos y la incompatibilidad con la aplicación y cumplimiento de otros instrumentos y organismos; y 3) favorecer la toma de decisiones de forma ágil y procurando el consenso.

La administración y funcionamiento de BBNJ implica la operación de órganos o instancias políticas, administrativas y técnico-científicas, que faciliten consensos políticos y acceso a la mejor ciencia disponible para la toma de decisiones.

Se debe pensar en esquemas de discusión que favorezcan la toma de decisiones de manera expedita y que, en la medida de lo posible, se favorezca la especialización e idoneidad en los órganos científicos.

CLAM apoya la creación de una institucionalidad propia del instrumento, que como mínimo cuente con una Conferencia de las Partes, una Secretaría, un Órgano Científico y Técnico y además incluir un mecanismo de intercambio de información (*clearing-house*). Es fundamental el establecimiento de un Fondo Especial para la repartición de beneficios monetarios de la utilización de recursos genéticos marinos.

Asignar las funciones y objetivos del instrumento a órganos ya existentes no se considera conveniente por la magnitud y el alcance de lo regulado en el tratado, que excede las competencias de las instituciones ya existentes, incluidas aquellas creadas por CONVEMAR. No obstante, se considera importante establecer un mecanismo de participación de dichos órganos para garantizar la complementariedad y el respeto de competencias.

Sobre su funcionamiento, es importante que el instrumento sea claro en cuanto a las facultades de cada órgano y que se tengan presentes medidas de coordinación y cooperación con otros instrumentos que puedan tener alguna implicación con este acuerdo. De igual forma, CLAM favorece la creación de un órgano científico, como un ente asesor del órgano decisorio que debe ser la COP. También es conveniente la creación de un mecanismo de intercambio de información (*clearing house*) administrado por la Secretaría, que facilite el acceso a la información, la transparencia y la publicidad a través de, principalmente, una plataforma web.

Para CLAM es importante incluir en el instrumento la convocatoria a una Conferencia de Revisión del instrumento cada cinco años. Asimismo, deben incluirse disposiciones sobre financiamiento, sobre la base de que estas pueden ser voluntarias y obligatorias.

Generalidades de las disposiciones finales

En materia de resolución de controversias, CLAM defiende la idea que exista una cláusula en este sentido dentro del instrumento. Sin embargo, cualesquiera que sean los

procedimientos que se incluyan en este artículo, deberán tener en cuenta que de este acuerdo participarán Estados parte y no parte de la CONVEMAR.

CLAM sugiere la introducción del siguiente párrafo como artículo 55 bis:

Artículo 55 Bis. Ninguna acción o actividad que se lleve a cabo en términos de este Acuerdo se entenderá en perjuicio de las posturas de los Estados Partes respecto de una disputa de soberanía ya sea terrestre, insular o marítima o respecto de una disputa relativa a la delimitación de áreas marítimas.

Es importante que el instrumento garantice que ninguna acción o actividad que se desarrolle en el marco de este instrumento afectará las posiciones de los Estados Partes en relación con alguna disputa de soberanía o de delimitación de las áreas marítimas.

Finalmente, CLAM considera que las disposiciones finales no han sido suficientemente discutidas y que su contenido es fundamental para lograr un acuerdo efectivo y eficiente en el cumplimiento de sus objetivos. En ese sentido, solicita a la Presidencia dedicar un espacio suficiente en el plenario y en las sesiones informales, para la discusión de la totalidad de las cláusulas finales.

**Comments of the Core Latin American Group (CLAM) to the
Revised draft text of an agreement under the United Nations Convention on the Law of
the Sea on the conservation and sustainable use of marine biological diversity of areas
beyond national jurisdiction**

The *Core Latin American Group* (CLAM) thanks the Presidency for its work on the publication of the last draft of the agreement and presents the following general comments to the text. It should not be understood that the Group agrees with those matters on which there are no comments. Furthermore, the group reserves its right to make any statement on parts 2 (marine genetic resources) and 4 (environmental impact assessment) at any time.

Nothing in this communication shall restrict the remarks that CLAM and the States that constitute the group will later make during the IV Intergovernmental Conference, nor shall it restrict further textual proposals.

Preamble

CLAM notes that the revised text includes the following statement:

"Desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations".

CLAM welcomes the reference in the preamble to the intergenerational equity principle in sustainable use and conservation of marine resources, which CLAM believes is fortunate for the interpretation and application of the instrument as a whole.

However, the word "*stewards*" has various connotations in Spanish language including those of custodian, keeper and even representative, which may confuse the interpretation of the instrument itself and the scope of the obligations of States. In that sense, CLAM considers that the wording should be limited to the recognition of the intergenerational equity principle, as follows:

"Desiring to act by the principle of intergenerational equity in the oceans"

Part I General Provisions.

Article 1 Use of terms

The comments CLAM has in this regard are found in the respective Part, depending on the subject matter of the definition.

Article 2 General objective

CLAM welcomes the addition of « **general** » to the « objective », since CLAM considers that all sections of the international legally binding instrument shall be interpreted and implemented as from the perspective of sustainable use and conservation of marine biodiversity, along with the promotion of international cooperation and coordination.

CLAM considers that the objective of this binding instrument is of constant, continuous and progressive application and observance. Thus the reference to “[long-term]” would not be in accordance with this vision. In this regard, it would be suggested not to consider “[long-term]” in the wording.

Article 3 Application

3.1. CLAM considers that the geographical scope of this instrument should be marine areas beyond national jurisdiction (in accordance with the content of the article 1.4), as stated in the latest draft of the binding instrument.

3.2. CLAM observes that this numeral refers to sovereign immunity for state vessels in terms of article 236 of UNCLOS. In this sense, CLAM wishes to call your attention to the following considerations:

- Reference to sovereign immunity has no place in an article referring to the geographical application of the instrument.
- During the Third Intergovernmental Conference there was **NO** consensus on including this clause. Several delegations, including CLAM, expressed objections about its content.
- This jurisdictional immunity of vessels is already recognized, not only within the framework of UNCLOS but also by other treaties and regimes governing the oceans. Therefore, the presence of this clause in the BBNJ instrument is unnecessary.
- This legal protection is made within the framework of environmental provisions - protection and preservation of the marine environment - and the BBNJ instrument provides for a broader material application (access and use of marine genetic resources, to which no reference is made either in UNCLOS or other instruments on navigation, ship safety and human life at sea).

Given that a considerable part of marine scientific research is carried out by state vessels, the acceptance of such an article would imply, for example, not considering the activities related to marine genetic resources, their access and the consequent distribution of benefits from access and utilization.

In terms of the abovementioned, CLAM requests to eliminate this clause or, where appropriate, keep it in square brackets for further discussion during the fourth conference. In no circumstance this article 3.2 shall be considered as accepted and agreed by the delegations as it is suggested in the revised text by not keeping the square brackets.

Article 4. Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

CLAM prefers the use of the word **relevant** rather than **existing**, as it provides for a broader scope than the organisms, bodies and instruments currently in force, and allows a future relationship with those that may arise at some point.

BBNJ should allow legislative harmonization and the participation of other international instruments and organizations to ensure that there is no over-regulation or interference in other jurisdictions or competences. This treaty should ensure complementarity and comprehensiveness in accordance to article 6 on cooperation.

BBNJ's negotiation is based, among others, on the cooperation between existing instruments in areas beyond the jurisdiction and on the not undermining of competences principle. This principle should be clearly reflected in articles 4 and 6, for the interest of an effective articulation between the existing mechanisms and the new institutional organization of BBNJ.

BBNJ shall harmoniously observe the sovereign rights, jurisdiction and duties of the coastal States as stated in the Convention, in terms of the applicable legal regime. Furthermore, the legal status of non-UNCLOS States shall be guaranteed in terms of the universal nature of the treaty. Such non-UNCLOS status shall not be affected by the provisions of the BBNJ instrument.

4.2. CLAM requests the removal of references to specific geographic areas as it is not on BBNJ jurisdiction to outline the limits or scope of maritime spaces:

Article 4.2 *The rights and jurisdiction of coastal States in all areas under national jurisdiction, ~~including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone,~~ shall be respected in accordance with the Convention.*

4.3. CLAM considers that the key for achieving the mandate of not undermining is to fully observe the competencies of the relevant forums, organisms and instruments. In that sense it is suggested to keep the reference to such competencies in the text as follows:

Article 4.3 *This Agreement shall be interpreted and applied in a manner that ~~respects the competences of and~~ does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.*

4.4. Finally, CLAM agrees to maintain article 4.4, echoing the universality of the instrument in accordance with the provisions of Resolutions 69/292 and 72/249. Therefore, CLAM requests to remove the square brackets of this clause.

Article 5 General [principles] [and] [approaches]

It is important for CLAM to maintain those principles that ensure compliance of the purpose and objective of the treaty at the same time that they warrant the sustainable use and conservation of biodiversity and the marine ecosystem.

CLAM believes that this BBNJ negotiation does not aim to determine which are the recognized and binding environmental principles. However, it would be appropriate to reflect their legal force in terms of the International Law, namely; the principles under a normative status -38.1.c of the Statute of the International Court of Justice- and; approaches of an informative character as implementation guides.

Derived from this differentiated legal scope, it is suggested that the wording of this article establish, in a hierarchical manner, first the principles, then the approaches and conclude with the practices guidelines. CLAM suggests including, no less than the following principles, approaches and criteria:

PRINCIPLES

- Common heritage of mankind
- Sustainable development
- The polluter pays
- Good neighbourliness
- Equity

APPROACHES

- Eco systemic

OTHER CRITERIA

- Accountability
- Flexibility, relevance and efficiency.

Finally, CLAM welcomes the inclusion of the principle of common heritage of mankind as the guiding principle of the interpretation and application of the BBNJ instrument and requests to maintain this principle as the basis for the BBNJ instrument.

Article 6 International Cooperation

6.3 CLAM does not consider that the instrument should establish new organizations, but favour coordination between existing organizations. Therefore, requests the elimination of numeral 3.

Part III. Measures such as Area-Based management tools, including marine protected areas

Definitions

As regards the definition of “area-based management tool”, CLAM prefers using the word “measure” instead of “tool” and suggests deleting the last phrase in brackets [and affording higher protection than that provided in the surrounding area], because there can exist neighbouring ABMTs which afford higher protection. CLAM proposes the following definition:

“Area-based management tool” means any measure for a geographically defined area, through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives, in accordance with this Agreement”.

Part III Measures such as area-based management tools, including marine protected areas

Article 14 Objectives

CLAM is of the view that the order of the Objectives should be modified to adequately depict the priorities of this Part

(a) CLAM does not support the new language that included former literal (c) at the end of the sentence. We believe they are two different issues, so we prefer keeping former literal (c) as a standalone Objective.

CLAM proposes the deletion of the literal b), as its content is already included in Article 2.

We propose moving current literal (c) to literal (a), considering that its content is the core Objective of this Part III.

CLAM proposes the deletion of the word “productivity”, as it refers to a concept more related to fishing.

Article 14.1.e *“Rehabilitating and restoring biodiversity and ecosystems, including by building resilience to stressors, including those related to climate change, ocean acidification and marine pollution”.*

CLAM proposes the deletion of literal (f) which is not related to the main objectives and mandate of this agreement.

Article 15 International cooperation and coordination

CLAM does not support para. 2. Alt. to para 1 (b) (ii). CLAM is against any provision obliging or inviting States Parties to create new mechanisms, frameworks or organisations in those regions where there are none, as all the loopholes should be covered by the new BBNJ treaty.

Article 17 Proposals

CLAM proposes the deletion of the new literal (g), as the proposals for establishing ABMT should not be conditioned on time, but on the conservation objectives it pursues.

Article 19 Decision-making

CLAM proposes the following alternative text with the aim at making its content clearer:

“Article 19

1. Where there are no relevant legal instruments or frameworks or relevant global, regional, subregional and sectoral bodies, the Conference of the Parties shall take decisions on:

(a) the identification of areas requiring protection;

(b) the establishment of area-based management tools, including marine protected areas, with respect to proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation process; and

(c) related conservation and sustainable use measures to be adopted to achieve the specified objectives.

2. Where there are relevant legal instruments or frameworks or relevant global, regional, subregional or sectoral bodies, the Conference of States Parties shall consider:

(a) To recommend that States Parties to this Agreement promote the adoption of relevant measures through such instruments, frameworks and bodies, in accordance with their respective mandates;

(b) To adopt measures complementary to those adopted under such instruments, frameworks and bodies.”

Article 20 Implementation

CLAM proposes the deletion of the second part of the text, as it is not advisable to oblige a State Party to implement measures adopted by other instrument to which it is not a Party. Being so, CLAM proposes that para. 6 reads as follows:

Article 20.6 *"A State Party that is not a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and management measures established under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction."*

Part V.¹ Capacity Building and Transfer of Marine Technology

Article 1. Terms used

CLAM requests the President to incorporate a definition of the term "Capacity Building", according to the following proposal:

5bis "capacity building" means any activity aimed at allowing or improving academic, professional and technical training; the exchange of knowledge and skills; access to physical infrastructure; institutional strengthening; communication between relevant actors; the exchange of scientific information, technological development and innovation; and awareness raising through public information and basic knowledge about marine biodiversity in areas beyond national jurisdiction.

Source: the proposed definition is not reflected in that way in a document but is based on an adaptation of concepts included in the IOC Capacity Development Strategy 2015-2021 (Document IOC / INF-1332 available through http://www.ioc-unesco.org/index.php?option=com_content&task=viewDocumentRecord&docID=14939), taking part of the "products" and "activities" (or "outputs" and "activities"), for the purpose of this legally binding international instrument.

Marine technology

It is requested to eliminate the examples, and that the word observation is replaced with innovation

[11. "Marine technology" means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines,

¹ **Clarification note:** Footnotes do not appear in the Spanish version, but have been included in the English version, with the only purpose of elucidating the language proposed by CLAM in the text in the English languages, as it refers specifically to the Spanish version.

criteria, standards and reference materials; sampling and methodology equipment; ~~observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboards and other means of ocean observation);~~ equipment for *in situ* and laboratory observations, analysis and experimentation; computers and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research ~~and observation~~ and innovation.]

With regard to the term "Transfer of marine technology": the group requests that this definition be deleted as details are given in the modality section in art. 45

Article 42. Objectives

- Regarding paragraph "c", the group agrees to include it and prefers to use the word **[ensure]** in terms of access by developing States parties, to capacity building and transfer of marine technology for peaceful purposes, with a view to achieving the objectives of this agreement.
- Regarding paragraph "f", we agree to the inclusion of subsections "i", "ii", "iii" and "iv" still in square brackets.
- In paragraph "f", subsection "i", the group supports including "and use" after "access to". In Spanish, it would read²: "*Tengan acceso a la información científica resultante del acceso y utilización de los recursos de las zonas fuera de la jurisdicción nacional, en particular los recursos genéticos marinos*". At the end of the sentence it reads "*y saquen provecho de esa información*", so we request that it be deleted so that it is consistent with the English version.
- In paragraph "f", subsection "iv", we consider that it is not necessary to place "endogenous" and "local". It would read in Spanish: "*Dispongan de capacidades de investigación en relación con los recursos genéticos marinos y sus productos, procesos y otras herramientas*"³.

Article 43. Cooperation in capacity-building and transfer of marine technology

² "Access to, and benefit from, the scientific information resulting from the access and use of resources in areas beyond national jurisdiction, in particular marine genetic resources."

³ Have research capabilities relating to marine genetic resources and products, processes and other tools."

- In paragraph "1", the group agrees with the option "[**ensure**] cooperation [**in accordance with [this Agreement]**]. It is requested to delete [**Part XIV of the Convention**]. In that same paragraph, and in the subsequent, where the "subregional" level has been added, the group has no objections to the matter.
- In paragraph "2", we opted that "capacity-building and transfer of marine technology under this Agreement shall be [**carried out**], through enhanced cooperation...". Regarding the new inclusion of levels of cooperation and actors involved, CLAM agrees with the proposal and supports including "**the private sector**".
- In paragraph "3", we prefer, "in giving effect to the duty to [cooperate]...", provided for in this article.

Article 44. Modalities for capacity-building and transfer of marine technology.

- We support the newly added paragraph "1" and prefer the option [**shall ensure**]
- In paragraph "2", we prefer the option in Spanish [**realizarán**]⁴, [**obligatoria y voluntaria**]⁵ and the inclusion of [**bilateral, regional and multilateral**]⁶.
- In paragraph "3", we request not to include [**and shall not duplicate existing programmes**].
- Regarding paragraph "4", we prefer the option [**as determined by**] a needs assessment [**on an individual case-by-case, subregional or regional basis**]. At the end of that paragraph, replace the word "**may be established**" with "**shall be established**", so that it reads as follows: "¹Such needs and priorities may be self-assessed or facilitated through a mechanism, which **shall be established** by the Conference of the Parties".

It is important to note that this paragraph and the following are harmonized with the functions assigned to the Conference of the Parties (COP) corresponding to Part VI on "Institutional arrangements", in article 48.

⁴ [shall]

⁵ [mandatory and voluntary]

⁶ [bilateral, regional and multilateral]

- In paragraph "5", we believe that it should read, in the Spanish version "*La Conferencia de las Partes [elaborará y adoptará] modalidades, procedimientos y directrices detalladas para la creación de capacidades y transferencia de tecnología marina.*"⁷

We also agree to support the idea of including a specific timeline.

Article 45. Additional modalities for the transfer of marine technology.

- In paragraph "1", we request that the square brackets be removed from the phrase **[the development and]**. In the same way, we support the inclusion of both modalities: **[on fair and most favourable terms, including on concessional and preferential terms]** and **[according to mutually agreed terms and conditions]**.
- Regarding paragraph "3", the group agrees with the new wording included and we support the phrase in square brackets "States parties shall ensure that such transfer is not subject to onerous reporting requirements", replacing "**velarán**" with "**asegurarán**"⁸, as it is in the English text.

Article 46. Types of capacity-building and transfer of marine technology.

The group agrees with the proposed wording for paragraphs "1" and "2",

In paragraph "3", our preference is that "La Conferencia de las Partes **[examinará, evaluará y ajustará]**"⁹ what is included in the two preceding paragraphs.

Article 47. Monitoring and review

- The group accepts the new proposal of the Presidency regarding paragraphs **1 to 4**.
- In relation to paragraph "5" we request that the phrase "and when applicable" be included, in the first sentence, so it read as follows:
"In supporting the monitoring and review of capacity-building and transfer of marine technology, States Parties **"and when applicable"**, regional committees on capacity-building and transfer of marine technology may submit, on a voluntary basis,

⁷ "Detailed procedures and guidelines for capacity-building and the transfer of marine technology **[shall be developed and adopted]** by the Conference of the Parties."

⁸ shall ensure

⁹ [shall be reviewed, assessed and amended]

reports, which may be made publicly available on capacity-building and the transfer of marine technology given and received".

Part VI. Institutional Arrangements

In a general sense, institutional arrangements must: 1) be driven by the cost-benefit principle; 2) avoid duplicity of processes, their excessive bureaucracy and incompatibility with the implementation and compliance with other instruments and organizations; 3) enable an agile decision-making process that aims to achieve consensus.

The functioning of BBNJ calls for the operation of political, administrative, technical and scientific bodies, that simplify political consensus as well as access to the best available science for decision making.

BBNJ must consider discussion mechanisms that favor expeditious decision making (i.e. taking into account the MGR access scheme for private actors and research activities, as well as environmental emergencies). It should also, as far as practicable, encourage specialization and suitability in the scientific and technical bodies.

CLAM is in favor of creating dedicated institutions for BBNJ. Those institutions should consist of, at the minimum, a Conference of the Parties, a Secretariat and a Scientific and Technical Body. CLAM believes that the assignment of functions and objectives of the instrument to other existing bodies is not appropriate, given the magnitude and scope of the issues regulated by BBNJ, which surpass the mandates of existing institutions, including those created by UNCLOS. Nevertheless, CLAM deems important the establishment of a participation mechanism for those bodies, institutions and organizations, in order to assure complementarity and due respect to their competencies.

BBNJ should clearly state the faculties of each body and contemplate coordination and cooperation measures with other instruments that may have any connection with the agreement. CLAM also supports the creation of a scientific body that would serve as an advisory entity to the governing body (COP). The establishment of a clearing house mechanism managed by the Secretariat is also desirable. The CHM should promote access to information and transparency through, primarily, an open-access web-based platform.

For CLAM, it is important that BBNJ calls for an Assessment Conference of the instrument every five years. Likewise, it should contemplate both mandatory and voluntary funding provisions.

General statements about final dispositions

CLAM supports the inclusion of a dispute settlement clause. Regardless of the content of that clause, it must take into account that this instrument is open to the participation of States parties and non-parties to UNCLOS.

CLAM suggests the following paragraph as an introduction to article 55 bis:

Article 55 Bis. “No action or activity taken on the basis of the Agreement will be construed or considered to be prejudicial to the positions of States Parties to a land, insular or maritime sovereignty dispute or to a dispute concerning the delimitation of maritime areas”.

It is crucial that the instrument guarantees that no action or activity taken within the framework of this agreement will affect the positions of States parties in relation to any sovereignty dispute or delimitation of maritime areas.

Furthermore, CLAM suggests the inclusion of an implementation and compliance mechanism in the final dispositions. Such provision could favor the accomplishment of the agreement, enhancing its effectiveness.

Lastly, CLAM believes that the final dispositions have not been sufficiently discussed and that their content is determining for the completion of an effective and efficient agreement, as well as for the fulfilment of its objectives. In that sense, we request the Presidency to dedicate enough time at the plenary and informal sessions for the discussion of the entirety of the final clauses.



MISIÓN PERMANENTE DE EL SALVADOR
ANTE LA ORGANIZACIÓN DE LAS NACIONES UNIDAS

Observaciones de El Salvador al documento de "Texto revisado de un acuerdo en el marco de la Convención de las Naciones Unidas sobre el Derecho del Mar relativo a la conservación y el uso sostenible de la diversidad biológica marina de las zonas situadas fuera de la jurisdicción nacional (BBNJ)"

La Delegación de El Salvador agradece a la Presidencia de Singapur, por su trabajo en la publicación del último borrador del proyecto de "Texto revisado de un acuerdo en el marco de la Convención de las Naciones Unidas sobre el Derecho del Mar relativo a la conservación y el uso sostenible de la diversidad biológica marina de las zonas situadas fuera de la jurisdicción nacional (BBNJ)".

Asimismo, desea adherirse a los comentarios que realice el Grupo afín de América Latina y en capacidad nacional desea resaltar los siguientes aspectos.

En relación al **artículo 4** "Relación entre el presente Acuerdo y la Convención y los Instrumentos y marcos jurídicos pertinentes y los órganos mundiales, regionales, subregionales y sectoriales competentes":

[4. La situación jurídica de quienes no sean partes en la Convención o en otros acuerdos conexos con respecto a esos instrumentos no se verá afectada por el presente Acuerdo.]

El Salvador solicita que se levanten los corchetes, para que se reitere la universalidad del instrumento de conformidad con lo establecido en las resoluciones 69/292 y 72/249, las cuales son fundamento y base del Instrumento Internacional jurídicamente vinculante en el marco de la Convención de las Naciones Unidas sobre el Derecho del Mar, relativo a la conservación y el uso sostenible de la diversidad biológica marina de las zonas situadas fuera de la jurisdicción nacional.

Este es un artículo fundamental para los Estados que no son Parte de la Convención de las Naciones Unidas sobre el Derecho del Mar y que desean ser Parte de este instrumento jurídicamente vinculante, el cual debe ser un instrumento universal.

En relación a la Parte IX del Instrumento denominado “Solución de Controversias”:

La Delegación de El Salvador desea resaltar lo expresado en la Tercera Conferencia Diplomática por las delegaciones de El Salvador y Colombia, en el sentido que el artículo 55 no refleja el objetivo de contar con un instrumento universal, al aplicar una disposición de un Acuerdo a un Estado que no es Parte del mismo, por cuanto vulneraría un principio reconocido en el derecho convencional de los tratados. Por lo que, se siguiere una redacción más general que incluya diferentes opciones para la solución de controversias; tales como negociación, investigación, mediación, conciliación, arbitraje, resolución judicial u otro medio pacífico de su propia elección.



MISIÓN PERMANENTE DE EL SALVADOR
ANTE LA ORGANIZACIÓN DE LAS NACIONES UNIDAS

Observations of El Salvador on the document of "Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction"(BBNJ)

The Delegation of El Salvador thanks the Presidency from Singapore for its work on the latest version of the draft "Revised text of an agreement within the framework of the United Nations Convention on the Law of the Sea on conservation and use Sustainable marine biological diversity in areas outside national jurisdiction (BBNJ). "

El Salvador wishes to adhere to the comments made by the Core Latin America Group, and in national capacity, wishes to highlight the following aspects:

In relation to **Article 4** "Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies".

[4. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement]

El Salvador requests that the square brackets be lifted, so that the universality of the instrument be reiterated in accordance with the provisions of resolutions

69/292 and 72/249. Those provisions are the basis of the legally binding International Instrument in the framework of the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity in areas outside national jurisdiction.

This is a fundamental article for States that are not Parties to the United Nations Convention on the Law of the Sea, but wish to be a party of this legally binding Instrument, which must be a universal instrument.

In relation to Part IX “Dispute Settlement”

The Delegation of El Salvador wishes to highlight what was expressed in the Third Diplomatic Conference by the delegations of El Salvador and Colombia on relation to article 55. This article does not reflect the spirit of a universal instrument. To apply a provision of another agreement to which a State is not a party would contravene an international principle of Treaty Law. Therefore, a wider spectrum of options should be considered to solving disputes, such as: negotiation, investigation, conciliation, arbitration, judicial resolution or other peaceful means..

20 February 2020

Proposal by ICELAND

Iceland has from the outset advocated a BBNJ Agreement based on a regional approach, where the agreement mandates cooperation and coordination among regional and sectoral bodies and where decision making would remain with these existing types of bodies. Similar positions have been presented by several other States in the negotiations. As this option is not adequately reflected in the current draft, Iceland hereby presents the following proposal for draft language.

The proposal is based on a proposal presented by Norway earlier in the process, with a few amendments and additions to the original Norwegian proposal.

As this approach would result in decision making regarding ABMTs and EIAs being at the regional level, it would follow that there would not be a need to include language in the Agreement relating to several points, including adopting at a global level decisions on individual ABMTs or EIAs nor regarding a global Scientific and Technical Body.

In order to accommodate different views, Iceland is willing to discuss the possibility of these provisions being maintained in some form, with their scope of application being limited to regions where no regional consultation process is in place.

Amendments from the original Norwegian proposal are highlighted in the following text.

Article 6 International cooperation

New para 4

4. **International** cooperation **regarding Parts III and IV of this Agreement** shall be conducted in the following manner:
 - a) States Parties shall establish regional consultation processes to enhance cooperation and coordination among relevant **international** legal instruments and frameworks and relevant global, regional, **subregional** and sectoral bodies and coordination among associated conservation and management measures adopted under such instruments and frameworks and by such bodies.
 - b) Relevant international legal instruments and frameworks and global, regional and sectoral bodies with competence under international law to control human activities in areas beyond national jurisdiction, including intergovernmental organizations for the protection of the marine environment, regional fisheries management organizations, the International Maritime Organization, the International Seabed Authority, shall, as appropriate, participate in regional consultation processes established pursuant to this Article.**
 - c) The participants in the regional consultation process shall formalise the processes either as a formal international body or by giving one of the participants the role of administrating and coordinating the work of the process including organising meetings and reporting to the Conference of the Parties.**
 - d) States Parties shall work through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies to adopt measures regarding area-based management tools, including marine protected areas and environmental impact assessments in line with Parts III and IV of this Agreement.**

- e) Where there is no regional body with a mandate to establish conservation and management measures to protect biodiversity from specific human activities in ABNJ, particularly if there is evidence that the biodiversity may be under threat or where a new activity is being developed, relevant coastal States and States operating in adjacent areas beyond national jurisdiction in the region shall cooperate to establish such a body to ensure conservation and sustainable use of such biodiversity and shall participate in the work of the body. Pending agreement on such bodies, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.
- f) When a regional body has been established pursuant to subparagraph (e), States operating in areas beyond national jurisdiction and relevant coastal States shall give effect to their duty to cooperate by becoming members of such body or by agreeing to apply the conservation and management measures established by such body. States having a real interest in the activities concerned may become members of such body. The terms of participation in such body shall not preclude such States from membership; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the activities concerned.
- g) Any State intending to propose that action be taken by a regional body having competence with respect to biodiversity should, where such action would have a significant effect on conservation and management measures already established by a competent intergovernmental body, consult through that body with its members. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental body.

20 February 2020

Proposal by ICELAND

There appears to be a common understanding that the BBNJ Agreement, or at least Part II (MGR) of the Agreement, should not apply to use of fish and other biological resources as commodity. Furthermore, in light of the well known “not undermine” principle in Article 4 of the Agreement it should be clear that decisions on ABMTs and EIAs under the BBNJ Agreement are not meant to amount to fisheries management. To clarify that the BBNJ Agreement is not intended to deal with regular fisheries management or undermine the existing international legal framework for fisheries Iceland proposes inserting the following, new Article into Part I of the current draft.

Article 6bis

This Agreement does not apply to conservation and management of fish stocks.



TEXTUAL PROPOSAL FOR CONSIDERATION

SUBMITTED BY
THE REPUBLIC OF INDONESIA

PART I: GENERAL PROVISIONS

WITHIN THE AGREEMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION

Use of terms (Article 1)

3. “Area-based management tool” means a tool, ~~including a marine protected area,~~ for a geographically defined area, ~~[other than a marine protected area,]~~ through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives ~~[and affording higher protection than that provided in the surrounding areas].~~

7. (NOTE: Proposing The new alternative text from combination of alternative 1 and alternative 2):

[7. “Environmental impact assessment” means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment and taking into account interrelated [socioeconomic] [social and economic], cultural and human health impacts, both beneficial and adverse].

General Objective (Article 2)

The objective of this Agreement is to ensure the ~~long-term~~ conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.



TEXTUAL PROPOSAL FOR CONSIDERATION

SUBMITTED BY
THE REPUBLIC OF INDONESIA

FISH AS MARINE GENETIC RESOURCES TO BE REGULATED UNDER PART II: MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

WITHIN THE AGREEMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION

Objectives (Article 7)

~~{(a) Promote the {fair and equitable} sharing of benefits arising from [the {collection of}], [access to] and [the {utilization of}] marine genetic resources of areas beyond national jurisdiction;}~~

~~{(b) Build the capacity of developing States Parties, in particular **archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to {collect,}{access,} and utilize marine genetic resources of areas beyond national jurisdiction;}~~

~~{(e) Contribute to the realization of a sustainable utilization and a just and equitable international economic order.}~~

Application (Article 8)

1. The provisions of this [Part][Agreement] shall apply to:

~~{(a) Marine genetic resources, **including fish, and its derivatives**, insofar as they are collected **and accessed** for the purpose of conducting research into their genetic properties;}~~

~~{(b) Marine genetic resources, **including fish, and its derivatives** - {collected}and {accessed}in situ, {and} {accessed}ex situ {and *in silico*}, [[and] {as digital sequence information} [as genetic sequence data]] [and their utilization];}~~

~~{(c) Derivatives.}~~

~~{(d)}(c)-Marine scientific research.}~~

3. The provisions of this Agreement shall apply to marine genetic resources, including fish, and its derivatives ~~{collected} and {accessed}~~ in situ, ~~{and} {accessed}~~ ex situ ~~{and in silico} ~~{and}~~ {as digital sequence information}~~ ~~{as genetic sequence data}~~ ~~{and their utilization}~~ after its entry into force, including those resources ~~{collected} and {accessed}~~ in situ before its entry into force, but accessed ex situ or ~~{in silico} ~~{and}~~ [as digital sequence information] [as genetic sequence data]] [or utilized] after its entry into force ~~it.~~~~

Activities with respect to marine genetic resources of areas beyond national jurisdiction (Article 9)

4bis: The utilization of marine genetic resources including fish and its derivatives of areas beyond national jurisdiction shall be conserved and sustainably used for the benefit of mankind taking into consideration the interests and needs of developing States, in particular the archipelagic States, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

Collection of and access to marine genetic resources of areas beyond national jurisdiction (Article 10)

~~{1. In situ {collection ~~of~~ and {access to} marine genetic resources, including fish, and its derivatives within the scope of this Part shall be subject to [Alt. 1. [prior] [and] [post-cruise] notification to the secretariat [, which shall include an indication of the location and date of [collection] [access], the resources to be {collected} and ~~{accessed}~~, the purposes for which the resources will be utilized and the entity that will [collect] [access] the resources] [of [collection of] [access to] marine genetic resources, including fish, and its derivatives, of areas beyond national jurisdiction].}~~

[Alt. 2. a [permit] ~~{license}~~ issued in the manner and under the terms and conditions set forth in paragraph 2.]]

[2. States Parties shall take the necessary legislative, administrative ~~and ~~of~~~~ policy measures, as appropriate, to ensure that in situ ~~{collection and ~~of~~}~~ ~~{access to}~~ marine genetic resources, including fish, and its derivatives within the scope of this Part shall be subject to:

(a) An indication of the geographical coordinates of the location where marine genetic resources were ~~[collected] ~~{accessed}~~~~;

(g) Other relevant terms and conditions as may be determined by the Conference of the Parties, including in relation to ~~{the collection ~~of~~}~~ ~~{and access to}~~ marine genetic resources, including fish, and its derivatives in ecologically and biologically significant areas, vulnerable marine ecosystems, ~~and other specially protected areas,~~ and in particular areas requiring measures subject to Article 16, in order to ensure the conservation and sustainable use of the resources therein.}

~~3.~~ States Parties shall take the necessary legislative, administrative ~~and~~ ~~or~~ policy measures, as appropriate, to ensure that ex situ access to marine genetic resources, including fish and its derivatives within the scope of this Part is free and open [, subject to articles 11 and 13].~~}~~

~~4.~~ States Parties shall take the necessary legislative, administrative and or policy measures, as appropriate, to ensure that access to [marine genetic resources, including fish, and its derivatives in silico [[and] [digital sequence information] ~~and~~ [genetic] sequence data [and information]] is facilitated [, subject to ~~A~~articles 11 and 13].~~}~~

~~5.~~ States Parties shall take the necessary legislative, administrative ~~and~~ ~~or~~ policy measures, as appropriate, to ensure that activities with respect to marine genetic resources, including fish, and its derivatives of areas beyond national jurisdiction that may result in the utilization of marine genetic resources found in areas both within [subject to consent of the Coastal States] and beyond national jurisdiction are subject to the prior notification and consultation of the ~~C~~oastal States [and any other relevant State] concerned, with a view to avoiding infringement of the rights and legitimate interests of [that] [those] State[s].~~}~~

~~6.~~ States Parties shall take the necessary legislative, administrative ~~and~~ ~~or~~ policy measures; as appropriate, to ensure that marine genetic resources, including fish, and its derivatives of areas beyond national jurisdiction utilized within their jurisdiction have been [collected] [and] [accessed] in accordance with this Part.~~}~~

Access to traditional knowledge of indigenous peoples and local communities associated with marine genetic resources, including fish, and its derivatives ~~{accessed}~~ ~~and~~ ~~{collected}~~ in areas beyond national jurisdiction (Article 10bis)

~~{~~States Parties shall take legislative, administrative ~~and~~ ~~or~~ policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources, including fish, and its derivatives ~~{collected}~~ ~~{accessed}~~ accessed and collected in areas beyond national jurisdiction that is held by indigenous peoples and local communities shall only be accessed with the prior and informed consent and approval, ~~or~~ approval and involvement of these indigenous peoples and local communities. The clearing-house mechanism may act as an intermediary to facilitate access to such traditional knowledge. Access to such traditional knowledge shall be on mutually agreed terms and serves as a mean for fair and equitable benefit sharing purposes subject to Article 11.~~}~~

Fair and equitable sharing of benefits (article 11)

~~{~~1. States Parties, including their nationals, that have ~~{collected}~~, ~~{accessed}~~, and ~~{utilized}~~— [Alt INDONESIA as well as subsequent applications and commercialization of marine genetic resources, including fish, and its derivatives, of areas beyond national jurisdiction [shall] ~~{may}~~ share benefits

arising therefrom [in a fair and equitable manner] with other States Parties, with consideration for the special requirements of developing States Parties, in particular archipelagic states, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries [, in accordance with this Part].]

~~{~~2. Benefits [shall] ~~{may}~~ include [monetary and] non-monetary benefits subject to ANNEX.. (with reference to Nagoya Protocol Annex on Monetary and Non-Monetary Benefits).~~}~~

~~{~~3. Benefits arising from [the collection, ~~of~~ ~~{~~access to, and ~~}~~] [the utilization of] marine genetic resources, including fish, and its derivatives, of areas beyond national jurisdiction [shall] ~~{may}~~ be shared at different stages, in accordance with the following provisions;

[(a) Monetary benefits [, Alt. INDONESIA including and not limited to access to samples and sample collections, sharing of information, such as pre-cruise or pre-research information, ~~{shall}~~ ~~{may}~~ be shared against an embargo period for ~~{~~marine genetic resources, including fish, and its derivatives, *in silico*] [digital sequence information] [genetic sequence data] or upon the commercialization of products that are based on marine genetic resources, including fish, and its derivatives, of areas beyond national jurisdiction [in the form of milestone payments] ~~The rate of payments of monetary benefits shall be determined by the Conference of the~~. [Payments shall be made to the special fund];]

~~{~~(b) Non-monetary benefits ~~{, such as access to samples and sample collections, sharing of information,~~ such as pre-cruise or pre-research information, post-cruise or post-research notification, transfer of technology and capacity building,] [shall] ~~{may}~~ be shared upon [collection ~~of~~ ~~{~~access to, ~~}~~ ~~{~~utilization] of marine genetic resources, including fish and its derivatives, of areas beyond national jurisdiction. Samples, data and related information [shall] [may] be made available in open access [through the clearing-house mechanism [upon [collection] [access] [after ~~{...}~~ 5 years]]]. [[Marine genetic resources, including fish and its derivatives, in silico] [Digital sequence information] [Genetic sequence data] related to marine genetic resources, including fish and its derivatives, of areas beyond national jurisdiction [shall] ~~{may}~~ be published and used taking into account current international practice in the field.~~}~~

4. Benefits shared in accordance with this Part shall be used:

~~{~~(a) To contribute to the conservation of marine biological diversity, of areas beyond national jurisdiction and sustainable use of its component;}

{(b) To promote scientific research and facilitate {the collection and {access to}-marine genetic resources, including fish, and its derivatives, of areas beyond national jurisdiction;}

{(c) To build capacity to {collect and access} and utilize marine genetic resources of areas beyond national jurisdiction {, including through common funding or pool funding for research cruises and collaboration in sample collection and data access where adjacent coastal States {shall} be invited to participate, taking into account the varying economic circumstances of States that wish to participate};}

{(d) To create and strengthen the capacity of States Parties to conserve and use sustainably marine biological diversity of areas beyond national jurisdiction, with a focus on small-island developing States;}

{(e) To support the transfer of marine technology;}

{(f) To assist developing States Parties in attending the meetings of the Conference of the Parties.}}

{5. States Parties shall take the necessary legislative, administrative and policy measures, as appropriate, with the aim of ensuring that benefits arising from [the collection and access to] [the utilization of] marine genetic resources, including fish, and its derivatives, of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.}

Intellectual property rights (Article 12)

1. State Parties shall implement this Agreement in a manner consistent with the rights and obligations of States under the relevant agreement concluded under the auspices of the World Intellectual Property Organization and World Trade Organization.

{1. 2. States Parties shall cooperate to ensure that intellectual property rights are supportive of and do not run counter to the objectives of this Agreement {, and that no action is taken in the context of intellectual property rights that would undermine benefit-sharing and the traceability of marine genetic resources, including fish and its derivatives, of areas beyond national jurisdiction}.}

{2.3 [Marine genetic resources including fish and its derivatives, [collected, accessed, and utilized] in accordance with this Agreement shall not be subject to patents except where such resources are modified by human intervention resulting in a product capable of industrial application.] [Unless otherwise stated in a patent application or other official filing or recognized public registry, the origin of marine genetic resources, including fish, and its derivatives utilized in patented applications shall be presumed to be of areas beyond national jurisdiction.}}

3.4. States Parties shall take the necessary legislative, administrative **and** policy measures, as appropriate, to ensure that:

(a) Applicants for patents on inventions that utilize or have utilized] marine genetic resources, **including fish, and its derivatives** of areas beyond national jurisdiction disclose the origin of the marine genetic resources that they utilize;

(b) Intellectual property rights applications related to the utilization of marine genetic resources, **including fish, and its derivatives** of areas beyond national jurisdiction that do not comply with this Part are not approved.}

Monitoring **and** Reporting (Article 13)

1. The Conference of the Parties shall adopt appropriate rules, guidelines or a code of conduct for the utilization of marine genetic resources, **including fish, and its derivatives** of areas beyond national jurisdiction.}

2. Monitoring **and reporting** of the utilization of marine genetic resources, **including fish, and its derivatives** of areas beyond national jurisdiction shall be carried out through the [clearing-house mechanism] [Scientific and Technical Body] [obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]].}

3. States Parties shall take the necessary legislative, administrative **and** policy measures, as appropriate, to ensure that:

(a) An identifier is assigned to marine genetic resources, **including fish, and its derivatives** [collected] **and** [accessed] in situ. In the case of marine genetic resources accessed ex situ [and in silico] [[and] [as digital sequence information] [as genetic sequence data]], such an identifier shall be assigned when databases, repositories and gene banks submit the list mentioned in article 51 (3) (b) to the clearing-house mechanism;}

(b) Databases, repositories and gene banks within their jurisdiction are required to [notify the [clearing-house mechanism] [Scientific and Technical Body]] [send a notification through the obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]] when marine genetic resources, **including fish, and its derivatives** of areas beyond national jurisdiction, **including derivatives**, are accessed;}

(c) Proponents of marine scientific research in areas beyond national jurisdiction **shall** submit periodic status reports **to the clearing-house mechanism** **and** **to the Scientific and Technical Body**}

[through the obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]], as well as research findings, including data collected and all associated documentation.]]

{4. States Parties shall make available to the clearing-house mechanism information on the legislative, administrative and policy measures that have been adopted in accordance with this Part.]

{5. States Parties shall submit reports to the Conference of the Parties about their utilization of marine genetic resources, including fish, and its derivatives of areas beyond national jurisdiction. The Conference shall review such reports and make recommendations.}

INDONESIA'S BACKGROUND POSITION

1. Based on rapidly developing science, especially in the marine and genetic resources, it is solid to argue that genetic resources taken from fish has the potential for a significant economical value.¹
2. Indonesia notes that the genetic potential of certain fishes has been widely used for fisheries aquaculture development activities in many places. It is also certain to be increasingly developed in the future. The possibility of fish becoming one of the main pillars of aquaculture and used or marine scientific research purposes in the future is undoubtedly very high.²
3. Fish that live in high seas, in the depths of the ocean underwater volcanoes, and other extreme deep sea environments store powerful genetic potential for medicine. Examples include deep sea fish oil as candidate treatment for rheumatoid arthritis. Many publications suggest that deep sea biological resources as potential ingredients for novel-anticancer drugs.³

¹ Anake Kijjoa and Pichan Sawangwong, *Drugs and Cosmetics from the Sea*, Marine Drugs Vol. 2(2) (2004) <https://doi.org/10.3390/md202073>; Refik Tanakol (et. al), *Fatty Acid Composition of 19 Species of Fish from the Black Sea and the Marmara Sea*, Lipids Vol. 34(3) (1999) <https://doi.org/10.1007/s11745-999-0366-8>; Ane Jorem and Morten Walloe Tvedt, *Bioprospecting in the High Seas: Existing Rights and Obligations in View of a New Legal Regime for Marine Areas Beyond National Jurisdiction*, The International Journal of Marine and Coastal Law Vol. 29(4) (2014) <https://doi.org/10.1163/15718085-12341319>; Gorka Merino (et. al), *Can Marine Fisheries and Aquaculture Meet Fish Demand from a Growing Human Population in a Changing Climate?*, Global Environmental Change Vol. 22(4) (2012) <https://doi.org/10.1016/j.gloenvcha.2012.03.003>

² J. Casey (et. al), *The Role of Genetics in Fisheries Management under the EU Common Fisheries Policy*, Journal of Fish Biology Vol. 89(6) (2016) <https://doi.org/10.1111/jfb.13151>

³ Anders Goksoyr and Lars Forlin, *The Cytochrome P-450 System in Fish, Aquatic Toxicology and Environmental Monitoring*, Aquatic Toxicology Vol.22(4) (1992) [https://doi.org/10.1016/0166-445X\(92\)90046-P](https://doi.org/10.1016/0166-445X(92)90046-P); Vidar Berg (et. al), *Organochlorines in Deep-Sea Fish from the Nordfjord* Vol. 38(2) (1999) [https://doi.org/10.1016/S0045-6535\(98\)00191-X](https://doi.org/10.1016/S0045-6535(98)00191-X); Marianne Synnes, *Bioprospecting of Organisms from the Deep Sea: Scientific and Environmental Aspects*, Clean Technologies and Environmental Policy (2006) <https://doi.org/10.1007/s10098-006-0062-7>

4. Fish is considered as an essential marine genetic resource that is very useful in determining ecosystem stability in marine and coastal areas.⁴ The existence of large number of fish in the ecosystem is also used to as a very crucial indicator to the climate change.⁵ This indication can support the global research on the climate change through genetic and material genetic approach.⁶
5. Archipelagic states, as Indonesia, are very rich of endemic species and highly migratory fish such as *Latimeria menadoensis*,⁷ *Hemiscyllium halmahera*,⁸ *Anguilla boorneensis* endemic to Kalimantan Island and being ancestral to eels,⁹ highly migratory fish being closely related to eels (genus *Anguilla*),¹⁰ and tuna (genus *Thunnus*).¹¹ This unique characteristic cannot be found in other coastal areas and become a strong attraction to the researchers globally to unlock the unfound potential in research and technology that would be used not only for economical purposes but also humanity and peace purposes.¹² It is undeniable that fish, in the largest world laboratory such as archipelagic states,¹³ need to be strongly governed in the dimension of ILBI BBNJ.
6. Indonesia is of the view that the regulation of fish as part of the MGR in the ILBI BBNJ will not lead to complications in regulating the status of fish within the area beyond national jurisdiction. In fact, a complete arrangement in terms of fish as a commodity product both with the regulation on fish as an MGR will provide a strong certainty in the future for the management of fisheries. A complete arrangement will eliminate the presence of gray areas of fish caught for consumption reasons but lead to bioprospecting activities. Indonesia believes that this interest is also shared by most of coastal States and archipelagic States in the world.

⁴ Leopoldo Diaz-Perez (et. al), *Coral Reef Health Indices versus the Biological, Ecological and Functional Diversity of Fish and Coral Assemblages in the Caribbean Sea*, PLOS ONE 11(11) (2016) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0161812>

⁵ Sylvain Bonhommeau (et. al), *Impact of Climate on Eel Populations of the Northern Hemisphere*, Marine Ecology Progress Series Vol. 373 (2008) <http://DOI.10.3354/meps07696>; Kuan-Mei Hsiung and Shingo Kimura, *Impacts of Global Warming on Larval and Juvenile Transport of Japanese Eels (Anguilla japonica)*, Deep Sea Research Part II: Topical Studies in Oceanography <https://doi.org/10.1016/j.dsr2.2019.104685>.

⁶ Sebastian N. Politis (et. al), *Temperature Effects on Gene Expression and Morphological Development of European eel, Anguilla Anguilla larvae*, PLoS ONE Vol. 12 (2017) <https://doi.org/10.1371/journal.pone.0182726>; Anderw Goksoyr and Lars Forlin, *The cytochrome P-450 system in fish, aquatic toxicology and environmental monitoring*, Aquatic Toxicology Vol. 22(4) (1992) [https://doi.org/10.1016/0166-445X\(92\)90046-P](https://doi.org/10.1016/0166-445X(92)90046-P); Vidar Berg (et. Al), *Organochlorines in deep-sea fish from the Nordfjord*, Chemosphere Vol. 38(2) (1999) [https://doi.org/10.1016/S0045-6535\(98\)00191-X](https://doi.org/10.1016/S0045-6535(98)00191-X)

⁷ Kadarusman (et. Al), *A thirteen-million-year divergence between two lineages of Indonesian coelacanths*, Scientific Reports Vol 10 (2020) <https://doi.org/10.1038/s41598-019-57042-1>

⁸ Christine L. Dudgeon (et. al), *Walking, Swimming or hitching a ride? Phylogenetics and biogeography of the walking shark genus Hemiscyllium*, Marine and Freshwater Research (2020) <https://doi.org/10.1071/MF19163>

⁹ Jun Aoyama (et. al), *Molecular Phylogeny and Evolution of the Freshwater Eel, Genus Anguilla*, Molecular Phylogenetics and Evolution, Vol. 20(3) (2001) <https://doi.org/10.1006/mpev.2001.0959>

¹⁰ K. Tsukamoto, *Oceanic migration and spawning of anguillid eels*, Journal of Fish Biology Vol. 74(9) (2009) <https://doi.org/10.1111/j.1095-8649.2009.02242.x>

¹¹ Toby A. Patterson (et. al), *Migration dynamics of juvenile southern bluefin tuna*, Scientific Reports Vol. 8 (2018) <https://www.nature.com/articles/s41598-018-32949-3>; David E. Richardson (et. al), *Discovery of a spawning ground reveals diverse migration strategies in Atlantic Bluefin tuna (Thunnus thynnus)*, PNAS Vol. 113(12) (2016) <https://doi.org/10.1073/pnas.1525636113>

¹² Kent E. Carpenter (et. al), *Comparative Phylogeography of the Coral Triangle and Implications for Marine Management*, Journal of Marine Sciences (2011) <https://doi.org/10.1155/2011/396982>

¹³ Michael J. Miller, *High Biodiversity of leptocephali in Tomini Bay Indonesia in the center of the Coral Triangle*, Regional Studies in Marine Science Vol. 8(1) (2016) <https://doi.org/10.1016/j.rsma.2016.09.006>

7. Furthermore, Indonesia noted and respected various concerns that regulating fish as part of the MGR would cause difficulties at the level of implementation in the field, specifically how to sort or monitor fish caught for commodity consumption or for bioprospecting. In this regard, Indonesia is of the view that these concerns are answered by ensuring a comprehensive clearing house mechanism and traceability mechanism through the ILBI BBNJ.
8. The discussion on the threshold of the number of fish caught for consumption or bioprospecting commodities becomes invalid when a rigid traceability is formed together. It is a fact that for the sake of bioprospecting fish, it does not always require a large number of specimens, it even requires only a small portion of fish, or even for some purposes, the genetic / fish DNA can be obtained from only taking a few samples from the living environment.

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TEXTUAL PROPOSAL FOR CONSIDERATION

SUBMITTED BY
THE REPUBLIC OF INDONESIA

PART III: MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

WITHIN THE AGREEMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION

Objectives (Article 14)

- ~~{(a) Enhance~~**ing** cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, ~~{existing}~~ relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, which will also promote a holistic and cross-sectoral approach to ~~{ocean management,}~~ [conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction];**]**
- ~~{(b) Implement~~**ing** effectively obligations under the Convention and other ~~existing~~ relevant international obligations and commitments;**}**
- {(c) Promoting a holistic and cross-sectoral approach to ocean management;}**
- ~~{(d) Conserve~~**ing** and sustainably use**ing** areas requiring protection, including by establishing a comprehensive system of area-based management tools, including marine protected areas ~~{under existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies};}~~
- ~~{(d) Establishing a system of ecologically representative~~ **area-based management tools including marine protected areas** that are connected [and **managed** effectively and equitably ~~managed~~];**}**
- ~~{(fe) Rehabilitateing and restoreing biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution;}~~
- ~~{(g) Support~~**ing** food security and other socioeconomic objectives, including the protection of cultural values;**}**
- ~~{(h) Create~~**ing** scientific reference areas for baseline research;**}**
- ~~{(i) Safeguarding aesthetic, natural or wilderness values;}~~

~~[(j) Establishing a comprehensive system of area-based management tools, including marine protected areas;]~~

~~[(l) Promoting cooperation under the Convention.]~~

International cooperation and coordination (Article 15)

1. [To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,] States Parties shall promote coherence and complementarity in the ~~[establishment]~~ [designation] of area-based management tools, including marine protected areas, through

[(a) ~~[Existing]~~ Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, without prejudice to their respective mandates, in accordance with this Part;]

(b). ~~(i)~~ Adopting conservation and ~~[management]~~ **for** [sustainable use] measures to complement measures designated under ~~[existing]~~ relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies;

~~(b) [(ii) [Establishing] [Designating] area-based management tools, including marine protected areas, and adopting conservation and [management for sustainable use] measures where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.]]~~

~~[2. Alt. to para. 1. (b) (ii) Where there is no ~~[existing]~~ relevant legal instrument or framework or relevant global, regional, subregional or sectoral body to ~~[establish]~~ **[designate]** area-based management tools, including marine protected areas, States Parties shall cooperate to establish such an instrument, framework or body and shall participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]~~

3. States Parties shall **establish [coordination and collaboration mechanisms]** ~~[consultation processes]~~ **at the [global] [and] [regional] level[s]** make arrangements for consultation and coordination to enhance cooperation with and coordination among [existing] relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among associated conservation and [management] [sustainable use] measures adopted under such instruments and frameworks and by such bodies.

4. Measures adopted in accordance with this Part shall not undermine the effectiveness of measures adopted by coastal States in adjacent areas within national jurisdiction and shall have due regard for the rights, duties and legitimate interests of all States, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to this end, in accordance with the provisions of this Part.

5. In cases where an area-based management tool, including a marine protected area, ~~[established]~~ **[designated]** under this Part subsequently falls under the national jurisdiction of a coastal State, either wholly or in part, that area-based management tool or marine protected area it shall be amended adapted to cover any remaining area beyond national jurisdiction or otherwise cease to be in **[force]** **[effect]**.

Identification of areas ~~[requiring protection]~~ measures (Article 16)

1. Areas requiring ~~protection measures~~ through the ~~[establishment]~~ ~~[designation]~~ of area based management tools, including marine protected areas, shall be identified, on the basis of ~~[, inter alia,] the best available [science,] [scientific information and relevant traditional knowledge of indigenous peoples and local communities],~~ the precautionary ~~[approach]~~ [principle] and an ecosystem approach ~~and take into account relevant traditional knowledge of indigenous peoples and local communities.~~

2. Indicative Criteria for the identification of areas requiring ~~protection measures~~ through the ~~[establishment]~~ **[designation]** of area-based management tools, including marine protected areas, under this Part, may include: those specified in Annex I.

3. The indicative criteria specified in paragraph 2 Annex I [shall] ~~[may]~~ be further developed and revised as necessary by the Scientific and Technical [Body] [Network], as necessary, for consideration and adoption by the Conference of the Parties.

~~[4. The indicative criteria specified in paragraph 2 annex I, as well as any that may be further developed and revised in accordance with paragraph 3, shall be applied , as relevant, by the proponents of a proposal under this Part and shall be taken into account by the Scientific and Technical [Body] [Network], as relevant, in the review of a proposal~~ ~~identification of areas requiring protection through the [establishment] [designation] of area-based management tools, including marine protected areas, under this Part.~~ [Such criteria shall also be **[applied]** **[taken into account]** by States Parties in the ~~[establishment]~~ **[designation]** of area-based management tools, including marine protected areas, under [existing]

relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.}}

5bis. An indicative list of measures on Area Based Management Tools that can be applied to Areas Beyond National Jurisdiction shall be taken into account by the Scientific and Technical Body as set forth in Annex bis. (NOTE: new proposal)

Proposal (Article 17)

1. Proposals in relation to [~~the establishment~~] **[the designation]** of] area-based management tools, including marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.

~~{~~2. States Parties ~~may~~ **shall** collaborate with relevant stakeholders in the development of proposals.~~}~~

Art 17. 4. [(f) A description of the ~~proposed~~ ~~{conservation and {management for }{sustainable use} measures}~~—and [priority elements for a management plan] to be adopted to achieve the specified objectives;]

~~[(g) A duration for the proposed area and measures;]~~

(hi) Information on any consultations undertaken **and its recommendation with adjacent coastal States** and/or relevant global, regional, subregional and sectoral bodies.

Art 17. 5. Further requirements regarding the contents of proposals [shall] ~~{may}~~ be elaborated by the Scientific and Technical [Body] [Network] as necessary, for consideration and adoption by the Conference of the Parties.

Consultation on and assessment of proposals (Article 18)

Art 18. 2. (a) States, in particular adjacent coastal States **and Archipelagic States**, shall be invited to submit views, ~~including~~, inter alia:

Art 18. 2. (a) (iv) **Views on the potential implications of the proposal on the sovereign rights of coastal States in for areas within their under national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone;**

Art 18. 2. (a) (v) Any other relevant information;

Art 18 2. (b) (iv) Views regarding any aspects of the ~~{conservation and [management]}~~~~{for sustainable use}~~~~measures}~~and ~~{priority elements for a management plan}~~ identified in the proposal that fall within the competence of that body;

Art 18. 7. The modalities of the consultation and assessment process shall be further elaborated by the [Scientific and Technical [Body] [Network]] [Conference of the Parties], as necessary [, and shall take into account the special circumstances of small island developing States and Archipelagic States].

Decision-Making (Article 19)

Art 19. ~~[1. While respecting [existing] relevant legal instruments and frameworks and relevant global, regional and sectoral bodies in the [establishment] [designation] of area-based management tools, including marine protected areas, {The Conference of the Parties [shall] [may] take decisions on matters related to area-based management tools, including marine protected areas, with respect to:~~

Art 19. 1. (c) (i) Whether to recommend that States Parties to this Agreement promote the adoption of relevant ~~conservation and {management}~~~~{for sustainable use}~~ measures through such instruments, frameworks and bodies, in accordance with their respective mandates;

Art 19. 1 (b). (i) The identification of areas requiring ~~protection measures;~~

Art 19. 1. (b) (ii) The ~~{establishment}~~ [designation] of area-based management tools, including marine protected areas, and related conservation and [management] [sustainable use] measures to be adopted to achieve the specified objectives, [taking into account] ~~{recognizing}~~ existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate;

Art 19. (c) (i) Whether to recommend that States Parties to this Agreement promote the adoption of relevant ~~conservation and {management}~~~~{for sustainable use}~~ measures through such instruments, frameworks and bodies, in accordance with their respective mandates;

Art 19. 1. (d) Where there are no ~~[existing]~~ relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, the adoption of **conservation and [management]** ~~for sustainable use~~ measures.]

~~Art 19. Alt. 2. (b) Matters related to identifying potential area-based management tools, including marine protected areas;~~

~~Art. 19. Alt. 2. (c) Recommendations relating to the implementation of related management measures, while recognizing the primary authority for the adoption of such measures within the respective mandates of [existing] relevant legal instruments and frameworks and relevant global, regional and sectoral bodies;.~~

2. As a general rule, the decisions of the Conference of the Parties referred to in paragraph 1 shall be taken by consensus. If all efforts to reach consensus have been exhausted, the procedure established in the rules of procedure adopted by the Conference shall apply.

3. Pursuant to Article 19(1), decisions of the Conference of the Parties, shall be made publicly available by the sSecretariat and shall be transmitted, in particular, to adjacent coastal States and [existing] relevant legal instruments and frameworks and relevant global, regional, and sectoral bodies.

Implementation (Article 20)

[3. States Parties shall ensure compliance by vessels flying their flags and enforcement of the measures adopted in conformity with this Part [by their nationals].]

43. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States **and archipelagic States** Parties, directly or indirectly.]

[65. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of a[n] ~~[established]~~ [designated] area-based management tool, including a marine protected area, to adopt measures supporting the conservation and management objectives of the measures adopted and area-based management tools ~~[established]~~ [designated] under this Part.]

[86. A State Party that is not a participant in a[n] [existing] relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and management measures ~~[established]~~ [designated] under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area-based management tools, including marine protected areas, ~~[established]~~ [designated] under relevant frameworks, instruments and bodies.]]

Monitoring and review (Article 21)

1. States Parties, individually or collectively, shall report to the Conference of the Parties on the implementation of [area-based management tools, including marine protected areas] [relevant elements of the decisions of the Conference on area -based management tools, including marine protected areas], ~~[established]~~ [designated] under this Part. Such reports shall be made publicly available by the ~~s~~Secretariat.

2. Area-based management tools, including marine protected areas, ~~[established]~~ [designated] under this Part, including related conservation and [management]~~+~~[for] sustainable use] measures, shall be monitored and periodically reviewed by the Scientific and Technical [Body] ~~[Network]~~.

4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment or revocation of area-based management tools, including marine protected areas, including any associated conservation and {management}~~+~~[for] sustainable use} measures, [as well as the extension of time-bound area-based management tools, ~~including marine protected areas,~~ which would otherwise automatically expire,] on the basis of an adaptive management approach and taking into account the best available [science]~~+~~[scientific information] and knowledge, including relevant traditional knowledge of indigenous peoples and local communities], the precautionary [approach] [principle] and an ecosystem approach.]

[Publication][Charts and Lists of Geographical Coordinates] (Article 21bis)

After the adoption of the decision pursuant to Article 19(1), the Conference of Parties shall:

- (a) Give due publicity to such charts or lists of geographical coordinates indicating Area Based Management Tools, including Marine Protected Areas, in Areas Beyond National Jurisdiction;
- (b) Cooperate with relevant hydrographic bodies, including such bodies of adjacent Coastal States, with the aim of providing publicity; and
- (c) Deposit a copy of such charts or lists of geographical coordinates with the Secretary-General of the United Nations.

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TEXTUAL PROPOSAL FOR CONSIDERATION

SUBMITTED BY
THE REPUBLIC OF INDONESIA

PART IV: ENVIRONMENTAL IMPACT ASSESSMENTS

WITHIN THE AGREEMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION

Obligation to conduct environmental impact assessments (Article 22)

3. The requirement in this Part to conduct an environmental impact assessment applies ~~only to activities conducted in areas beyond national jurisdiction~~. ~~[to all activities that have an impact in areas beyond national jurisdiction]~~.

Relationship between this Agreement and environmental impact assessment processes under other ~~existing~~ relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies (Article 23)

1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with ~~[the obligations under]~~ the Convention.
2. The Scientific and Technical [Body] ~~[Network]~~ shall consult and/or coordinate with ~~existing~~ relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment. [Procedures for consultation and/or coordination shall include the establishment of an ad hoc interagency working group or the participation of representatives of the scientific and technical bodies of those organizations in meetings of the Scientific and Technical [Body] ~~[Network]~~.]
3. [Global minimum standards] [and] [guidelines] for the conduct of environmental impact assessments [under ~~existing~~ relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies] shall be developed [by the Scientific and Technical [Body] ~~[Network]~~ [through consultation or collaboration with ~~existing~~ relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies]. [These [global minimum standards] [and] [guidelines] shall be set out in an annex to this Agreement and shall be updated periodically].]

4. Where a planned activity under the jurisdiction or control of a State Party [with impacts] in areas beyond national jurisdiction is already covered by existing environmental impact assessment obligations and agreements, it is not necessary to conduct another environmental impact assessment of that activity under this Agreement [, provided that the [State with jurisdiction or control over the planned activity] [body set forth in Part [...]] [, following consultation with ~~existing~~-relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,] determines that:

{(a) The outcome of environmental impact assessment under those obligations or agreements is effectively implemented;}

{(b) The environmental impact assessment already undertaken is [[functionally] [substantively] equivalent to the one required under this Part] [comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts];}

{(c) The threshold for the conduct of environmental impact assessments meets or exceeds the threshold set out in this Part.}}

Thresholds and criteria for environmental impact assessments (Article 24)

1. When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control:
 - (a) Are likely to have more than a minor or transitory effect on the marine environment, they shall conduct an environmental impact assessment on the potential effects of such activities on the marine environment in the manner provided in this Part;
 - (b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall [conduct] [ensure that] a [full] [comprehensive] environmental impact assessment [is conducted] on the potential effects of such activities on the marine environment [and ecosystems] and shall ~~communicate~~ [submit] the results of such assessments [for technical review] in the manner provided in this Part.}
2. Environmental impact assessments shall be conducted in accordance with the threshold and criteria [set out in this Part and as further elaborated upon pursuant to the procedure set out in paragraph [...]] [, which shall be developed by the Scientific and Technical Body.]

Cumulative impacts (Article 25)

1. Cumulative impacts shall ~~as far as possible~~ be ~~taken into account~~ [considered] in the conduct of environmental impact assessments.}

Strategic environmental assessments (Article 28)

1. States Parties, individually or in cooperation with other States Parties, shall ensure that a strategic environmental assessment is carried out for plans and programmes relating to activities [under their

jurisdiction or control,] [conducted] ~~[with impacts]~~ in areas beyond national jurisdiction, which meet the threshold/criteria established in article 24.

Scoping (Article 31)

~~[2.~~ Such scope shall include, the identification of key environmental [, social, economic, cultural and other relevant] [impacts] [issues], including ~~[identified cumulative impacts]~~, using the best available scientific information and **relevant traditional knowledge of indigenous peoples and local communities** [, alternatives for analysis] [and a determination of the potential effects of the planned activity **under the jurisdiction or control of a State Party, and adjacent coastal State**, including a detailed description of potential environmental consequences].~~]~~

Public notification and consultation (Article 34)

~~[2.~~ Stakeholders in this process include potentially affected States, where those can be identified, [in particular adjacent coastal States] [, indigenous peoples and local communities with relevant traditional knowledge in **adjacent coastal States**,] relevant global, regional, subregional and sectoral bodies, non-governmental organizations, the general public, academia [, scientific experts] [, affected parties,] [adjacent communities and organizations that have special expertise or jurisdiction] [, interested and relevant stakeholders] [, and those with existing interests in an area].~~]~~

~~[4.~~ [Substantive] comments received during the consultation process~~—[from adjacent coastal States]~~ shall be considered and [addressed] [responded to] by States Parties. States Parties shall give particular regard to comments concerning potential transboundary impacts. States Parties shall make public the comments received and the descriptions of how they were addressed.~~]~~

Preparation and content of environmental impact assessment reports (Article 35)

1. States Parties shall ~~[be responsible for]~~ **[ensure]** the preparation of an environmental impact assessment report for any such assessment undertaken pursuant to this Part.
2. Where an environmental impact assessment is required in accordance with this Part, the environmental impact assessment report **[shall]** ~~[may]~~ include [as a minimum, the following information]:
 - (a)....(q)
3. Further ~~[details]~~ **[guidance]** regarding the required content of an environmental impact assessment report ~~[shall]~~ ~~[may]~~ be developed by the Conference of the Parties as an annex to this Agreement and shall be based on the best available scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities. ~~[[These details]]~~ ~~[This guidance]~~ shall be reviewed regularly.~~]~~



TEXTUAL PROPOSAL FOR CONSIDERATION

SUBMITTED BY
THE REPUBLIC OF INDONESIA

PART V: CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

WITHIN THE AGREEMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION

Objectives (Article 42)

(f) Ensuring that developing States Parties have:

- ~~{(i) Access to, and benefit from, the scientific information resulting from **the collection of** and **access to** resources in areas beyond national jurisdiction, in particular marine genetic resources;}~~
- [(ii) Access to, and that their special requirements receive consideration in, the sharing of benefits from marine genetic resources and in marine scientific research;]
- [(iii) **Collection of** **Access to** marine genetic resources *in situ*, *ex situ*, ~~and in silico,~~ ~~and as~~ **digital sequence information** ~~as genetic~~ sequence data ~~and information~~ **and their utilization**;]

Cooperation in capacity-building and transfer of marine technology (Article 43)

3. In giving effect to the duty to [cooperate] [promote cooperation] under this article, States Parties shall give full recognition to the special requirements of developing States **Parties**, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, **Archipelagic States**, coastal African States and developing middle-income countries.

Modalities for capacity-building and the transfer of marine technology (Article 44)

1. States Parties, recognizing that capacity-building, access to and the transfer of marine technology, including biotechnology, among States Parties are essential elements for the attainment of the objectives of this Agreement, ~~undertake to provide or facilitate~~ ~~shall promote~~ ~~shall ensure~~ access to and the transfer of marine technology, and capacity-building, for developing States Parties, in particular least developed countries, landlocked developing countries,

geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

~~12.~~ Capacity-building and the transfer of marine technology [shall] [may] be provided on **a** ~~[mandatory and voluntary]~~ ~~[voluntary]~~ basis, as well as a ~~[bilateral, regional, subregional and multilateral]~~ basis.

~~23.~~ Capacity-building and the transfer of marine technology shall be transparent and country-driven ~~1.~~ **and shall, as far as possible, not duplicate existing programmes.** Capacity-building and the transfer of marine technology shall be guided by lessons learned, including those from capacity-building and the transfer of marine technology activities under ~~existing~~ relevant legal instruments and frameworks and relevant global, regional, **subregional** and sectoral bodies, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive.

~~34.~~ Capacity-building and the transfer of marine technology shall be based on and be responsive to the needs and priorities of developing States Parties ~~[carried out through]~~ **[as determined by]** [informed by] a needs assessment [on an individual case-by-case, **subregional** or regional basis]. Such needs and priorities may be self-assessed or facilitated through a mechanism, which may be established by the Conference of the Parties.

Additional modalities for the transfer of marine technology (Article 45)

~~21.~~ The development and transfer of marine technology shall be ~~[carried out]~~ **[on fair and most favourable terms, including on concessional and preferential terms]** **[according to mutually agreed terms and conditions].**

~~[32. Alt. 1. The transfer of marine technology shall [take into account the need to protect intellectual property rights] [be carried out with due regard for all legitimate interests, including the rights and duties of holders, suppliers and recipients of marine technology].]~~

~~[32. Alt. 2. States Parties shall [protect] [respect the protection of] intellectual property rights.]~~

~~[32. Alt. 3. Intellectual property rights [related to resources of areas beyond national jurisdiction] shall [not preclude the transfer of **marine** technology] [be subject to specific limitations in furtherance of technology transfer related to marine technology] under this Agreement.]~~

Alt. 4 INDONESIA- States Parties law on intellectual property rights should promote and encourage transfer of marine technology to developing countries in order to achieve the objectives of this instrument/Agreement.

NOTE: Indonesia wishes to streamline all four alternatives relating to Article 45(2) into one paragraph.

23. Marine technology transferred pursuant to this Part shall be appropriate, reliable, affordable, up to date, environmentally sound, available in an accessible form for developing States Parties

and relevant to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. ~~[States Parties shall [promote] [ensure] the transfer of marine technology in an accessible form for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries [, and shall ensure that such transfer is not conditional on onerous reporting requirements].~~

Types of capacity-building and transfer of marine technology (Article 46)

~~[Alt.1~~

1. In support of the objectives set out in article 42, the types of capacity-building and transfer of marine technology may include, and are not limited to:

- (a) The sharing of relevant data, information, knowledge and research;
- (b) Information dissemination and awareness-raising, including with respect to **relevant traditional knowledge of indigenous peoples and local communities**;
- (c) The development and strengthening of relevant infrastructure, including equipment;
- (d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms;
- (e) The development and strengthening of human resources and technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of technology;
- (f) The development and sharing of manuals, guidelines and standards;
- (g) The development of technical, scientific and research and development programmes, including biotechnological research activities.]

~~[Alt.2~~

12. Further details concerning ~~In support of the objectives set out in article 42,~~ the types of capacity-building and transfer of marine technology ~~are set forth~~ **identified in this article are elaborated** in the annex II.]

~~[Alt.3~~

~~1. The Conference of the Parties [shall] [may] develop [guidelines on] [an indicative, non-exhaustive and flexible list of] [a broad set of categories of] types of capacity-building and transfer of marine technology and may establish a subsidiary body for that purpose.]~~

~~23. [The types of capacity-building and transfer of marine technology set out in paragraph 1 of this article] [The list set forth in the annex II] [The guidelines] [shall] [may] be reviewed, assessed and~~

~~adjusted~~ **amended** periodically by the Conference of the Parties to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, **subregions** and regions.

Monitoring and review (Article 47)

2(c) Making recommendations for proposed ways forward and follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to allow developing States Parties, in particular **Archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States , small island developing States, coastal African States and developing middle-income countries, to fully meet their obligations and exercise their rights under this Agreement.

5. In supporting the monitoring and review of capacity-building and the transfer of marine technology, States Parties [and regional committees on capacity-building and the transfer of marine technology] may submit, on a voluntary basis, reports, which may be made publicly available, on capacity-building and the transfer of marine technology given and received. States Parties shall ensure that reporting requirements for developing States Parties, in particular **Archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States , small island developing States, coastal African States and developing middle-income countries, are streamlined and not onerous.



TEXTUAL PROPOSAL FOR CONSIDERATION

SUBMITTED BY
THE REPUBLIC OF INDONESIA

PART VI: INSTITUTIONAL ARRANGEMENTS

WITHIN THE AGREEMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION

PART VI INSTITUTIONAL ARRANGEMENTS

Conference of the Parties (Article 48)

{5. The Conference of the Parties ~~{shall}~~ {may}, at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.}

Clearing-house mechanism (Article 51)

{5. The clearing-house mechanism shall recognize the special circumstances of small island developing States **Parties ~~{and archipelagic developing States Parties}~~**; facilitate access to the mechanism to enable those States to utilize it without undue obstacles or administrative burdens, and include information on activities to promote information-sharing, awareness-raising and dissemination in and with those States, as well as provide specific programmes for those States.}

{6. The clearing-house mechanism shall be managed by ~~{the secretariat}~~ [the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, in association with relevant organizations, including the International Seabed Authority and the International Maritime Organization, and shall be informed by the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology].}



TEXTUAL PROPOSAL FOR CONSIDERATION

SUBMITTED BY
THE REPUBLIC OF INDONESIA

PART VII: FINANCIAL RESOURCES AND MECHANISM

WITHIN THE AGREEMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION

Funding (Article 52)

1. Funding in support of the implementation of this Agreement, in particular capacity-building and the transfer of marine technology under this Agreement, ~~[shall]~~ ~~[may]~~ ~~[aims to strive to]~~ be adequate, accessible, transparent ~~[, sustainable and predictable; and [both voluntary and mandatory]~~ ~~[voluntary].]~~
...
5. In addition to the voluntary trust fund, a special fund ~~[may]~~ ~~[shall]~~ be established by the Conference of the Parties to:
 - (a) Fund capacity-building projects, including effective projects on the conservation and sustainable use of marine biological diversity;
 - (b) Fund activities and programmes, including training, related to the transfer of technology;
 - (c) Assist developing States Parties to implement this Agreement;
 - (d) Finance the rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction;
 - (e) Support conservation and sustainable use programmes by holders of traditional knowledge ~~in~~ of **indigenous peoples and** local communities;
 - (f) Support public consultations at the national, **subregional** and regional levels;
 - (g) Undertake any other functions as agreed by the States Parties.

5bis. The special fund shall be funded through:

- (a) Voluntary contributions;
- (b) Mandatory sources, including:
 - (i) Contributions from States Parties and royalties and milestone payments resulting from the utilization of marine genetic resources;

- (ii) Payments as a condition of access to, and utilization of, marine genetic resources, premiums paid during the approval process of environmental impact assessments, in addition to cost recovery, fees and penalties, and other avenues for mandatory payments;
 - (c) Endowments by States Parties;
 - (d) Existing financial mechanisms, such as the Global Environment Facility and the Green Climate Fund;
 - (e) Private entities wishing to engage in the exploration and exploitation of marine biological diversity of areas beyond national jurisdiction.]]
6. The funding mechanisms established under this Agreement shall be aimed at ensuring efficient access to funding through simplified approval procedures and enhanced readiness of support for developing States Parties, in particular archipelagic States, least developed countries, landlocked developing countries, geographically disadvantaged States , small island developing States, coastal African States and developing middle-income countries.
7. Access to funding under this Agreement shall be open to developing States Parties ~~{and other stakeholders}~~ [on the basis of need] [~~], taking into account the needs for assistance of~~] ~~[giving priority to]~~ States **Parties** with special requirements, in particular archipelagic States, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries].



TEXTUAL PROPOSAL FOR CONSIDERATION

**SUBMITTED BY
THE REPUBLIC OF INDONESIA**

A NEW ANNEX

**WITHIN THE
AGREEMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF
MARINE BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION**

**ANNEX BIS
INDICATIVE LIST OF AREA BASED MANAGEMENT TOOLS THAT CAN BE APPLIED TO
AREAS BEYOND NATIONAL JURISDICTION**

- (a) Marine Spatial Planning;
- (b) Marine Protected Area;
- (c) Particularly Sensitive Sea Areas;
- (d) Ecologically or Biologically Significant Marine Areas;
- (e) Vulnerable Marine Ecosystems;
- (f) Traffic Separation Schemes;
- (g) MARPOL Special Area;
- (h) Areas of Particular Environmental Interest;
- (i) Preservation Reference Zones;
- (j) Fishing Area Closure;
- (k)

INDONESIA'S BACKGROUND POSITION
Indonesia finds that it is necessary for the revised draft text to provide an indicative list of ABMTs through an annex, due to the following considerations: 1. To remain consistent with Article 4 (Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies) of the revised draft text.

2. Part III of the revised draft text should align with Article 194 LOSC, in particular Article 194(5), which seeks to indicate measures with the aim of protecting biodiversity. While both the LOSC and Convention on Biological Diversity impose obligations for all States to protect the marine environment, LOSC was not envisioned to produce an institutional capacity to expand implementation of Article 194 further. Article 194 LOSC employs “all measures”, “the measures” and “measures”. The general reference to measures in turns enables States to have a variety of policy options to operationalize Article 194 LOSC in a way that is tailored to their needs, such as: geographic configuration, important marine ecosystems, maritime culture, traditional knowledge, fish stocks, presence of existing and planned activities, sea lanes and coastal communities. Hence, from state practice of Article 194 varies.
3. Marine Protected Areas are not the only recourse to conserve and sustainably manage areas beyond national jurisdiction;
4. Practicality and guidance.



TEXTUAL PROPOSAL FOR CONSIDERATION

SUBMITTED BY
THE REPUBLIC OF INDONESIA

THE NEED FOR INCORPORATING THE INTEREST OF ARCHIPELAGIC STATES

WITHIN THE AGREEMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTION

Objectives (Article 7)

{(b) Build the capacity of developing States Parties, in particular **archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to ~~{collect,}~~~~{access,}~~ and utilize marine genetic resources of areas beyond national jurisdiction;}

Activities with respect to marine genetic resources of areas beyond national jurisdiction (Article 9)

4bis: The utilization of marine genetic resources including fish and its derivatives of areas beyond national jurisdiction shall be conserved and sustainably used for the benefit of mankind taking into consideration the interests and needs of developing States, in particular the archipelagic States, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

Fair and equitable sharing of benefits (Article 11)

{1 States Parties, including their nationals, that have ~~{collected}, {accessed}, and {utilized},~~ as well as subsequent applications and commercialization of marine genetic resources, including fish and its derivatives, of areas beyond national jurisdiction ~~{shall}~~~~{may}~~ share benefits arising therefrom ~~{in a fair and equitable manner}~~ with other States Parties, with consideration for the special requirements of developing States Parties, in particular **archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries [, in accordance with this Part].}

Consultation on and assessment of proposals (Article 18)

Art 18. 2. (a) States, in particular adjacent coastal States **and Archipelagic States**, shall be invited to submit ~~views, including,~~ inter alia:

Art 18. 7. The modalities of the consultation and assessment process shall be further elaborated by the ~~{Scientific and Technical {Body} [Network]}~~ [Conference of the Parties], as necessary [, and shall take into account the special circumstances of small island developing States **and Archipelagic States**].

Implementation (Article 20)

~~{3. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States **and archipelagic States** Parties, directly or indirectly.}~~

Cooperation in capacity-building and transfer of marine technology (Article 43)

3. In giving effect to the duty to ~~{cooperate}~~ ~~{promote cooperation}~~ under this article, States Parties shall give full recognition to the special requirements of developing States **Parties**, in particular **Archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

Monitoring and review (Article 47)

2(c) Making recommendations for proposed ways forward and follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to allow developing States Parties, in particular **Archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to fully meet their obligations and exercise their rights under this Agreement.

5. In supporting the monitoring and review of capacity-building and the transfer of marine technology, States Parties [and regional committees on capacity-building and the transfer of marine technology] may submit, on a voluntary basis, reports, which may be made publicly available, on capacity-building and the transfer of marine technology given and received. States Parties shall ensure that reporting requirements for developing States Parties, in particular **Archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, are streamlined and not onerous.

Clearing-house mechanism (Article 51)

5. The clearing-house mechanism shall recognize the special circumstances of small island developing States **Parties** ~~{and archipelagic developing States Parties}~~, facilitate access to the mechanism to enable those States to utilize it without undue obstacles or administrative burdens, and include information on activities to promote information-sharing, awareness-raising and dissemination in and with those States, as well as provide specific programmes for those States.

Funding (Article 52)

6. The funding mechanisms established under this Agreement shall be aimed at ensuring efficient access to funding through simplified approval procedures and enhanced readiness of support for developing States Parties, in particular **archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

7. Access to funding under this Agreement shall be open to developing States Parties ~~{and other stakeholders}~~ ~~[on the basis of need]~~ ~~[, taking into account the needs for assistance of]~~ ~~{giving priority to}~~ States **Parties** with special requirements, in particular **archipelagic States**, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries].

INDONESIA'S BACKGROUND POSITION

A. The Archipelagic State Concept as a *Sui Generis*

1. Archipelagic State concept is regarded as a *Sui Generis*. The special characteristics of archipelagos were addressed with particular recognition of political, economic, and national security of the archipelagic States.
2. The adoption of UNCLOS in 1982 marks the recognition of the archipelagic State concept and further marks the incorporation of the archipelagic State concept into international law.
3. The revised draft text of an Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction circulated on November 27, 2019 (Revised Draft Text) is under the framework of UNCLOS 1982 which shows the close connection between the two legal instruments. Thus, the interests of peculiar geographical circumstances, the archipelagic State concept, recognized under UNCLOS shall not be left behind in our present endeavors in drafting the Revised Draft Text.

B. Enormous Impact of Ecological Connectivity to archipelagic States due to its geographical characteristic

4. Ecological Connectivity between ABNJ and waters of the Coastal State may increase the impact of the activity conducted within ABNJ to the coastal State, including the negative impact.
5. The archipelagic States, due to their geographical characteristic, have special entitlements under UNCLOS. These entitlements result in an immense body of water, the water area is greater than the land area.
6. It means that the archipelagic States face a greater risk imposed by Ecological Connectivity due to the immensity of the water area of the archipelagic States, which located adjacent to the ABNJ, compared to the other coastal States.

C. The local wisdoms and interests of the various local communities in archipelagic States

7. Various local communities living in the outer islands of the archipelagic States also have local wisdoms and interests that need to be considered in the ILBI BBNJ.

D. The impact of the activities in the ABNJ to the economy of the archipelagic States

8. The livelihood of the people of the archipelagic States depends primarily on the management of the marine resources. It indicates the importance of fisheries for the archipelagic state and highly affect the economy of the archipelagic state.
9. The fact that all activities conducted in ABNJ will affect the marine resources in the waters of the archipelagic States, it will in turn directly or indirectly affect the economy of the archipelagic state. Due to this, the archipelagic States have a high concern regarding the conservation and sustainable use of marine biological diversity in their waters, surrounding waters, including the waters outside their jurisdiction.
10. Further, the current economic capacity of archipelagic states cannot be used as a justification for denying geographical facts and the challenges faced by archipelagic states in managing their territorial waters.

The aforementioned risk and consideration was never reckoned nor accommodated under the revised draft text of an Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of ABNJ. Therefore, it is prima facie evidence that the archipelagic States' interest must be incorporated into the draft by adopting the archipelagic States term.

ooOoo



TEXTUAL PROPOSAL FOR CONSIDERATION

SUBMITTED BY
THE REPUBLIC OF INDONESIA

PROPOSED NEW ARTICLES

PART II MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

Activities with respect to marine genetic resources of areas beyond national jurisdiction (Article 9)

4bis. The utilization of marine genetic resources including fish and its derivatives of areas beyond national jurisdiction shall be conserved and sustainably used for the benefit of mankind taking into consideration the interests and needs of developing States, in particular the archipelagic states, least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries

PART III MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

Article 21bis

[Publication][Charts and Lists of Geographical Coordinates]

After the adoption of the decision pursuant to Article 19(1), the Conference of Parties shall:

- (a) Give due publicity to such charts or lists of geographical coordinates indicating Area Based Management Tools, including Marine Protected Areas, in Areas Beyond National Jurisdiction;
- (b) Cooperate with relevant hydrographic bodies, including such bodies of adjacent Coastal States, with the aim of providing publicity; and
- (c) Deposit a copy of such charts or lists of geographical coordinates with the Secretary-General of the United Nations.

Israel Submission

PART I GENERAL PROVISIONS

Article 1 Use of terms

For the purposes of this Agreement:

- [1. “Access” means, in relation to marine genetic resources, the collection of marine genetic resources [, including marine genetic resources accessed *in situ*, *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data]]].]
2. “Activity under a State’s jurisdiction or control” means an activity over which a State has effective control or exercises jurisdiction.
3. “Area-based management tool” means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording higher protection than that provided in the surrounding areas].
4. “Areas beyond national jurisdiction” means the high seas and the Area.
5. “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.
- [6. “Cumulative impacts” means impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts.]
- [7. Alt. 1. “Environmental impact assessment” means a process to evaluate the environmental impact of an activity ~~to be carried out in areas beyond national jurisdiction~~, with an effect on areas within or beyond national jurisdiction]] ~~[, taking into account [, inter alia,] interrelated [socioeconomic] [social and economic], cultural and human health impacts, both beneficial and adverse].]~~

[7. Alt. 2. “Environmental impact assessment” means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment.]

[8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity.]

[9. Alt. 1. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties.]

[9. Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.]

10. “Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas].

[11. “Marine technology” means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for *in situ* and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]

12. (a) “States Parties” means States that have consented to be bound by this Agreement and for which this Agreement is in force.

(b) This Agreement applies *mutatis mutandis*:

(i) To any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention, and

(ii) Subject to article 67, to any entity referred to as an “international organization” in annex IX, article 1, of the Convention that becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.

[13. “Strategic environmental assessment” means the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking

into account of the environmental report and the results of the public participation and consultations in a plan or programme.]

[14. “Transfer of marine technology” means the transfer of the instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.]

[15. “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources [, as well as the exploitation thereof].]

Article 5

General [principles] [and] [approaches]

In order to achieve the objective of this Agreement, States Parties shall be guided by the following:

[(a) The principle of non-regression;]

(b) [The polluter pays principle] [The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should ~~t~~, in principle,~~t~~ bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment];

[(c) The principle of the common heritage of mankind;]

(d) ~~The principle of equity;~~

(e) The precautionary [principle] ~~[approach];~~

(f) An ecosystem approach;

[(g) An integrated approach;]

(h) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;

(i) The use of the best available ~~[science]~~ ~~[scientific information and relevant traditional knowledge of indigenous peoples and local communities];~~

Commented [GB-IMttU-1]:

We (Israel) propose that this be the language adopted throughout the document. This proposal comes up a number of times. We propose this globally. Consistently throughout the document.

(j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another.

PART II

MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

Article 7

Objectives

The objectives of this Part are to:

[(a) Promote the ~~fair and equitable~~ sharing of benefits arising from the ~~collection of~~ ~~access to~~ ~~utilization of~~ marine genetic resources of areas beyond national jurisdiction;]

[(b) Build the capacity of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries, to [collect] [access] and utilize marine genetic resources of areas beyond national jurisdiction;]

[(c) Promote the generation of knowledge and technological innovations, including by promoting and facilitating the development and conduct of marine scientific research in areas beyond national jurisdiction, in accordance with the Convention;]

[(d) Promote the development and transfer of marine technology [, subject to all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology].]

[Article 8

Application]

[1. The provisions of this [Part] [Agreement] shall apply to:

[(a) Marine genetic resources, insofar as they are collected for the purposes of being the subject of research into their genetic properties;]

(b) Marine genetic resources [collected] [accessed] *in situ*, [and] [accessed]

ex situ [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [and their commercial utilization];

[(c) Commercial Derivativesderivatives.]]

[2. The provisions of this [Part] [Agreement] shall not apply to:

[(a) The use of fish and other biological resources as a commodity.]

[(b) Marine genetic resources accessed *ex situ* [or *in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization];]

[(c) Derivatives;]

[(d) Marine scientific research.]]

[3. The provisions of this Agreement shall apply to marine genetic resources

[collected] [accessed] *in situ*, [and] [accessed] *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization] after its entry into force, including those resources [collected] [accessed] *in situ* before its entry into force, but accessed *ex situ* or [*in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [or utilized] after it.]

[Article 11

~~{Fair and equitable} sharing~~ Sharing of benefits}

[1. States Parties, including their nationals, that have [collected] [accessed]

[utilized] marine genetic resources of areas beyond national jurisdiction ~~[shall]~~ [may] share benefits arising therefrom ~~{in a fair and equitable manner}~~ with other States Parties, with consideration for the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries,

geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries [, in accordance with this Part].]

~~[2. Benefits [shall] [may] include [monetary and] non-monetary benefits.]~~

~~[3. Benefits arising from the [collection of] [access to] [utilization of] marine genetic resources of areas beyond national jurisdiction [shall] [may] be shared at different stages, in accordance with the following provisions:~~

Commented [GB-IMttU-2]:

We would prefer to keep option (1).
We feel option two is repetitive and therefore not needed.

Concerning options 3 and 4. We would prefer a voluntary benefits sharing regime and think draft article 1 is sufficient.

~~[(a) Monetary benefits [shall] [may] be shared against an embargo period for [marine genetic resources *in silico*] [digital sequence information] [genetic sequence data] or upon the commercialization of products that are based on marine genetic resources of areas beyond national jurisdiction [in the form of milestone payments]. The rate of payments of monetary benefits shall be determined by the Conference of the Parties. [Payments shall be made to the special fund];]~~

~~[(b) Non monetary benefits [, such as access to samples and sample collections, sharing of information, such as pre cruise or pre-research information, post cruise or post research notification, transfer of technology and capacity building,] [shall] [may] be shared upon [collection of] [access to], [utilization] of marine genetic resources of areas beyond national jurisdiction. Samples, data and related information [shall] [may] be made available in open access [through the clearing house mechanism [upon [collection] [access] [after [...] years]]]. [[Marine genetic resources *in silico*] [Digital sequence information] [Genetic sequence data] related to marine genetic resources of areas beyond national jurisdiction [shall] [may] be published and used taking into account current international practice in the field.]]~~

~~[4. Benefits shared in accordance with this Part shall be used:~~

~~[(a) To contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;]~~

~~[(b) To promote scientific research and facilitate [the collection of] [access to] marine genetic resources of areas beyond national jurisdiction;]~~

~~[(c) To build capacity to [collect] [access] and utilize marine genetic resources of areas beyond national jurisdiction [, including through common funding or pool funding for research cruises and collaboration in sample collection and data access where adjacent coastal States [shall] [may] be invited to participate, taking into account the varying economic circumstances of States that wish to participate];]~~

~~[(d) To create and strengthen the capacity of States Parties to conserve and use sustainably marine biological diversity of areas beyond national jurisdiction, with a focus on small island developing States;]~~

~~[(e) To support the transfer of marine technology;]~~

~~[(f) To assist developing States Parties in attending the meetings of the Conference of the Parties.]]~~

[5. States Parties ~~shall~~ may take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from ~~[the collection of] [access to] [the utilization]~~ of marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.]

[Article 12]

Intellectual property rights]

Commented [GB-IMttU-3]:

We (Israel) think Section 12 exceeds the scope of this agreement and so including it might cause fragmentation and overlap with other existing intellectual property agreements

~~[1. States Parties shall cooperate to ensure that intellectual property rights are supportive of and do not run counter to the objectives of this Agreement [, and that no action is taken in the context of intellectual property rights that would undermine benefit sharing and the traceability of marine genetic resources of areas beyond national jurisdiction].]~~

~~[2. [Marine genetic resources [collected] [accessed] [utilized] in accordance with this Agreement shall not be subject to patents except where such resources are modified by human intervention resulting in a product capable of industrial application.] [Unless otherwise stated in a patent application or other official filing or recognized public registry, the origin of marine genetic resources utilized in patented applications shall be presumed to be of areas beyond national jurisdiction.]]]~~

~~[3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that:~~

~~(a) [Users of] [Applicants for patents on inventions that utilize or have utilized] marine genetic resources of areas beyond national jurisdiction disclose the origin of the marine genetic resources that they utilize;~~

~~(b) Intellectual property rights applications related to the utilization of marine genetic resources of areas beyond national jurisdiction that do not comply with this Part are not approved.]~~

[Article 13

Monitoring]

[1. The Conference of the Parties shall adopt appropriate rules, guidelines or a code of conduct for the utilization of marine genetic resources of areas beyond national jurisdiction.]

[2. Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction shall be carried out through the ~~[clearing house mechanism]~~ [Scientific and Technical Body] ~~[obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]].]~~

[3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that:

[(a) An identifier is assigned to marine genetic resources [collected] ~~accessed~~ *in situ*. In the case of marine genetic resources accessed *ex situ* [and *in silico*] ~~[[and] [as digital sequence information and/or] as~~ genetic sequence data]], such identifier shall be assigned when databases, repositories and gene banks submit the list mentioned in article 51 (3) (b) to the clearing-house mechanism;]

[(b) Databases, repositories and gene banks within their jurisdiction are required to [notify the [clearing-house mechanism] [Scientific and Technical Body]] [send a notification through the obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]] when marine genetic resources of areas beyond national jurisdiction, including derivatives, are accessed;]

[(c) Proponents of marine scientific research in areas beyond national jurisdiction submit periodic status reports [to the clearing-house mechanism] [to the Scientific and Technical Body] [through the obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]], as well as research findings, including data collected and all associated documentation.]]

[4. States Parties shall make available to the clearing-house mechanism information on the legislative, administrative and policy measures that have been adopted in accordance with this Part.]

[5. States Parties shall submit reports to the Conference of the Parties about their utilization of marine genetic resources of areas beyond national jurisdiction. The Conference shall review such reports and make recommendations.]

Article 16

Identification of areas [requiring protection]

1. Areas requiring protection through the establishment of area -based management tools, including marine protected areas, shall be identified on the basis of the best available ~~[sciences] [scientific information and relevant traditional knowledge of indigenous peoples and local communities]~~, the precautionary ~~[approach] [principle]~~ and an ecosystem approach.

2. Indicative criteria for the identification of areas requiring protection through the establishment of area-based management tools, including marine protected areas, under this Part, may include those specified in annex I.

3. The indicative criteria specified in annex I ~~[shall]~~ ~~[may]~~ be further developed and revised as necessary by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties.

[4. The indicative criteria specified in annex I, as well as any that may be further developed and revised in accordance with paragraph 3, shall be applied, as relevant, by the proponents of a proposal under this Part and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part. [Such criteria shall also be ~~[applied]~~ ~~[taken into account]~~ by States Parties in the establishment of area-based management tools, including marine protected areas, under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.]]

Article 17

Proposals

1. Proposals in relation to the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.

[2. States Parties may collaborate with relevant stakeholders in the development of proposals.]

3. Proposals shall be formulated on the basis specified in paragraph 1 of article 16.

4. Proposals shall include, at a minimum, the following elements:

(a) A geographic or spatial description of the area that is the subject of the proposal;

(b) Information on any of the indicative criteria specified in annex I, as well as any criteria that may be further developed and revised in accordance with paragraph 3 of article 16, applied in identifying the area;

(c) Specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States;

(d) A description of the state of the marine environment and biodiversity in the identified area;

(e) A description of the specific conservation and sustainable use objectives that are to be applied to the area;

(f) A description of the proposed [conservation and [management] [sustainable use] measures] [priority elements for a management plan] to be adopted to achieve the specified objectives;

[(g) A duration for the proposed area and measures;]

(h) A monitoring, research and review plan, including priority elements;

(i) Information on any consultations undertaken with adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies.

5. Further requirements regarding the contents of proposals ~~{shall}~~ ~~{may}~~ be elaborated by the Scientific and Technical Body as necessary, for consideration and adoption by the Conference of the Parties.

Article 18

Consultation on and assessment of proposals

1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all relevant stakeholders.

2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed by the secretariat to the proponent. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review of the Scientific and Technical Body. The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows:

(a) States, in particular adjacent coastal States, shall be invited to submit, *inter alia*:

(i) Views on the merits of the proposal;

(ii) Any relevant [additional] scientific inputs;

(iii) Information regarding any existing measures in adjacent areas within national jurisdiction;

(iv) Views on the potential implications of the proposal for areas under national jurisdiction;

(v) Any other relevant information;

(b) Bodies of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be invited to submit, *inter alia*:

- (i) Views on the merits of the proposal;
- (ii) Any relevant [additional] scientific inputs;
- (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;
- (iv) Views regarding any aspects of the [conservation and [management] [sustainable use] measures] [priority elements for a management plan] identified in the proposal that fall within the competence of that body;
- (v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body;
- (vi) Any other relevant information;

(c) Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, *inter alia*:

- (i) Views on the merits of the proposal;
- (ii) Any relevant [additional] scientific inputs;
- (iii) Any relevant traditional knowledge of indigenous peoples and local communities;
- (iv) Any other relevant information.

3. Contributions received pursuant to paragraph 2 shall be made publicly available by the secretariat.

4. The proponent shall consider the contributions received during the consultation period and shall either revise the proposal accordingly or continue the consultation process.

5. The consultation period shall be **time-bound**.

6. The revised proposal shall be submitted to the Scientific and Technical Body, which shall assess the proposal, and make recommendations to the Conference of the Parties.

Commented [GB-IMttU-4]: We believe a more specific timeline should be mentioned here. We are flexible/open to a discussion as to the specific timeline

7. The modalities of the consultation and assessment process shall be further elaborated by the [Scientific and Technical Body] [Conference of the Parties], as necessary [, and shall take into account the special circumstances of small island developing States].

Article 21

Monitoring and review

1. States Parties, individually or collectively, ~~may~~ shall report to the Conference of the Parties on the implementation of [area-based management tools, including marine protected areas] [relevant elements of the decisions of the Conference on area -based management tools, including marine protected areas], established under this Part. Such reports shall be made publicly available by the secretariat.
2. Area-based management tools, including marine protected areas, established under this Part, including related conservation and [management] [sustainable use] measures, shall be monitored and periodically reviewed by the Scientific and Technical Body.
3. The review referred to in paragraph 2 shall assess the effectiveness of measures and the progress made in achieving their objectives and provide advice and recommendations to the Conference of the Parties.
4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment or revocation of area-based management tools, including marine protected areas, including any associated conservation and [management] [sustainable use] measures, [as well as the extension of time-bound area-based management tools, including marine protected areas, which would otherwise automatically expire,] on the basis of an adaptive management approach and taking into account the best available [science] ~~[scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities]~~, the precautionary ~~[approach]~~ [principle] and an ecosystem approach.
5. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies ~~{shall}~~ ~~{may}~~ be invited to report to the Conference of the Parties on the implementation of measures that they have established.

PART IV

ENVIRONMENTAL IMPACT ASSESSMENTS

Article 22

Obligation to conduct environmental impact assessments

1. States Parties shall [as far as practicable] assess the potential effects of planned activities under their jurisdiction or control [on the marine environment] ~~in accordance with their obligations under articles 204 to 206 of the Convention~~.
2. ~~On the basis of articles 204 to 206 of the Convention,~~ States Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement the provisions ~~of this Part~~ [[and any further measures [on the conduct of environmental impact assessments] adopted by the Conference of the Parties].
3. The requirement in this Part to conduct an environmental impact assessment applies [only to activities conducted in areas beyond national jurisdiction] [to all activities that have an impact in areas beyond national jurisdiction].

Article 23

Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with [the obligations under] the Convention.

[2. Alt. 1. The Scientific and Technical Body shall consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment. [Procedures for consultation and/or coordination shall include the establishment of an ad hoc interagency working group or the participation of representatives of the scientific and technical bodies of those organizations in meetings of the Scientific and Technical Body].]

[2. Alt. 2. State Parties shall cooperate in promoting the use of environmental impact assessments in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies for planned activities that meet or exceed the threshold contained in this Agreement.]

~~[3. Alt. 1. [Global minimum standards] [and] [guidelines] for the conduct of environmental impact assessments [under relevant legal~~

~~instruments and frameworks and relevant global, regional, subregional and sectoral bodies] shall be developed [by the Scientific and Technical Body] [through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies]. [These [global minimum standards] [and] [guidelines] shall be set out in an annex to this Agreement and shall be updated periodically].~~

~~[3. Alt. 2. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.]~~

[4. Alt. 1. Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate in relation to marine biological diversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in this Part.]

[4. Alt. 2. No environmental impact assessment is required under this Agreement for any activity conducted in accordance with the rules and guidelines appropriately established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.]

[4. Alt. 3. No environmental impact assessment is required under this Agreement where relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies with mandates for environmental impact assessments for planned activities [with impacts] in areas beyond national jurisdiction already exist, regardless of whether or not an environmental impact assessment is required for the planned activity under the jurisdiction or control of a State Party.]

[4. Alt. 4. Where a planned activity under the jurisdiction or control of a State Party [with impacts] in areas beyond national jurisdiction is already covered by existing environmental impact assessment obligations and agreements, it is not necessary to conduct another environmental impact assessment of that activity under this Agreement [, provided that the [State with jurisdiction or control over the planned activity] [body set forth in Part [...]] [, following consultation with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,] determines that:

[(a) The outcome of environmental impact assessment under those obligations or agreements is effectively implemented;]

[(b) The environmental impact assessment already undertaken is [[functionally] [substantively] equivalent to the one required under this Part] [comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts];]

[(c) The threshold for the conduct of environmental impact assessments meets or exceeds the threshold set out in this Part.]]

Article 24

Thresholds and criteria for environmental impact assessments

[1. Alt.1

1. When States have reasonable grounds for believing that planned activities under their jurisdiction or control ~~may cause substantial pollution of or significant and harmful changes to~~ ~~[are likely to have more than a minor or transitory effect on]~~ the marine environment [in areas beyond national jurisdiction], they shall, [individually or collectively,] as far as practicable, [assess the potential effects of such activities on the marine environment] [ensure that the potential effects of such activities on the marine environment are assessed].]

[1. Alt.2

1. When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control:

(a) Are likely to have more than a minor or transitory effect on the marine environment, they shall conduct an environmental impact assessment on the potential effects of such activities on the marine environment in the manner provided in this Part;

(b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall [conduct] [ensure that] a [full] [comprehensive] environmental impact assessment [is conducted] on the potential effects of such activities on the marine environment [and ecosystems] and shall submit the results of such assessments [for technical review] in the manner provided in this Part.

[2. Environmental impact assessments shall be conducted in accordance with the threshold and criteria [set out in this Part and as further elaborated upon pursuant to the procedure set out in paragraph [...]] [, which shall be developed by the Scientific and Technical Body].]

Commented [GB-IMttU-5]: We prefer the use of this alternative. Whoever, would be willing to consider Alt 1 with the suggested changes.

Article 25

Cumulative impacts

1. Cumulative impacts shall ~~[as far as possible]~~ be ~~[taken into account]~~ ~~[considered]~~ in the conduct of environmental impact assessments.

[2. Alt. 1. Guidelines for assessing cumulative impacts in areas beyond national

jurisdiction and how those impacts will be taken into account in the environmental impact assessment process for planned activities shall be developed by the Conference of the Parties.]

~~[2.—Alt. 2. In determining cumulative impacts, the incremental effect of a planned activity under the jurisdiction or control of a State Party when added to the effects of past, present and reasonably foreseeable future activities shall be examined regardless of whether the State Party exercises jurisdiction or control over those other activities.]~~

Article 29

List of activities that [require] [or] [do not require] an environmental impact assessment

[1. An indicative non-exhaustive list of activities that ~~[normally]~~ [require] [or] [do not require] an environmental impact assessment [is contained in annex [...]] [shall be [prepared by the Conference of the Parties as voluntary guidelines on the basis of recommendations by the Scientific and Technical Body]].]

[2. The list shall be regularly updated by the Conference of the Parties.]

Article 31

Scoping

[1. States Parties shall establish procedures to define the scope of the environmental impact assessments that shall be conducted [under the provisions of this Part].]

[2. Such scope shall include, the identification of key environmental ~~[, social, economic, cultural and other relevant]~~ [impacts] [issues], including identified cumulative impacts, using the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities [, alternatives for analysis] [and a determination of the potential effects of the planned activity under the jurisdiction or control of a State Party, including a detailed description of potential environmental consequences].]

Article 32

Impact assessment and evaluation

1. A State Party [that has determined that a planned activity under its jurisdiction

or control requires an environmental impact assessment under this Agreement] shall ensure that the identification and evaluation of impacts in such an assessment is conducted in accordance with this Part, using the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities [, and an examination of alternatives].

2. Nothing in this Part precludes States Parties, in particular [small island] developing States, from conducting joint environmental impact assessments.

[3. A State Party may designate a third party to conduct an environmental impact assessment required under this Agreement. Such third party ~~{shall}~~ {may} be drawn from the pool of experts created pursuant to paragraph 4 below. Environmental impact assessments conducted by such third parties must be submitted to the State for review and decision-making.]

[4. A pool of experts shall be created under the Scientific and Technical Body. States Parties with capacity constraints may commission those experts to conduct and evaluate environmental impact assessments for planned activities.]

Article 34

Public notification and consultation

1. States Parties shall ~~ensure~~ ~~strive to provide~~ early notification to stakeholders about planned activities under their jurisdiction or control and effective, time-bound opportunities for stakeholder participation throughout the environmental impact assessment process, including through the submission of comments, before a decision is made as to whether to proceed with the activity.

[2. Stakeholders in this process include potentially affected States, where those can be identified, [in particular adjacent coastal States] [, indigenous peoples and local communities with relevant traditional knowledge in adjacent coastal States,] relevant global, regional, subregional and sectoral bodies, non-governmental organizations, the general public, academia [, scientific experts] [, affected parties,] [adjacent communities and organizations that have special expertise or jurisdiction] [, interested and relevant stakeholders] [, and those with existing interests in an area].]

3. Public notification and consultation shall be transparent and inclusive ~~[, and targeted and proactive when involving adjacent small island developing States].~~

4. [Substantive] comments received during the consultation process [from adjacent coastal States] shall be considered and [addressed] [responded to] by States Parties. States Parties shall give particular regard to comments

concerning potential transboundary impacts. States Parties shall make public the comments received and the descriptions of how they were addressed.

5. States Parties [undertaking an environmental impact assessment pursuant to this Agreement] shall establish procedures allowing for access to information related to the environmental impact assessment process under this Agreement.

[Notwithstanding this, States Parties shall not be required to disclose non - public information or information that would undermine intellectual property rights or other interests].

[6. Procedures may be developed by the Conference of the Parties to facilitate consultation at the international level.]

Article 35

Preparation and content of environmental impact assessment reports

1. States Parties shall [be responsible for] [ensure] the preparation of an environmental impact assessment report for any such assessment undertaken pursuant to this Part.

2. Where an environmental impact assessment is required in accordance with this Part, the environmental impact assessment report ~~shall~~ ~~may~~ include [as a minimum, the following information]:

(a) A description of the planned activity under the jurisdiction or control of a State Party and its purpose [, including a description of the location of [the] [such a] planned activity];

(b) A description of the results of the scoping exercise;

(c) A description of the marine environment likely to be affected;

(d) A description of the potential effects of the planned activity under the jurisdiction or control of a State Party on the marine environment, including ~~[social, economic, cultural and other relevant impacts,]~~ and ~~rea-~~sonably foreseeable potential direct, ~~indirect,~~ cumulative and transboundary impacts, [as well as an estimation of their significance] [, including a description of the likelihood that the assessed activity will cause substantial pollution of or other significant and harmful changes to the marine environment in areas beyond national jurisdiction and its biodiversity];

(e) A description ~~f,~~ where appropriate, ~~f~~ of reasonable alternatives to the

planned activity under the jurisdiction or control of a State Party, including the no-action alternative;

~~[(f) A description of the worst case scenario that could be expected to occur as a result of the planned activity under the jurisdiction or control of a State Party;]~~

(g) A description of any measures for avoiding, preventing [, minimizing] and mitigating impacts [and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment] ~~[and other adverse social, economic, cultural and relevant impacts];~~

(h) A description of any follow-up actions, including any monitoring and management programmes, any plans for post-project analysis where scientifically justified, and plans for remediation;

(i) Uncertainties and gaps in knowledge;

(j) [A non-technical summary] [and/or a technical summary];

[(k) The identification of the sources of the information contained in the report;]

[(l) An explicit indication of predictive methods and underlying assumptions, as well as the relevant environmental data used;]

[(m) The methodology used to identify environmental impacts;]

[(n) An environmental management plan, including a contingency plan for responding to incidents that have an impact on the marine environment;]

[(o) The environmental record of the proponent;]

[(p) A review of the business plan for the planned activity under the jurisdiction or control of a State Party;]

(q) A description of consultations undertaken in the environmental impact assessment process, including with relevant global, regional, subregional and sectoral bodies.

[3. Further [details] [guidance] regarding the required content of an environmental impact assessment report [shall] [may] be developed by the Conference of the Parties as an annex to this Agreement and shall be based on the best available scientific information and knowledge, including relevant

traditional knowledge of indigenous peoples and local communities. [[These details] [This guidance] shall be reviewed regularly].]

Article 36

Publication of [assessment] reports

States Parties shall publish [and communicate] the reports of the results of the assessments ~~in accordance with [articles 204 to 206 of] the Convention~~ [, including through the clearing-house mechanism].

Article 39

Monitoring

~~In accordance with articles 204 to 206 of the Convention~~, States Parties shall [[continuously] monitor the effects of authorized activities] [ensure that the environmental impacts of the authorized activity are [continuously] monitored [and supervised]] [, in accordance with the conditions set out in the approval of the activity].

Article 41

Review

[1. States Parties shall ensure that the environmental impacts of the authorized activity are reviewed.]

[(a) Should the results of the monitoring required under article 39 identify adverse impacts not foreseen in the environmental impact assessment, the [State with jurisdiction or control over the activity] ~~[Scientific and Technical Body]~~ shall:

[(i) Notify the [Conference of the Parties] [other States] [the public];] [(ii) Halt the activity;]

[(iii) Require the proponent to propose measures to mitigate and/or prevent those impacts;]

[(iv) Evaluate measures proposed under article [...] and decide whether the activity should continue];]

[(b) The Conference of the Parties shall develop guidelines on the nature and severity of the impacts that would require a supplemental environmental impact assessment.]

[2. A ~~non-adversarial consultation~~ process shall be established to resolve

~~[controversies]~~ ~~[differences]~~ ~~[disagreements]~~ in respect of monitoring,
~~[without recourse to judicial or non-judicial bodies].]~~

[3. [All States and, in particular] Adjacent coastal States [, including small island developing States,] shall be [kept informed of] [consulted actively [, as appropriate,] in] the monitoring, reporting and review processes in respect of [an activity approved under this Agreement] [activities in areas beyond national jurisdiction].]

PART V

CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

Article 42 **Objectives**

The objectives of this Part are to:

(a) Assist States Parties, in particular developing States Parties, in implementing the provisions of this Agreement, to achieve its objectives;

(b) Enable inclusive and effective participation in the activities undertaken under this Agreement;

[(c) ~~†Promote and encourage~~ ~~†Ensure~~ access to marine technology by and transfer of marine technology for peaceful purposes to developing States Parties for the attainment of the objectives of this Agreement;]

(d) Increase, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

(e) Develop the marine scientific and technological capacity of States Parties with regard to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

(f) ~~Ensure~~ Encourage that developing States Parties have:

[(i) Access to, and benefit from, the scientific information resulting from [the collection of] [access to] resources in areas beyond national jurisdiction, in particular marine genetic resources;]

[(ii) Access to, and that their special requirements receive consideration in, the sharing of benefits from marine genetic resources and in marine scientific research;]

[(iii) [Collection of] [Access to] marine genetic resources *in situ*, *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data] [and their utilization];]

[(iv) [Endogenous] [Local] research capabilities relating to marine genetic resources and products, processes and other tools;]

(v) The capacity to develop, implement, monitor and manage, including to enforce, any area-based management tools, including marine protected areas;

(vi) The capacity to conduct and evaluate environmental impact assessments [and strategic environmental assessments].

Article 43

Cooperation in capacity-building and transfer of marine technology

1. States Parties, directly or through relevant legal instruments and frameworks

and relevant global, regional, subregional and sectoral bodies, shall [promote] ~~[ensure]~~ cooperation, [in accordance with [this Agreement] [Part XIV of the Convention],] in accordance with their capabilities, in capacity -building and the transfer of marine technology to assist States Parties that need and request it, in particular developing States Parties in achieving the objectives of this Agreement.

2. Capacity-building and the transfer of marine technology under this Agreement

shall be ~~[carried out]~~ ~~[promoted]~~ through enhanced cooperation ~~at all levels and in all forms, including partnerships with and involving all relevant stakeholders, such as, where appropriate, [the private sector,] civil society and holders of traditional knowledge,~~ and by strengthening cooperation, coordination and synergies between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

3. In giving effect to the duty to ~~[cooperate]~~ ~~[promote cooperation]~~ under this article, States Parties shall give full recognition to the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

Article 44

Modalities for capacity-building and the transfer of marine technology

1. States Parties, recognizing that capacity-building, access to and the transfer of

marine technology, including biotechnology, among States Parties are essential elements for the attainment of the objectives of this Agreement, ~~[undertake to provide or facilitate]~~ ~~[shall promote]~~ ~~[shall ensure]~~ access to and the transfer of marine technology, and capacity-building, for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries.

2. Capacity-building and the transfer of marine technology ~~[shall]~~ ~~[may]~~ be provided on a ~~[mandatory and voluntary]~~ ~~[voluntary]~~ ~~[bilateral, regional, subregional and multilateral]~~ basis.

3. Capacity-building and the transfer of marine technology shall be transparent and country-driven [, and shall not duplicate existing programmes]. Capacity-building and the transfer of marine technology shall be guided by lessons learned, including those from capacity-building and the transfer of marine technology activities under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive.

4. Capacity-building and the transfer of marine technology shall be based on and be responsive to the needs and priorities of developing States Parties [as determined by] [informed by] a needs assessment [on an individual case -by-case, subregional or regional basis]. Such needs and priorities may be self-assessed or facilitated through a mechanism, which may be established by the Conference of the Parties.

[5. Detailed modalities, procedures and guidelines for capacity-building and the transfer of marine technology ~~[may]~~ ~~[shall]~~ be developed and adopted by the Conference of the Parties.]

Article 49

Scientific and Technical Body

1. A Scientific and Technical Body is hereby established.
2. The Body shall be composed of experts, taking into account the need for multidisciplinary expertise ~~[, including expertise in relevant traditional knowledge of indigenous peoples and local communities]~~, gender balance and equitable geographical representation.
3. The Body may also draw on appropriate advice from [existing arrangements, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection] [relevant legal instruments and frameworks and

relevant global, regional, subregional and sectoral bodies], as well as other scientists and experts, as may be required.

4. Under the authority and guidance of the Conference of the Parties, the Body shall:

(a) Provide scientific and technical advice to the Conference of the Parties;

[(b) Monitor the utilization of marine genetic resources of areas beyond national jurisdiction;]

[(c) Possess recommendatory functions with respect to measures such as area - based management tools, including marine protected areas, including regarding:

(i) Standard-setting and review;

(ii) The assessment of proposals;

(iii) The monitoring and review of measures;]

[(d) Elaborate guidelines with respect to environmental impact assessments;]

[(e) Make recommendations to the Conference of the Parties with respect to environmental impact assessments;]

[(f) Review environmental impact assessment standards to ensure consistency with the requirements under this Agreement;]

[(g) Identify innovative, efficient and state-of-the-art technology and know-how relating to the conservation and sustainable use of marine biological diversity;]

[(h) Advise on ways and means to promote the development and transfer of marine technology;]

[(i) Assess the effectiveness of the implementation of measures and programmes for capacity-building and the transfer of marine technology, including by assessing whether capacity gaps are decreasing;]

[(j) Collaborate with regional and subregional committees on capacity - building and the transfer of marine technology or regional needs assessment mechanisms;]

[(k) Elaborate programmes for capacity-building and the transfer of marine technology;]

[(l) Establish subsidiary bodies as required;]

(m) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

Article 51

Clearing-house mechanism

1. A clearing-house mechanism is hereby established.
2. The clearing-house mechanism shall consist primarily of an open-access web-based platform. [It shall also include a network of experts and practitioners in relevant fields.] The specific modalities for the operation of the clearing-house mechanism shall be determined by the Conference of the Parties.
3. The clearing-house mechanism shall serve as a centralized platform to enable States Parties to have access to, [collect,] [evaluate,] [make public] and disseminate information with respect to:

[(a) Activities related to marine genetic resources of areas beyond national jurisdiction, including notices of forthcoming *in situ* collection of marine genetic resources, research teams, ecosystems where the marine genetic resources are collected, the [digital] [genetic] properties of the marine genetic resources, their biochemical components, genetic sequence data [and information] [and the utilization of marine genetic resources];]

[(b) Data and scientific information on, as well as [, in line with the principle of prior informed consent,] traditional knowledge associated with, marine genetic resources of areas beyond national jurisdiction, including through lists of databases, repositories or gene banks where marine genetic resources of areas beyond national jurisdiction are currently held, a registry of such resources, and a track -and-trace mechanism for marine genetic resources of areas beyond national jurisdiction and their utilization;]

[(c) The sharing of benefits, including through reports on the status of monetary benefits shared and on their use through the publication of the proceedings of the meetings of the Conference of the Parties;]

[(d) Environmental impact assessments [, including:

(i) Environmental impact assessment reports;

(ii) Guidelines and technical methods on environmental impact assessments];]

[(e) Opportunities for capacity-building and the transfer of marine technology, such as activities, programmes and projects being conducted in areas beyond national jurisdiction, including those relevant to building capacity for skills development in activities covered in this Agreement [, as well as availability of funding];]

[(f) Requests for capacity-building and the transfer of marine technology on a case-by-case basis;]

[(g) Research collaboration and training opportunities, including in relation to information on universities and other organizations that offer study grants and facilities in the field of marine science, marine research institutes that offer laboratory facilities, equipment and opportunities for research and training, and offers of cruise studies at the global, regional and subregional levels;]

[(h) Information on sources and availability of technological information and data for the transfer of marine technology and opportunities for facilitated access to marine technology.]

[4. The clearing-house mechanism shall:

(a) Match capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and [provide] [facilitate] access to related know-how and expertise;

[(b) Promote linkages to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases, repositories and gene banks [, including experts in relevant traditional knowledge of indigenous peoples and local communities];]

[(c) Link to private and non-governmental platforms for the exchange of information;]

[(d) Build on regional and subregional clearing-house institutions, if applicable, when establishing regional and subregional mechanisms under the global mechanism;]

(e) Facilitate enhanced transparency, including by providing baseline data and information;

(f) Facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration.]

~~[5.—The clearing-house mechanism shall recognize the special circumstances of~~

~~small island developing States Parties [and archipelagic developing States Parties], facilitate access to the mechanism to enable those States to utilize it without undue obstacles or administrative burdens, and include information on activities to promote information sharing, awareness raising and dissemination in and with those States, as well as provide specific programmes for those States.]~~

[6. The clearing-house mechanism shall be managed by [the secretariat] [the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, in association with relevant organizations, including the International Seabed Authority and the International Maritime Organization, and shall be informed by the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology].]

[7. ~~Due regard shall be given to the confidentiality of information provided under this Agreement.]~~

Commented [GB-IMttU-6]:

We believe that only no-confidential information should be provided to the clearing-house mechanism. If that is the case, then this provision would not be relevant/necessary. Hence, we would suggest deletion.

[PART VII FINANCIAL RESOURCES [AND MECHANISM]]

[Article 52 Funding]

[1. Funding in support of the implementation of this Agreement, in particular capacity-building and the transfer of marine technology under this Agreement, shall be adequate, accessible, transparent [, sustainable and predictable] and ~~[both voluntary and mandatory]] [voluntary].]~~

2. Funding may be provided through public and private sources, both national and international, including but not limited to contributions from States, international financial institutions, existing funding mechanisms under global and regional instruments, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons, and through public-private partnerships.

3. States Parties shall ensure that, for the purposes of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, developing States Parties are granted preference by international organizations in the allocation of appropriate funds and technical assistance and the utilization of their specialized services.

4. A voluntary trust fund to facilitate the participation of representatives of developing States Parties in the meetings of the bodies under this Agreement shall be established by the Conference of the Parties. It shall be funded through voluntary contributions.

[Alt.1

~~5. In addition to the voluntary trust fund, a special fund [may] [shall] be established by the Conference of the Parties to:~~

- ~~(a) Fund capacity-building projects, including effective projects on the conservation and sustainable use of marine biological diversity;~~
- ~~(b) Fund activities and programmes, including training, related to the transfer of technology;~~
- ~~(c) Assist developing States Parties to implement this Agreement;~~
- ~~(d) Finance the rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction;~~
- ~~(e) Support conservation and sustainable use programmes by holders of traditional knowledge of indigenous peoples and local communities;~~
- ~~(f) Support public consultations at the national, subregional and regional levels;~~
- ~~(g) Undertake any other functions as agreed by the States Parties.~~

5bis. The special fund shall be funded through:

- ~~(a) Voluntary contributions;~~
- ~~[(b) Mandatory sources, including:~~
 - ~~(i) Contributions from States Parties and royalties and milestone payments resulting from the utilization of marine genetic resources;~~
 - ~~(ii) Payments as a condition of access to, and utilization of, marine genetic resources, premiums paid during the approval process of environmental impact assessments, in addition to cost recovery, fees and penalties, and other avenues for mandatory payments;]~~
- ~~(c) Endowments by States Parties;~~

~~(d) Existing financial mechanisms, such as the Global Environment Facility and the Green Climate Fund;~~

~~[(e) Private entities wishing to engage in the exploration and exploitation of marine biological diversity of areas beyond national jurisdiction.]]~~

[Alt.2

5. States Parties shall cooperate to establish appropriate funding mechanisms to assist developing States Parties with achieving the objectives of capacity - building and the transfer of marine technology under this Agreement.]

6. The funding mechanisms established under this Agreement shall be aimed at ensuring efficient access to funding through simplified approval procedures and enhanced readiness of support for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries.

7. Access to funding under this Agreement shall be open to developing States Parties [on the basis of need] [, taking into account the needs for assistance of States Parties with special requirements, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle -income countries].

[ANNEX I

Indicative criteria for identification of areas]

[(a)

Uniqueness; [(b)

Rarity;]

(c) Special importance for the life history stages of species;

(d) Special importance of the species found therein;

(e) The importance for threatened, endangered or declining species or habitats;

(f) Vulnerability, including to climate change and ocean acidification;

(g) Fragility;

(h) Sensitivity;

(i) Biological diversity [and productivity];

~~[(j) Representativeness;]~~

~~(k) Dependency;~~

~~[(l) Exceptional naturalness;]~~

(m) Ecological connectivity [and/or coherence];

(n) Important ecological processes occurring therein;

~~[(o) Economic and social
factors;]~~

~~[(p) Cultural factors]~~

[(q) Cumulative and
transboundary impacts;]

(r) Slow recovery and resilience;

(s) Adequacy and viability;

(t) Replication;

(u) Feasibility.]

Submission by Japan

PART III-
AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE
PROTECTED AREAS

Article 14
Objectives

The objectives of area -based management tools, including marine protected areas, may include:

- (a) Enhancing cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional and sectoral bodies;
- (b) Promoting an integrated approach to ocean management;
- (c) Establishing network of ecologically representative marine protected areas.

Article 15
International cooperation and coordination

1. To further international cooperation and coordination with respect to area-based management tools, including marine protected areas, States Parties shall promote consultations, exchanging of views and sharing knowledge and experiences obtained in establishing area-based management tools, including marine protected areas, under this agreement with relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, without prejudice to their respective mandates, in accordance with this Part.
2. States Parties may establish consultation processes at the global and/or regional levels, as appropriate, to enhance cooperation and coordination among relevant legal instruments and frameworks and relevant global, regional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among associated conservation and management measures adopted under such instruments and frameworks and by such bodies.
3. In promoting cooperation and coordination under this article, States Parties shall not undermine relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

4. Measures adopted in accordance with this Part shall not undermine the effectiveness of measures adopted by coastal States in adjacent areas within national jurisdiction and should have due regard for the rights, duties and legitimate interests of all States, as reflected in relevant provisions of the Convention. Consultations should be undertaken to this end, in accordance with the provisions of this Part.

5. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls under the national jurisdiction of a coastal State, either wholly or in part, or impedes the rights of the coastal States provided in the Convention, that area-based management tool or marine protected area shall be amended to cover any remaining area beyond national jurisdiction, and to rectify the infringement or otherwise cease to be in force.

Article 16

Identification of areas and measures

1. Areas requiring the establishment of area-based management tools, including marine protected areas, shall be identified on the basis of the best available science, the precautionary approach and the ecosystem approach and take into account relevant traditional knowledge of indigenous peoples and local communities.

2. Criteria for the identification of areas requiring the establishment of area-based management tools, including marine protected areas, under this Part shall be developed by the Scientific and Technical Body in the form of guidelines for the consideration by the Conference of the Parties after entry into force of this Agreement.

3. The criteria mentioned in paragraph 2 shall be applied by the States Parties in the identification of areas for the establishment of the area-based management tools, including marine protected areas, and the criteria used for the identification shall be specified in proposals submitted in accordance with this Part.

4. The conservation and management measures for an identified area shall be designed to meet the conservation and sustainable use objectives specified in the proposal pursuant to article 17, paragraph 3 (a), based on the best available science, the precautionary approach and the ecosystem approach.

Article 17

Proposals

1. Proposals in relation to the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.
2. Proposals shall be based on the best available science, the precautionary approach and the ecosystem approach and take into account the relevant traditional knowledge of indigenous peoples and local communities.
3. Proposals shall include the following elements:
 - (a) A description of the conservation and sustainable use objectives
 - (b) A geographic or spatial description of the area that is the subject of the proposal, including;
 - (i) Information including scientific data on the criteria applied in identifying the area and the information on the contact persons of the State Party submitting the proposal, responsible for the data;
 - (ii) Specific human activities in the area, including uses by local communities in adjacent coastal States;
 - (iii) Elements on the state of the marine environment and biodiversity in the identified area;
 - (c) A description of the proposed conservation and management measures to achieve the specific objectives specified in paragraph (a), including;
 - (i) Scientific data supporting the identification of conservation and management measures and the information on the contact persons of the State Party submitting the proposal, responsible for the data;
 - (ii) A monitoring, research and review plan with specific timeline of the reviewing process;
 - (d) Information on any consultations undertaken with adjacent coastal States and/or relevant global, regional and sectoral bodies.

Article 18

Consultation on and assessment of proposal

1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all relevant stakeholders.
2. Upon receipt of a proposal, the secretariat shall conduct a preliminary review of the proposal to determine whether it includes all the elements specified in article 17. If the proposal is complete for further processing, the secretariat shall make the proposal publicly available. All States, in particular adjacent coastal States, relevant legal instruments and frameworks and relevant global, regional and sectoral bodies and other relevant stakeholders, including the scientific community, civil society and local communities with relevant traditional knowledge shall be invited to submit their views and/or information based on the best available scientific information and knowledge.

3. Any views and/or information received pursuant to paragraph 2 shall be made publicly available by the secretariat.
4. The proponent shall consider such views and/or information received during the consultation period and may revise the proposal accordingly or continue the consultation process.
5. The consultation period shall be time-bound. If the proposal is revised, however, the revised proposal shall be made public and the consultation period shall be extended accordingly. The time period of consultations including extended period shall be determined by the Conference of the Parties pursuant to paragraph 7.
6. After the consultation concluded, the proposal shall be submitted to the Scientific and Technical Body which shall assess the proposal, and make a report to the Conference of the Parties including its advices.
7. The modalities of the consultation and assessment process shall be further elaborated by the Conference of the Parties, as necessary.

Article 19

Decision-making

1. Taking into account the scientific advice or reports of the Scientific and Technical Body and the contributions received during the consultation process provided in Article 18, the Conference of the Parties may take decisions, with respect to the proposals submitted pursuant to Article 17, in relation to:
 - (a) The specific objectives;
 - (b) The identification of areas over which area-based management tools, including marine protected areas are to be established; and
 - (c) The conservation and [management] [sustainable use] measures, including a monitoring, research and review plan, to be adopted in that identified areas to achieve the specified objectives referred to in subparagraph (a).Such decisions shall be made public by the secretariat within 10 days of the date of the decision.
2. Where there are relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, the decisions made by the Conference of the Parties pursuant to paragraph 1, constitute a recommendation for that relevant legal instruments or frameworks or relevant global, regional or sectoral bodies to consider and make a final decision.
3. Where there are no relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, the Conference of the Parties shall request

relevant States, especially coastal States adjacent to the areas identified pursuant to paragraph 1 (b) to consider its decision and decide either:

- (a) to establish such an instrument, framework or body to adopt and implement the decisions made by the Conference of the Parties; or
- (b) to entrust the Conference of the Parties to establish such area-based management tools, including marine protected areas, provided that all the relevant States agree to do so.

Note: For the purposes of this Article, the term “the relevant States” means any States that notify the secretariat of their wish to participate the consultations of the relevant States, within sixty days after the date the decisions are made public.

4. When the relevant legal instrument or framework or relevant global, regional or sectoral body made the final decision to adopt and to implement the recommendation provided in paragraph 2, or when the relevant States decided to entrust the Conference of the Parties as provided in paragraph 3(b), such decisions as well as the details of the matters related to paragraph 1(a), (b) and (c) including their revisions if any, shall be circulated to all States Parties of this Agreement by the secretariat.

5. The decisions that are circulated in pursuant to paragraph 4, shall become binding on the expiry of a period of (two hundred) days after its circulation for those State Parties that have not notified the Conference of the Parties within that period in writing that they are unable to accept the decision.

Article 20

Implementation

1. States Parties shall take measures to facilitate activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.

2. Nothing in this Agreement shall prevent a State Party from adopting stricter measures with respect to its vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law.

3. States Parties shall promote the adoption of measures recommended by the Conference of the Parties within relevant legal instruments and frameworks and relevant global, regional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures.

4. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the conservation and management objectives of the measures adopted under this Part.

5. The relevant legal instruments and frameworks and relevant global, regional and sectoral bodies are responsible for the implementation and enforcement of the conservation and management measures established by those bodies in relation to area-based management tools, including marine protected areas.

Article 21

Monitoring and review

1. States Parties, individually or collectively, shall monitor and report on the implementation of measures in area-based management tools, including marine protected areas established under this Part. The State Party submitting the proposal should take the lead in monitoring the measures, while other States Parties may monitor them and report thereon. The relevant legal instruments and frameworks and relevant global, regional and sectoral bodies responsible for the measures shall be invited to assist the States Parties for monitoring and making reports. The reports shall cover the relevant activities with associated data and shall be sent to the secretariat within the required time frame after the monitoring activity.

2. The Scientific and Technical Body shall periodically review the area-based management tools, including marine protected areas, based on the reports referred to in paragraph 1. Such reviews shall assess the effectiveness of measures and the progress made in achieving their objectives. After the review, the Scientific and Technical Body shall provide advice and recommendations to the Conference of the Parties.

3. Based on the advice and recommendations referred in paragraph 2, the Conference of the Parties shall, as necessary, take decisions on extension, amendment or revocation of area-based management tools, including marine protected areas as well as associated conservation and management measures, on the basis of an adaptive management approach and taking into account the best available scientific information and knowledge, including traditional knowledge, the precautionary approach and an ecosystem approach.

4. The decisions of the Conference of the Parties referred to in paragraph 3 shall be transmitted to the relevant legal instruments and frameworks and relevant global, regional and sectoral bodies responsible for the measures for their considerations and making final decisions on extension, amendment or revocation

of the measures.

REPUBLIC OF KENYA



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

**STATE DEPARTMENT FOR FISHERIES, AQUACULTURE AND THE BLUE ECONOMY
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19th February 2020

The Secretariat

United Nations Division of
Ocean Affairs and the Law of the Sea
New York, NY

UNITED STATES OF AMERICA

**RE: COMMENTS OF THE GOVERNMENT OF THE REPUBLIC OF
KENYA ON THE REVISED DRAFT TEXT OF AN AGREEMENT
UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF
THE SEA ON THE CONSERVATION AND SUSTAINABLE USE OF
MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND
NATIONAL JURISDICTION**

We have perused the above-stated Revised Draft Text contained in the document referenced A/CONF.232/2020/3 and wish to make proposals to the text as follows:

1) Preamble:

A new paragraph should be inserted immediately before the paragraph that in part reads thus: '*Desiring to act as stewards ...*'

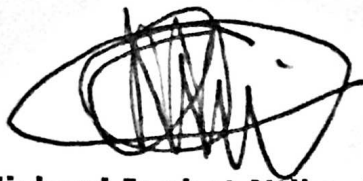
The proposed paragraph should read as follows:

'Acknowledging the disastrous effect on States and their peoples caused by growing destruction of Biological Diversity, especially the impact on food security and livelihoods of those in Developing States and Small Island Developing States,'

2) Part I, Article 1:

Insert a definition of 'Biological Diversity in Areas Beyond National Jurisdiction'.

We propose that the definition encompasses / includes fish since they are the living organisms that have suffered arguably the most destruction from human activity and ever-increasing effort in the ocean; and whose conservation and sustainable use is directly linked to food and food security and thus the survival of humankind.



Prof. Micheni Japhet Ntiba, Ph.D, DBA, CBS
PRINCIPAL SECRETARY

Copy to: **Mr. Kennedy Ogeto EBS**
Solicitor-General
Office of the Attorney General and
Department of Justice
NAIROBI

Mr. Macharia Kamau, CBS
Principal Secretary
Ministry of Foreign Affairs
NAIROBI

Proposals for the ILBI on BBNJ, on behalf of the Republic of Maldives

Article 8, 1 (a):

[1. The provisions of this [Part] [Agreement] Part shall apply to:

[(a) marine genetic resources **both accessed in and originating from areas beyond national jurisdiction**, insofar as they are collected for the purposes of being the subject of research into their genetic properties;]

Article 35, 2 (d):

d) A description of the potential effects of the planned activity, **at both developmental and operational phases**, under the jurisdiction or control of a State Party on the marine environment, including [social, economic, cultural and other relevant impacts,] and [reasonably foreseeable potential direct, indirect,] [cumulative and transboundary impacts], [as well as an estimation of their significance] [, including a description of the likelihood that the assessed activity will cause substantial pollution of or other significant and harmful changes to the marine environment in areas beyond national jurisdiction and its biodiversity];

Article 45, 2:

The development and transfer of marine technology shall be carried out on **a voluntary and mandatory basis**.



Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

Submission by Monaco

19 February 2020

Pursuant to the Note by the President of the Intergovernmental Conference, H. E. Ms. Rena LEE, referenced A/CONF.232/2020/3, containing the revised draft text of an agreement, the delegation of the Principality of Monaco has the honor to submit the following written submission, reflecting its textual propositions to the revised draft text of an agreement, in view of the fourth session of the Intergovernmental Conference, to be held from 23 March to 3 April 2020.

~~Red and struck through~~: proposed deletions

Bold: proposed additions

Green: comments

PART I

GENERAL PROVISIONS

Article 1 Use of terms

3. “Area-based management tool” means a tool, ~~including a marine protected area~~, for a geographically defined area, **based on the best available science**, through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives ~~[and affording higher protection than that provided in the surrounding areas]~~.

10. “Marine protected area” ~~means~~ **is a type of area-based management tool** ~~a geographically defined marine area~~ that is ~~designated~~ **established** and managed to achieve specific ~~[long-term biodiversity] conservation~~ **and sustainable use** objectives ~~[and that affords higher protection than the surrounding areas]~~.

Article 2

General objectives

The objective of this Agreement is to ensure the ~~[long-term]~~ conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.

Article 3

Application

1. This Agreement applies to areas beyond national jurisdiction.
2. This Agreement does not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement.

Article 4

Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.
2. The rights and jurisdiction of coastal States in all areas under national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone, shall be respected in accordance with the Convention.
3. This Agreement shall be interpreted and applied in a manner that ~~[respects the competences of and]~~ does not undermine **the effectiveness of** relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.
- [4. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.]

Article 5

General ~~principles~~ and ~~approaches~~

In order to achieve the objective of this Agreement, States Parties shall be guided by the following:

- ~~{(a) The principle of non-regression;}~~
- (b) [The polluter pays principle] [The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment];
- ~~{(c) The principle of the common heritage of mankind;}~~
- ~~{(d) The principle of equity;}~~
- (e) The precautionary ~~[principle]~~ ~~approach~~;
- (f) An ecosystem approach;
- ~~{(g) An integrated approach;}~~
- (h) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;
- (i) The use of the best available ~~science~~ ~~scientific information and relevant traditional knowledge of indigenous peoples and local communities~~;
- (j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another.

Article 6

International cooperation

1. States Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and members thereof in the achievement of the objective of this Agreement.

2. States Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objective of this Agreement.

~~{3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary.}~~

PART III

MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

Article 14 Objectives

The objectives of this Part are to:

~~[(a) Enhance cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, which will also promote a holistic and cross-sectoral approach to [ocean management] [conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction];]~~

Commented [FB1]: (note: the second part of the paragraph is merged with paragraph d)

~~[(b) Implement effectively obligations under the Convention and other relevant international obligations and commitments;]~~

~~[(c) Conserve and sustainably use areas requiring protection, including by establishing a global comprehensive system of area-based management tools, including marine protected areas;]~~

[(d) Promote a holistic and cross-sectoral approach to conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through the establishment of a system well-connected network of ecologically representative marine protected areas that are ~~connected~~ [and effectively [and equitably] managed];]

Commented [FB2]: (note: the first part of the paragraph is taken from the second part of paragraph a)

[(e) Protect, maintain ~~Rehabilitate~~ and restore biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution;]

~~[(f) Support food security and other socioeconomic objectives, including the protection of cultural values;]~~

~~[(g) Create scientific reference areas for ~~baseline-research~~ research, education, monitoring or long-term observations;]~~

~~[(h) Safeguard aesthetic, natural or wilderness values;]~~

~~[(i) Promote coherence and complementarity;]~~

[(j) Protect representative examples of marine ecosystems, biodiversity and habitats at an appropriate scale to maintain their viability and integrity in the long term;

(k) Protect key ecosystem processes, habitats and species, including populations and life-history stages;

(l) Protect areas vulnerable to impact by human activities, including unique, rare or highly biodiverse habitats and features;

(m) Protect areas to maintain resilience or the ability to adapt to the effects of climate change.

Article 15 International cooperation and coordination

1. ~~[To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,] States Parties shall promote coherence and complementarity in the establishment and application of measures such as area-based management tools, including marine protected areas, through:~~

~~[(a) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, without prejudice to their respective mandates, in accordance with this Part;]~~

~~[(b) The process in relation to area-based management tools, including marine protected areas, set out in this Part, including by:~~

~~(i) Adopting conservation and [management] [sustainable use] measures to complement measures designated under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies;~~

~~[(ii) Establishing area-based management tools, including marine protected areas, and adopting conservation and [management] [sustainable use] measures where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.]]~~

~~[2. Alt. to para. 1. (b) (ii) Where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body to establish area-based management tools, including marine protected areas, States Parties shall cooperate to establish such an instrument, framework or body and shall participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]~~

~~3. States Parties shall make arrangements for consultation and coordination to enhance cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among associated conservation and [management] [sustainable use] measures adopted under such instruments and frameworks and by such bodies.~~

~~4. Measures adopted in accordance with this Part shall not undermine the effectiveness of measures adopted by coastal States in adjacent areas within national jurisdiction and shall have due regard for the rights, duties and legitimate interests of all States, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to this end, in accordance with the provisions of this Part.~~

Commented [FB3]: (Note: this proposed deletion is merely to streamline article 15 and avoid duplications with other provisions in the Agreement)

Commented [FB4]: (Note: this is to streamline article 15 and avoid duplications)

Commented [FB5]: (Note: this is to streamline article 15)

5. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls under the national jurisdiction of a coastal State, either wholly or in part, it shall be adapted to cover any remaining area beyond national jurisdiction or otherwise cease to be in force.

Article 16

Identification of areas ~~requiring protection~~

1. Areas requiring protection through the establishment of area-based management tools, including marine protected areas, shall be identified on the basis of the best available ~~science~~ ~~scientific information and relevant traditional knowledge of indigenous peoples and local communities~~, the precautionary ~~approach~~ ~~principle~~ and an ecosystem approach.

2. Indicative criteria for the identification of **such** areas ~~requiring protection through the establishment of area-based management tools, including marine protected areas~~, under this Part, may include those specified in annex I. ~~3. The indicative criteria specified in annex I and~~ ~~shall~~ ~~may~~ be further developed and revised as necessary by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties.

~~4. The indicative criteria specified in annex I, as well as any that may be further developed and revised in accordance with paragraph 3, shall be applied, as relevant, by the proponents of a proposal under this Part and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part. Such criteria shall also be applied taken into account by States Parties in the establishment of area-based management tools, including marine protected areas, under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.~~

Commented [FB6]: (Note: merger of paragraphs 2 and 3 without affecting the substance of those two paragraphs)

~~ANNEX I Indicative criteria for identification of areas~~

- ~~(a) Uniqueness;~~
- ~~(b) Rarity;~~
- (c) Special importance for the life history stages of species;
- (d) Special importance of the species found therein;
- (e) The importance for threatened, endangered or declining species or habitats;
- (f) Vulnerability, including to climate change and ocean acidification;
- (g) Fragility;
- (h) Sensitivity;
- (i) Biological diversity [and productivity];
- ~~(j) Representativeness;~~
- (k) Dependency;
- ~~(l) Exceptional naturalness;~~
- (m) Ecological connectivity [and/or coherence];
- (n) Important ecological processes occurring therein;
- ~~(o) Economic and social socioeconomic factors;~~
- ~~(p) Cultural factors~~

- ~~{(q) Cumulative and transboundary impacts;}~~
- (r) Slow recovery and resilience;
- (s) Adequacy and viability;
- (t) Replication;
- (u) Feasibility.~~}~~

Article 17 Proposals

1. Proposals in relation to the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.

~~{2. States Parties may collaborate with relevant stakeholders in the development of proposals.}~~

3. Proposals shall be formulated on the basis specified in paragraph 1 of article 16.

4. Proposals shall include ~~{-at a minimum,}~~ the following elements:

(a) A geographic or spatial description of the area that is the subject of the proposal;

(b) Information on any of the indicative criteria ~~specified in annex I, as well as any criteria that may be further developed and revised in accordance with paragraph 3 of article 16,~~ applied in identifying the area;

(c) Specific **current and expected** human activities in the area [, including uses by indigenous peoples and local communities in adjacent coastal States] **and their impacts on the marine biodiversity**;

(d) A description of the state of the marine environment and biodiversity in the identified area;

(d bis) A description of the characteristics and biodiversity values of the area and the sensitivity of the species and/or habitats concerned, as well as, where relevant, the potential for restoration of the proposed area.

(e) A description of the specific conservation and sustainable use objectives that are to be applied to the area;

(f) A description of the proposed ~~{conservation and {management} {sustainable use} measures}~~ [priority elements for a management plan] to be adopted to achieve the specified objectives;

~~{(g) A duration for the proposed area and measures;}~~

(h) A monitoring, research and review plan, including priority elements;

Commented [FB7]: (Note: this is merely to streamline)

Commented [FB8]: (Note: placement: could be moved down, after (d bis))

- (i) Information on ~~any~~ consultations undertaken with **all relevant stakeholders, if any adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies.**

5. Further requirements regarding the contents of proposals ~~[shall]~~ **[may]** be elaborated by the Scientific and Technical Body as necessary, for consideration and adoption by the Conference of the Parties.

Article 18

Consultation on and assessment of proposals

1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all ~~relevant~~ stakeholders.

2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed by the secretariat to the proponent. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review of the Scientific and Technical Body. ~~The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows:~~

(a) States, in particular adjacent coastal States, shall be invited to submit, inter alia:

- (i) ~~Views on the merits of the proposal;~~
- (ii) Any relevant [additional] scientific inputs;
- (iii) Information regarding any existing measures in adjacent areas within national jurisdiction;
- (iv) Views on the potential implications of the proposal for areas under national jurisdiction;
- (v) Any other relevant information;

(b) Bodies of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be invited to submit, inter alia:

- (i) Views on the merits of the proposal;
- (ii) Any relevant [additional] scientific inputs;
- (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;
- (iv) Views regarding any aspects of the [conservation and [management] [sustainable use] measures] [priority elements for a management plan] identified in the proposal that fall within the competence of that body;
- (v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body;
- (vi) Any other relevant information;

(c) Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, inter alia:

- (i) Views on the merits of the proposal;
- (ii) Any relevant [additional] scientific inputs;

Commented [FB9]: (Note: the first part of the paragraph should be disconnected from the second part, for clarity)

Commented [FB10]: (Note: proposal to streamline this list in a new 2.bis, which retains the same elements)

- ~~(iii) Any relevant traditional knowledge of indigenous peoples and local communities;~~
- ~~(iv) Any other relevant information.~~

(NEW) 2. bis The secretariat shall make that proposal publicly available. It shall further facilitate consultations thereon, by inviting all States, Bodies of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, the Scientific and Technical body, indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders to submit, inter alia and as appropriate, views on the merits of the proposal, relevant scientific inputs and any other relevant contributions for the consideration of the proposal.

3. Contributions received pursuant to paragraph 2 shall be made publicly available by the secretariat.

4. The proponent shall consider the contributions received during the consultation period **as well as the views of the Scientific and Technical Body** and ~~shall may either~~ revise the proposal accordingly or continue the consultation process.

5. The consultation period shall be time-bound.

6. The revised proposal shall be submitted to the Scientific and Technical Body, which shall assess the proposal, and make recommendations to the Conference of the Parties.

7. The modalities of the consultation and assessment process ~~shall may~~ be further elaborated by the [Scientific and Technical Body] ~~[Conference of the Parties]~~, as necessary [, and shall take into account the special circumstances of small island developing States].

Article 19 Decision-making

1. On the basis of the final proposal and in particular the draft management plan, taking into account the contributions and recommendations received during the consultation process established under this part, the Conference of the Parties ~~[shall]~~~~[may]~~ take decisions on ~~matters related to area-based management tools, including marine protected areas, with respect to:~~ the establishment of area-based management tools, including marine protected areas, and related conservation and [management] [sustainable use] measures to be adopted to achieve the specified objectives.

~~[(a) Objectives, criteria, modalities and requirements, as provided for under articles 14, 16, 17 and 18;]~~

~~[Alt. 1~~

~~(b) Proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, including in relation to:]~~

~~(i) The identification of areas requiring protection;~~

Commented [FB11]: (Note: this reformulated paragraph 1 is composed of elements from alt. 1, sub-paragraph b chapeau and alt. 1, sub-paragraph b ii)

Commented [FB12]: (Note: this idea is incorporated in the reformulated paragraph 1)

~~(ii) The establishment of area-based management tools, including marine protected areas, and related conservation and [management] [sustainable use] measures to be adopted to achieve the specified objectives, taking into account existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate.~~

Commented [FB13]: (Note: this idea is incorporated in the reformulated paragraph 1)

(NEW) 2 The Conference of Parties, while respecting relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, shall also take decisions on measures complementary to those adopted under relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, and recommendations to States Parties to this Agreement to promote the adoption of relevant conservation and [management] [sustainable use] measures through such instruments, frameworks and bodies, in accordance with their respective mandates.

Commented [FB14]: (Note: this new paragraph 2 is composed of elements from alt. 1, sub-paragraph c ii and alt. 1, sub-paragraph c i)

~~(c) Where there are relevant legal instruments or frameworks or relevant global, regional or sectoral bodies:~~

~~(i) Whether to recommend that States Parties to this Agreement promote the adoption of relevant conservation and [management] [sustainable use] measures through such instruments, frameworks and bodies, in accordance with their respective mandates;~~

Commented [FB15]: (Note: this idea is incorporated in the new paragraph 2)

~~(ii) Whether to adopt conservation and [management] [sustainable use] measures complementary to those adopted under such instruments, frameworks and bodies;~~

Commented [FB16]: (Note: this idea is incorporated in the new paragraph 2)

~~(d) Where there are no relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, the adoption of conservation and [management] [sustainable use] measures.~~

~~[Alt. 2~~

~~(b) Matters related to identifying potential area-based management tools, including marine protected areas;~~

~~(c) Recommendations relating to the implementation of related management measures, while recognizing the primary authority for the adoption of such measures within the respective mandates of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.]~~

Article 20 Implementation

1. States Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.

2. Nothing in this Agreement shall prevent a State Party from adopting more stringent measures with respect to its vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law.

[3. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States Parties, directly or indirectly.]

[4. States Parties shall promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures adopted under this Part.]

[5. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the conservation and management objectives of the measures adopted and area-based management tools established under this Part.]

[6. A State Party that is not a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and management measures established under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area-based management tools, including marine protected areas, established under relevant frameworks, instruments and bodies.]]

Article 21

Monitoring and review

1. States Parties, individually or collectively, shall report to the Conference of the Parties on the implementation of [area-based management tools, including marine protected areas] [relevant elements of the decisions of the Conference on area-based management tools, including marine protected areas], established under this Part. Such reports shall be made publicly available by the secretariat.

2. Area-based management tools, including marine protected areas, established under this Part, including related conservation and [management] [sustainable use] measures, shall be monitored and periodically reviewed by the Scientific and Technical Body.

3. The review referred to in paragraph 2 shall assess the effectiveness of measures and the progress made in achieving their objectives and provide advice and recommendations to the Conference of the Parties.

4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment or revocation of area-based management tools, including marine protected areas, including any associated conservation and [management] [sustainable use] measures, ~~as well as the extension of time-bound area-based management tools, including marine protected areas, which would otherwise automatically expire,~~ on the basis of an adaptive management approach, **considering whether the specified objectives have been fully achieved** and taking into account

the best available ~~{science}~~{scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities}, the precautionary ~~{approach}~~
~~{principle}~~ and an ecosystem approach.

5. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies [shall] [may] be invited to report to the Conference of the Parties on the implementation of measures that they have established.

PART VI

INSTITUTIONAL ARRANGEMENTS

Article 48 Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The first meeting of the Conference of the Parties shall be convened no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference shall be held at regular intervals to be determined by the Conference at its first meeting.
3. The Conference of the Parties shall agree upon and adopt rules of procedure for itself and for any subsidiary body that it may establish.

[3bis. As a general rule, the decisions of the Conference of the Parties shall be taken by consensus. If all efforts to reach consensus have been exhausted, the procedure established in the rules of procedure adopted by the Conference shall apply.]

~~{3ter. Decisions of the Conference of the Parties shall be made publicly available by the secretariat and shall be transmitted to all States Parties in a timely manner [, in particular to adjacent coastal States], as well as to relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.}~~
4. The Conference of the Parties shall ~~{monitor and}~~ keep under **regular** review the implementation of this Agreement and ~~, for this purpose,~~ shall **make the decisions necessary to promote its effective implementation.** ÷

4 bis. The Conference of Parties shall perform the functions assigned by this Agreement and shall:

- (a) Adopt decisions and recommendations related to the implementation of this Agreement;
- (b) Exchange information relevant to the implementation of this Agreement;
- (c) Promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts towards, and the harmonization of relevant policies and measures for, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction [, including by establishing processes for cooperation and coordination with and among relevant global, regional, subregional and sectoral bodies] [, including by inviting other global, regional, subregional and sectoral bodies to establish processes for cooperation];
- (d) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement [, which may include:
 - [(i) An access and benefit-sharing mechanism;]
 - [(ii) A capacity-building and transfer of marine technology committee;]
 - [(iii) An implementation and compliance committee;]
 - [(iv) A finance committee]];
- (e) Adopt, at each ordinary meeting, a budget for the financial period until the following ordinary meeting;
- (f) Undertake other functions identified in this Agreement or as may be required for its implementation.

~~{5. The Conference of the Parties [shall] [may], at intervals to be determined by it, periodically assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction achieve the objectives of the agreement.}~~

Article 49
Scientific and Technical Body

1. A Scientific and Technical Body is hereby established.
2. The Scientific and Technical Body shall be composed of experts, taking into account the need for multidisciplinary expertise [, including expertise in relevant traditional knowledge of indigenous peoples and local communities], gender balance and equitable geographical representation.

3. The Scientific and Technical Body may also draw on appropriate advice from [existing arrangements, ~~such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection~~] [relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies], as well as other scientists and experts, as may be required.

4. Under the authority and guidance of the Conference of the Parties, the Scientific and Technical Body shall:

(a) Provide scientific and technical advice to the Conference of the Parties;

[(b) Monitor the utilization of marine genetic resources of areas beyond national jurisdiction;]

~~[(c) Possess recommendatory functions]~~ **Make recommendations** with respect to measures such as area-based management tools, including marine protected areas, **to the proponents and to the Conference of Parties** [including regarding:

- (i) Standard-setting and review;
- (ii) The assessment of proposals;
- (iii) The monitoring and review of measures;]

[(d) Elaborate guidelines with respect to environmental impact assessments;]

[(e) Make recommendations to the Conference of the Parties with respect to environmental impact assessments;]

[(f) Review environmental impact assessment standards to ensure consistency with the requirements under this Agreement;]

[(g) Identify innovative, efficient and state-of-the-art technology and knowhow relating to the conservation and sustainable use of marine biological diversity;]

[(h) Advise on ways and means to promote the development and transfer of marine technology;]

[(i) Assess the effectiveness of the implementation of measures and programmes for capacity-building and the transfer of marine technology, including by assessing whether capacity gaps are decreasing;]

[(j) Collaborate with regional and subregional committees on capacitybuilding and the transfer of marine technology or regional needs assessment mechanisms;]

[(k) Elaborate programmes for capacity-building and the transfer of marine technology;]

[(l) Establish subsidiary bodies, as required;]

(m) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

Article 50 Secretariat

[1. Alt. 1. A secretariat is hereby established.]

Commented [FB17]: (Note: Alt. 1 is preferred option)

~~[1. Alt. 2. The Conference of the Parties shall [, at its first ordinary meeting,] designate the secretariat from among those existing competent international organizations that have signified their willingness to carry out the secretariat functions under this Agreement.]~~

[1. Alt. 3. The secretariat functions for this Agreement shall be performed by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations.]

2. The secretariat shall:

- (a) Provide administrative and logistical support;
- (b) Convene and service the meetings of the Conference of the Parties and of any other bodies as may be established by the Conference;
- (c) Circulate information relating to the implementation of this Agreement;
- [(d) Facilitate [appropriate] coordination with the secretariats of other relevant international bodies;]
- ~~[(e) Provide assistance with the implementation of this Agreement, as mandated by the Conference of the Parties;]~~
- [(f) Prepare reports on the execution of its functions under this Agreement and submit them to the Conference of the Parties;]
- (g) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

CONSIDERACIONES DE LA REPÚBLICA DE NICARAGUA AL II BORRADOR DEL
PROYECTO DEL INSTRUMENTO INTERNACIONAL JURÍDICAMENTE VINCULANTE EN EL
MARCO DE LA CONVEMAR RELATIVO A LA CONSERVACIÓN Y EL USO SOSTENIBLE
DE LA DIVERSIDAD BIOLÓGICA MARINA DE LAS ZONAS SITUADAS FUERA DE LA
JURISDICCIÓN NACIONAL (BBNJ)

La República de Nicaragua, luego de analizar y discutir amplia y profundamente el proyecto presentado por la Honorable Embajadora Rena Lee de Singapur, Presidente de la Conferencia Intergubernamental para la elaboración de un Instrumento Internacional jurídicamente vinculante denominado Acuerdo bajo la Convención de Las Naciones Unidas sobre el Derecho del Mar, relativo a la Conservación y Uso Sostenible de la Diversidad Biológica Marina en las Aguas Fuera de la Jurisdicción Nacional (BBNJ), llegamos a las siguientes conclusiones respecto al borrador II de la BBNJ y de la manera más respetuosa, solicitamos se tomen en cuenta en las negociaciones, discusiones y texto del Acuerdo, siendo las siguientes:

1. Consideramos que el borrador de Acuerdo BBNJ, a pesar de decir que no aplica a la pesca, contiene disposiciones que se traslapan con las competencias de los Estados ribereños y de las organizaciones internacionales de ordenación pesquera y demás instrumentos jurídicamente vinculantes en materia pesquera.
2. Consideramos necesario que se deben respetar las competencias de la FAO como organismo internacional competente para los temas de pesca, según se establece en el Convenio de las Naciones Unidas sobre el Derecho del Mar (CONVEMAR).
3. Observamos que el Acuerdo BBNJ contiene términos científicos cuya definición no es clara, pero con un alcance y repercusión que afecta a la industria pesquera y libertad de navegación, estimamos que hace falta mayor discusión sobre estos puntos antes de iniciar el proceso de toma de decisiones respecto a las mismas.
4. Requerimos que el texto del Acuerdo BBNJ contenga la obligación de consultar previamente con los países, las organizaciones de ordenación pesqueras correspondientes, y demás autoridades existentes, las medidas impositivas que se pretendan adoptar en materia pesquera.
5. Requerimos que en el texto del Acuerdo BBNJ se respeten las competencias ya establecidas y que no se traslapen ni usurpen dichas competencias.
6. Nos presentamos en desacuerdo con la creación de nuevas estructuras de gobernanza en el marco internacional en materia de pesquería y libertad de navegación, debido a que se encuentran reguladas y son vinculantes.

7. Apoyamos la protección de la diversidad biológica y precisamente por ello, abogamos por un marco de respeto, cooperación, comunicación y consulta previa, cada vez que sea necesario.
8. Solicitamos una extensión de las discusiones y negociaciones sobre el tema, debido a que existen temas sobre los cuales aún no existen acuerdos, requiriéndose mayor tiempo de estudio del texto actual, en beneficio de todas las partes involucradas.
9. Ratificamos nuestro apoyo al mantenimiento de los ejes o áreas que son objeto de discusión y de mantener los conceptos de patrimonio común de la humanidad, transferencia de tecnologías, estudios de impacto ambiental y áreas marinas protegidas, dentro del ámbito de las competencias de los organismos, comisiones de ordenamiento pesquero y otras instituciones ya existentes.

Managua, 18 de febrero de 2020.

CONSIDERATIONS BY THE REPUBLIC OF NICARAGUA ON THE SECOND
DRAFT OF THE INTERNATIONAL LEGALLY BINDING INSTRUMENT WITHIN
THE FRAMEWORK OF UNCLOS ON THE CONSERVATION AND
SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY IN AREAS BEYOND
NATIONAL JURISDICTION (BBNJ)

The Republic of Nicaragua, after analyzing and discussing widely and deeply the project presented by the Honorable Ambassador Rena Lee of Singapore, President of the Intergovernmental Conference for the elaboration of a legally binding international instrument called the Agreement under the United Nations Convention on the Law of the Sea, regarding the Conservation and Sustainable Use of Marine Biological Diversity Beyond National Jurisdiction (BBNJ), we have reached the following conclusions regarding draft II of the BBNJ and in the most respectful way, we request that they be taken into account in the negotiations, discussions and text of the Agreement, being the following:

1. We consider that the draft BBNJ Agreement, despite saying that it does not apply to fisheries, contains provisions that overlap with the competences of coastal states and international fisheries management organizations and other legally binding instruments on fisheries.
2. We consider it necessary to respect the competence of the FAO as the competent international body for fisheries matters, as established in the United Nations Convention on the Law of the Sea (UNCLOS).
3. We note that the BBNJ Agreement contains scientific terms whose definition is not clear, but with a scope and repercussion that affects the fishing industry and freedom of navigation, we consider that further discussion is needed on these points before initiating the decision-making process with respect to them.
4. We request that the text of the BBNJ Agreement contain the obligation to previously consult with the countries, the corresponding fisheries management organizations, and other existing authorities, the binding measures that are intended to be adopted in the area of fisheries.
5. We require that the text of the BBNJ Agreement respect the competences already established and that it neither overlaps nor usurps such competences.

6. We do not agree with the creation of new governance structures in the international framework on fisheries and freedom of navigation matters, because they are regulated and binding.

7. We support the protection of biological diversity and precisely because of this, we advocate a framework of respect, cooperation, communication and prior consultation, whenever necessary.

8. We request an extension of the discussions and negotiations on the subject, because there are issues on which there are not yet agreements, requiring more time to study the current text, for the benefit of all parties involved.

9. We ratify our support for maintaining the axes or areas that are the object of discussion and for maintaining the concepts of common heritage of mankind, transfer of technologies, environmental impact studies and marine protected areas, within the scope of the competencies of the bodies, commissions for fisheries management and other existing institutions.

Managua, 18 February 2020.

Textual Proposal on
Intergovernmental Conference on an international legally binding instrument
under the United Nations Convention on the Law of the Sea on the
conservation and sustainable use of marine biological diversity of areas
beyond national jurisdiction

The document's structure addressed general provisions and cross-cutting issues, as well as the four elements of the package identified:

- Marine genetic resources (MGRs), including questions on the sharing of benefits;
- Measures such as area-based management tools (ABMTs), including marine protected areas (MPAs);
- Environmental impact assessment (EIAs);
- Capacity building and the transfer of marine technology (CB&TT).

Pakistan Stance/Proposal on the discussion on MGRs of BBNJ

Pakistan may support the following provisions given in draft agreement discussed in different deliberation/negotiations/discussions given above

- The concept/definition of that MGRs in BBNJ fall under the common heritage regime and definition given in draft agreement.
- Establishment of benefit-sharing trust fund to promote access, utilization of MGRs, capacity building, marine technology transfer and training in developing countries.
- Optimum/judicious utilization of monetary and non monetary benefits through the sustainable use of resources, equitable benefit-sharing related to MGRs in BBNJ.
- The set of rules and regulations which will govern/monitor the judicious utilization of monetary and non monetary benefits.
- The inventions, scientific processes and products must be subjected to Intellectual property rights as per provisions given by WIPO.
- The activities carrying out in BBNJ including commercial and noncommercial, scientific and Non Scientific must be monitored through some viable common and surveillance system.

Pakistan Stance/Proposal on the discussion on ABMTs and MPAs of BBNJ

Pakistan may support the following provisions given in draft agreement discussed in different deliberation/negotiations/discussions given above

- The concept/definition of that ABMTs and MPAs in BBNJ given in draft agreement.
- No management tools should be developed which will not align with the current/existing regulatory framework of related conventions, RFMOs and related organizations.
- Setting up the common guidelines can be formulate for MPA designation; regional bodies, in consultation with others, involved in MPA implementation; and states reporting on implementation.
- The guidelines should be respecting the mandates of existing regional and sectoral bodies, like the IMO and RFMOs.
- The establishment of ILBI subsidiary body for ABMT review on a case-by-case basis within a timeframe, with options to maintain, modify or terminate an MPA.

- It requires state parties to report regularly, in a standardized format, on activities pursuant to a management plan

Pakistan Stance/Proposal on the discussion on ABMTs and MPAs of BBNJ

Pakistan may support the following provisions given in draft agreement discussed in different deliberation/negotiations/discussions given above

- The concept/definition of that EIAs in BBNJ given in draft agreement.
- No management tools should be developed which will not align with the current/existing regulatory framework of related conventions (CBD and UNCLOS), RFMOs and related organizations.
- Inclusion of TEIAs and SEAs in the ILBI and favored the ILBI including activities in ABNJ with impacts on areas within national jurisdiction after the consultation of all the stakeholders.
- Setting up the system of monitoring, compliance, enforcement, and environmental auditing and a common set of reporting and monitoring requirements,
- The above system will help the proponent in preparing a monitoring plan, reporting to the sponsor state to ensure compliance.
- Establishment of intergovernmental, science-based, technical and scientific committee should mitigate potential damages, including socio-economic impacts, through reparation activities
- It requires state parties to report regularly, in a standardized format, on activities pursuant to a management plan.

Pakistan Stance/Proposal on discussion on CB&TT and MPAs of BBNJ

Pakistan may support the following provisions given in draft agreement discussed in different deliberation/negotiations/discussions given above

- The concept/definition of that CB&TT in BBNJ given in draft agreement.
- No management tools should be developed which will not align with the current/existing regulatory framework of related conventions (CBD and UNCLOS), RFMOs and related organizations.
- Establishment of benefit-sharing trust fund to promote access, utilization of MGRs, capacity building, marine technology transfer and training in developing countries.
- A global fund for capacity building, taking into account the special case of LLDCs.
- Capacity building/Schemes are to be linked to ABS, taking into account, the special needs of adjacent states, public and private stakeholder participation, defined performance indicators, and monitoring and evaluation systems.
- Setting up the system of monitoring, compliance, enforcement, and environmental auditing and a common set of reporting and monitoring requirements,
- The above system will help the proponent in preparing a monitoring plan, reporting to the sponsor state to ensure compliance.
- Establishment of intergovernmental, science-based, technical and scientific committee should mitigate potential damages, including socio-economic impacts, through reparation activities
- It requires state parties to report regularly, in a standardized format, on activities pursuant to a management plan.



PHILIPPINES' TEXTUAL PROPOSALS

Additional Text = Red with underline

Annex

Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

PREAMBLE

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea, including the obligation to protect and preserve the marine environment,

Stressing the need to respect the balance of rights, obligations and interests set out in the Convention,

Stressing the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,

Desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations,

Emphasizing the need to enhance cooperation to address marine environmental degradation and climate change-related impacts on marine biodiversity.

Respecting the sovereignty, territorial integrity and political independence of all States,

Desiring to promote sustainable development,

Aspiring to achieve universal participation,

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1 Use of terms

For the purposes of this Agreement:

[1. “Access” means, in relation to marine genetic resources, the collection of marine genetic resources [, including marine genetic resources accessed *in situ*, *ex situ* ~~and in silico~~] ~~[[and]]~~ [as digital sequence information] of genetic resources or as [as genetic sequence data]]].

XXX

[9. ~~Alt. 1.~~ “Marine genetic resources” means any genetic material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties.]

XXX

[15. “Utilization of marine genetic resources” means to conduct research and their potential uses [, as well as the ~~exploitation~~ commercialization thereof].]

XXX

PART II MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

Article 7 Objectives

The objectives of this Part are to:

XXX

[(b) Build the capacity of developing States Parties, in particular least developed countries, landlocked developing countries, environmentally vulnerable states, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to ~~collect~~ [access] and utilize marine genetic resources of areas beyond national jurisdiction;]

{Article 8 Application}

{1. The provisions of this {Part} {Agreement} shall apply to:

{(a) Marine genetic resources, insofar as they are ~~collected~~ accessed for the purpose of conducting research into their genetic properties;}

{(b) Marine genetic resources ~~collected~~ {accessed} *in situ*, ~~and~~ ~~accessed~~ *ex situ* ~~and in silico~~ ~~and~~ {as digital sequence information of genetic resource or {as genetic sequence data}}{and their utilization};

{(c) Derivatives.}}

{2. The provisions of this {Part} {Agreement} shall not apply to:

{(a) The use of fish and other biological resources as a ~~commodity~~ food source.}

XXX

{3. The provisions of this Agreement shall apply to marine genetic resources ~~collected~~ {accessed} *in situ*, ~~and~~ ~~accessed~~ *ex situ* ~~and in silico~~ ~~and~~ {as digital sequence information of genetic resource or {as genetic sequence data}}{and their utilization} after its entry into force, or including those resources ~~collected~~ {accessed} *in situ* before its entry into force, but accessed *ex situ* or *in silico* ~~and~~ {as digital sequence information of genetic resource or {as genetic sequence data}}{or utilized} after it.}

{Article 9

Activities with respect to marine genetic resources of areas beyond national jurisdiction}

XXX

{2. In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State under the jurisdiction of which such resources are found in situ.}

{3. No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction {, nor shall any State or ALLOW natural or juridical person under its control and jurisdiction, or by itself, appropriate any part thereof}. No such claim or exercise of sovereignty or sovereign rights {nor such appropriation} shall be recognized.}

{4. The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of mankind as a whole, taking into consideration the interests and needs of developing States, in particular the least developed countries, landlocked developing countries, environmentally vulnerable states, geographically disadvantaged States, small

island developing States, coastal African States and developing middle-income countries.}

XXX

**{Article 10
[Collection of] [and] [Access to] marine genetic resources of areas
beyond national jurisdiction}**

XXX

{4. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that access to {marine genetic resources *in silico*}~~[[and]]~~{digital sequence information} of genetic resource or {genetic sequence data}~~]]~~ is facilitated {, subject to articles 11 and 13}.}

XXX

**{Article 10bis
Access to traditional knowledge of indigenous peoples and local
communities associated with marine genetic resources [collected]
[accessed] in areas beyond national jurisdiction}**

{States Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources [collected]~~]]~~[accessed] in areas beyond national jurisdiction that is held by indigenous peoples and local communities shall only be accessed with the free prior and informed consent or approval and involvement of these indigenous peoples and local communities. The clearing-house mechanism may act as an intermediary to facilitate access to such traditional knowledge. Access to such traditional knowledge shall be on mutually agreed terms.}

**{Article 11
[Fair and equitable] sharing of benefits}**

{1. States Parties, including their nationals, that have [collected]~~]]~~[accessed] or {utilized} marine genetic resources of areas beyond national jurisdiction {shall}~~]]~~~~[[may]]~~ share benefits arising therefrom {in a fair and equitable manner} with other States Parties, with consideration for the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, environmentally vulnerable states, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries {, in accordance with this Part}.}

{2. Benefits {shall}~~]]~~~~[[may]]~~ include [monetary and] non-monetary and/or monetary benefits.}

{3. Benefits arising from ~~{the collection of}~~ ~~{access to}~~ **or** ~~{the utilization of}~~ marine genetic resources of areas beyond national jurisdiction ~~{shall}~~ ~~{may}~~ be shared at different stages, in accordance with the following provisions:

{(a) Monetary benefits ~~{shall}~~ ~~{may}~~ be shared against an embargo period for ~~{marine genetic resources *in silico*}~~ ~~{digital sequence information **of genetic resource**}~~ **or** ~~{genetic sequence data}~~ or upon the commercialization of products that are based on marine genetic resources of areas beyond national jurisdiction ~~{in the form of milestone payments}~~. The rate of payments of monetary benefits shall be determined by the Conference of the Parties. ~~{Payments shall be made to the special fund};~~

{(b) Non-monetary benefits ~~{, such as access to samples and sample collections, sharing of information, such as pre-cruise or pre-research information, post-cruise or post-research notification, transfer of technology and capacity-building,}~~ ~~{shall}~~ ~~{may}~~ be shared upon ~~{the collection of}~~ ~~{access to}~~ **and** ~~{the utilization of}~~ marine genetic resources of areas beyond national jurisdiction. Samples, data and related information ~~{shall}~~ ~~{may}~~ be made available in open access ~~{through the clearing-house mechanism {upon {collection} {access} {after [...] years}}}~~. ~~{[Marine genetic resources *in silico*] {Digital sequence information **of genetic resource**} or {Genetic sequence data}}~~ related to marine genetic resources of areas beyond national jurisdiction ~~{shall}~~ ~~{may}~~ be published and used taking into account current international practice in the field.}}

XXX

{Article 12 Intellectual property rights}

XXX

{2. ~~{Marine genetic resources {collected} {accessed}}~~ **and/or** ~~{utilized}~~ in accordance with this Agreement shall not be subject to patents **and other intellectual property rights** except where such resources are modified by human intervention resulting in a product capable of industrial application.} ~~{Unless otherwise stated in a patent application or other official filing or recognized public registry, the origin of marine genetic resources utilized in patented applications shall be presumed to be of areas beyond national jurisdiction.}}~~

{Article 13 Monitoring}

XXX

{3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that:

{(a) An identifier is assigned to marine genetic resources ~~{collected}~~ ~~{accessed}~~ *in situ*. In the case of marine genetic resources accessed *ex situ* ~~{and *in silico*}~~ ~~{and}~~ ~~{as~~

digital sequence information of genetic resource] or [as genetic sequence data]], such an identifier shall be assigned when databases, repositories and gene banks submit the list mentioned in article 51 (3) (b) to the clearing-house mechanism;}

XXX

PART III

MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

Article 14

Objectives

The objectives of this Part ~~are to~~ include:

XXX

{(d) Establish a system of ecologically representative marine protected areas and marine protected area networks that are connected [and effectively and equitably managed];}

XXX

{(f) Support ~~food security and other socioeconomic objectives, including the protection of cultural values~~ sustainable development of marine resources;}

XXX

{(h) Safeguard areas with aesthetic, natural or wilderness values;}

XXX

Article 15

International cooperation and coordination

1. [To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,] States Parties shall promote coherence and complementarity in the establishment of area-based management tools, including marine protected areas, through:

XXX

{(b) The process in relation to area-based management tools, including marine protected areas, set out in this Part, including by:

(i) Adopting conservation, ~~and [management]~~, and [sustainable use] measures to ~~complement measures~~ those designated under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies;

XXX

3. States Parties shall make arrangements for consultation and coordination to enhance cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among associated conservation ~~and [management]~~, and [sustainable use] measures adopted under such instruments and frameworks and by such bodies.

XXX

Article 17 Proposals

XXX

4. Proposals shall include, at a minimum, the following elements:

XXX

(f) A description of the proposed [conservation, ~~and [management]~~, and [sustainable use] measures] ~~[priority elements for a management plan]~~ to be adopted to achieve the specified objectives;

{(g) A duration for the proposed area and measures, when relevant;}

XXX

Article 18 Consultation on and assessment of proposals

XXX

2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed to the proponent by the secretariat. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review by the Scientific and Technical Body. The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows:

(a) States, in particular adjacent coastal States, shall be invited to submit, *inter alia*:

XXX

(v) Any ~~other~~ relevant information including current threats/ usage of the area;

(b) Bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be invited to submit, inter alia:

XXX

(iv) Views regarding any aspects of the [conservation, ~~and~~ [management], and [sustainable use] measures] ~~[priority elements for a management plan]~~ identified in the proposal that fall within the competence of that body;

XXX

(vi) Any ~~other~~ relevant information including current threats/ usage of the area;

(c) Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, inter alia:

XXX

(iv) Any ~~other~~ relevant information including current threats/ usage of the area.

3. Contributions received pursuant to paragraph 2 shall be made publicly available by the secretariat.

XXX

6bis In cases where the proposal affects areas of high seas that are surrounded by the exclusive economic zones of adjacent coastal states, the views and comments of such states shall be given particular regard.

XXX

Article 19 Decision-making

The Conference of the Parties [shall] ~~[may]~~ take make decisions on matters related to area-based management tools, including marine protected areas, with respect to:

XXX

[Alt. 1

(b) Proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, including in relation to:

XXX

(ii) The establishment of area-based management tools, including marine protected areas, and related conservation, ~~and [management]~~, and [sustainable use] measures to be adopted to achieve the specified objectives, taking into account existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate;

(c) Where there are relevant legal instruments or frameworks or relevant global, regional or sectoral bodies:

(i) Whether to recommend that States Parties to this Agreement promote the adoption of relevant conservation, ~~and [management]~~, and [sustainable use] measures through such instruments, frameworks and bodies, in accordance with their respective mandates;

(ii) Whether to adopt conservation, and [management], and [sustainable use] measures complementary to those adopted under such instruments, frameworks and bodies;

(d) Where there are no relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, the adoption of conservation, ~~and [management]~~, and [sustainable use] measures.

XXX

Article 21

Monitoring and review

XXX

2. Area-based management tools, including marine protected areas, established under this Part, including related conservation, ~~and [management]~~, and [sustainable use] measures, shall be monitored and periodically reviewed by the Scientific and Technical Body.

XXX

4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment or revocation of area-based management tools, including marine protected areas, including any associated conservation, ~~and [management]~~, and [sustainable use] measures, [as well as the extension of time-bound area-based management tools, including marine protected areas, that would otherwise automatically

expire,] on the basis of an adaptive management approach and taking into account the best available ~~{science}~~ [scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities], the precautionary ~~[approach]~~ [principle] and an ecosystem approach.

XXX

PART IV ENVIRONMENTAL IMPACT ASSESSMENTS

Article 21bis Objectives

The objectives of this Part are to:

XXX

{(b) Enable the consideration of cumulative impacts and transboundary impacts;}

XXX

Article 22 Obligation to conduct environmental impact assessments

XXX

2. On the basis of articles 204 to 206 of the Convention, States Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement the provisions [of this Part] [and any further measures {on the conduct of environmental impact assessments}] ~~adopted~~ decided by the Conference of the Parties]-

XXX

Article 23 Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

XXX

[4. Alt. 4. Where a planned activity under the jurisdiction or control of a State Party ~~[with impacts]~~ in areas beyond national jurisdiction is already covered by existing environmental impact assessment obligations and agreements, it is not necessary to conduct another environmental impact assessment of that activity under this Agreement [, provided that the [State with jurisdiction or control over the planned activity] [body set

forth in Part [...] [, following consultation with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,] determines that:

XXX

{(b) The environmental impact assessment already undertaken is ~~[[functionally]~~ ~~[substantively]~~ equivalent to the one required under this Part} ~~[comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts~~ and transboundary impacts};

XXX

Article 24

Thresholds and criteria for environmental impact assessments

XXX

[1. Alt.2

1. When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control:

XXX

(b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall ~~[conduct]~~ ~~[ensure that]~~ a ~~[full]~~ ~~[comprehensive]~~ environmental impact assessment ~~[is conducted]~~ on the potential effects of such activities on the marine environment ~~[and ecosystems]~~ and shall submit the results of such assessment ~~[for technical review~~ of the science and technical body ~~]~~ in the manner provided in this Part.

XXX

Article 26

Transboundary impacts

XXX

2. Where relevant, the environmental impact assessment process shall also take into account possible impacts in ~~[adjacent]~~ ~~[coastal States]~~ and ~~[areas within national jurisdiction, including the continental shelf beyond 200 nautical miles].~~

Article 27

Areas identified as ecologically or biologically significant or vulnerable

{1. the characteristic of the area where the planned activity under the jurisdiction or control of a state party shall be considered. should such planned activity take place in or adjacent to an area that has been identified for its significance or vulnerability, regardless of whether the impacts are expected to be minimal or not, an environmental impact assessment shall be required.}

XXX

Article 28

Strategic environmental assessments

1. States Parties, individually or in cooperation with other States Parties, ~~shall ensure that~~ a may opt for the conduct of strategic environmental assessment ~~is carried out~~ for plans and programmes relating to activities ~~[under their jurisdiction or control,]~~ ~~[conducted]~~ ~~[with impacts]~~ in areas beyond national jurisdiction, which meet the threshold/criteria established in article 24, 27 and 29.

XXX

Article 30

Screening

XXX

{2. The initial screening of activities shall be based on articles 24, 27, and 29 of this part.}

XXX

Article 31

Scoping

XXX

{2. Such scope shall include the identification of key environmental [, social, economic, cultural and other relevant] [impacts] and [issues], including identified cumulative impacts, using the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities [, alternatives for analysis] [and a determination of the potential effects of the planned activity under the jurisdiction or control of a State Party, including a detailed description of potential environmental consequences].}

Article 32

Impact assessment and evaluation

1. A state party shall ensure that an eia conducted under this part, shall predict and evaluate impacts using the best available scientific information and where relevant, use

of traditional knowledge of indigenous peoples and local communities. impact assessment and evaluation shall identify and predict the likely environmental impacts of the planned activity and shall include cumulative impacts and transboundary impacts and an examination of alternatives].

XXX

[3. A State Party may designate a third party to conduct an environmental impact assessment required under this Agreement. Such third party ~~[shall]~~ [may] be drawn from the pool of experts created pursuant to paragraph 4 below. Environmental impact assessments conducted by such third parties must be submitted to the State for review and decision-making and submission to the scientific and technical body.]

XXX

Article 33

Mitigation, prevention and management of potential adverse effects

[States Parties shall ~~establish~~ ensure that measures ~~procedures~~ for the prevention, mitigation and management of potential adverse effects of ~~[authorized]~~ activities under their jurisdiction or control are included in the environmental impact assessment report. Such ~~procedures~~ measures shall include the identification of alternatives to the planned activity under their jurisdiction or control shall address all potential impacts identified in the analysis.]

Article 34

Public notification and consultation

XXX

5. States Parties {undertaking an environmental impact assessment pursuant to this Agreement} shall allow ~~establish procedures allowing for~~ access to information related to the environmental impact assessment process under this Agreement. [Notwithstanding this, States Parties shall not be required to disclose non-public information or information that would undermine intellectual property rights or other interests].

[6. Procedures may be developed by the Conference of the Parties to facilitate consultation at the international level.]

Article 35

Preparation and content of environmental impact assessment reports

XXX

2. Where an environmental impact assessment is required in accordance with this Part, the environmental impact assessment report ~~{shall}~~ ~~{may}~~ include [, as a minimum, the following information]:

XXX

(g) A description of any measures for avoiding, preventing [, minimizing] and mitigating impacts ~~{and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment}~~ ~~{and other adverse social, economic, cultural and relevant impacts}~~, following the mitigation hierarchy;

XXX

[Article 37 Consideration and review of ~~{assessment}~~ reports]

~~[The environmental impact assessment reports prepared pursuant to this Agreement shall be considered and reviewed on the basis of approved scientific methods by the Scientific and Technical Body.]~~

The environmental impact assessment report shall be submitted by state parties to the scientific and technical body for review which shall, having regard to the inputs received during public consultation, review the report on the basis of approved scientific method and, where relevant, traditional knowledge of indigenous people and local communities, and make a recommendation to the conference of the parties.

Article 38 Decision-making

XXX

~~{2. No decision allowing the planned activity under the jurisdiction or control of a State Party to proceed shall be made where the environmental impact assessment indicates that the planned activity under the jurisdiction or control of a State Party would have severe adverse impacts on the marine environment.}~~

XXX

Article 39 Monitoring

In accordance with articles 204 to 206 of the Convention, States Parties shall ~~[[continuously] monitor the effects of authorized activities]~~ ~~[ensure that the environmental impacts of the authorized activity are {continuously} monitored~~ by the proponent of the

planned activity ~~[and supervised]~~ [, in accordance with the conditions set out in the approval of the activity].

Article 40 Reporting

XXX

[1. ~~Alt. 2. [States Parties] [and] [relevant legal instruments and frameworks and, including where appropriate, relevant with support of~~ global, regional, subregional or sectoral bodies] shall periodically report on ~~[the environmental impacts of the authorized activity]~~ [the results of the monitoring and review required under articles 39 and 41].]

XXX

Article 41 Review

[1. States Parties shall ensure that the environmental impacts of the authorized activity are reviewed.]

[(a) Should the results of the monitoring required under article 39 identify adverse impacts not foreseen in the environmental impact assessment, the ~~[State with jurisdiction or control over the activity]~~ [Scientific and Technical Body] shall:

XXX

{(iv) Evaluate measures proposed under article [...] and recommend to conference of the parties whether the activity should continue;}

XXX

PART V CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

Article 42 Objectives

The objectives of this Part are to:

(a) Assist States Parties, in particular developing States Parties, in implementing and complying with the provisions of this Agreement, to achieve its objectives;

XXX

(f) Ensure that developing States Parties have:

{(i) Access to, and benefit from, the scientific information resulting from {the collection of} ~~{access to}~~ resources in areas beyond national jurisdiction, in particular and utilization of marine genetic resources;}

{(ii) Access to, and that their special requirements receive consideration in, the sharing of benefits from marine genetic resources and their derivatives and in marine scientific research;}

{(iii) ~~{Collection of}~~ {Access to} marine genetic resources *in situ*, *ex situ* {and *in silico*} ~~{and}~~ {as digital sequence information of genetic resource} or {as genetic sequence data} [, and their utilization];}

{(iv) {Endogenous} or ~~{L}~~local} research capabilities relating to marine genetic resources and products, processes and other tools;}

XXX

Article 43

Cooperation in capacity-building and transfer of marine technology

XXX

2. Capacity-building and the transfer of marine technology under this Agreement shall be ~~{carried out}~~ ~~{promoted}~~ through enhanced cooperation at all levels and in all forms, including partnerships with and involving all relevant stakeholders, such as, where appropriate, {the private sector;} civil society and holders of traditional knowledge, as well as through strengthening cooperation, coordination and synergies between and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

3. In giving effect to the duty to [cooperate] [promote cooperation] under this article, States Parties shall give full recognition to the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, environmentally vulnerable States, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

Article 44

Modalities for capacity-building and the transfer of marine technology

XXX

3. Capacity-building and the transfer of marine technology shall be ~~transparent and country-driven~~ [, and shall not duplicate existing programmes] done in a transparent manner with a view of promoting synergy and cooperation. Capacity-building and the transfer of marine technology shall be guided by lessons learned, including those from capacity-building and the transfer of marine technology activities under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive.

4. Capacity-building and the transfer of marine technology shall be ~~based on and be responsive to the needs and priorities of developing States Parties~~ country-driven [as determined by] ~~[informed by]~~ a needs assessment [on an individual case-by-case, subregional or regional basis]. Such needs and priorities may be self-assessed or facilitated through a mechanism, which may be established by the Conference of the Parties.

XXX

Article 47

Monitoring and review

XXX

2. The monitoring and review referred to in paragraph 1 shall be aimed at:

XXX

(b) Measuring performance on the basis of ~~objective~~ objectively verifiable indicators and reviewing results-based analyses, including the output, progress and effectiveness of capacity-building and transfer of marine technology activities, successes and challenges;

XXX

5. In supporting the monitoring and review of capacity-building and the transfer of marine technology, States Parties, ~~[and regional~~ and subregional committees on capacity-building and the transfer of marine technology] may submit, on a voluntary basis, reports, which ~~may~~ shall be made publicly available, on capacity-building and the transfer of marine technology given and received. States Parties shall ensure that reporting requirements for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, are streamlined and not onerous.

PART VI

INSTITUTIONAL ARRANGEMENTS

Article 48
Conference of the Parties

XXX

4. The Conference of the Parties shall [monitor and] keep under review the implementation of this Agreement and, for this purpose, shall:

(a) ~~Adopt~~ make decisions and adopt recommendations related to the implementation of this Agreement;

XXX

Article 49
Scientific and Technical Body

XXX

4. Under the authority and guidance of the Conference of the Parties, the Scientific and Technical Body shall:

XXX

{(b) Monitor the access and utilization of marine genetic resources of areas beyond national jurisdiction;}

XXX

Article 51
Clearing-house mechanism

XXX

3. The clearing-house mechanism shall serve as a centralized platform to enable States Parties to have access to [, collect] [, evaluate]—[, make public] and disseminate information with respect to:

{(a) Activities related to marine genetic resources of areas beyond national jurisdiction, including notices of forthcoming *in situ* collection of marine genetic resources, research teams, ecosystems where the marine genetic resources are collected, the [digital] or [genetic] properties of the marine genetic resources, their biochemical components, digital sequence information of genetic resource or genetic sequence data [~~and information~~]—[and the utilization of marine genetic resources];}

{(b) Data and scientific information on, as well as [, in line with the principle of prior informed consent,] traditional knowledge of indigenous peoples and local communities, in line with the principle of free and prior informed consent, associated with, marine genetic resources of areas beyond national jurisdiction, including through lists of databases, repositories or gene banks where marine genetic resources of areas beyond national jurisdiction are currently held, a registry of such resources and a track-and-trace mechanism for marine genetic resources of areas beyond national jurisdiction and their utilization;}

XXX

(c)bis Information on the existing proposal and list of approved/adopted area-based management tools, including marine protected areas, and reports on the implementation thereof;

{(d) Environmental impact assessments [, including:

XXX

(ii)bis Environmental impact assessment monitoring reports.

XXX

(h)bis Other functions as may be determined by the conference of parties.

[4. The clearing-house mechanism shall:

XXX

{(b) ~~Promote~~ Provide linkages to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases, repositories and gene banks [, including experts in relevant traditional knowledge of indigenous peoples and local communities];}

XXX

{PART VII FINANCIAL RESOURCES [AND MECHANISM]}

{Article 52 Funding}

XXX

[Alt. 2

XXX

6. The funding mechanisms established under this Agreement shall be aimed at ensuring efficient access to funding ~~through simplified approval procedures and enhanced readiness of support~~ in fair and equitable sharing of benefits with due regard for developing States Parties, in particular least developed countries, landlocked developing countries, environmentally vulnerable States, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

7. Access to funding under this Agreement shall be open to developing States Parties ~~[on the basis of need]~~ [, taking into account the needs for assistance of States Parties with special requirements, in particular least developed countries, landlocked developing countries, environmentally vulnerable States, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries].

XXX

**{ANNEX I
Indicative criteria for identification of areas}**

XXX

- (r) Vulnerability, fragility, sensitivity, or ~~S~~slow recovery and resilience;
- (s) Adequacy and viability;
- (t) Replication;
- (u) Feasibility.]

Preamble

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea, including the obligation to protect and preserve the marine environment,

Stressing the need to respect the balance of rights, obligations and interests set out in the Convention,

Stressing the need for the comprehensive global regime under the United Nations Convention on the Law of the Sea to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,

Desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations,

Recognizing the importance of promoting the voluntary sharing of benefits arising from the collection of marine genetic resources of areas beyond national jurisdiction on the basis of fair and reasonable terms and conditions, (moved from Article 7(a))

Noting the importance of rehabilitation and restoration of biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution, (moved from Article 14(e))

Emphasizing that the implementation of this Agreement should not undermine relevant legal instruments and frameworks and global, regional, subregional and sectoral bodies.

Respecting the sovereignty, territorial integrity and political independence of all States,

Desiring to promote sustainable development,

Aspiring to achieve universal participation,

Have agreed as follows:

PART I GENERAL PROVISION

Article 1 Use of terms

For the purposes of this Agreement:

- ~~[1. “Access” means, in relation to marine genetic resources, the collection of marine genetic resources.] [, including marine genetic resources accessed in situ, ex situ [and in silico] [[and] [as] [digital sequence information] [as genetic] sequence data [and information]]].]~~
12. “Activity under a State’s jurisdiction or control” means an activity over which a State has effective control or exercises jurisdiction.
23. “Area-based management tool” means a tool, including a marine protected area, for a geographically defined area, through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives. ~~[and affording higher protection than that provided in the surrounding areas].~~
34. “Areas beyond national jurisdiction” means the high seas and the Area.
45. “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.
- ~~[6. “Cumulative impacts” means impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts.]–~~
- ~~[7. Alt. 1. “Environmental impact assessment” means a process to evaluate the environmental impact of an activity [to be carried out in areas beyond national jurisdiction [, with an effect on areas within or beyond national jurisdiction]] [, taking into account [, inter alia,] interrelated [socioeconomic] [social and economic], cultural and human health impacts, both beneficial and adverse].]–~~
57. Alt. 2. “Environmental impact assessment” means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment.†
68. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity.]
- ~~[79. Alt. 1. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties.]–~~

[79. Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.]

[840. “Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas].]

~~[11. “Marine technology” means information and data, provided in a user friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for in situ and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]~~

912. (a) “States Parties” means States that have consented to be bound by this Agreement and for which this Agreement is in force. 3/48

(b) This Agreement applies mutatis mutandis:

(i) To any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention, and

(ii) Subject to article 67, to any entity referred to as an “international organization” in annex IX, article 1, of the Convention that becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.

~~[13. “Strategic environmental assessment” means the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.]~~

~~[14. “Transfer of marine technology” means the transfer of the instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.]~~

~~[15. Alt. 1. “Utilization of marine genetic resources” means to conduct research and~~

~~development on the genetic and/or biochemical composition of marine genetic resources
[, as well as the exploitation thereof].]~~

Article 2 General Objective

The objective of this Agreement is to ensure the ~~[long-term]~~ conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.

Article 3 ~~Application~~ Scope

This Agreement applies to the activities under the States' jurisdiction or control in areas beyond national jurisdiction.

Article 3 bis

This Agreement does not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement.

Article 4 Relationship between this Agreement and the Convention and other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

2. The rights and jurisdiction of coastal States in all areas under national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone, shall be respected in accordance with the Convention.
3. This Agreement shall be interpreted and applied in a manner that [respects the competences of and] does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

~~[4. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.]~~

Article 5 General [principles] [and] [approaches]

In order to achieve the objective of this Agreement, States Parties shall be guided by the following:

~~[(a) The principle of non-regression;]~~

~~(a)(b) [The polluter pays principle] [The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment];~~

~~[(c) The principle of the common heritage of mankind;];~~

~~[(d) The principle of equity;];~~

~~(b)(e) The precautionary [principle] [approach];~~

~~(c)(f) An ecosystem approach;~~

~~(d)[(g) An integrated approach [principle];]~~

~~(e)(h) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;~~

~~(i) The use of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities];~~

~~(f)(j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another.~~

Article 6 International cooperation

1. States Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and members thereof in the achievement of the objective of this Agreement.
2. States Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objective of this Agreement.
- ~~3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary.~~

PART II Marine Genetic Resources

~~**Article 7 Objectives**~~

~~The objectives of this Part are to:~~

~~[(a) Promote the [fair and equitable] sharing of benefits arising from the [collection of] [access to] [utilization of] marine genetic resources of areas beyond national jurisdiction;]~~

~~**(moved to Preamble)**~~

~~[(b) Build the capacity of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to [collect] [access] and utilize marine genetic resources of areas beyond national jurisdiction;]~~

~~[(c) Promote the generation of knowledge and technological innovations, including by promoting and facilitating the development and conduct of marine scientific research in areas beyond national jurisdiction, in accordance with the Convention;]~~

~~[(d) Promote the development and transfer of marine technology [, subject to all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology];]~~

Article 8 Application

~~1. The provisions of this [Part] [Agreement] shall apply to:–~~

~~[(a) [The use of fish [samples] and other biological resources for research into their genetic properties] [Marine genetic resources, including fish, insofar as they are collected for the purposes of being the subject of research into their genetic properties];–~~

~~(b) Marine genetic resources [collected] [accessed] in situ [and [accessed] ex situ [and [in silico] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization];~~

~~[(c) Derivatives.]]~~

1. The provisions of this Part shall apply to marine genetic resources collected in situ after its entry into force of this Agreement, insofar as they are collected for the purpose of being the subject of research into their genetic properties. **(moved from paragraph 3 and streamlined)**

~~2. The provisions of this [Part] [Agreement] shall not apply to:~~

~~{(a) The use of fish and other biological resources as a commodity.~~

~~{(b) Marine genetic resources **accessed collected** ex situ [or in silico] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization];}~~

~~{(c) Derivatives;}~~

~~{(d) Marine scientific research.}}~~

~~3. The provisions of this Agreement shall apply to marine genetic resources [collected] [accessed] in situ, [and] [accessed] ex situ [and in silico] [[and] [as] [digital sequence information] [as genetic] sequence data]] [and their utilization] after its entry into force, including those resources [collected] [accessed] in situ before its entry into force, but ~~accessed ex situ or [in silico] [[and] [as digital sequence information] [as genetic sequence data]] [or utilized] after it.~~~~

Article 9 Activities with respect to marine genetic resources of areas beyond national jurisdiction

~~1. Activities with respect to marine genetic resources of areas beyond national jurisdiction~~

may be carried out by States Parties and their natural or juridical persons under the conditions laid down in this Agreement.}]

~~{2. In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State under the jurisdiction of which such resources are found.}~~

~~{3. No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction [, nor shall any State or natural or juridical person appropriate any part thereof]. No such claim or exercise of sovereignty or sovereign rights [nor such appropriation] shall be recognized.}~~

~~{4. The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of mankind as a whole, taking into consideration the interests and needs of developing States, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle income countries.}~~

{25.} Activities with respect to marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.}]

Article 10 [Collection of] [and] [Access to] marine genetic resources of areas beyond national jurisdiction

~~[1. States Parties shall notify the secretariat within 60 days after the completion of the cruise of the information on in situ {collection of} {access to} marine genetic resources within the scope of this Part.~~

~~2. Such information shall include an indication of the location and date of {collection} {access}, the resources to be {collected} {accessed}, the purposes for which the resources will be utilized and the entity that has collected {collect} {access} the resources] {of {collection of} {access to} marine genetic resources of areas beyond national jurisdiction}.]~~

~~[Alt. 2: a {permit} {licence} issued in the manner and under the terms and conditions set forth in paragraph 2.]]~~

~~[2. States Parties shall take the necessary legislative, administrative or policy measures, as~~

~~appropriate, to ensure that in situ [collection of] [access to] marine genetic resources within the scope of this Part shall be subject to:—~~

- ~~(a) An indication of the geographical coordinates of the location where marine genetic resources were [collected] [accessed];—~~
- ~~(b) Capacity building;—~~
- ~~(c) The transfer of marine technology;—~~
- ~~(d) The deposit of samples, data and related information in open source platforms, such as databases, repositories or gene banks;—~~
- ~~(e) Contributions to the special fund;—~~
- ~~(f) Environmental impact assessments;—~~
- ~~(g) Other relevant terms and conditions as may be determined by the Conference of the Parties, including in relation to [collection of] [access to] marine genetic resources in ecologically and biologically significant areas, vulnerable marine ecosystems and other specially protected areas, in order to ensure the conservation and sustainable use of the resources therein.]~~

~~[3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that ex situ access to marine genetic resources within the scope of this Part is free and open [, subject to articles 11 and 13].]—~~

~~[4. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that access to [marine genetic resources in silico] [[and] [digital sequence information] [genetic] sequence data]] is facilitated [, subject to articles 11 and 13].]~~

~~[5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that activities with respect to marine genetic resources of areas beyond national jurisdiction that may result in the utilization of marine genetic resources found in areas both within and beyond national jurisdiction are subject to the prior notification and consultation of the coastal States [and any other relevant State] concerned, with a view to avoiding infringement of the rights and legitimate interests of [that] [those] State[s].]~~

~~[6. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that marine genetic resources of areas beyond national jurisdiction~~

~~utilized within their jurisdiction have been [collected] [and] [accessed] in accordance with this Part.]~~

Article 11 ~~[Fair and equitable]~~ **Voluntary** sharing of benefits

~~[1. States Parties, including their nationals, that have [collected] [accessed] [utilized] marine genetic resources of areas beyond national jurisdiction [shall] [may] share benefits arising therefrom [in a fair and equitable manner] with other States Parties, with consideration for the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries [, in accordance with this Part].]~~

1. States Parties shall promote, on a voluntary basis, sharing of non-monetary benefits arising from collection of marine genetic resources of areas beyond national jurisdiction with consideration for developing States Parties, in particular, least developed countries and landlocked developed countries.

~~[2. Benefits [shall] [may] include [monetary and] non-monetary benefits.]~~

~~[23. Non-monetary benefits arising from the [collection of] [access to] [utilization of] marine genetic resources of areas beyond national jurisdiction [shall] [may] be shared at different stages, in accordance with the following provisions:~~

(a) Access to samples and sample collections, sharing of information, such as ~~pre-cruise or pre-research information,~~ post-cruise or post-research notification, transfer of technology and capacity-building,] ~~[shall] [may]~~ be shared ~~upon after~~ [collection of] ~~[access to], utilization of~~ marine genetic resources of areas beyond national jurisdiction.

(b) Samples, data and related information ~~[shall] [may]~~ be made publicly available in open access [through the clearing-house mechanism ~~[upon after [collection] [access] within reasonable period of time [[marine genetic resources in-silico] [Digital sequence information].~~

(c) [Genetic sequence data related to marine genetic resources of areas beyond national jurisdiction ~~[shall] [may]~~ be published and used taking into account current international practice in the field.]

~~[3-4].~~ Benefits shared in accordance with this Part shall be used

~~{(a) To contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;}~~

~~{(b) To promote scientific research and facilitate {collection of} {access to} marine genetic resources of areas beyond national jurisdiction;}~~

~~{(c) To build capacity of States Parties to {collect} and conserve {access} and utilize marine genetic resources of areas beyond national jurisdiction {, including through common funding or pool funding for research cruises and collaboration in sample collection and data access where adjacent coastal States [shall] [may] be invited to participate, taking into account the varying economic circumstances of States that wish to participate};}~~

~~{(d) To create and strengthen the capacity of States Parties to conserve and use sustainably marine biological diversity of areas beyond national jurisdiction, with a focus on small island developing States;}~~

~~{(e) To support the transfer of marine technology;}~~

~~{(f) To assist developing States Parties in attending the meetings of the Conference of the Parties.}}~~

~~Article 12 Intellectual property rights~~

ROK requests to delete Article 12

~~Article 13 Monitoring~~

ROK requests to delete Article 13

PART III. Measures such as Area-Based Management Tools, Including Marine Protected Areas

~~Article 14 Objectives~~

~~1. The objectives of this Part are to:—~~

~~{(a) Enhance cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks~~

~~and relevant global, regional, subregional and sectoral bodies, which will also promote a holistic and cross-sectoral approach to [ocean management] [conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction];~~

~~[(b) Implement effectively obligations under the Convention and other existing relevant international obligations and commitments;]~~

~~(c) Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of area-based management tools, including marine protected areas ;]~~

~~[(d) Establish a system of ecologically representative marine protected areas that are connected [and effectively and equitably managed];]~~

~~[(e) Rehabilitate and restore biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution;]~~ **(moved to Preamble)**

~~[(f) Support food security and other socioeconomic objectives, including the protection of cultural values;]~~

~~[(g) Create scientific reference areas for baseline research;]~~

~~[(h) Safeguard aesthetic, natural or wilderness values;]~~

~~[(i) Promote coherence and complementarity;]~~

Article 15 International cooperation and coordination

1. To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, States Parties shall promote coherence and complementarity in the {establishment of area-based management tools, including marine protected areas, through:

~~[(a) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, without prejudice to their respective mandates, in accordance with this Part;]~~

~~[(b) The process in relation to area-based management tools, including marine protected areas, set out in this Part, including by (i) adopting recommending conservation and [management] [sustainable use] measures to complement measures designated under relevant legal instruments and frameworks and relevant global, regional, subregional or~~

sectoral bodies.

~~{(ii) Establishing area-based management tools, including marine protected areas, and adopting conservation and [management] [sustainable use] measures where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.}}~~

~~{2.Alt. to para. 1. (b)(ii)}~~ Where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body to establish area-based management tools, including marine protected areas, States Parties shall cooperate to establish such an instrument, framework or body and shall participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. If it is deemed that all efforts are exhausted to establish a new instrument or framework or relevant global, regional or sectoral body, the States Parties may establish area-based management tools, including marine protected areas, by decisions at the Conference of the Parties.

3. States Parties shall make arrangements for consultation and coordination to enhance cooperation with and among relevant legal instruments and frameworks and relevant global, regional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among associated conservation and [management] [sustainable use] measures adopted under such instruments and frameworks and by such bodies.
4. Measures ~~recommended~~ **adopted** in accordance with this Part shall not undermine the effectiveness of measures adopted by coastal States in adjacent areas within national jurisdiction and shall have due regard for the rights, duties and legitimate interests of all States, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to this end, in accordance with the provisions of this Part.
- [5.** In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls under the national jurisdiction of a coastal State, either wholly or in part, it shall be adapted to cover any remaining area beyond national jurisdiction or otherwise cease to be in force.**]**

Article 16 Identification of areas requiring protection

1. Areas requiring protection through the establishment of area-based management tools, including marine protected areas, shall be identified on the basis of the best available ~~[science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities]~~, the precautionary ~~[approach] [principle]~~ and an ecosystem approach and take into account relevant traditional knowledge of indigenous peoples and local communities.
2. Indicative criteria for the identification of areas requiring protection through the [establishment] of area-based management tools, including marine protected areas, under this Part may include: those specified in annex I.
3. The indicative criteria specified in annex I [shall] [may] be further developed and revised as necessary by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties.
- ~~4. The indicative criteria specified in annex I, as well as any that may be further developed and revised in accordance with paragraph 3, shall be applied, as relevant, by the proponents of a proposal under this Part and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part. Such criteria shall also be [applied] [taken into account] by States Parties in the establishment of area-based management tools, including marine protected areas, under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.]~~

Article 17 Proposals

1. Proposals in relation to the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.
- ~~2. States Parties may collaborate with relevant stakeholders in the development of proposals.]~~
3. Proposals shall be formulated on the basis specified in paragraph 1 of article 16.
4. Proposals shall include, at a minimum, the following elements:
 - (a) A geographic or spatial description of the area that is the subject of the proposal;

- (b) Information on any of the indicative criteria specified in annex I, as well as any criteria that may be further developed and revised in accordance with paragraph 3 of article 16, applied in identifying the area.
 - (c) Specific human activities in the area, including uses by indigenous peoples and local communities in ~~adjacent~~ coastal States;
 - (d) A description of the state of the marine environment and biodiversity in the identified area;
 - (e) A description of the specific conservation and sustainable use objectives that are to be applied to the area;
 - (f) A description of the proposed [conservation and [management] [sustainable use] measures] ~~[priority elements for a management plan]~~ to be adopted to achieve the specified objectives;
 - ~~{(g) A duration for the proposed area and measures;}~~
 - (h) A monitoring, research and review plan, ~~including priority elements;~~
 - (i) Information on any consultations undertaken with ~~adjacent~~ coastal States and/or relevant global, regional, subregional and sectoral bodies.
5. Further ~~requirements~~ elements regarding the contents of proposals ~~{shall}~~ ~~{may}~~ be elaborated by the Scientific and Technical Body as necessary, for consideration and adoption by the Conference of the Parties.

Article 18 Consultation on and assessment of proposals

1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all relevant stakeholders.
2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed by the secretariat to the proponent. The proponent shall retransmit to the secretariat, having taken into account the preliminary review of the Scientific and Technical Body. The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows:
 - (a) States, in particular ~~adjacent~~ coastal States, shall be invited to submit, inter alia:

- (i) Views on the merits of the proposal;
 - (ii) Any relevant [additional] scientific inputs;
 - (iii) Information regarding any existing measures in adjacent areas within national jurisdiction;
 - (iv) Views on the potential implications of the proposal for areas under national jurisdiction;
 - (v) Any other relevant information;
- (b) Bodies of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be invited to submit, inter alia:
- (i) Views on the merits of the proposal;
 - (ii) Any relevant [additional] scientific inputs;
 - (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;
 - (iv) Views regarding any aspects of the [conservation and [management] [sustainable use] measures] [priority elements for a management plan] identified in the proposal that fall within the competence of that body;
 - (v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body;
 - (vi) Any other relevant information;
- ~~(c) Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, inter alia:—~~
- ~~(i) Views on the merits of the proposal;—~~
 - ~~(ii) Any relevant [additional] scientific inputs;—~~
 - ~~(iii) Any relevant traditional knowledge of indigenous peoples and local communities;—~~
 - ~~(iv) Any other relevant information.—~~
3. Contributions received pursuant to paragraph 2 shall be made publicly available by the secretariat.
4. The proponent shall consider the contributions received during the consultation period and shall either revise the proposal accordingly or continue the consultation process.
5. The consultation period shall be time-bound.

6. The revised proposal shall be submitted to the Scientific and Technical Body, which shall assess the proposal, and make recommendations to the Conference of the Parties.
7. The modalities of the consultation and assessment process shall be further elaborated by the ~~{Scientific and Technical Body}~~ [Conference of the Parties], as necessary ~~{, and shall take into account the special circumstances of small island developing States}~~.

Article 19 Decision-Making

The Conference of the Parties ~~{shall}~~ ~~{may}~~ take decisions on matters related to area-based management tools, including marine protected areas, with respect to:

- ~~{(a) Objectives, Criteria, modalities and requirements, as provided for under articles 14, 16, 17 and 18;}~~

[Alt. 1

(b) Proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, including in relation to:

- (i)** The identification of areas requiring protection;
 - (ii)** The establishment of area-based management tools, including marine protected areas, and related conservation and [management] [sustainable use] measures to be adopted to achieve the specified objectives, [taking into account] existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate;
- (c)** Where there are relevant legal instruments or frameworks or relevant global, regional or sectoral bodies:
- (i)** Whether to recommend that States Parties to this Agreement promote the adoption of relevant conservation and [management] [sustainable use] measures through such instruments, frameworks and bodies, in accordance with their respective mandates;
 - (ii)** Whether to ~~adopt~~ recommend conservation and [management] [sustainable use] measures complementary to those adopted under such instruments, frameworks and bodies;
- (d)** Whether to establish area-based management tools, including marine protected areas,

where there are no relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, in accordance with paragraph 2 of Article 15.

~~{Alt. 2-~~

~~(b) Matters related to identifying potential area-based management tools, including marine protected areas;—~~

~~(c) Recommendations relating to the implementation of related management measures, while recognizing the primary authority for the adoption of such measures within the respective mandates of [existing] relevant legal instruments and frameworks and relevant global, regional and sectoral bodies;—~~

Article 20 Implementation

1. States Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.
2. Nothing in this Agreement shall prevent a State Party from adopting more stringent measures with respect to its vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law.
- ~~{3. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States Parties, directly or indirectly. }~~
- ~~{34. States Parties shall promote the adoption of such measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures adopted recommended under this Part. }~~
- ~~{45. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the conservation and management the objectives of the measures recommended or adopted and area-based management tools established under this Part. }~~
- ~~{56. A State Party that is not a participant in a relevant legal instrument or framework, or a~~

member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and ~~[management]~~ [sustainable use] measures established under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. ~~Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area-based management tools, including marine protected areas, established under relevant frameworks, instruments and bodies.]~~

~~Article 21 Monitoring and review~~

ROK requests to delete Article 21

PART IV Environmental Impact Assessment

~~Article 21bis Objectives~~

ROK requests to delete Article 21bis

Article 22 Obligation to conduct environmental impact assessments

1. States Parties shall ~~{as far as practicable}~~ assess the potential effects of planned activities under their jurisdiction or control [on the marine environment] [in accordance with their obligations under ~~articles 204 to~~ Article 206 of the Convention].
2. On the basis of articles 204 to 206 of the Convention, States Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement the provisions ~~{of this Part} [and any further measures [on the conduct of environmental impact assessments] adopted by the Conference of the Parties.~~
3. The requirement in this Part to conduct an environmental impact assessment applies ~~{only to activities conducted in areas beyond national jurisdiction} [to all activities that have an~~

~~impact in areas beyond national jurisdiction~~].

Article 23 Relationship between this Agreement and environmental impact assessment processes under other ~~{existing}~~ relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

~~1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with the obligations under the Convention.~~

~~{~~12. ~~Alt. 2.~~ States Parties shall cooperate in promoting the use of environmental impact assessments in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies for planned activities that meet or exceed the threshold contained in this Agreement.~~}~~

~~{~~3. ~~Alt. 1.~~ ~~[Global minimum standards] [and] [guidelines] for the conduct of environmental impact assessments [under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies] shall be developed [by the Scientific and Technical Body] [through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies]]. [These [global minimum standards] [and] [guidelines] shall be set out in an annex to this Agreement and shall be updated periodically].~~~~}~~

~~{~~3. ~~Alt. 2.~~ The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.~~}~~

~~{~~24. ~~Alt. 2.~~ No environmental impact assessment is required under this Agreement for any activity conducted in accordance with the rules and guidelines appropriately established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies, regardless of whether or not an environmental impact assessment is required under those rules or guidelines~~}, insofar as the activity is conducted consistently with Article 206 of the Convention. The Conference of the Parties may, as appropriate, make and update the list of such rules and guidelines.~~

Article 24 Thresholds and criteria for environmental impact assessments

- ~~{1. Alt. 1. When States have reasonable grounds for believing that planned activities under their jurisdiction or control {may cause substantial pollution of or significant and harmful changes to} {are likely to have more than a minor or transitory effect on} the marine environment {in areas beyond national jurisdiction}, they shall, [individually or collectively,] as far as practicable, {assess the potential effects of such activities on the marine environment} {ensure that the potential effects of such activities on the marine environment are assessed}.}~~
- ~~2. Environmental impact assessments shall be conducted in accordance with the threshold and criteria [set out in this Part and as further elaborated upon pursuant to the procedure set out in paragraph [...]] [, which shall be developed by the [Scientific and Technical Body]].~~

~~**Article 25 Cumulative impacts**~~

~~**Article 26 Transboundary impacts**~~

ROK requests to delete Articles 25 and 26 (cumulative impacts and transboundary impacts are to be addressed in Article 35(d))

~~**Article 27 Areas identified as ecologically or biologically significant or vulnerable**~~

ROK requests to delete Article 27

~~**Article 28 Strategic environmental assessments**~~

ROK requests to delete Article 28

~~**Article 29 List of activities that [require] [or] [do not require] an environmental impact assessment**~~

ROK requests to delete Article 29

Article 30 Screening

1. A State Party shall determine whether an environmental impact assessment is required in respect of {a planned activity under its jurisdiction or control.
- ~~2.~~ The ~~initial~~ screening of activities shall consider the environmental and ecological characteristics of the area where the planned activity under the jurisdiction or control of a

State Party is intended to take place, as well as where the potential effects are going to be felt. ~~Should such planned activity take place in or adjacent to an area that has been identified for its significance or vulnerability, regardless of whether the impacts are expected to be minimal or not, an environmental impact assessment shall be required.]~~

~~[3. If a State Party determines that an environmental impact assessment is not required for a planned activity under its jurisdiction or control, [the approval of the Scientific and Technical Body must be obtained] [it must provide information to support that conclusion]. [The Scientific and Technical Body shall verify that the information provided by the [State Party] satisfies the requirements in this Part.]]~~

Article 31 Scoping

- ~~[1. States Parties shall **establish procedures to** define the scope of the environmental impact assessments that shall be conducted [under the provisions of this Part].]~~
- [2. Such scope shall include, the identification of key environmental ~~[, social, economic, cultural and other relevant] [impacts] [issues], including [identified cumulative impacts],~~ using the best available ~~scientific information~~ science and taking into account relevant traditional knowledge of indigenous peoples and local communities ~~[, alternatives for analysis] [and a determination of the potential effects of the planned activity under the jurisdiction or control of a State Party, including a detailed description of potential environmental consequences].]~~

Article 32 Impact assessment and evaluation

1. A State Party ~~[that has determined that a planned activity under its jurisdiction or control requires an environmental impact assessment under this Agreement]~~ shall ensure that the identification and evaluation of impacts in such an assessment is conducted in accordance with this Part, using the best available ~~scientific information~~ science and taking into account relevant traditional knowledge of indigenous peoples and local communities ~~[, and an examination of alternatives].~~
2. Nothing in this Part precludes States Parties, ~~in particular [small island] developing States,~~

from conducting joint environmental impact assessments.

- [3. A State Party may designate a third party to conduct an environmental impact assessment required under this Agreement. Such third party [shall] [may] be drawn from the pool of experts created pursuant to paragraph 4 below. Environmental impact assessments conducted by such third parties must be submitted to the State for review and decision-making.]
- [4. A pool of experts shall be created under the Scientific and Technical Body. States Parties with capacity constraints may commission those experts to conduct and evaluate environmental impact assessments for planned activities.]

~~Article 33 Mitigation, prevention and management of potential adverse effects–~~
ROK requests to delete Article 33

Article 34 Public Notification and consultation

- 1. States Parties shall ensure early timely public notification ~~to stakeholders~~ about planned activities under their jurisdiction or control that require an environmental impact assessment under this Agreement, and effective and time-bound opportunities for stakeholder ~~participation throughout the environment impact assessment process, including the~~ submission of comments before a decision is made as to whether to proceed with the activity.
- ~~[2. Stakeholders in this process include potentially affected States, where those can be identified, [in particular adjacent coastal States] [, indigenous peoples and local communities with relevant traditional knowledge in adjacent coastal States,] relevant global, regional, subregional and sectoral bodies, non-governmental organizations, the general public, academia [, scientific experts] [, affected parties,] [adjacent communities and organizations that have special expertise or jurisdiction] [, interested and relevant stakeholders] [, and those with existing interests in an area].]~~
- 23. Public notification and consultation shall be transparent and inclusive ~~[, and targeted and proactive when involving adjacent small island developing States].~~
- 34. Substantive comments received during the consultation process ~~[from adjacent coastal~~

~~States]~~ shall be considered ~~and [addressed] [responded to]~~ by States Parties. ~~States Parties shall give particular regard to comments concerning potential transboundary impacts. States Parties shall make public the comments received and the descriptions of how they were addressed.~~

- 45.** States Parties [undertaking an environmental impact assessment pursuant to this Agreement] shall establish procedures allowing for access to information related to the environmental impact assessment process under this Agreement. [Notwithstanding this, States Parties shall not be required to disclose non-public information or information that would undermine intellectual property rights or other interests].
- ~~[56.~~ Procedures may be developed by the Conference of the Parties to facilitate consultation at the international level.]

Article 35 Preparation and content of environmental impact assessment reports

1. States Parties shall [be responsible for] [ensure] the preparation of an environmental impact assessment report for any such assessment undertaken pursuant to this Part.
2. ~~Where an environmental impact assessment is required in accordance with this Part, T~~he environmental impact assessment report ~~{shall}~~ ~~{may}~~ include ~~{as a minimum,~~ the following information~~}~~:
 - (a) A description of the planned activity under the jurisdiction or control of a State Party and its purpose ~~{,~~ including a description of the location of [the] [such a] planned activity;
 - (b) A description of the results of the scoping exercise~~}~~;
 - (c) A description of the marine environment likely to be affected;
 - (d) A description of the potential effects of the planned activity under the jurisdiction or control of a State Party on the marine environment, including ~~{social, economic, cultural and other relevant impacts,}~~ and ~~{reasonably foreseeable potential direct, indirect,}~~ ~~{cumulative and transboundary impacts}~~, ~~{as well as an estimation of their significance}~~ ~~{,~~ including a description of the likelihood that the assessed activity will cause substantial pollution of or other significant and harmful changes to the marine environment in areas beyond national jurisdiction and its biodiversity~~}~~;
 - (e) A description ~~{,~~ where appropriate,~~}~~ of reasonable alternatives to the planned activity

under the jurisdiction or control of a State Party, including the no-action alternative;

~~{(f) A description of the worst case scenario that could be expected to occur as a result of the planned activity under the jurisdiction or control of a State Party;}~~

(fg) A description of any measures for avoiding, preventing ~~{, minimizing}~~ and mitigating impacts ~~{ and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment} [and other adverse social, economic, cultural and relevant impacts];~~

(gh) A description of any follow-up actions, including any monitoring and management programmes, ~~any plans for post-project analysis where scientifically justified, and plans for remediation;~~

~~{(i) Uncertainties and gaps in knowledge;~~

(hj) ~~{A non-technical summary} {and/or a technical summary};~~

~~{(k) The identification of the sources of the information contained in the report;}~~

~~{(l) An explicit indication of predictive methods and underlying assumptions, as well as the relevant environmental data used;}~~

~~{(m) The methodology used to identify environmental impacts;}~~

~~{(n) An environmental management plan, including a contingency plan for responding to incidents that have an impact on the marine environment;}~~

~~{(o) The environmental record of the proponent;}~~

~~{(p) A review of the business plan for the planned activity under the jurisdiction or control of a State Party;}~~

~~{(q) A description of consultations undertaken in the environmental impact assessment process, including with relevant global, regional and sectoral bodies.}~~

[3. Further [details] [guidance] regarding the required content of an environmental impact assessment report [shall] [may] be developed by the Conference of the Parties as an annex to this Agreement and shall be based on the best available scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities. [[These details] [This guidance] shall be reviewed regularly].]

Article 36 Publication of [assessment] reports

States Parties shall publish ~~and communicate or provide~~ the reports of the results of the assessments in accordance with ~~[articles 204 to 206 of]~~ Article 205 of the Convention [, including through the clearing-house mechanism].

[Article 37 Consideration and review of [assessment] reports]

1. ~~{The Scientific and Technical Body shall environmental impact assessment reports prepared pursuant to this Agreement shall be considered and reviewed the environmental impact assessment reports prepared pursuant to this Agreement on the basis of approved recognized scientific methods and may provide comments on the environmental assessment reports to the State Party which has prepared those reports. by the Scientific and Technical Body.}~~
2. The State Party may consider comments referred to in paragraph 1 of this Article.

Article 38 Decision-making

- ~~{1. Alt. 1. Where a planned activity is under the jurisdiction or control of a State Party, that State shall be responsible for determining whether the planned activity under its jurisdiction or control may proceed.}~~
- ~~{1. Alt. 2. The Conference of the Parties shall be responsible for determining whether a planned activity under the jurisdiction or control of a State Party may proceed, in accordance with the following procedural requirements:–~~
 - ~~(a) The environmental impact assessment report shall be submitted to the Scientific and Technical Body for review, which shall, having regard to the inputs received during public consultation, review the report and make a recommendation to the Conference of the Parties on whether the planned activity under the jurisdiction or control of a State Party should proceed[:]–~~
 - ~~{(b) A revised environmental impact assessment report may be submitted to the panel of experts, appointed by the Scientific and Technical Body, for reconsideration where the Scientific and Technical Body has recommended that the planned activity under the jurisdiction or control of a State Party should not proceed.}}~~

- {2. No decision allowing the planned activity under the jurisdiction or control of a State Party to proceed ~~shall~~ should be made where the environmental impact assessment indicates that the planned activity under the jurisdiction or control of a State Party would have severe adverse impacts on the environment.}
- ~~{3. Decision-making-related documents shall be made public, including through the clearing-house mechanism.}~~

Article 39 Monitoring and reporting

1. {In accordance with articles 204 to 206 of the Convention,} States Parties shall ~~[[continuously]]~~ monitor the effects of authorized activities ~~}-[ensure that the environmental impacts of the authorized activity are [continuously] monitored [and supervised]]~~ ~~[-, in accordance with the conditions set out in the approval of the activity].}~~ on the basis of the environmental impact assessment report.
2. States Parties shall publish reports of the results obtained pursuant to paragraph 1 of this Article or provide such reports to the secretariat in a timely manner.

~~Article 40 Reporting~~

ROK requests to delete Article 40

~~Article 41 Review~~

ROK requests to delete Article 41

PART V. Capacity-Building and Transfer of Marine Technology

~~Article 42 Objectives~~

ROK requests to delete Article 42

Article 43 Cooperation in capacity-building and transfer of marine technology

1. States Parties, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall ~~{promote}~~ ~~{ensure}~~ cooperation, ~~{in accordance with [this Agreement] [Part XIV of the Convention],}~~ in accordance with their capabilities, in capacity-building and the transfer of marine technology to assist States Parties that may need and request it, particularly, developing States Parties in achieving the objectives of this Agreement.
2. Capacity-building and the transfer of marine technology under this Agreement shall be ~~{carried out}~~ ~~{promoted}~~ through enhanced cooperation at all levels ~~and in all forms, including partnerships with and involving all relevant stakeholders, such as, where appropriate, [the private sector,] civil society and holders of traditional knowledge~~ and by strengthening cooperation, coordination and synergies between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.
3. In giving effect to the duty to ~~{cooperate}~~ ~~{promote cooperation}~~ under this article, States Parties shall ~~give full recognition to the special~~ take into account requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, ~~small island developing States, coastal African States and developing middle income countries.~~

Article 44 Modalities for capacity-building and the transfer of marine technology

- ~~[1. States Parties, recognizing that capacity-building, access to and the transfer of marine technology, including biotechnology, among States Parties are essential elements for the attainment of the objectives of this Agreement, {undertake to provide or facilitate} {shall promote} {shall ensure} access to and the transfer of marine technology, and capacity-building, for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle income countries.]~~
2. Capacity-building and the transfer of marine technology ~~{shall}~~ ~~{may}~~ be provided on a ~~{mandatory and voluntary}~~ ~~{voluntary}~~ basis through ~~{bilateral, regional, subregional and multilateral}~~ cooperation.
3. Capacity-building and the transfer of marine technology shall be transparent and country-

- driven ~~{~~, and shall not duplicate existing programmes~~}~~. Capacity-building and the transfer of marine technology shall be guided by lessons learned, including those from capacity-building and the transfer of marine technology activities under existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, ~~and should be an effective, iterative process that is participatory, cross-cutting and gender responsive.~~
4. Capacity-building and the transfer of marine technology ~~shall~~ should be based on and be responsive to the needs and priorities of developing States Parties [as determined by] [informed by] a needs assessment [on an individual case-by-case, subregional or regional basis]. Such needs and priorities may be self-assessed or facilitated through a mechanism, which may be established by the Conference of the Parties.
- ~~5. The {development and} transfer of marine technology shall be carried out {on fair and most favourable terms, including on concessional and preferential terms} {according to mutually agreed terms and conditions} (moved from paragraph 1 of Article 45)~~
- ~~6. [Alt. 1. The transfer of marine technology shall [take into account the need to protect intellectual property rights] [be carried out with due regard for all legitimate interests, including the rights and duties of holders, suppliers and recipients of marine technology].] [Alt. 2. States Parties shall [protect] [respect the protection of] intellectual property rights.] (moved from paragraph 2 of Article 45)~~
- ~~{75. Guidelines on~~ detailed modalities, procedures ~~and guidelines~~ for capacity-building and the transfer of marine technology [may] [shall] be developed and adopted by the Conference of the Parties.~~}~~

~~**Article 45 Additional modalities for the transfer of marine technology**~~

ROK requests to delete Article 45

Article 46 Types of capacity-building and transfer of marine technology

1. In support of the objectives set out in article 42, the types of capacity-building and transfer of marine technology may include, and are not limited to:
- (a) The sharing of relevant data, information, knowledge and research;
 - (b) Information dissemination and awareness-raising, including with respect to relevant

traditional knowledge of indigenous peoples and local communities;

~~(c) The development and strengthening of relevant infrastructure, including equipment;—~~

~~(cd)~~ The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms;

~~(de)~~ The development and strengthening of human resources and technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of technology;

~~(ef)~~ The development and sharing of manuals, guidelines and standards;

~~(fg)~~ The development of technical, scientific and research and development programmes, including biotechnological research activities.]

2. Further ~~details~~ indicative list concerning the types of capacity-building and transfer of marine technology identified in this article are elaborated in annex II.
3. The indicative list of types of capacity-building and transfer of marine technology set out in annex II ~~[shall]~~ ~~[may]~~ be reviewed, assessed and amended periodically as necessary, by the Conference of the Parties to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, ~~subregion and regions~~.

Article 47 Monitoring and review

- ~~1. Capacity-building and the transfer of marine technology activities undertaken in accordance with this Agreement shall be monitored and reviewed periodically.~~
- ~~2. The monitoring and review referred to in paragraph 1 shall be aimed at:—~~
 - ~~(a) Reviewing the needs and priorities of developing States Parties in terms of capacity-building and transfer of marine technology, including the support required, provided and mobilized, and gaps in meeting requirements of developing States Parties;—~~
 - ~~(b) Measuring performance on the basis of objective indicators and reviewing results-based analyses, including the output, progress and effectiveness of capacity-building and transfer of marine technology activities, successes and challenges;~~
 - ~~(c) Making recommendations for proposed ways forward and follow-up activities, including on how capacity-building and the transfer of marine technology could be further~~

~~enhanced to allow developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to fully meet their obligations and exercise their rights under this Agreement.~~

~~3. Monitoring and review shall be carried out by the Conference of the Parties, which shall decide upon the details and modalities of such review and monitoring, including with regard to any subsidiary body that it may wish to establish in this respect.~~

~~4. The monitoring and review of capacity-building and transfer of marine activities under this Agreement shall include all relevant actors involved in the process, including at the subregional and regional level.~~

5. In supporting the monitoring and review of capacity-building and the transfer of marine technology, States Parties ~~{and committees on regional capacity-building and the transfer of marine technology}~~ may submit, on a voluntary basis, reports, which may be made publicly available, on capacity-building and the transfer of marine technology given and received. States Parties shall ensure that reporting requirements for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, ~~small island developing States, coastal African States and developing middle-income countries~~, are streamlined and not onerous. The Conference of the Parties may, as necessary, review the reports submitted by States Parties.

PART VI. Institutional Arrangements

Article 48 Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The first meeting of the Conference of the Parties shall be convened no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference shall be held at regular intervals to be determined by the Conference at its first meeting.

3. The Conference of the Parties shall agree upon and adopt rules of procedure for itself and for any subsidiary body that it may establish.

[3bis. As a general rule, the decisions of the Conference of the Parties shall be taken by consensus. ~~If all efforts to reach consensus have been exhausted, the procedure established in the rules of procedure adopted by the Conference shall apply.~~]

[3ter. Decisions of the Conference of the Parties shall be made publicly available by the secretariat and shall be transmitted to all States Parties in a timely manner, ~~[in particular, to adjacent coastal States]~~ and as well as to relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.]

4. The Conference of the Parties shall monitor and keep under review the implementation of this Agreement and, for this purpose, shall:

(a) Adopt decisions and recommendations related to the implementation of this Agreement;

(b) Exchange information relevant to the implementation of this Agreement;

(c) Promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts towards, and the harmonization of relevant policies and measures for, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction ~~[, including by establishing processes for cooperation and coordination with and among relevant global, regional, subregional and sectoral bodies] [, including by inviting other global, regional, subregional and sectoral bodies to establish processes for cooperation];~~

(d) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement ~~[, which may include:—~~

~~[(i) An access and benefit sharing mechanism;]—~~

~~[(ii) A capacity building and transfer of marine technology committee;]—~~

~~[(iii) An implementation and compliance committee;]—~~

~~[(iv) A finance committee];~~

(e) Adopt, at each ordinary meeting, a budget for the financial period until the following ordinary meeting;

(f) Undertake other functions identified in this Agreement or as may be required for its implementation.

- [5. The Conference of the Parties ~~{shall}~~ ~~{may}~~, at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]

Article 49 Scientific and Technical Body

1. A Scientific and Technical Body is hereby established.
2. The Body shall be composed of experts, taking into account the need for multidisciplinary expertise [, including expertise in relevant traditional knowledge of indigenous peoples and local communities], gender balance and equitable geographical representation.
3. The Body may also draw on appropriate advice from [existing arrangements, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection] [relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies], as well as other scientists and experts, as may be required.
4. Under the authority and guidance of the Conference of the Parties, the Body shall:
 - (a) Provide scientific and technical advice to the Conference of the Parties;
 - ~~[(b) Monitor the utilization of marine genetic resources of areas beyond national jurisdiction;]~~
 - [(~~be~~) Possess recommendatory functions with respect to measures such as area-based management tools, including marine protected areas, including regarding:
 - (i) Standard-setting and review;
 - (ii) The assessment of proposals;
 - (iii) The monitoring and review of measures;]
 - [(~~cd~~) Elaborate guidelines with respect to environmental impact assessments;]
 - ~~[(~~de~~) Make recommendations to the Conference of the Parties with respect to environmental impact assessments; Consider and review the environmental impact assessment reports prepared pursuant to this Agreement;~~
 - ~~[(f) Review environmental impact assessment standards to ensure consistency with the requirements under this Agreement;]~~

~~[(g) Identify innovative, efficient and state-of-the-art technology and know-how relating to the conservation and sustainable use of marine biological diversity;]~~

[(~~eh~~) Advise on ways and means to promote the development and transfer of marine technology;]

[(~~fi~~) Assess the effectiveness of the voluntary implementation of measures and programmes by the States Parties for capacity-building and the transfer of marine technology, including by assessing whether capacity gaps are decreasing;]

~~[(j) Collaborate with regional and subregional committees on capacity-building and the transfer of marine technology or regional needs assessment mechanisms;]~~

~~[(k) Elaborate programmes for capacity-building and the transfer of marine technology;]~~

~~[(l) Establish subsidiary bodies as required;]-~~

(~~gm~~) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

Article 50 Secretariat

[1. Alt. 1. A secretariat is hereby established.]

[1. Alt. 2. The Conference of the Parties shall [, at its first ordinary meeting,] designate the secretariat from among those existing competent international organizations that have signified their willingness to carry out the secretariat functions under this Agreement.]

[1. Alt. 3. The secretariat functions for this Agreement shall be performed by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations.]

2. The secretariat shall:

(a) Provide administrative and logistical support;

(b) Convene and service the meetings of the Conference of the Parties and of any other bodies as may be established by the Conference;

(c) Circulate information relating to the implementation of this Agreement;

~~[(d) Facilitate [appropriate] coordination with the secretariats of other relevant international bodies, as mandated by the Conference of the Parties;~~

~~[(e) Provide assistance with the implementation of this Agreement, as mandated by the~~

Conference of the Parties;~~†~~

~~†~~**(f)** Prepare reports on the execution of its functions under this Agreement and submit them to the Conference of the Parties;~~†~~

(g) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

Article 51 Clearing-house mechanism

1. A clearing-house mechanism is hereby established.
2. The clearing-house mechanism shall consist primarily of an open-access web-based platform. ~~It shall also include a network of experts and practitioners in relevant fields.~~
The functions of the clearing-house mechanism and the specific modalities for the operation of the clearing-house mechanism shall be determined by the Conference of the Parties.
3. ~~The clearing-house mechanism shall serve as a centralized platform to enable States Parties to have access to, [collect,] [evaluate,] [make public] and disseminate~~ States Parties may access to and provide information with respect to:
 - [(a)** Activities related to marine genetic resources of areas beyond national jurisdiction, including notices of forthcoming in situ collection of marine genetic resources, research teams, ecosystems where the marine genetic resources are collected, the [digital] [genetic] properties of the marine genetic resources, their biochemical components, genetic sequence data ~~[and information] [and the utilization of marine genetic resources];~~
 - [(b)** Data and scientific information on, as well as ~~[, in line with the principle of prior informed consent,]~~ traditional knowledge associated with, marine genetic resources of areas beyond national jurisdiction, including through lists of databases, repositories or gene banks where marine genetic resources of areas beyond national jurisdiction are currently held, ~~a registry of such resources, and a track-and-trace mechanism for marine genetic resources of areas beyond national jurisdiction and their utilization;~~
 - [(c)** The sharing of non-monetary benefits, ~~including through reports on the status of monetary benefits shared and on their use through the publication of the proceedings of the meetings of the Conference of the Parties;~~

[(d) Environmental impact assessments [, including:

(i) Environmental impact assessment reports;

(ii) Guidelines and technical methods on environmental impact assessments;];]

[(e) Opportunities for capacity-building and the transfer of marine technology, such as activities, programmes and projects being conducted in areas beyond national jurisdiction, including those relevant to building capacity for skills development in activities covered in this Agreement [, as well as availability of funding];]

[(f) Requests for capacity-building and the transfer of marine technology on a case-by-case basis;]

[(g) Research collaboration and training opportunities, including in relation to information on universities and other organizations that offer study grants and facilities in the field of marine science, marine research institutes that offer laboratory facilities, equipment and opportunities for research and training, and offers of cruise studies at the global, regional and subregional levels;]

[(h) Information on sources and availability of technological information and data for the transfer of marine technology and opportunities for facilitated access to marine technology.]

[4. The clearing-house mechanism shall:

(a) Match capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, ~~and~~ ~~[provide] [facilitate] access to related know-how and expertise;~~

(b) Promote linkages to existing relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases, repositories and gene banks [, including experts in relevant traditional knowledge of indigenous peoples and local communities];]

~~[(c) Link to private and non-governmental platforms for the exchange of information;]~~

~~[(d) Build on existing regional and subregional clearing-house institutions, if applicable, when establishing regional and subregional mechanisms under the global mechanism;]~~

(~~c~~e) Facilitate ~~enhanced~~ transparency, including by providing baseline data and information;

(~~d~~f) Facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration.

- [5. ~~The clearing-house mechanism~~ States Parties shall recognize the special circumstances of ~~small island~~ all States Parties, in particular, developing States Parties ~~{and archipelagic developing States Parties}~~, facilitate access to the clearing-house mechanism to enable those States to utilize it without undue obstacles or administrative burdens, ~~and include information on activities to promote information-sharing, awareness-raising and dissemination in and with those States, as well as provide specific programmes for those States.~~]
- [6. The clearing-house mechanism shall be managed by ~~{the secretariat.}~~ ~~{the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, in association with relevant organizations, including the International Seabed Authority and the International Maritime Organization, and shall be informed by the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology}.}~~
- [7. ~~Due regard shall be given to~~ States Parties shall not be required to disclose the confidentiality of information provided under this Agreement.]

[PART VII. Financial resources [and mechanism]]

[Article 52 Funding]

1. States Parties undertake to provide, in accordance with their capabilities, financial support to achieve the objectives of this Agreement.
2. Funding may be provided through public and private sources, both national and international, including but not limited to contributions from States, international financial institutions, existing funding mechanisms under global and regional instruments, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons, and through public-private partnerships.
3. ~~States Parties shall ensure that,~~ Developing States Parties shall, for the purpose of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, be ~~are~~ granted preference by international organizations in the allocation of

appropriate funds and technical assistance and the utilization of their specialized services.

4. A voluntary trust fund to facilitate the participation of representatives of developing States Parties in the meetings of the bodies under this Agreement shall be established by the Conference of the Parties. It shall be funded through voluntary contributions.

[Alt. 2.

5. States Parties shall cooperate to establish appropriate funding mechanisms to assist developing States Parties with achieving the objectives of capacity-building and the transfer of marine technology under this Agreement.]
6. The funding mechanisms established under this Agreement shall be aimed at ensuring efficient access to funding through simplified approval procedures and enhanced readiness of support for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, ~~small island developing States, coastal African States and developing middle income countries.~~
7. Access to funding under this Agreement shall be open to developing States Parties [on the basis of need] [, taking into account the needs for assistance of States Parties with special requirements, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, ~~small island developing States, coastal African States and developing middle income countries~~].

[ANNEX I Guidelines on indicative criteria for identification of areas]

- [(a)** Uniqueness;
- [(b)** Rarity;]
- (c)** Special importance for the life history stages of species;
- (d)** Special importance of the species found therein;
- (e)** The importance for threatened, endangered or declining species or habitats;
- (f)** Vulnerability, including to climate change and ocean acidification;
- (g)** Fragility;
- (h)** Sensitivity;
- (i)** Biological diversity [and productivity];
- [(j)** Representativeness;]
- (k)** Dependency;
- [(l)** Exceptional naturalness;]
- (m)** Ecological connectivity [and/or coherence];
- (n)** Important ecological processes occurring therein;
- ~~**[(o)** Economic and social factors;]~~
- ~~**[(p)** Cultural factors]~~
- [(~~oq~~)** Cumulative and transboundary impacts;]
- (~~pr~~)** Slow recovery and resilience;
- (~~qs~~)** Adequacy and viability;
- (~~rt~~)** Replication;
- (~~st~~)** Feasibility.]

[ANNEX II The indicative list of tTypes of capacity-building and transfer of marine technology]

[Under this agreement, capacity-building and the transfer of marine technology initiatives may include, and are not limited to:

(a) The sharing of relevant data, information, knowledge and research, in user-friendly formats, including:

(i) The sharing of marine scientific and technological knowledge;

(ii) The exchange of information on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

~~(iii) The sharing of research and development results;~~

(b) Information dissemination and awareness-raising, including with regard to:

(i) Marine scientific research, marine sciences and related marine operations and services;

(ii) Environmental and biological information collected through research conducted in areas beyond national jurisdiction;

~~(iii) Relevant traditional knowledge [; in line with the principle of prior informed consent];~~

(iv) Stressors on the ocean that affect marine biological diversity of areas beyond national jurisdiction, including the adverse effects of climate change and ocean acidification;

(v) Measures such as area-based management tools, including marine protected areas;

(vi) Environmental impact assessments;

~~(c) The development and strengthening of relevant infrastructure, including equipment, such as:—~~

~~(i) The development and establishment of necessary infrastructure;—~~

~~(ii) The provision of technology, including sampling and methodology equipment (e.g., for water, geological, biological or chemical samples);—~~

~~(iii) The acquisition of the equipment necessary to support and further develop research and development capabilities, including in data management, in the context of [the collection of] [access to] and the utilization of marine genetic resources, measures such as area-based management tools, including marine protected areas, and the conduct of~~

~~environmental impact assessments;—~~

(cd) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms, including:

- (i)** Governance, policy and legal frameworks and mechanisms;
- (ii)** Assistance in the development, implementation and enforcement of national legislative, administrative or policy measures, including associated regulatory, scientific and technical requirements at the national or regional level;
- (iii)** Technical support for the implementation of the provisions of this Agreement, including for data monitoring and reporting;
- (iv)** Capacity to translate data and information into effective and efficient policies, including by facilitating access to and the acquisition of necessary knowledge to inform decision makers in developing States Parties;
- (v)** The establishment or strengthening of the institutional capacities of relevant national and regional organizations and institutions;
- ~~**(vi)** The establishment of national and regional scientific centres, including as data repositories;~~
- ~~**(vii)** The development of regional centres of excellence;—~~
- ~~**(viii)** The development of regional centres for skills development;—~~
- (vix)** Increasing cooperative links between regional institutions, for example North-South and South-South collaboration and collaboration among regional seas organizations and regional fisheries management organizations;

(de) The development and strengthening of human resources and technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of technology, such as:

- (i)** Collaboration and cooperation in marine science, including through data collection, technical exchange, scientific research projects and programmes, and the development of joint scientific research projects in cooperation with institutions in developing States;
- (ii)** [Short-term, medium-term and long-term] [Education] and training in:
 - a. The natural and social sciences, both basic and applied, to develop scientific and research capacity;
 - b. Technology, and the application of marine science and technology, to develop

- scientific and research capacities;
- c. Policy and governance;
- d. The relevance and application of traditional knowledge;
- (iii)** The exchange of experts, including experts on traditional knowledge;
- ~~(iv) The provision of funding for the development of human resources and technical expertise, including through:–~~
 - ~~a. The provision of scholarships or other grants for representatives of small island developing States Parties in workshops, programmes or other relevant training programmes to develop their specific capacities;–~~
 - ~~b. The provision of financial and technical expertise and resources, in particular for small island developing States, concerning environmental impact assessments;~~
- ~~(ivv)~~ The establishment of a networking mechanism among trained human resources;
- (ef)** The development and sharing of manuals, guidelines and standards, including:
 - (i)** Criteria and reference materials;
 - (ii)** Technology standards and rules;
 - (iii)** A repository for manuals and relevant information to share knowledge and capacity on how to conduct environmental impact assessments, lessons learned and best practices;
- (fg)** The development of technical, scientific and research and development programmes, ~~including biotechnological research activities.]~~



MINISTRE DES PECHEES
ET DE L'ECONOMIE MARITIME

**AVIS ET OBSERVATIONS SUR L'AVANT PROJET D'ACCORD PORTANT SUR LA
CONSERVATION ET L'UTILISATION DURABLE DE LA BIODIVERSITE MARINE
DES ZONES NE RELEVANT PAS DE LA JURIDICTION NATIONALE**

 Sur le Préambule

Au regard de l'importance de l'accord, le préambule semble relativement bref. Il doit être plus étoffé pour mettre en exergue tous les éléments de contexte

 Sur le dispositif

- **Article 1^{er}** : une liste assez longue de termes a été définie dont la plupart mérite d'être renforcé. C'est le cas de l'approche intégrée, des études d'impact environnemental, des ressources génétiques marines (RGM) entre autres ; (la signature de la convention va permettre au Sénégal d'avoir une définition officielle de certains termes et concepts).
A ce niveau, et au point 7, la variante 2 est beaucoup plus décisive pour l'atteinte de l'objectif visé : protection de l'environnement de la zone.
A l'alinéa 9, enlever « trouvé à » et garder issu des zones ne relevant pas.
- **Article 3** : il doit être intitulé « champs d'application », étant entendu que ce terme prend en compte aussi bien le champ d'application géographique que le champ d'application territorial ;
- **Article 4** : les dispositions entre crochets des points 3 et 4 méritent d'être validées ;
- **Article 5** : les crochets du titre doivent être enlevés et consacrer ainsi le titre en ces termes « Approches et principes généraux » car tous ces deux termes sont pris en compte dans les dispositions de cet article. Au point e), la précaution est plus une approche qu'un principe ; au point b), le pollueur doit assumer ;
- **Article 6** : le point 3 entre crochets doit être validé ;
- **Article 7** : au point a), les termes « juste et équitable » doivent être maintenus pour préserver les intérêts des Etats sous – développés ou géographiquement désavantagés. Au point b), le terme entre crochets « collecté » doit être retiré au profit du terme « avoir accès » car ce dernier n'exclut pas le premier ;
- **A l'article 8** : l'application fait plutôt référence à la partie I de l'Accord ;

- **Article 10 point 1** : la variante 2 ne peut être envisagée dans la mesure où le régime de liberté de la haute mer s'oppose à toute délivrance de licence ou permis. La variante 1 est assez bien élaborée pour réglementer l'accès aux RGM, tout en n'excluant pas une contribution au fonds spécial et une notification préalable à l'occasion de l'accès à ces ressources (ceci va permettre d'avoir une traçabilité des RGM, de même que le point 2 du même Article). Concernant les mesures législatives, administratives et politiques que les Etats doivent prendre, l'option présentée au point 5 semble la plus adéquate et doit être préférée à celles des points 3, 4 et 6 ;
- **Article 10 bis** : les crochets doivent être retirés afin de valider les dispositions de cet article qui parle des connaissances traditionnelles des peuples autochtones (connaissances empiriques);
- **Article 11** : Le partage juste et équitable doit être mis en exergue et les avantages doivent être aussi bien monétaires que non monétaires ;
- **Article 12** : le point 1 mérite d'être validé dans sa globalité ; (signaler que parfois comme dans le point 2a et 2b, il y a des coquilles qui apparaissent comme « de zones » à la place de « des zones » pour harmoniser) ;
- **Article 13** : les dispositions pour le suivi doivent être adoptées dans leur ensemble ; le nom de l'organe habilité et les modalités relèveront du consensus. Au point 3 a), « sous forme de données de séquençage génétique » : cette forme est beaucoup plus connue et maîtrisée par rapport à la génétique. Au point 3 c), opter pour un organe scientifique et technique pour un plus grand contrôle de l'existence des données RGM ;
- **Article 16 point 1** : sur les critères d'identification des aires marines protégées les dispositions du deuxième crochet (informations scientifiques les plus fiables dont on dispose et les connaissances traditionnelles pertinentes des peuples autochtones et des communautés locales) doivent être préférées à celles du premier crochet). En effet, le contenu du deuxième crochet est beaucoup plus pertinent pour la gestion des zones ne relevant pas de la juridiction nationale, car les zones sous juridiction sont déjà assujetties à une réglementation nationale. Au **point 3**, enlever le second crochet « peuvent » et garder « sont » pour avoir une dimension contraignante ;
- **Article 17 point 4 c)** : Garder « des mesures de conservation et de gestion pour une utilisation durable » ;
- **Article 19 après le point a)** : la variante 1 doit être retenue car plus cohérente ;
- **Article 20** : les points 3, 4, 5, et 6 entre crochets doivent être adoptés en l'état ;
- **Article 21 alinéa 1** : il est plus pertinent que les Etats fassent rapport de la mise en œuvre de l'outil de gestion à l'organe scientifique, qui à son tour le soumettra pour avis à la Conférence des Parties qui le validera. En effet, il sera difficile pour la Conférence de prendre un avis immédiat après exposé individuel des parties. Cette logique justifie d'ailleurs les alinéas 2, 3 et 4 ;

- **Article 22** : le terme entre crochets « dans toute la mesure du possible » doit être supprimé car l'évaluation pour mesurer les impacts des activités envisagées sur le milieu marin doit être une obligation. Au point 3, le second crochet est plus englobant et plus pertinent car des impacts dans la zone ne relevant pas de juridiction peuvent impacter la zone sous juridiction. Donc dans un souci de protéger le plus largement possible des océans, retenir cette option ;
- **Article 23** : les points 2 à 4 évoquent la même chose. Dès lors seule la variante 4 du point 4 devrait être retenue et renforcée de quelques éléments de la variante 1 du point 2 et de la variante 2 du point 3 ;
- **Article 24** : retenir la variante 2 qui est plus complète ; il devra ainsi être adopté dans son ensemble ;
- **Article 25** : au point 2, les variantes 1 et 2 doivent être fusionnées car se complètent ;
- **Article 27 point 1** : retenir les termes suivants : « tout autre instrument pertinent » et « organes ». Au point 2, suggérer : des orientations.....à l'intérieur et/ou à proximité immédiate » pour être englobant ;
- **Article 28 point 1** : accepter « relevant de leur juridiction » et « menées » ;
- **Article 29** : à supprimer du texte car toutes les activités dans la zones liées aux RGM doivent faire l'objet d'une EIE ;
- **Article 30** : au point 3, insister sur l'approbation de l'Organe scientifique et technique en cas de sursis à procéder à une étude de l'impact sur l'environnement d'une activité envisagée ;
- **Article 32** : les points 3 et 4 entre crochets doivent être adoptés dans leur ensemble ; supprimer au point 2 les termes « petits » et « insulaires » ;
- **Article 33** : il doit être validé dans son ensemble ;
- **Article 35** : au premier alinéa, retenir la disposition « Les États Parties veillent à ce que soit établi un rapport d'étude d'impact sur l'environnement pour toute évaluation entreprise en application de la présente partie », plutôt que de faire élaborer ce rapport par les Etats parties eux – mêmes. Au point 2, faire des mentions minimales que doit contenir un rapport d'impact environnemental une obligation (préférer « doit » à « peut » ;
- **Article 38** : au point 1, la variante 1 semble plus logique vu qu'on est dans une zone hors juridiction des Etats ;
- **Article 39** : la régularité du contrôle par l'Etat partie doit être mise en exergue, et la nécessité d'un rapport doit être affirmé à l'article 40 point 1 ;

- **Article 42 :** au point a) ajouter « Aider les États Parties, en particulier les États Parties en développement, *les Etats moins avancés et les Etats géographiquement désavantagés* ... ». L'ajouter aussi aux point f) et c). Par ailleurs, prendre le terme « assurer » car dans le cadre des renforcements de capacités, il serait préférable « d'assurer » l'accès aux Etats en développement ;
- **Article 44 :** vu que le renforcement des capacités et l'accès aux techniques marines sont des éléments indispensables à la réalisation des objectifs du présent Accord, il importe d'en faire une obligation. Par ailleurs, au point 2, les termes « obligatoire » et « volontaire » ne peuvent pas être utilisés concomitamment : c'est l'un ou l'autre. Dans ce cas, proposer le terme « obligatoire » car dans le cadre des renforcements de capacités pour une parfaite prise en compte des éléments des EIE mais aussi de l'optimisation de l'exploitation des RGM afin de comprendre les enjeux nouveaux des RGM ;
- **Article 45 :** au point 2, préférer la variante 1, deuxième crochet, ce qui donne : « Le transfert de techniques marines s'effectue dans le respect de tous les intérêts légitimes, y compris les droits et obligations des détenteurs, des fournisseurs et des acquéreurs de techniques marines » ;
- **Article 47 :** au point 5, reformuler cette disposition car les deux phrases présentent une certaine contradiction (caractère facultatif et caractère obligatoire des rapports) ;
- **Article 48 :** La prise de décision par consensus peut enrailler le processus d'adoption des décisions et partant, bloquer l'atteinte des objectifs de l'Accord : il y a lieu de prévoir un autre mode. Par ailleurs, parmi les missions de la Conférence des Parties, il semble intéressant d'y inclure des règlements à portée générale et obligatoire ;
- **Article 49 :** il est nécessaire de prendre en compte dans l'organe scientifique et technique les connaissances traditionnelles (l'organe scientifique et technique peut s'appuyer sur d'autres organes existants et non sur des instruments et cadres juridiques même pertinents, car ces instruments s'adossent à certains aspects spécifiques relatives aux zones ciblées) ;
- **Article 50 :** la variante 3 semble la meilleure dans la mesure où la DOALOS est mieux à même d'assurer le secrétariat ;
- **Article 51 :** au point 2, il est nécessaire de prendre en compte la participation d'un réseau d'experts et de praticiens spécialisés dans les domaines pertinents dans le centre d'échange. Au point 3, tous les 3 crochets doivent être validés pour permettre au centre d'échange de jouer pleinement son rôle. Au point 6, il est plus judicieux de laisser l'administration du centre d'échange à la Commission océanographique intergouvernementale (COI) de l'UNESCO, en relation avec les organisations compétentes, notamment l'autorité internationale des Fonds marins (AIFM) ;
- **Article 52 :** contrairement au fonds de contribution volontaire qui, comme son nom l'indique, ne contraint les donateurs à aucune obligation rigide, la

contribution au fonds spécial doit être une obligation au regard de son rôle pour l'atteinte des objectifs de l'accord. En effet, une partie importante de ce fonds peut aider les pays en voie de développement à une meilleure implication dans la recherche;

- **Article 54 :** il faut privilégier des moyens de règlement pacifique, et en dernier ressort, la saisine des juridictions internationales ;
- **Article 57 :** ce principe de bonne foi et d'interdiction de tout abus s'affirme comme un *jus cogens* (norme impérative). Car, devant ce clivage économique, il est important d'agir sur l'éthique et la bonne foi des Etats puissants pour ne pas nuire aux Etats parties moins avantagés ;
- **Article 63 :** il est très intéressant que l'accord n'admette ni réserves ni exceptions afin de rester fidèle à son objet et à son but;
- **Article 64 :** le point 1 semble assez problématique. Comment comprendre qu'un accord entre Etats parties puisse suspendre l'application des dispositions du présent Accord ?

South Africa's advance written submission to the Secretariat on the revised draft text of an agreement under the United Nations Convention Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

20 March 2020

With reference to the Note on the UN Website stating: Please note that the President has extended the deadline to submit to the secretariat (doalos@un.org) textual proposals for consideration at the fourth session of the intergovernmental conference to 20 February 2020.

South Africa would like to emphasise or raise textual proposals as follows:

Article 1. Definitions:

1. Access – we will provide input at 4th meeting

3. Whilst we support the inclusion of text for a definition of area-based management tools we note that the current version would need to exclude the bracketed text which states [providing higher protection than that provided in the surrounding areas]. The reason for this is that two (or more) area based management areas may be adjacent to one another and thus they cannot all provide higher protection. A more focussed solution to this is proposed below.

“Area-based management tool” means a tool through which one or several sectors or activities are managed within a geographically defined area, with the aim of achieving particular conservation and sustainable use objectives [, that result in higher protection than that provided outside of such defined areas].

6. We strongly support inclusion of a definition on cumulative impacts and support the current version, including all square bracketed text.

7. EIAs – We can support Alt 2 version of the definition as is, or the Alt 1 version, which is more comprehensive but needs work. The Alt 1 version will need consideration of the following: the inclusion of ‘Economic’ is necessary. However ‘Social’ is already captured in ‘Cultural and Human health’. The words ‘Ecological’, or perhaps ‘Biophysical’, should be mentioned explicitly? Proposed language: **‘...interrelated biophysical, economic, cultural and human health impacts’**

8. Marine Genetic Material – will make inputs at the 4th meeting

10. Marine protected areas – suggest the first bracketed text should fall away, and the second bracket kept and amended as below:

“Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific conservation and sustainable use objectives [and that affords higher protection than that provided outside of such defined areas].

11. Definition of Marine Technology supported, including all bracketed text.

13. Support inclusion of a definition of Strategic Environmental Assessment which should also explicitly include consideration of cumulative impacts.

14. The definition for transfer of marine technology should include expertise after the word methodologies. The reasoning here is that expertise is included in the definition of marine technology and without it being explicitly transferred, processes and methodologies may simply be manuals or instructions.

Article 2.

Support text without the words [long-term] in the square bracket. This is because conservation may also involve short and medium term objectives and measures.

Article 4

The current definition is not supported, as it has undergone deletion of previous text which was important. The text which was deleted was trying to achieve a very important aspect, namely that unless this treaty has priority when it comes to the conservation and sustainable use of biodiversity, other legal instruments and bodies can still pursue their own agendas potentially to the detriment of the implementation of this agreement. We would keep in most of the deleted mark-up text, apart from the clause ...are supportive of. This treaty, to achieve its potential, needs to have priority when it comes to the conservation and sustainable use of biodiversity in ABNJ.

Article 5. General principles and approaches

(b) Support the simple version of the polluter pays principle.

(c) **Strongly support** the principle of the common heritage of mankind. Do not support other versions of text to replace this or additional text to qualify it.

(f) Support an ecosystem approach

(i) support the longer version, namely: The use of the best available scientific information and the relevant traditional knowledge of indigenous peoples and local communities.

Part 2. Article 7. Marine genetic resources including sharing of benefits

Noting that we are still preparing additional specific inputs

Article 8. South Africa notes that Part 2 on genetic resources clearly seems to now be purely about genetics and not sustainable utilization of biological resources. References to fish are clearly being culled. For example paragraph 2 proposed that This [Part] [Agreement] shall not apply to the use of fish and other biological resources as a commodity.

In this we can support This Part not applying to fish etc, but NOT the whole agreement. Clearly some of the area-based management tools may need to include measures on fish and fishing if they are to be effective in ensuring conservation and sustainable use in abnj.

Part 3. Article 14.

(a) Support keeping the currently proposed text, including deletion of the word existing before relevant legal instruments etc. For the choice in square brackets we prefer that which - states conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

(c) We propose amending by mentioning geographically defined areas.

Conserving and sustainably using areas requiring protection, **including by establishing a comprehensive system of geographically defined areas that are managed using area-based management tools, including marine protected areas.**

(d). Support a separate bullet for:

(d) Establishing a system of ecologically representative marine protected areas that are well connected

Whilst these MPAs will need to be effectively and equitably managed, **establishing them is a clear first step**. If text on management is bundled with the first part of (d), this may actually delay the establishment of such areas.

Also whilst well connected' is better than 'connected' better still and less ambiguous text could include the principle of connectivity:

The new text would then read: **(d) Establish a system of marine protected areas that is adherent with the [CBD] principles of ecological representativeness and connectivity for protected area networks.**

(e) We propose removing 'including with a view' and replace 'health' with integrity (or have both), and other slight modifications. See proposal below

Rehabilitating and restoring of biodiversity and ecosystems to enhance their integrity and productivity, and build resilience to stressors, including those related to climate change, ocean acidification and marine pollution

(i) It is vague what 'coherence and complementarity' imply here, until they are expanded upon in the next article. Since they are dealt with in the next Article (1.), we suggest they be removed here.

Article 15.

1(a). We strongly support the inclusion of sub-regional bodies.

1. (b) (i). Support adopting conservation and management measures. (Noting that management measures can clearly include sustainable use measures).

Article 16. General comment on paragraphs 1 and 2 - A key component is that areas that are under management for a particular sector objective, such as particular fish species, should still be able to

be considered under indicative criteria for identification for conservation and other management objectives under this treaty. At this stage of the text this is apparently neither included or excluded...

Specific proposal for paragraph 1. Areas requiring protection through the [establishment] of area-based management tools, including marine protected areas, shall be identified on the basis of the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities, taking into account the precautionary [approach][principle] and an ecosystem approach.

We do note however that **Article 18 on Consultation and Assessment of Proposals**, Paragraph 2 (b) (iii) states that bodies shall be invited to submit – information on any existing measures adopted by that instrument, framework or body for the relevant area or adjacent areas. This seems to clearly imply that areas already under sectoral management shall still be eligible for consideration for management under this treaty. This is supported.

In Article 19 on Decision-making, Alt 1 is preferred although it is lengthy.

We are concerned however that in Alt 2, Alt 2 (c) proposes considering – Recommendations relating to the implementation of related management measures, while recognizing **the primary** authority for the adoption of such measures within the respective mandates of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

In this the phrase **the primary** implies giving priority to maintaining the status quo in terms managing an area for an already established objective, which (for example) may not include conservation.

We propose an additional alternate text for paragraph Alt 2 which reads: , while recognizing [the primary][the specific roles of authorities] for the adoption of [such] measures.

Thanking you for your consideration

Proposals from Turkey

Proposal I

Article 1

Use of terms

3. “Area-based management tool” means a tool, ~~including a marine protected area,~~ for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording higher protection than that provided in the surrounding areas].

Rationale: During the Third Session of the Intergovernmental Conference, Turkey had explained its position that differentiation should be made between the establishment of “area-based management tools” and “marine protected areas”, due to temporal and spatial scale related reasons. In that Session, we made proposals with regard to the relevant sections of the draft text (including Articles 14, 15, 16 and 17), in order to ensure that this differentiation is reflected consistently in the entire text.

Our new proposal with regard to Article 1, paragraph 3 of the revised draft text is an additional proposal based on the same rationale.

Proposal II

Article 48

Conference of the Parties

[3bis. As a general rule, the decisions of the Conference of the Parties shall be taken by consensus. ~~If all efforts to reach consensus have been exhausted, the procedure established in the rules of procedure adopted by the Conference shall apply.~~]

Rationale: Considering that the Conference of the Parties would be entrusted with the most fundamental functions and powers related to the implementation of the Agreement, Turkey is of the view that it should take its decisions based on consensus of the Parties. Turkey believes that, if decisions are taken by consensus, it will also enable more effective and consistent implementation of the Agreement.

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Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1 Use of terms

For the purposes of this Agreement:

[1. “Access” means, in relation to marine genetic resources, the collection of marine genetic resources [, including marine genetic resources accessed *in situ*, *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data]]].]

U.S. requests to delete Article 1(1).

3. “Area-based management tool” means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording higher protection than that provided in the surrounding areas].

U.S. suggested text for Article 1(3): “Area-based management tool” means a tool, including a marine protected area, for a geographically defined area, which is based on the best available science, adaptable over time, and through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives ~~[and affording higher protection than that provided in the surrounding areas].~~”

[7. Alt. 1. “Environmental impact assessment” means a process to evaluate the environmental impact of an activity [to be carried out in areas beyond national jurisdiction [, with an effect on areas within or beyond national jurisdiction]] [, taking into account [, inter alia,] interrelated [socioeconomic] [social and economic], cultural and human health impacts, both beneficial and adverse].]

[7. Alt. 2. “Environmental impact assessment” means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or

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control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment.]

U.S. suggested text for Article 1(7): “‘Environmental impact assessment’ means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment.”

[9. Alt. 1. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties.]

[9. Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.]

U.S. suggested text for Article 1(9): “‘Marine genetic resources’ means marine genetic material of actual or potential value.”

10. “Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas].

U.S. suggested text for Article 1(10): “‘Marine protected area’ means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives and that affords higher protection than ~~the surrounding areas~~ would otherwise exist.”

[11. “Marine technology” means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for *in situ* and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]

U.S. requests to delete Article 1(11).

12. (a) “States Parties” means States that have consented to be bound by this Agreement and for which this Agreement is in force.

(b) This Agreement applies *mutatis mutandis*:

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- (i) To any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention, and
- (ii) Subject to article 67, to any entity referred to as an “international organization” in annex IX, article 1, of the Convention that becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.

U.S. suggested text for Article 1(12)(b):

“(b) This Agreement applies *mutatis mutandis*:

(i) To any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention, and

(ii) Subject to article 67, to any entity referred to as an “international organization” in annex IX, article 1, of the Convention ~~that becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.~~

that becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.”

[13. “Strategic environmental assessment” means the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.]

U.S. requests to delete Article 1(13).

[14. “Transfer of marine technology” means the transfer of the instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.]

U.S. requests to delete Article 1(14).

[15. “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources [, as well as the exploitation thereof].]

U.S. requests to delete Article 1(15).

Article 4

Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

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3. This Agreement shall be interpreted and applied in a manner that [respects the competences of and] does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

U.S. suggested text for Article 4(3): “This Agreement shall be interpreted and applied in a manner that {respects the competences of and} does not undermine relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.”

[4. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.]

U.S. suggested text for Article 4(4): “The legal status of non-parties to the Convention or any other related agreements ~~with regard to those instruments~~ is not affected by this Agreement.”

Article 5 General [principles] [and] [approaches]

U.S. suggested text for Article 5 title: “General {principles}{and}
{approaches}”

In order to achieve the objective of this Agreement, States Parties shall be guided by the following:

[(a) The principle of non-regression;]

(b) [The polluter pays principle] [The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment];

[(c) The principle of the common heritage of mankind;]

[(d) The principle of equity;]

(e) The precautionary [principle] [approach];

(f) An ecosystem approach;

[(g) An integrated approach;]

(h) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;

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- (i) The use of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities];
- (j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another.

U.S. suggested text for Article 5: “In order to achieve the objective of this Agreement, States Parties ~~[shall]~~ should be guided by the following principles or approaches:

- ~~-(a) The principle of non-regression;~~
- ~~(b) [The polluter pays principle] [The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment];~~
- ~~-(c) The principle of the common heritage of mankind;~~
- ~~-(d) The principle of equity;~~
- ~~(e) The precautionary [principle] [approach];~~
- ~~(f) An ecosystem approach;~~
- ~~-(g) An integrated approach;~~
- ~~(h) An approach that builds marine ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;~~
- ~~(ii) —The use of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities];~~
- (j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another.”

Article 6 International cooperation

1. States Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and members thereof in the achievement of the objective of this Agreement.

U.S. suggested text for Article 6(1): “States Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction including, as appropriate, through strengthening and enhancing

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cooperation with ~~and among~~ relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and members thereof ~~in the achievement of the objective of this Agreement.~~”

2. States Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objective of this Agreement.

U.S. requests to delete Article 6(2).

[3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary.]

U.S. requests to delete Article 6(3).

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PART II MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

Article 7 Objectives

The objectives of this Part are to:

[(a) Promote the [fair and equitable] sharing of benefits arising from the [collection of] [access to] [utilization of] marine genetic resources of areas beyond national jurisdiction;]

U.S. suggested text for Article 7(a): “Promote the {fair and equitable} sharing of benefits arising from the {collection of}—{access} {utilization of}—marine genetic resources of areas beyond national jurisdiction;”

[(b) Build the capacity of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries, to [collect] [access] and utilize marine genetic resources of areas beyond national jurisdiction;]

U.S. suggested text for Article 7(b): “Build the capacity of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, and coastal African States ~~and developing middle-income countries~~, to {collect,} {access} and utilize marine genetic resources of areas beyond national jurisdiction;”

[(d) Promote the development and transfer of marine technology [, subject to all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology].]

U.S. suggested text for Article 7(d): “Promote the development and voluntary transfer of marine technology on mutually agreed terms and conditions, and {—subject to all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology};”

U.S. suggested text for Article 7(d)(bis) MOVED FROM Article 8(2)(d): “Promote marine scientific research in areas beyond national jurisdiction.”

[Article 8

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Application]

[1. The provisions of this [Part] [Agreement] shall apply to:

U.S. suggested text for 8(1): “The provisions of this [Part] [Agreement] shall apply to:”

[(a) Marine genetic resources, insofar as they are collected for the purposes of being the subject of research into their genetic properties;]

U.S. requests to delete Article 8(1)(a).

(b) Marine genetic resources [collected] [accessed] *in situ*, [and] [accessed] *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization];

U.S. suggested text for Article 8(1)(b): “Marine genetic resources ~~[collected] [accessed] *in situ*, [and] [accessed] *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization]~~ after entry into force of this Agreement for the State Party concerned, using funding from the State Party, insofar as they are collected for the purposes of being the subject of research into their genetic properties.”

[(c) Derivatives.]]

U.S. requests to delete Article 8(1)(c).

[2. The provisions of this [Part] [Agreement] shall not apply to:

[(b) Marine genetic resources accessed *ex situ* [or *in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization];]

U.S. suggested text for Article 8(2)(b): “Marine genetic resources accessed *ex situ* ~~[or *in silico*] [[and] [as digital sequence information, including] [as genetic sequence data]] [and their utilization]~~ of marine genetic resources.”

[(d) Marine scientific research.]]

U.S. suggested text for Article 8(2)(d) MOVE TO Article 7(d)(bis): “Promote marine scientific research in areas beyond national jurisdiction.”

[3. The provisions of this Agreement shall apply to marine genetic resources [collected] [accessed] *in situ*, [and] [accessed] *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization] after its entry into force, including those resources

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[collected] [accessed] *in situ* before its entry into force, but accessed *ex situ* or [*in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [or utilized] after it.]

U.S. suggested text for Article 8(3): “For each State Party, ~~the provisions of this Agreement shall apply to marine genetic resources [collected] [accessed] *in situ* for research into their genetic properties using funding by the State Party, [and] [accessed] *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization] after its entry into force for that State Party, including those resources [collected] [accessed] *in situ* before its entry into force, but accessed *ex situ* or [*in silico*] [[and] [as digital sequence information] [as genetic sequence data]] [or utilized] after it.”~~

[Article 9

Activities with respect to marine genetic resources of areas beyond national jurisdiction]

[2. In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State under the jurisdiction of which such resources are found.]

U.S. requests to delete Article 9(2).

[3. No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction [, nor shall any State or natural or juridical person appropriate any part thereof]. No such claim or exercise of sovereignty or sovereign rights [nor such appropriation] shall be recognized.]

U.S. suggested text for Article 9(3): “No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction ~~[, nor shall any State or natural or juridical person appropriate any part thereof].~~ No such claim or exercise of sovereignty or sovereign rights ~~[nor such appropriation]~~ shall be recognized.”

[4. The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of mankind as a whole, taking into consideration the interests and needs of developing States, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.]

U.S. requests to delete Article 9(4).

[5. Activities with respect to marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.]

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U.S. suggested text for Article 9(5): “Activities conducted in areas beyond national jurisdiction with respect to marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.”

[Article 10 [Collection of] [and] [Access to] marine genetic resources of areas beyond national jurisdiction]

U.S. suggested text for Article 10 title: “~~[Collection of] [and] [Access to]~~ marine genetic resources of areas beyond national jurisdiction”

[1. *In situ* [collection of] [access to] marine genetic resources within the scope of this Part shall be subject to [Alt. 1. [prior] [and] [post-cruise] notification to the secretariat [, which shall include an indication of the location and date of [collection] [access], the resources to be [collected] [accessed], the purposes for which the resources will be utilized and the entity that will [collect] [access] the resources] [of [collection of] [access to] marine genetic resources of areas beyond national jurisdiction].]

U.S. requests to delete Article 10(1).

[Alt. 2. a [permit] [licence] issued in the manner and under the terms and conditions set forth in paragraph 2.]]

U.S. requests to delete Article 10 (1) (Alt 2).

[2. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that *in situ* [collection of] [access to] marine genetic resources within the scope of this Part shall be subject to:

(a) An indication of the geographical coordinates of the location where marine genetic resources were [collected] [accessed];

(b) Capacity-building;

(c) The transfer of marine technology;

(d) The deposit of samples, data and related information in open source platforms, such as databases, repositories or gene banks;

(e) Contributions to the special fund;

(f) Environmental impact assessments;

(g) Other relevant terms and conditions as may be determined by the Conference of the Parties, including in relation to [the collection of] [access to] marine genetic resources in

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ecologically and biologically significant areas, vulnerable marine ecosystems and other specially protected areas, in order to ensure the conservation and sustainable use of the resources therein.]

U.S. suggested text for Article 10(2): “States Parties shall take the necessary ~~legislative, administrative or policy~~ measures, as appropriate, to ensure that *in situ* ~~{collection of}~~~~{access to}~~ marine genetic resources within the scope of this Part shall be subject to the benefit sharing provisions as set forth in Article 11;

~~(a) An indication of the geographical coordinates of the location where marine genetic resources were {collected} {accessed};~~

~~(b) Capacity building;~~

~~(c) The transfer of marine technology;~~

~~(d) The deposit of samples, data and related information in open source platforms, such as databases, repositories or gene banks;~~

~~(e) Contributions to the special fund;~~

~~(f) Environmental impact assessments;~~

~~(g) Other relevant terms and conditions as may be determined by the Conference of the Parties, including in relation to {the collection of} {access to} marine genetic resources in ecologically and biologically significant areas, vulnerable marine ecosystems and other specially protected areas, in order to ensure the conservation and sustainable use of the resources therein.”~~

[3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that *ex situ* access to marine genetic resources within the scope of this Part is free and open [, subject to articles 11 and 13].]

U.S. suggested text for Article 10(3): MOVE TO ARTICLE 11(3)(b)(bis): “States Parties shall take the necessary ~~legislative, administrative or policy~~ measures, as appropriate, to ensure that *ex situ* access to marine genetic resources within the scope of this Part collected as set forth in Article 10 is made publicly available consistent with scientific best practices free and open [, subject to articles 11 and 13].”

[4. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that access to [marine genetic resources *in silico*] [[and] [digital sequence information] [genetic sequence data]] is facilitated [, subject to articles 11 and 13].]

U.S. suggested text for Article 10(4): MOVE TO ARTICLE 11(3)(b)(ter): “States Parties shall take the necessary ~~legislative, administrative or policy~~ measures, as appropriate, to ensure that access to {marine genetic resources *in silico*} [[and] {digital sequence information}] { genetic sequence data}} of marine genetic resources collected as set forth in Article 10 is made facilitated publicly available consistent with scientific best practices [, subject to articles 11 and 13].”

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[5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that activities with respect to marine genetic resources of areas beyond national jurisdiction that may result in the utilization of marine genetic resources found in areas both within and beyond national jurisdiction are subject to the prior notification and consultation of the coastal States [and any other relevant State] concerned, with a view to avoiding infringement of the rights and legitimate interests of [that] [those] State[s].]

U.S. requests to delete Article 10(5).

[6. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that marine genetic resources of areas beyond national jurisdiction utilized within their jurisdiction have been [collected] [and] [accessed] in accordance with this Part.]

U.S. requests to delete Article 10(6).

[Article 10bis

Access to traditional knowledge of indigenous peoples and local communities associated with marine genetic resources [collected] [accessed] in areas beyond national jurisdiction]

[States Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources [collected] [accessed] in areas beyond national jurisdiction that is held by indigenous peoples and local communities shall only be accessed with the prior and informed consent or approval and involvement of these indigenous peoples and local communities. The clearing-house mechanism may act as an intermediary to facilitate access to such traditional knowledge. Access to such traditional knowledge shall be on mutually agreed terms.]

U.S. is still considering Article 10bis.

[Article 11

[Fair and equitable] sharing of benefits]

[1. States Parties, including their nationals, that have [collected] [accessed] [utilized] marine genetic resources of areas beyond national jurisdiction [shall] [may] share benefits arising therefrom [in a fair and equitable manner] with other States Parties, with consideration for the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries [, in accordance with this Part].]

U.S. suggested text for Article 11(1): “States Parties shall take measures, as appropriate, to ensure that benefits arising from the collection of,
including their nationals, that have [collected] [accessed] [utilized]

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marine genetic resources of areas beyond national jurisdiction are shared~~[shall] [may] share benefits arising therefrom~~ [in a fair and equitable manner] with other States Parties, with consideration for the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, and coastal African States and developing middle income countries~~[, in accordance with this Part].~~”

[2. Benefits [shall] [may] include [monetary and] non-monetary benefits.]

U.S. requests to delete Article 11(2).

[3. Benefits arising from the [collection of] [access to] [utilization of] marine genetic resources of areas beyond national jurisdiction [shall] [may] be shared at different stages, in accordance with the following provisions:

U.S. suggested text for Article 11(3): “Benefits arising from the ~~[collection of] [access to] [utilization of]~~ marine genetic resources of areas beyond national jurisdiction ~~[shall] [may]~~ be shared ~~at different stages,~~ in accordance with the following provisions:”

[(a) Monetary benefits [shall] [may] be shared against an embargo period for [marine genetic resources *in silico*] [digital sequence information] [genetic sequence data] or upon the commercialization of products that are based on marine genetic resources of areas beyond national jurisdiction [in the form of milestone payments]. The rate of payments of monetary benefits shall be determined by the Conference of the Parties. [Payments shall be made to the special fund];]

U.S. requests to delete Article 11(3)(a).

[(b) Non-monetary benefits [, such as access to samples and sample collections, sharing of information, such as pre-cruise or pre-research information, post-cruise or post-research notification, transfer of technology and capacity- building,] [shall] [may] be shared upon [collection of] [access to], [utilization] of marine genetic resources of areas beyond national jurisdiction. Samples, data and related information [shall] [may] be made available in open access [through the clearing-house mechanism [upon [collection] [access] [after [...] years]]]. [[Marine genetic resources *in silico*] [Digital sequence information] [Genetic sequence data] related to marine genetic resources of areas beyond national jurisdiction [shall] [may] be published and used taking into account current international practice in the field.]]

U.S. suggested text for Article 11(3)(b): “Non-monetary benefits [, such as access to samples and sample collections, sharing of information, such as ~~pre-cruise or pre-research information, post-cruise or post-research notification,~~ voluntary transfer of marine technology on mutually agreed terms, and capacity-building,] ~~[shall] [may]~~ be shared ~~upon~~ after ~~[collection of] [access to], [utilization]~~ of marine genetic resources of areas beyond national jurisdiction. Samples, data and related information ~~[shall] [may]~~ be made publicly ~~available in open access [through the~~

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~~clearing-house mechanism [upon [collection] [access] [after [...] years]] within a reasonable period of time, consistent with scientific best practices. [[Marine genetic resources *in silico*] [Digital sequence information] [, including Genetic sequence data] related to of marine genetic resources of areas beyond national jurisdiction [shall] [may] be published and used made publicly available taking into account current international consistent with scientific best practices in the field.”~~

U.S. suggested text for 11(3)(b)(bis), MOVED FROM Article 10(3): “States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that *ex situ* access to marine genetic resources within the scope of this Part collected as set forth in Article 10 is made publicly available consistent with scientific best practices free and open [, subject to articles 11 and 13].”

U.S. suggested text for 11(3)(b)(ter), MOVED FROM Article 10(4): “States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that access to [marine genetic resources *in silico*] [[and] [digital sequence information] [genetic sequence data]] of marine genetic resources collected as set forth in Article 10 is made facilitated publicly available consistent with scientific best practices [, subject to articles 11 and 13].”

[4. Benefits shared in accordance with this Part shall be used:

[(a) To contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;]

[(b) To promote scientific research and facilitate [the collection of] [access to] marine genetic resources of areas beyond national jurisdiction;]

[(c) To build capacity to [collect] [access] and utilize marine genetic resources of areas beyond national jurisdiction [, including through common funding or pool funding for research cruises and collaboration in sample collection and data access where adjacent coastal States [shall] [may] be invited to participate, taking into account the varying economic circumstances of States that wish to participate];]

[(d) To create and strengthen the capacity of States Parties to conserve and use sustainably marine biological diversity of areas beyond national jurisdiction, with a focus on small island developing States;]

[(e) To support the transfer of marine technology;]

[(f) To assist developing States Parties in attending the meetings of the Conference of the Parties.]]

U.S. suggested text for Article 11(4): “Benefits shared in accordance with this Part shall be used:

{(a) To contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;}

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{(b) To promote scientific research and facilitate [the collection of] [access to] marine genetic resources of areas beyond national jurisdiction;}

{(c) To build capacity to [collect] [access] and utilize marine genetic resources of areas beyond national jurisdiction [, including through voluntary common funding or pool funding for research cruises and collaboration in sample collection and data access where adjacent coastal States ~~{shall}~~ {may} be invited to participate, taking into account the varying economic circumstances of States that wish to participate];}

{(d) To create and strengthen the capacity of States Parties to conserve and use sustainably marine biological diversity of areas beyond national jurisdiction, with a focus on small island developing States;}

{(e) To support the voluntary transfer of marine technology on mutually agreed terms;}

~~—{(f) To assist developing States Parties in attending the meetings of the Conference of the Parties.}~~”

[5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from [the collection of] [access to] [the utilization] of marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.]

U.S. requests to delete Article 11(5).

[Article 12 Intellectual property rights]

U.S. requests to delete Article 12.

[Article 13 Monitoring]

U.S. requests to delete Article 13.

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PART III MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

Article 14 Objectives

The objectives of this Part are to:

U.S. suggested text for Article 14 chapeau: ~~“The objectives of this Part are to:~~ Depending on the type of tool, specific objectives of area-based management tools, including marine protected areas, may include, as appropriate.”

[(a) Enhance cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, which will also promote a holistic and cross-sectoral approach to [ocean management] [conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction];]

U.S. suggested text for Article 14(a): ~~“Enhance cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, which will also promote the a holistic and cross-sectoral approach to [ocean management] [conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction];”~~

[(b) Implement effectively obligations under the Convention and other relevant international obligations and commitments;]

U.S. requests to delete Article 14(b).

[(c) Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of area-based management tools, including marine protected areas;]

U.S. suggested text for Article 14(c): ~~“Conserve and sustainably use~~ Promote the conservation and sustainable use of areas requiring protection for marine biodiversity through a comprehensive system to coordinate ~~of area-based management tools, including marine protected areas;”~~

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[(d) Establish a system of ecologically representative marine protected areas that are connected [and effectively and equitably managed];]

U.S. suggested text for Article 14(d): “Promote the establishment of
~~Establish~~ a system of ecologically representative marine protected areas
that are connected [~~and effectively and equitably managed~~].”

[(f) Support food security and other socioeconomic objectives, including the protection of cultural values;]

U.S. suggested text for Article 14(f): “~~Support~~ Consider food security and
other socioeconomic objectives, including the protection of cultural
values;”

Article 15 International cooperation and coordination

1. [To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,] States Parties shall promote coherence and complementarity in the establishment of area-based management tools, including marine protected areas, through:

[(b) The process in relation to area-based management tools, including marine protected areas, set out in this Part, including by:

U.S. suggested text for Article 15(1)(b): “The process in relation to area-
based management tools, including marine protected areas, set out in this
Part, including by:”

(i) Adopting conservation and [management] [sustainable use] measures to complement measures designated under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies;

U.S. requests to delete Article 15(1)(b)(i).

[(ii) Establishing area-based management tools, including marine protected areas, and adopting conservation and [management] [sustainable use] measures where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.]]

U.S. requests to delete Article 15(1)(b)(ii).

[2. Alt. to para. 1. (b) (ii) Where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body to establish area-based management tools, including

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marine protected areas, States Parties shall cooperate to establish such an instrument, framework or body and shall participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]

U.S. suggested text for Article 15(1)(b)(ii)ALT: “Where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body to consider and adopt management measures in relation to areas identified as requiring protection under this Agreement ~~establish area-based management tools, including marine protected areas~~, States Parties shall cooperate with an aim to establish such an instrument, framework or body and shall participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.”

3. States Parties shall make arrangements for consultation and coordination to enhance cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among associated conservation and [management] [sustainable use] measures adopted under such instruments and frameworks and by such bodies.

U.S. suggested text for Article 15(3): “States Parties shall make arrangements for consultation and coordination to enhance cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among associated conservation and {management} [sustainable—use] measures adopted under such instruments and frameworks and by such bodies.”

U.S. suggested text for Article 15(3)(bis): “In promoting cooperation and coordination under this article, States Parties shall not undermine relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.”

4. Measures adopted in accordance with this Part shall not undermine the effectiveness of measures adopted by coastal States in adjacent areas within national jurisdiction and shall have due regard for the rights, duties and legitimate interests of all States, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to this end, in accordance with the provisions of this Part.

U.S. suggested text for Article 15(4): “Measures ~~adopted~~ recommended in accordance with this Part shall not undermine the effectiveness of measures for the conservation and sustainable use of marine biodiversity

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adopted by coastal States in adjacent areas within national jurisdiction and shall have due regard for the rights, duties and legitimate interests of all States, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to this end, in accordance with the provisions of this Part.”

5. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls under the national jurisdiction of a coastal State, either wholly or in part, it shall be adapted to cover any remaining area beyond national jurisdiction or otherwise cease to be in force.

U.S. suggested text for Article 15(5): “In cases where an area-based management tool, including a marine protected area, established recommended under this Part subsequently falls under the national jurisdiction of a coastal State, either wholly or in part, it shall, for purposes of this Agreement, be adapted to cover any remaining area beyond national jurisdiction or otherwise cease to be in force.”

Article 16

Identification of areas [requiring protection]

1. Areas requiring protection through the establishment of area-based management tools, including marine protected areas, shall be identified on the basis of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities], the precautionary [approach] [principle] and an ecosystem approach.

U.S. suggested text for Article 16(1): “Areas requiring protection through the establishment of area-based management tools, including marine protected areas, shall be identified on the basis of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities], the precautionary ~~[approach]~~~~[principle]~~ and an ecosystem approach.”

[4. The indicative criteria specified in annex I, as well as any that may be further developed and revised in accordance with paragraph 3, shall be applied, as relevant, by the proponents of a proposal under this Part and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part. [Such criteria shall also be [applied] [taken into account] by States Parties in the establishment of area-based management tools, including marine protected areas, under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.]]

U.S. suggested text for Article 16(4): “The indicative criteria specified in annex I, as well as any that may be further developed and revised in accordance with paragraph 3, shall be applied, as relevant, by the proponents of a proposal under this Part and shall be taken into account

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by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part. ~~{Such criteria shall~~ should also be ~~{applied}~~ {taken into account} by States Parties in the establishment of area-based management tools, including marine protected areas, under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as appropriate.”

Article 17 Proposals

1. Proposals in relation to the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.

U.S. suggested text for Article 17(1): “Proposals in relation to the ~~establishment of area-based management tools, including marine protected areas,~~ identification of areas requiring protection under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.”

[2. States Parties may collaborate with relevant stakeholders in the development of proposals.]

U.S. suggested text for Article 17(2): “States Parties ~~may~~ should collaborate with relevant stakeholders, including States entitled to become Parties, in the development of proposals.”

4. Proposals shall include, at a minimum, the following elements:

(c) Specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States;

U.S. suggested text for Article 17(4)(c): “Specific human activities in the area, including uses by indigenous peoples and local communities ~~in adjacent coastal States,~~ and their impacts, if any, on the biodiversity of the identified area;”

(f) A description of the proposed [conservation and [management] [sustainable use] measures] [priority elements for a management plan] to be adopted to achieve the specified objectives;

U.S. suggested text for Article 17(4)(f): “A description of ~~the~~ any proposed ~~{conservation and {management} {sustainable use} measures} {priority elements for a management plan}~~ recommended to be adopted to achieve the specified objectives;”

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[(g) A duration for the proposed area and measures;]

U.S. suggested text for Article 17(4)(g): “A duration, if any, for the proposed area and measures;”

(h) A monitoring, research and review plan, including priority elements;

U.S. suggested text for Article 17(4)(h): “A recommended monitoring, research and review plan, including priority elements;”

5. Further requirements regarding the contents of proposals [shall] [may] be elaborated by the Scientific and Technical Body as necessary, for consideration and adoption by the Conference of the Parties.

U.S. suggested text for Article 17(5): “Further requirements guidance regarding the contents of proposals ~~{shall}~~~~{may}~~ be elaborated by the Scientific and Technical Body as necessary, for consideration and adoption by the Conference of the Parties.”

Article 18

Consultation on and assessment of proposals

2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed by the secretariat to the proponent. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review of the Scientific and Technical Body. The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows:

(b) Bodies of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be invited to submit, *inter alia*:

(iv) Views regarding any aspects of the [conservation and [management] [sustainable use] measures] [priority elements for a management plan] identified in the proposal that fall within the competence of that body;

U.S. suggested text for Article 18(2)(b)(iv): “Views regarding any aspects of the recommended~~{conservation and {management} {sustainable use} measures}~~ ~~{priority elements for a management plan}~~ identified in the proposal that fall within the competence of that body;”

U.S. suggested text for Article 18(2)(b)(v)(bis): “Views regarding the monitoring and review plan;”

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4. The proponent shall consider the contributions received during the consultation period and shall either revise the proposal accordingly or continue the consultation process.

U.S. suggested text for Article 18(4): “The proponent shall consider the contributions received during the consultation period and ~~shall either~~ may revise the proposal accordingly or continue the consultation process. Proponents shall respond to substantive contributions not addressed in a revised proposal, as appropriate.”

7. The modalities of the consultation and assessment process shall be further elaborated by the [Scientific and Technical Body] [Conference of the Parties], as necessary [, and shall take into account the special circumstances of small island developing States].

U.S. suggested text for Article 18(7): “Guidance on the modalities of the consultation and assessment process ~~shall~~ may be further elaborated by the [Scientific and Technical Body] [Conference of the Parties], as necessary [, and shall take into account the special circumstances of small island developing States].”

Article 19 Decision-making

1. The Conference of the Parties [shall] [may] take decisions on matters related to area-based management tools, including marine protected areas, with respect to:

U.S. suggested text for Article 19(1): “While respecting relevant legal instruments and frameworks and relevant global, regional and sectoral bodies in the establishment of area-based management tools, including marine protected areas, the Conference of the Parties ~~{shall}~~ {may} take decisions on matters related to area-based management tools, including marine protected areas, with respect to:”

[(a) Objectives, criteria, modalities and requirements, as provided for under articles 14, 16, 17 and 18;]

U.S. suggested text for Article 19(1)(a): “Objective, criteria, modalities and requirements, as provided for under articles ~~14,~~ 16, 17 [and 18];”

[Alt. 1

(b) Proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, including in relation to:

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(ii) The establishment of area-based management tools, including marine protected areas, and related conservation and [management] [sustainable use] measures to be adopted to achieve the specified objectives, taking into account existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate;

U.S. requests to delete Article 19(Alt. 1)(b)(ii).

(c) Where there are relevant legal instruments or frameworks or relevant global, regional or sectoral bodies:

(i) Whether to recommend that States Parties to this Agreement promote the adoption of relevant conservation and [management] [sustainable use] measures through such instruments, frameworks and bodies, in accordance with their respective mandates;

U.S. suggested text for Article 19(Alt. 1)(c)(i): “Whether to recommend that States Parties to this Agreement promote the adoption of relevant conservation and {management}{sustainable use} measures through such instruments, frameworks and bodies, in accordance with their respective mandates:”

(ii) Whether to adopt conservation and [management] [sustainable use] measures complementary to those adopted under such instruments, frameworks and bodies;

U.S. requests to delete Article 19(Alt.1)(c)(ii).

(d) Where there are no relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, the adoption of conservation and [management] [sustainable use] measures.]

U.S. requests to delete Article 19 (Alt. 1)(d).

[Alt. 2

(b) Matters related to identifying potential area-based management tools, including marine protected areas;

U.S. suggested text for Article 19(Alt. 2)(b): “Matters related to identifying areas requiring protection to meet the objective of this Agreement
~~potential area-based management tools, including marine protected areas;~~”

(c) Recommendations relating to the implementation of related management measures, while recognizing the primary authority for the adoption of such measures within the respective

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mandates of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

U.S. suggested text for Article 19(Alt. 2)(c): “Recommendations relating to the implementation of related conservation and management measures, ~~while recognizing the primary~~ authority for the adoption of such measures within the respective mandates of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.”

Article 20 Implementation

1. States Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.

U.S. requests to delete Article 20(1).

[3. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States Parties, directly or indirectly.]

U.S. suggested text for Article 20(3): “~~The implementation of the measures~~ Decisions adopted under this Part ~~shall~~ should recognize the special requirements of ~~not impose a disproportionate burden on small island developing States Parties, directly or indirectly.~~”

[4. States Parties shall promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures adopted under this Part.]

U.S. suggested text for Article 20(4): “States Parties ~~shall~~ should promote the ~~adoption~~ consideration of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures ~~adopted~~ recommended under this Part.”

[5. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures

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supporting the conservation and management objectives of the measures adopted and area-based management tools established under this Part.]

U.S. suggested text for Article 20(5): “States Parties ~~shall~~ should encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the conservation and management objectives of the measures adopted and area-based management tools established under the process set out in this Part.]”

U.S. suggested text for Article 20(5)(bis): “The relevant legal instruments and frameworks and relevant global, regional or sectoral bodies are responsible for the implementation and enforcement of the conservation and management measures established by those bodies in relation to area-based management tools, including marine protected areas.”

[6. A State Party that is not a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and management measures established under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area-based management tools, including marine protected areas, established under relevant frameworks, instruments and bodies.]]

U.S. suggested text for Article 20(6): “A State Party that is not a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and management measures established under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, ~~in accordance~~ consistent with the Convention and in accordance with this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [~~Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area-based management tools, including marine protected areas, established under relevant frameworks, instruments and bodies.~~]”

Article 21 Monitoring and review

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1. States Parties, individually or collectively, shall report to the Conference of the Parties on the implementation of [area-based management tools, including marine protected areas] [relevant elements of the decisions of the Conference on area-based management tools, including marine protected areas], established under this Part. Such reports shall be made publicly available by the secretariat.

U.S. suggested text for Article 21(1): “States Parties, individually or collectively, ~~shall~~ may report to the Conference of the Parties on the implementation of [area-based management tools, including marine protected areas] [relevant elements of the decisions of the Conference on area-based management tools, including marine protected areas], established under the process set out in this Part. Such reports shall be made publicly available by the secretariat.”

2. Area-based management tools, including marine protected areas, established under this Part, including related conservation and [management] [sustainable use] measures, shall be monitored and periodically reviewed by the Scientific and Technical Body.

U.S. suggested text for Article 21(2): “Area-based management tools, including marine protected areas, established under ~~this~~ the process set out in this Part, including related recommended conservation and ~~{management}~~ ~~{sustainable use}~~ measures, shall be monitored and periodically reviewed by the Scientific and Technical Body.”

4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment or revocation of area-based management tools, including marine protected areas, including any associated conservation and [management] [sustainable use] measures, [as well as the extension of time-bound area-based management tools, including marine protected areas, which would otherwise automatically expire,] on the basis of an adaptive management approach and taking into account the best available [science] [scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities], the precautionary [approach] [principle] and an ecosystem approach.

U.S. suggested text for Article 21(4): “Following the review, the Conference of the Parties shall, as necessary, revise decisions related to ~~take decisions on the amendment or revocation of~~ area-based management tools, including marine protected areas, including any associated recommended conservation and ~~{management}~~ ~~{sustainable use}~~ measures, [as well as the extension of time-bound area-based management tools, including marine protected areas, which would otherwise automatically expire,] on the basis of an adaptive management approach and taking into account the best available [science] [scientific information and knowledge, and including relevant traditional knowledge of indigenous peoples and local communities], the precautionary ~~{approach}~~ ~~{principle}~~ and an ecosystem approach.”

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5. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies [shall] [may] be invited to report to the Conference of the Parties on the implementation of measures that they have established.

U.S. suggested text for Article 21(5): "The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and Members thereof [shall] [may] be invited to report to the Conference of the Parties on the implementation of measures that they have established."

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PART V CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

Article 42 Objectives

The objectives of this Part are to:

[(c) [Promote and encourage] [Ensure] access to marine technology by and transfer of marine technology for peaceful purposes to developing States Parties for the attainment of the objectives of this Agreement;]

U.S. suggested text for Article 42(c): “[Promote and encourage] ~~[Ensure]~~ [access to marine technology by and transfer of marine technology for peaceful purposes to developing States Parties for the attainment of the objectives of this Agreement;”

(f) Ensure that developing States Parties have:

[(i) Access to, and benefit from, the scientific information resulting from [the collection of] [access to] resources in areas beyond national jurisdiction, in particular marine genetic resources;]

[(ii) Access to, and that their special requirements receive consideration in, the sharing of benefits from marine genetic resources and in marine scientific research;]

[(iii) [Collection of] [Access to] marine genetic resources *in situ*, *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data] [and their utilization];]

[(iv) [Endogenous] [Local] research capabilities relating to marine genetic resources and products, processes and other tools;]

(v) The capacity to develop, implement, monitor and manage, including to enforce, any area-based management tools, including marine protected areas;

(vi) The capacity to conduct and evaluate environmental impact assessments [and strategic environmental assessments].

U.S. requests to delete 42(f).

Article 43 Cooperation in capacity-building and transfer of marine technology

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1. States Parties, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall [promote] [ensure] cooperation, [in accordance with [this Agreement] [Part XIV of the Convention],] in accordance with their capabilities, in capacity-building and the transfer of marine technology to assist States Parties that need and request it, in particular developing States Parties in achieving the objectives of this Agreement.

U.S. suggested text for Article 43(1): “States Parties, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall ~~[promote]~~ ~~[ensure]~~ cooperation, [in accordance with ~~[this Agreement]~~ [consistent with Part XIV of the Convention],] in accordance with their capabilities, in capacity-building and the transfer of marine technology to assist States Parties that need and request it, in particular developing States Parties in achieving the objectives of this Agreement.”

2. Capacity-building and the transfer of marine technology under this Agreement shall be [carried out] [promoted] through enhanced cooperation at all levels and in all forms, including partnerships with and involving all relevant stakeholders, such as, where appropriate, [the private sector,] civil society and holders of traditional knowledge, and by strengthening cooperation, coordination and synergies between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

U.S. suggested text for Article 43(2): “Capacity-building and the transfer of marine technology under this Agreement shall be [carried out] [promoted] through enhanced cooperation at all levels and in all forms, including partnerships with and involving all relevant stakeholders, such as, where appropriate, [the private sector,] civil society and holders of traditional knowledge and by promoting ~~–strengthened~~ ~~in~~ cooperation, and coordination ~~and synergies~~ between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.”

3. In giving effect to the duty to [cooperate] [promote cooperation] under this article, States Parties shall give full recognition to the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

U.S. suggested text for Article 43(3): “In giving effect to the duty to ~~[cooperate]~~ ~~[promote cooperation]~~ under this article, States Parties shall give full recognition to the special requirements of developing

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States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, and coastal African States and developing middle income countries in relation to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.”

Article 44

Modalities for capacity-building and the transfer of marine technology

1. States Parties, recognizing that capacity-building, access to and the transfer of marine technology, including biotechnology, among States Parties are essential elements for the attainment of the objectives of this Agreement, [undertake to provide or facilitate] [shall promote] [shall ensure] access to and the transfer of marine technology, and capacity-building, for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries.

U.S. suggested text for Article 44(1): “States Parties, recognizing that capacity-building, access to and the transfer of marine technology, , which may include~~ing~~ biotechnology, among States Parties ~~are essential elements for~~ will promote the attainment of the objectives of this Agreement, [~~undertake~~ shall endeavour to provide or facilitate] [shall promote] [~~shall ensure~~] access to and the transfer of marine technology, and capacity-building related to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, and coastal African States ~~and developing middle income countries.~~”

2. Capacity-building and the transfer of marine technology [shall] [may] be provided on a [mandatory and voluntary] [voluntary] [bilateral, regional, subregional and multilateral] basis.

U.S. suggested text for Article 44(2): “Capacity-building and the transfer of marine technology related to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction [~~shall~~] be consistent with relevant provisions of the Convention and [~~may~~] be provided on a [~~mandatory or voluntary~~] [~~voluntary~~] [~~bilateral, regional, subregional and or multilateral~~] basis.”

4. Capacity-building and the transfer of marine technology shall be based on and be responsive to the needs and priorities of developing States Parties [as determined by] [informed by] a needs

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assessment [on an individual case-by-case, subregional or regional basis]. Such needs and priorities may be self-assessed or facilitated through a mechanism, which may be established by the Conference of the Parties.

U.S. suggested text for Article 44(4): “Capacity-building and the transfer of marine technology shall be based on and be responsive to the needs and priorities of developing States Parties ~~[as determined by]~~ [informed by] a needs assessment as appropriate ~~[on an individual case-by-case, subregional or regional basis]~~. Such needs and priorities may be self-assessed or facilitated through a mechanism, which may be established by the Conference of the Parties.”

[5. Detailed modalities, procedures and guidelines for capacity-building and the transfer of marine technology [may] [shall] be developed and adopted by the Conference of the Parties.]

U.S. suggested text for Article 44(5): “Detailed modalities, procedures and guidelines for capacity-building and the transfer of marine technology [may] ~~[shall]~~ be developed and adopted by the Conference of the Parties, as necessary.”

Article 45

Additional modalities for the transfer of marine technology

1. The [development and] transfer of marine technology shall be carried out [on fair and most favourable terms, including on concessional and preferential terms] [according to mutually agreed terms and conditions].

U.S. suggested text for Article 45 (1): “The [development and] voluntary transfer of marine technology shall be carried out ~~[on fair and most favourable terms, including on concessional and preferential terms]~~ [according to mutually agreed terms and conditions].”

[2. Alt. 3. Intellectual property rights [related to resources of areas beyond national jurisdiction] shall [not preclude the transfer of marine technology] [be subject to specific limitations in furtherance of technology transfer related to marine technology] under this Agreement.]

U.S. requests to delete Article 45 (2) (Alt.3)

Article 46

Types of capacity-building and transfer of marine technology

1. In support of the objectives set out in article 42, the types of capacity-building and transfer of marine technology may include, and are not limited to:

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(g) The development of technical, scientific and research and development programmes, including bio technological research activities.

U.S. suggested text for Article 46(1)(g): “The development of technical, scientific and research and development programmes, including marine bio technological research activities.”

2. Further details concerning the types of capacity-building and transfer of marine technology identified in this article are elaborated in annex II.

U.S. requests to delete Article 46(2).

3. The types of capacity-building and transfer of marine technology set out in annex II [shall] [may] be reviewed, assessed and amended periodically by the Conference of the Parties to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, subregions and regions.

U.S. suggested text for Article 46(3): “~~The types of capacity-building and transfer of marine technology set out in annex II [shall] [may] be reviewed, assessed and amended periodically by the Conference of the Parties~~ may develop an indicative, non-exhaustive and flexible list of types of capacity-building and transfer of marine technology under this Agreement as needed to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, subregions and regions.”

Article 47 Monitoring and review

2. The monitoring and review referred to in paragraph 1 shall be aimed at:

(b) Measuring performance on the basis of objective indicators and reviewing results-based analyses, including the output, progress and effectiveness of capacity- building and transfer of marine technology activities, successes and challenges;

U.S. requests to delete Article 47(2).

(c) Making recommendations for proposed ways forward and follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to allow developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries, to fully meet their obligations and exercise their rights under this Agreement.

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U.S. suggested text for Article 47(2)(c): “Making recommendations for proposed ways forward and follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to ~~allow~~ assist developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, and coastal African States ~~and developing middle-income countries~~, to ~~fully meet their obligations and exercise their rights under~~ strengthen their implementation of this Agreement.”

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PART VI INSTITUTIONAL ARRANGEMENTS

Article 48 Conference of the Parties

1. The first meeting of the Conference of the Parties shall be convened no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference shall be held at regular intervals to be determined by the Conference at its first meeting.

U.S. suggested text for Article 48(1): “The first meeting of the Conference of the Parties shall be convened no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference shall be held once a year for the first three years after entry into force of this Agreement, and thereafter at regular intervals of not more than once every two years to be determined by the Conference at its first meeting.”

3. The Conference of the Parties shall agree upon and adopt rules of procedure for itself and for any subsidiary body that it may establish.

U.S. suggested text for Article 48(3): “The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body that it may establish.”

[3bis. As a general rule, the decisions of the Conference of the Parties shall be taken by consensus. If all efforts to reach consensus have been exhausted, the procedure established in the rules of procedure adopted by the Conference shall apply.]

U.S. suggested text for Article 48(3bis): “~~As a general rule~~ The decisions, including recommendations, of the Conference of the Parties shall be taken by consensus. If all efforts to reach consensus have been exhausted, the procedure established in the rules of procedure adopted by the Conference shall apply.”

4. The Conference of the Parties shall [monitor and] keep under review the implementation of this Agreement and, for this purpose, shall:

(c) Promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts towards, and the harmonization of relevant policies and measures for, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction [, including by establishing processes for cooperation and coordination with

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and among relevant global, regional, subregional and sectoral bodies] [, including by inviting other global, regional, subregional and sectoral bodies to establish processes for cooperation];

U.S. suggested text for Article 48(4)(c): “Promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts towards, and the complementarity-harmonization of relevant policies and measures for, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction [, including by establishing processes to facilitate ~~for~~ cooperation and coordination with and among relevant global, regional, subregional and sectoral bodies] [, including by inviting other global, regional, subregional and sectoral bodies to establish processes for cooperation];”

(d) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement [, which may include:

[(i) An access and benefit-sharing mechanism;]

[(ii) A capacity-building and transfer of marine technology committee;]

[(iii) An implementation and compliance committee;]

[(iv) A finance committee]];

U.S. suggested text for Article 48(4)(d): “Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement ~~[, which may include:~~

~~— [(i) An access and benefit-sharing mechanism;]~~

~~— [(ii) A capacity-building and transfer of marine technology committee;]~~

~~— [(iii) — An implementation and compliance committee;]~~

~~— [(iv) A finance committee]];~~”

[5. The Conference of the Parties [shall] [may], at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]

U.S. suggested text for Article 48(5): “The Conference of the Parties ~~[shall]~~ ~~[may]~~, at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary,

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propose means of strengthening the ~~substance and methods of~~ implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.”

Article 49 Scientific and Technical Body

3. The Body may also draw on appropriate advice from [existing arrangements, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection] [relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies], as well as other scientists and experts, as may be required.

U.S. suggested text for Article 49(3): “The Body may also draw on appropriate advice from ~~{existing arrangements, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection}~~ [relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies], as well as other scientists and experts, as may be required.”

4. Under the authority and guidance of the Conference of the Parties, the Body shall:

U.S. suggested text for Article 49(4): “Under the ~~authority and guidance~~ of the Conference of the Parties, the Body shall:”

[(b) Monitor the utilization of marine genetic resources of areas beyond national jurisdiction;]

U.S. requests to delete Article 49(4)(b).

[(c) Possess recommendatory functions with respect to measures such as area- based management tools, including marine protected areas, including regarding:

- (i) Standard-setting and review;
- (ii) The assessment of proposals;
- (iii) The monitoring and review of measures;]

U.S. suggested text for Article 49(4)(c): “Possess recommendatory functions with respect to measures such as area- based management tools, including marine protected areas, including regarding:

~~(i) Standard-setting and review;~~

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(ii) The assessment of proposals;

(iii) The monitoring-and-review-of measures;”

[(d) Elaborate guidelines with respect to environmental impact assessments;]

U.S. suggested text for Article 49(4)(d): “Elaborate guidelines with respect to environmental impact assessments as appropriate.”

[(e) Make recommendations to the Conference of the Parties with respect to environmental impact assessments;]

U.S. requests to delete Article 49(4)(e)-(k).

Article 50 Secretariat

[1. Alt. 2. The Conference of the Parties shall [, at its first ordinary meeting,] designate the secretariat from among those existing competent international organizations that have signified their willingness to carry out the secretariat functions under this Agreement.]

U.S. requests to delete Article 50(1)(Alt.2)

2. The secretariat shall:

[(e) Provide assistance with the implementation of this Agreement, as mandated by the Conference of the Parties;]

U.S. suggested text for Article 50(2)(e): “Provide assistance with the implementation of this Agreement, as ~~mandated~~ determined by the Conference of the Parties;”

Article 51 Clearing-house mechanism

2. The clearing-house mechanism shall consist primarily of an open-access web- based platform. [It shall also include a network of experts and practitioners in relevant fields.] The specific modalities for the operation of the clearing-house mechanism shall be determined by the Conference of the Parties.

U.S. suggested text for Article 51(2): “The clearing-house mechanism shall consist primarily of an open-access web-based platform. ~~{It shall may~~ also include contact information for a network of experts and practitioners in relevant fields.~~}~~ The specific modalities for the operation

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of the clearing-house mechanism shall be determined by the Conference of the Parties.”

3. The clearing-house mechanism shall serve as a centralized platform to enable States Parties to have access to, [collect,] [evaluate,] [make public] and disseminate information with respect to:

U.S. suggested text for Article 51(3): “The clearing-house mechanism shall serve as a centralized platform to enable States Parties to have access to, ~~[collect,] [evaluate,] [make public],~~ and disseminate information with respect to:”

[(a) Activities related to marine genetic resources of areas beyond national jurisdiction, including notices of forthcoming *in situ* collection of marine genetic resources, research teams, ecosystems where the marine genetic resources are collected, the [digital] [genetic] properties of the marine genetic resources, their biochemical components, genetic sequence data [and information] [and the utilization of marine genetic resources];]

U.S. suggested text for Article 51(3)(a): “~~Activities related to marine genetic resources of areas beyond national jurisdiction, including notices of forthcoming *in situ* collection of marine genetic resources, research teams, ecosystems where the marine genetic resources are collected, the [digital] [genetic] properties of the marine genetic resources, their biochemical components, genetic sequence data [and information] [and the utilization of marine genetic resources]~~ as set out in Part II of this Agreement;”

[(b) Data and scientific information on, as well as [, in line with the principle of prior informed consent,] traditional knowledge associated with, marine genetic resources of areas beyond national jurisdiction, including through lists of databases, repositories or gene banks where marine genetic resources of areas beyond national jurisdiction are currently held, a registry of such resources, and a track-and-trace mechanism for marine genetic resources of areas beyond national jurisdiction and their utilization;]

U.S. requests to delete Article 51(3)(b).

[(c) The sharing of benefits, including through reports on the status of monetary benefits shared and on their use through the publication of the proceedings of the meetings of the Conference of the Parties;]

U.S. requests to delete Article 51(3)(c).

[(h) Information on sources and availability of technological information and data for the transfer of marine technology and opportunities for facilitated access to marine technology.]

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U.S. suggested text for Article 51(3)(h): “Information on sources and availability of technological information and data for the transfer of marine technology ~~and opportunities for facilitated access to marine technology.~~”

[4. The clearing-house mechanism shall:

(a) Match capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and [provide] [facilitate] access to related know-how and expertise;

U.S. suggested text for Article 51(4)(a): “Allow for States to match capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and [provide] [facilitate] access to related know-how and expertise;”

[(b) Promote linkages to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases, repositories and gene banks [, including experts in relevant traditional knowledge of indigenous peoples and local communities];]

U.S. suggested text for Article 51(4)(b): “Promote linkages to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other publicly available databases, repositories and gene banks [, including experts in relevant traditional knowledge of indigenous peoples and local communities] with a view to avoiding duplication of efforts;”

[(c) Link to private and non-governmental platforms for the exchange of information;]

U.S. suggested text for Article 51(4)(c): “Link to publicly available private and non-governmental platforms for the exchange of information;”

[(d) Build on regional and subregional clearing-house institutions, if applicable, when establishing regional and subregional mechanisms under the global mechanism;]

U.S. suggested text for Article 51(4)(d): “Build on global, regional and subregional clearing-house institutions, if applicable, ~~when establishing regional and subregional mechanisms under the global mechanism;~~”

(e) Facilitate enhanced transparency, including by providing baseline data and information;

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U.S. suggested text for Article 51(4)(e): “Facilitate enhanced transparency, including by disseminating ~~providing~~ baseline data and information;”

[5. The clearing-house mechanism shall recognize the special circumstances of small island developing States Parties [and archipelagic developing States Parties], facilitate access to the mechanism to enable those States to utilize it without undue obstacles or administrative burdens, and include information on activities to promote information-sharing, awareness-raising and dissemination in and with those States, as well as provide specific programmes for those States.]

U.S. suggested text for Article 51(5): “~~The clearing-house mechanism shall recognize the special circumstances of small island developing States Parties [and archipelagic developing States Parties],~~ facilitate access to the mechanism to enable ~~those~~ all States to utilize it without undue obstacles or administrative burdens, and include information on activities to promote information-sharing, awareness-raising and dissemination in and with ~~those~~ States, in particular developing States as well as provide specific programmes for those States.”

[6. The clearing-house mechanism shall be managed by [the secretariat] [the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, in association with relevant organizations, including the International Seabed Authority and the International Maritime Organization, and shall be informed by the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology].]

U.S. suggested text for Article 51(6): “The clearing-house mechanism shall be managed by {the secretariat} {with support, as appropriate, from the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, in association with relevant organizations, including the International Seabed Authority and the International Maritime Organization, and shall be informed by the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology}.”

[PART VII FINANCIAL RESOURCES [AND MECHANISM]]

[Article 52 Funding]

[1. Funding in support of the implementation of this Agreement, in particular capacity-building and the transfer of marine technology under this Agreement, shall be adequate, accessible, transparent [, sustainable and predictable] and [both voluntary and mandatory] [voluntary].]

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U.S. suggested text for Article 52(1): “Funding in support of the implementation of this Agreement, in particular capacity-building and the transfer of marine technology under this Agreement, shall be ~~adequate, accessible, transparent [, sustainable and predictable] and [both voluntary and mandatory] [voluntary].~~”

3. States Parties shall ensure that, for the purposes of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, developing States Parties are granted preference by international organizations in the allocation of appropriate funds and technical assistance and the utilization of their specialized services.

U.S. requests to delete Article 52(3).

4. A voluntary trust fund to facilitate the participation of representatives of developing States Parties in the meetings of the bodies under this Agreement shall be established by the Conference of the Parties. It shall be funded through voluntary contributions.

[Alt.1

5. In addition to the voluntary trust fund, a special fund [may] [shall] be established by the Conference of the Parties to:

5bis. The special fund shall be funded through:

[(b) Mandatory sources, including:

(i) Contributions from States Parties and royalties and milestone payments resulting from the utilization of marine genetic resources;

(ii) Payments as a condition of access to, and utilization of, marine genetic resources, premiums paid during the approval process of environmental impact assessments, in addition to cost recovery, fees and penalties, and other avenues for mandatory payments;]

U.S. requests to delete Article 52(Alt. 1)(5 bis.)(b).

(d) Existing financial mechanisms, such as the Global Environment Facility and the Green Climate Fund;

U.S. requests to delete Article 52(Alt. 1)(5 bis.)(d).

[(e) Private entities wishing to engage in the exploration and exploitation of marine biological diversity of areas beyond national jurisdiction.]]

U.S. requests to delete Article 52(Alt. 1)(5 bis.)(e).

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[Alt.2

5. States Parties shall cooperate to establish appropriate funding mechanisms to assist developing States Parties with achieving the objectives of capacity-building and the transfer of marine technology under this Agreement.]

U.S. suggested text for Article 52(Alt. 2)(5): “States Parties shall [cooperate to] ~~establish~~ promote appropriate funding mechanisms to assist developing States Parties with achieving the objectives of ~~capacity building and the transfer of marine technology~~ Part V of ~~under~~ this Agreement.”

6. The funding mechanisms established under this Agreement shall be aimed at ensuring efficient access to funding through simplified approval procedures and enhanced readiness of support for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries.

U.S. suggested text for Article 52(Alt. 2)(6): “The funding mechanisms established under this Agreement shall be aimed at ensuring efficient access to funding through simplified approval procedures and enhanced readiness of support for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, and coastal African States ~~and developing middle income countries.~~”

7. Access to funding under this Agreement shall be open to developing States Parties [on the basis of need] [, taking into account the needs for assistance of States Parties with special requirements, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries].

U.S. suggested text for Article 52(Alt. 2)(7): “Access to funding under this Agreement shall be open to developing States Parties [on the basis of need] [, taking into account the needs for assistance of States Parties with special requirements, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, and coastal African States ~~and developing middle income countries.~~”]

PART VIII IMPLEMENTATION [AND COMPLIANCE]

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Article 53 Implementation [and compliance]

[3. The Conference of the Parties shall consider and adopt cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Agreement and to address cases of non-compliance.]

U.S. requests to delete Article 53(3).

PART XII FINAL PROVISIONS

Article 61 Entry into force

[2. For each State or entity that ratifies, approves or accepts the Agreement or accedes thereto after the deposit of the [...] instrument of ratification, approval, acceptance or accession, this Agreement shall enter into force on the [thirtieth] day following the deposit of its instrument of ratification, approval, acceptance or accession.]

U.S. suggested text for Article 61(2)(bis): “For the purposes of counting towards the number of instruments required for entry into force of this Agreement pursuant to this Article, any instrument deposited by an entity referred to in article 1(12)(b)(ii) shall not be counted.”

[Article 62 Provisional application]

[1. This Agreement shall be applied provisionally by a State or entity that consents to its provisional application by so notifying the depositary in writing at the time of signature or deposit of its instrument of ratification, acceptance, approval, formal confirmation or accession. Such provisional application shall become effective from the date of receipt of the notification by the Secretary-General.]

U.S. suggested text for Article 62(1): “This Agreement shall be applied provisionally by a State or entity that consents to its provisional application by so notifying the depositary in writing at the time of signature or deposit of its instrument of ratification, acceptance, approval, formal confirmation or accession. Such provisional application shall become effective from the date of receipt of the notification by the Secretary-General of the United Nations.”

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Article 65 Amendment

[2. The Conference of the Parties shall make every effort to reach agreement on the adoption of any proposed amendment by way of consensus. If all efforts to reach consensus have been exhausted, the procedures established in the rules of procedure adopted by the Conference shall apply.]

U.S. suggested text for Article 65(2): “The Conference of the Parties shall ~~make every effort to reach~~ agreement on the adoption of any proposed amendment by ~~way of~~ consensus. ~~If all efforts to reach consensus have been exhausted, the procedures established in the rules of procedure adopted by the Conference shall apply.~~”

[5. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than required under this article.]

U.S. suggested text for Article 65(5): “An amendment may provide that a smaller or a larger number of ratifications, approvals or acceptances ~~or accessions~~ shall be required for its entry into force than required under this article.”

U.S. suggested text of Article 65(5)(bis): “For the purposes of counting towards the number of instruments required for entry into force of an Amendment pursuant to this article, any instrument deposited by an entity referred to in article 1(12)(b)(ii) shall not be counted.”

[ANNEX I Indicative criteria for identification of areas]

[(o) Economic and social factors;]

U.S. requests to delete Annex I(o).

[(p) Cultural factors]

U.S. requests to delete Annex I(p).

[ANNEX II Types of capacity-building and transfer of marine technology]

U.S. requests to delete Annex II.

International legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

IUCN Comments

20 February 2020

International Union for Conservation of Nature
World Commission on Environmental Law - Ocean Specialist Group
Global Marine and Polar Programme
&
Environmental Law Centre



Note: Comments on the first version of the BBNJ text are available [here](#).

Additional resources are available at: www.iucn.org/bbnj

For more information, please contact Cymie Payne (cp@cymiepayne.org)

The suggestions, recommendations and opinions provided below belong solely to the authors and do not necessarily represent the policies of IUCN.

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Cross-cutting comments

A key omission from this text is the absence of a clear obligation to conserve and sustainably use marine biodiversity and similarly to ensure that activities under a State Parties' jurisdiction or control do not cause significant harm to the marine environment in ABNJ. These obligations are core components of the duty to protect and preserve the marine environment and should be more explicitly stated.

PREAMBLE

Draft Text	Proposed text	Commentary
<i>The States Parties to this Agreement,</i> <i>Recalling</i> the relevant provisions of the United Nations Convention on the Law of the Sea, including the obligation to protect and preserve the marine environment, <i>Stressing</i> the need to respect the balance of rights, obligations and interests set out in the Convention, <i>Stressing</i> the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, <i>Desiring</i> to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations, <i>Respecting</i> the sovereignty, territorial integrity and	<i>Recognizing</i> the urgent need to enhance international cooperation to protect and restore the health, productivity and resilience of the ocean and marine ecosystems in areas beyond the limits of national jurisdiction, and to maintain their biodiversity <i>Aware</i> that the conservation of marine biodiversity is a common concern and the shared responsibility of all States and that States have the obligation to protect and preserve the marine environment in ABNJ and to assist other States to do the same; <i>Recognizing</i> the ecological, social, economic, scientific, educational, and cultural importance and intrinsic value of biodiversity beyond national jurisdiction for maintaining ocean health	The Preamble does not yet reflect the scale or scope of ambition reflected in the outcome document from Rio+20 (para. 158): “We therefore commit to protect, and restore, the health, productivity and resilience of oceans and marine ecosystems, and to maintain their biodiversity, enabling their conservation and sustainable use for present and future generations, and to effectively apply an ecosystem approach and the precautionary approach in the management, in accordance with international law, of activities impacting on the marine environment, to deliver on all three dimensions of sustainable development.”

political independence of all States, <i>Desiring</i> to promote sustainable development, Aspiring to achieve universal participation, <i>Have agreed</i> as follows:		

PART I GENERAL PROVISIONS

Draft text	Proposed text	Commentary
Article 1 Use of terms For the purposes of this Agreement: [1. “Access” means, in relation to marine genetic resources, the collection of marine genetic resources [, including marine genetic resources accessed <i>in situ</i>, <i>ex situ</i> [and <i>in silico</i>] [[and] [as digital sequence information] [as genetic sequence data]]].] 2. “Activity under a State’s jurisdiction or control” means an activity over which a State has effective control or exercises jurisdiction. 3. “Area-based management tool” means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording higher protection than that provided in the surrounding areas]. 4. “Areas beyond national jurisdiction” means the high seas and the Area. 5. “Convention” means the United Nations Convention on the Law of the Sea of 10	1. “Access” means, in relation to marine genetic resources, collecting, taking, obtaining or exploiting marine genetic resources [and associated data] for their utilization. 3. “Area-based management tool” means a management measure ~~tool~~, including a marine protected area, for a ~~geographically~~ defined area through which one or several ~~sectors or~~ activities are managed to ensure the with the aim of achieving particular conservation and sustainable use of marine biodiversity objectives [and affording higher protection than that provided in the surrounding areas]. [4. “Areas beyond national jurisdiction” include means the high seas and its superjacent airspace, and the Area.][<i>no definition</i>] <i>Insertion:</i> “Derivative” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.	1(1) It is problematic to see multiple definitions of DSI in different fora. In order to ensure that this process is aligned with the CBD DSI process, the definition of “Associated data” could be determined by the decision-making body at a later date. 1(3) The ABMT definition should be more closely aligned with the CBD art. 8.which focuses on a broad range of measures to promote in situ conservation of nature. 1(4) ABNJ is not defined in UNCLOS and should not be defined in this text. UNCLOS defines the marine areas that are subject to varying levels of national jurisdiction; what remains is beyond national jurisdiction. Accordingly, a definition adds nothing to the term itself. On the other hand, this definition omits air space, which is referenced in UNCLOS (e.g., art. 78(1), 87(b), 135, 212(1), and which should therefore be included if ABNJ is defined. 1(6) It is important that “cumulative impacts” be “cumulative” across different uses (within a sector or across sectors) at any time as well as over time. The wording of the draft article is confusing because it refers to climate change and

December 1982. [6. “Cumulative impacts” means impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts.] [7. Alt. 1. “Environmental impact assessment” means a process to evaluate the environmental impact of an activity [to be carried out in areas beyond national jurisdiction [, with an effect on areas within or beyond national jurisdiction]] [, taking into account [, <i>inter alia</i>,] interrelated [socioeconomic] [social and economic], cultural and human health impacts, both beneficial and adverse].] [7. Alt. 2. “Environmental impact assessment” means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment.] [8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity.] [9. Alt. 1. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties.] [9. Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.] 10. “Marine protected area” means a	<i>Insertion:</i> “Conservation” means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species. 9. “Marine genetic resources” means material of marine plant, animal, microbial or other origin containing functional units of heredity and utilized within the meaning of this Part. 10. “Marine protected area” means a geographically defined marine area that is designated and managed to achieve ~~specific [long-term biodiversity]~~ conservation, ~~and sustainable use objectives [and that affords higher protection than the surrounding areas].~~ 11. “Marine technology” means information and data, provided in a user-friendly format, ~~on marine sciences and related marine operations and services~~; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for <i>in situ</i> and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to the conservation and sustainable use of marine biodiversity, including but not limited to marine scientific research and observation. 13. “Strategic environmental assessment” means the integrated evaluation of the likely environmental, ~~including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the~~	acidification as activities, which they are not. These are “impacts” themselves even if they have (cascading) consequences. 1(9) The definition of MGR follows the CBD (art. 2) where one definition relies on another one. Consolidating the definition is more straightforward and simple and avoids the problem of defining actual or potential value. Defining in terms of “utilization” allows better differentiation between commodities and genetic resources. It is still compatible with the CBD definition. 1(10) The definition of “MPA” should be consistent with the IUCN definition to ensure comparable reporting in the World Database on Protected Areas (WDPA) and compatible protection standards within and beyond national jurisdictions. (IUCN WCPA, 2018). Most important elements are persistence (long term) and a primary objective of conservation. Activities should be managed consistently with that objective (IUCN WCPA 2019). 1(11)/1(14) 1(11) “marine technology” and 1(14) “transfer of marine technology” should be better linked. For example, in the definition of ‘marine technology transfer’ [14] reference should be made to expertise. The draft definition of “marine technology” reflects the IOC Criteria and Guidelines on the Transfer of Marine Technology and therefore has a focus on marine sciences and related services. While these forms of technology will be important for the BBNJ agreement, other relevant forms of technology (such as monitoring, control and surveillance technologies) may not be currently captured in the definition. The definition could be made broader. 1(13) The draft definition of SEA describes the process of an SEA but does not provide a definition of an SEA. Moreover, in

geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas]. [11. “Marine technology” means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for <i>in situ</i> and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.] 12. (a) “States Parties” means States that have consented to be bound by this Agreement and for which this Agreement is in force. (b) This Agreement applies mutatis mutandis: (i) To any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention, and (ii) Subject to article 67, to any entity referred to as an “international organization” in annex IX, article 1, of the Convention that becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities. [13. “Strategic environmental assessment” means the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental	~~carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.]~~ effects of proposed plans or programmes, or of proposed technologies or novel activities, including potential cumulative effects. <i>13.bis. Insertion. “Sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to the loss of or long-term decline in biological diversity and is assessed to ensure such use does not cause significant adverse impacts, individually or cumulatively, thereby maintaining its potential to meet the needs and aspirations of present and future generations.</i> [14. “Transfer of marine technology” means the transfer of the instruments, equipment, expertise, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.] 15. “Utilization” means, in relation to genetic resources, to conduct research and development for any purpose on the genetic and/or biochemical composition of genetic resources, [and derivatives]and on second, third and fourth generation genetic resources.	the draft text, there is no difference between EIA and SEA definitions, except that in SEA, the text refers to the details of the structure (scope) and process (participation, etc.) which apply also (but are not described) in the EIA paragraph above. The integrated aspect of SEA should be emphasized. Suggested additional terms to define: In addition to “sustainable use” it would be helpful to include definitions for “science-based”, “best-available science”, “ecosystem approaches”, “precautionary approach/principle”. These appear under art. 5 (General principles and approaches) but it would be an opportunity to clarify and unify terminology (e.g. refer to CBD COP Decision V/6)

report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.] [14. “Transfer of marine technology” means the transfer of the instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.] [15. “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources [, as well as the exploitation thereof].]		
Article 2 General Objective The objective of this Agreement is to ensure the [long-term] conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.		2 Additional objectives, obligations or principles could be included, in this article or other articles, Such objectives could include: ● Promote the protection of ecosystems, natural habitats and maintenance of viable populations of species in natural surroundings ● Apply internationally agreed scientific criteria and guidelines ● Integrate conservation and sustainable use into decision-making ● Adopt measures to avoid or minimize adverse impacts ● Cooperate to establish a system of MPAs and adopt other effective conservation measures. These provisions may be based on the provisions of UNCLOS art. 194.5, CBD art. 8 & 10, UNFSA art. 10; Aichi Target 11; UNGA res. 61/105.

Article 4 Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies 1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention. 2. The rights and jurisdiction of coastal States in all areas under national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone, shall be respected in accordance with the Convention. 3. This Agreement shall be interpreted and applied in a manner that [respects the competences of and] does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies. [4. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.]	3. This Agreement shall be interpreted and applied in a manner that ~~[respects the competences of and]~~ promotes coherence and cooperation and does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.	4(3) There is still value in text that promotes coherence and coordination as was addressed in prior draft text.
Article 5 General [principles] [and] [approaches] In order to achieve the objective of this Agreement, States Parties shall be guided by the following: [(a) The principle of non-regression;] (b) [The polluter pays principle] [The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due		5. This list is missing many key principles and obligations from UNCLOS. UNCLOS Part XII starts with Article 192: General obligation. States have the obligation to protect and preserve the marine environment. Moreover, some of these principles will require some elaboration to clarify. For example, the Principle of Equity may need some more explanations, e.g.: equity in recognition, and representation (in decision-making) as well as distribution of costs and benefits (c.f. CBD). It may also not be clear what is meant by an integrated approach or the 'non-

regard to the public interest and without distorting international trade and investment]; [(c) The principle of the common heritage of mankind;] (d) The principle of equity;] (e) The precautionary [principle] [approach]; (f) An ecosystem approach; [(g) An integrated approach;] (h) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity; (i) The use of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities]; (j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another.		transfer” of damage or hazards in the case of marine migratory species..
Article 6 International cooperation 1. States Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and members thereof in the achievement of the objective of this Agreement. 2. States Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology	2. States Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology ~~consistent with the Convention~~ in support of the objective of this Agreement. 3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary to support the objective of this Agreement.	6(2) There is a need for a more ambitious text regarding the promotion of international cooperation in MSR and transfer of marine technology to recognise that the current state of international cooperation in MSR is inadequate (<i>see comment on art. 4(4) above</i>).

consistent with the Convention in support of the objective of this Agreement. [3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary.]		

PART II MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

Draft text	Proposed text	Commentary
Article 7 Objectives The objectives of this Part are to: [(a) Promote the [fair and equitable] sharing of benefits arising from the [collection of] [access to] [utilization of] marine genetic resources of areas beyond national jurisdiction;] [(b) Build the capacity of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries, to [collect] [access] and utilize marine genetic resources of areas beyond national jurisdiction;] [(c) Promote the generation of knowledge and technological innovations, including by promoting and facilitating the development and conduct of marine scientific research in areas beyond national jurisdiction, in accordance with the Convention;] [(d) Promote the development and transfer of marine technology [, subject to all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology].]	(c/d) Promote the generation, development and transfer of marine technology and marine scientific research in areas beyond national jurisdiction subject to all legitimate interests, including, inter alia, the owners of intellectual property rights and the rights and duties of holders, suppliers and recipients of marine technology. States shall ensure that intellectual property rights shall be subject to specific limitations which are permitted under international intellectual property framework in furtherance of technology transfer related to marine technology under this Agreement	7(a) The inclusion of “fair and equitable” is important to move away from a focus on commercial reward and to ensure that there is wider benefit to all including those with less capacity to be involved in generating benefit in the first place 7(b) The listing of States is unnecessary and lacks flexibility to allow for future inclusion of other types of States. 7(c) and 7(d) Should be combined and cover generation, development and transfer of knowledge and technological innovation, which could be worded so as to cover results of work with MGR. The reference to “rights and duties” should clearly cover IP rights and limits which can be imposed on them under the international IP regime. This article does not engage directly with the issue of information sharing with regards to MSR and the delay that could be involved while a patent application is being prepared. There is no reference to time. If a patent is granted, there will need to have been a sharing of information at some point. More concerning is the prospect of the choice to keep information a trade secret. One option to address this is to establish a period during which secrecy is permitted and after which information must be available to all. A disclosure within this period may be permitted (in line with public interest defences) if the information is used to contribute to ecologically sustainable practices.

		(see comment on art. 45).
[Article 8 Application] [1. The provisions of this [Part] [Agreement] shall apply to: [(a) Marine genetic resources, insofar as they are collected for the purposes of being the subject of research into their genetic properties;] (b) Marine genetic resources [collected] [accessed] <i>in situ</i>, [and] [accessed] <i>ex situ</i> [and <i>in silico</i>] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization]; [(c) Derivatives.]] [2. The provisions of this [Part][Agreement] shall not apply to: [(a) The use of fish and other biological resources as a commodity.] [(b) Marine genetic resources accessed <i>ex situ</i> [or <i>in silico</i>] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization];] [(c) Derivatives;] [(d) Marine scientific research.]] [3. The provisions of this Agreement shall apply to marine genetic resources [collected] [accessed] <i>in situ</i>, [and] [accessed] <i>ex situ</i> [and <i>in silico</i>] [[and] [as digital sequence information] [as genetic sequence data]] [and their utilization] after its entry into force, including those resources [collected] [accessed] <i>in situ</i> before its entry into force, but accessed <i>ex situ</i> or [<i>in silico</i>] [[and] [as digital sequence information] [as genetic sequence data]] [or utilized] after it.]		8 It should apply to “MGR and associated data” in order to allow the inclusion of Omics data. See e.g. Draft NOAA 'Omics Strategy 8(1)(a) Including derivatives makes this agreement consistent with Nagoya and allows for the very real possibility of the discovery of derivatives which have as much value as DSI, e.g. chemical structures which can be synthesised in the lab. . It is not clear how to ascertain that resources were collected “for the purposes of being the subject of research into their genetic properties”. They may be collected for taxonomy and there may be a change of use. 8(1)(b) and 8(2)(b) Engaging with DSI is very important to future proof and indeed present proof the agreement. DSI is an essential tool for conservation and use of MGR. Currently DSI is shared in an open fashion and restrictions are likely to impede ability to develop conservation measures and new MGR-based products and processes. 8(3) There should be no retrospective application to MGR or DSI. The definition of DSI needs to be the same across all fora to prevent ‘jurisdiction shopping’ (see comment on art. 1.1)

[Article 9 Activities with respect to marine genetic resources of areas beyond national jurisdiction] [1. Activities with respect to marine genetic resources of areas beyond national jurisdiction may be carried out by all States Parties and their natural or juridical persons under the conditions laid down in this Agreement.] [2. In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State under the jurisdiction of which such resources are found.] [3. No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction [, nor shall any State or natural or juridical person appropriate any part thereof]. No such claim or exercise of sovereignty or sovereign rights [nor such appropriation] shall be recognized.] [4. The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of mankind as a whole, taking into consideration the interests and needs of developing States, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.] [5. Activities with respect to marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.]		9(2) The meaning of due regard in this situation could refer to process or substantive rights. If the intention is to allow for notification of coastal States, or to provide information (etc...), this could be more clearly spelled out, with due regard as a backstop. It may be best to leave it so that whichever jurisdiction the actual material was obtained from is applied. 9(3) This could raise a patent issue if there were to be direct patenting of MGR, but even the loosest application of patent law should not lead to this. It could depend on what is meant by appropriation – e.g. setting on one a path to an innovation, although that is not the standard meaning and is likely not what is meant here. 9(4) Is not inconsistent with the existence of patents building on MGR as development and sharing of innovation can be consistent with the benefit of all (eventually) 9(5) This provision may be difficult to monitor and enforce. As an example, marine toxins are studied for their effect on human health, but they could easily be subverted to be used as biowarfare agents (in fact, the OPCW register mentions compounds with such properties). Military funding is a significant source of funding for biotechnology research.

[Article 10 [Collection of] [and] [Access to] marine genetic resources of areas beyond national jurisdiction] [1. <i>In situ</i> [collection of] [access to] marine genetic resources within the scope of this Part shall be subject to [Alt. 1. [prior] [and] [post-cruise] notification to the secretariat [, which shall include an indication of the location and date of [collection] [access], the resources to be [collected] [accessed], the purposes for which the resources will be utilized and the entity that will [collect] [access] the resources] [of [collection of] [access to] marine genetic resources of areas beyond national jurisdiction].] [Alt. 2. a [permit] [licence] issued in the manner and under the terms and conditions set forth in paragraph 2.]] [2. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that <i>in situ</i> [collection of] [access to] marine genetic resources within the scope of this Part shall be subject to: (a) An indication of the geographical coordinates of the location where marine genetic resources were [collected] [accessed]; (b) Capacity-building; (c) The transfer of marine technology; (d) The deposit of samples, data and related information in open source platforms, such as databases, repositories or gene banks; (e) Contributions to the special fund; (f) Environmental impact assessments; (g) Other relevant terms and conditions as may be determined by the Conference of the Parties,	10(2)(c) The transfer of marine technology including through the imposition of limits on intellectual property rights and compulsory licensing as is consistent with the international intellectual property framework and in particular to enable research for any purposes and the use of underlying technology and innovation for energy transition or ecologically sustainable products.	10(1) This provision should include prior notification of listed items with an update post cruise. 10(2)(c) Private IP rights over relevant technology could restrict the effective transfer of marine technology - reference could be made to TRIPS art. 9, 30 and 31 that provide exceptions and compulsory licensing provisions, in particular regarding ongoing research by anyone for any purpose and the sharing of patents for use for energy transitions or ecologically sustainable products. This would not remove all reliance on rights, depending on the activity or the need for some payment but it would engage directly with the issue. Silence on this matter in UNFCCC agreements has been unproductive, and challenges remain at WTO and UNFCCC regarding the power of intellectual property (<i>see Brown monograph 2019 Intellectual Property, Climate Change and Technology</i>, in particular ch. 1). <i>See</i> wording from CBD (and TRIPS above) (and <i>see</i> IUCN contribution on art 12 at end IGC 3 but note that the reference there to restrictions in the context of plant life, human life, avoiding serious prejudice to the environment is quite wide. 10(2)(d) What is meant by open source? Does this mean functionally accessible and interoperable or does it mean free of charge or free of restriction as to onward use? There may be claims that information submitted to the banks, etc. is secret, that collections of such data are subject to database rights and that a software which operates for banks, etc. currently or in the future is subject to a patent. This could restrict the workability of this solution. <i>Benefit sharing: combining intellectual property, trade secrets, science and an ecosystem-focused approach</i>, edited collection from Malmo conference May 2019).

including in relation to [the collection of] [access to] marine genetic resources in ecologically and biologically significant areas, vulnerable marine ecosystems and other specially protected areas, in order to ensure the conservation and sustainable use of the resources therein.] [3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that <i>ex situ</i> access to marine genetic resources within the scope of this Part is free and open [, subject to articles 11 and 13].] [4. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that access to [marine genetic resources <i>in silico</i>] [[and] [digital sequence information] [genetic sequence data]] is facilitated [, subject to articles 11 and 13].] [5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that activities with respect to marine genetic resources of areas beyond national jurisdiction that may result in the utilization of marine genetic resources found in areas both within and beyond national jurisdiction are subject to the prior notification and consultation of the coastal States [and any other relevant State] concerned, with a view to avoiding infringement of the rights and legitimate interests of [that] [those] State[s].] [6. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that marine genetic resources of areas beyond national jurisdiction utilized within their jurisdiction have been [collected] [and] [accessed] in accordance with this Part.]		• This provision may be better used in the benefit sharing section. • A formal definition of the terms (open access, open source...) should clarify the provision. Another issue arises from the common practice of providers of material requesting a handling charge to send materials reducing the burden on them. 10(3) There is a lack of clarity with regards to the definition of free and open (<i>see</i> comments on art. 10(2)(d) above). 10(4) Providing for access to DSI is critical to prevent fragmentation of databases. The value rests with the collection of information, not individual sequences. 10(5) This section is highly problematic. In case of conflict, it is unclear where the burden of proof would lie. If one develops a product from an MGR found in ABNJ and that it is subsequently found in the EEZ of a coastal state, will they have to share benefits? The same problem arises when something found in an MGR from an ABNJ is also found in a terrestrial species in a landlocked state. This is inapplicable. The whole issue of adjacency and rights of coastal States is irrelevant. The jurisdiction where the GR is found should govern how benefit sharing is applied.

[Article 10bis Access to traditional knowledge of indigenous peoples and local communities associated with marine genetic resources [collected] [accessed] in areas beyond national jurisdiction] [States Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources [collected] [accessed] in areas beyond national jurisdiction that is held by indigenous peoples and local communities shall only be accessed with the prior and informed consent or approval and involvement of these indigenous peoples and local communities. The clearing-house mechanism may act as an intermediary to facilitate access to such traditional knowledge. Access to such traditional knowledge shall be on mutually agreed terms.]		10bis. This article is important, but much of the traditional knowledge will be known from the EEZ and be applicable in ABNJ. How can this be covered legally?
[Article 11 [Fair and equitable] sharing of benefits] [1. States Parties, including their nationals, that have [collected] [accessed] [utilized] marine genetic resources of areas beyond national jurisdiction [shall] [may] share benefits arising therefrom [in a fair and equitable manner] with other States Parties, with consideration for the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries [, in accordance with this Part].] [2. Benefits [shall] [may] include [monetary and] non-monetary benefits.] [3. Benefits arising from the [collection of]		11(1) It is important to emphasize that benefits should be shared in a fair and equitable manner. Art. 11(2) is not necessary, given art. 11(3). It will be important to make clear decisions about what monetary and non-monetary benefits are covered and how. 11(3)(a) The rate of payments of monetary benefits could be determined by the COP. The ILBI could specify that different rates must be determined by nature of use of MGR (e.g. lower if products encourage sustainable activity). This would set down a marker consistent with fair and equitable benefit sharing and with overall principles, and also with 11(4), while still leaving details to be discussed and adopted at the COP. <i>Benefit sharing: combining intellectual property, trade secrets, science and an ecosystem-focused approach</i>, chapter to edited collection from Malmo

[access to] [utilization of] marine genetic resources of areas beyond national jurisdiction [shall] [may] be shared at different stages, in accordance with the following provisions: [(a) Monetary benefits [shall] [may] be shared against an embargo period for [marine genetic resources <i>in silico</i>] [digital sequence information] [genetic sequence data] or upon the commercialization of products that are based on marine genetic resources of areas beyond national jurisdiction [in the form of milestone payments]. The rate of payments of monetary benefits shall be determined by the Conference of the Parties. [Payments shall be made to the special fund];] [(b) Non-monetary benefits [, such as access to samples and sample collections, sharing of information, such as pre-cruise or pre-research information, post-cruise or post-research notification, transfer of technology and capacity-building,] [shall] [may] be shared upon [collection of] [access to], [utilization] of marine genetic resources of areas beyond national jurisdiction. Samples, data and related information [shall] [may] be made available in open access [through the clearing-house mechanism [upon [collection] [access] [after [...] years]]]. [[Marine genetic resources <i>in silico</i>] [Digital sequence information] [Genetic sequence data] related to marine genetic resources of areas beyond national jurisdiction [shall] [may] be published and used taking into account current international practice in the field.]]] [4. Benefits shared in accordance with this Part shall be used: [(a) To contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;]		conference May 2019)). Since both monetary and non-monetary benefits cost money, the true cost of ‘non-monetary benefits’ should be recognised and factored in any calculations on levels of benefit provided. 11(3)(a)/11(3)(b) DSI can be shared without loss of materials, whereas MGR are limited and may be collected for specific research project. Therefore, an embargo on physical MGR makes more sense than an embargo for DSI. Sharing of MGR should be based on availability, suitability of material and non-competing use. 11(3)(b) seems to cover this better (current international practice in the field). 11(3)(b) <i>See</i> comments under art. 10(2)(d) above on open access 11(4) This provision is really positive. It will be important to find ways to monitor these benefits and ensure that their value is factored into benefit calculations. Art. 11(5) needs to ensure that this information is not kept by each State, but shared via a clearing house mechanism in order to ensure transparency. This open clause could be seen as enabling States to rely on provision from TRIPS discussed in comments on art. 10(2)(c) above.

[(b) To promote scientific research and facilitate [the collection of] [access to] marine genetic resources of areas beyond national jurisdiction;] [(c) To build capacity to [collect] [access] and utilize marine genetic resources of areas beyond national jurisdiction [, including through common funding or pool funding for research cruises and collaboration in sample collection and data access where adjacent coastal States [shall] [may] be invited to participate, taking into account the varying economic circumstances of States that wish to participate];] [(d) To create and strengthen the capacity of States Parties to conserve and use sustainably marine biological diversity of areas beyond national jurisdiction, with a focus on small island developing States;] [(e) To support the transfer of marine technology;] [(f) To assist developing States Parties in attending the meetings of the Conference of the Parties.]] [5. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from [the collection of] [access to] [the utilization] of marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.]		
[Article 12 Intellectual property rights] [1. States Parties shall cooperate to ensure that intellectual property rights are supportive of and do not run counter to the objectives of this Agreement [, and that no action is taken in the context of intellectual property rights that would		12(1) <i>See</i> comments under art. 10(2)(c) and art. 11(5). This wording could work or it could be seen as ensuring a maximalist approach to IP and there could be reluctance to pursue flexibilities in TRIPS because of fear as to approaches which would be better. It would be preferable to opt for

undermine benefit-sharing and the traceability of marine genetic resources of areas beyond national jurisdiction].] [2. [Marine genetic resources [collected] [accessed] [utilized] in accordance with this Agreement shall not be subject to patents except where such resources are modified by human intervention resulting in a product capable of industrial application.] [Unless otherwise stated in a patent application or other official filing or recognized public registry, the origin of marine genetic resources utilized in patented applications shall be presumed to be of areas beyond national jurisdiction.]] [3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that: (a) [Users of] [Applicants for patents on inventions that utilize or have utilized] marine genetic resources of areas beyond national jurisdiction disclose the origin of the marine genetic resources that they utilize; (b) Intellectual property rights applications related to the utilization of marine genetic resources of areas beyond national jurisdiction that do not comply with this Part are not approved.]		clarity. There is a lot of scholarship on this in the domain of health, <i>see e.g.</i> Carlos Correa, 2000; Carlos Correa, 2002; Daniel J. Gervais, ‘Trips 3.0: Policy Calibration and Innovation Displacement’ in Chantal Thomas and Joel P Trachtman (eds), <i>Developing Countries in the WTO Legal System</i> (Oxford University Press, New York, 2009) and Abdulqawi (eds, 3 ed) <i>Intellectual Property and International Trade: The TRIPS Agreement</i> (Wolters Kluwer, Netherlands, 2016). 12(2) The first sentence of this provision repeats internationally accepted limits on patenting. There is a concern that a requirement that there must be disclosure of origin to get a patent, then this is a new ground for validity and this would be moving beyond the requirements of TRIPS. The presumption avoids concerns that a new requirement for validity would be imposed, (which would be inconsistent with TRIPS) and does not create a new procedural requirement (which could be problematic under the Patent Cooperation Treaty (<i>see</i> Chiarolla, 2018)). For this to work, however, there needs to be a link between this and the benefit sharing provisions (art. 11) and this point may be better made there. 12(3) This provision links to the legal issues highlighted in comments to art. 12(2). There could be a requirement that States do it, many already do (<i>see</i> WIPO, disclosure requirements table) and research shows it would not be expensive (<i>see</i> Castalia (2018). Economic Evaluation of Disclosure of Origin Requirements). A focus on users and collection of information elsewhere could be a different solution but this

		may be practically difficult. If patent offices are seen as the easiest way of collecting this for all use and not only for patents (reference to users is important), this could be made clear. Patent offices could just be a collection house rather than there being any link with patent law. The disclosure of origin could be introduced at national level to meet requirements under Nagoya and it could be delivered in patent offices. This must not, however, be linked with the validity of there being a patent. 12(3)(a) Disclosure of origin is essential to show you did not obtain material from AWNJ so you do not have to comply with the NP. 12(3)(b) Would be a problem under TRIPS.
[Article 13 Monitoring] [1. The Conference of the Parties shall adopt appropriate rules, guidelines or a code of conduct for the utilization of marine genetic resources of areas beyond national jurisdiction.] [2. Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction shall be carried out through the [clearing-house mechanism] [Scientific and Technical Body] [obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]].] [3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that: [(a) An identifier is assigned to marine genetic resources [collected] [accessed] <i>in situ</i>. In the case of marine genetic resources accessed <i>ex situ</i> [and <i>in silico</i>] [[and] [as digital sequence information] [as genetic sequence data]], such identifier shall be		13(3)(a) There is a distinction between traceability and track and trace. The former is achievable and relies on the end user having the identifier when publishing/patenting etc. Track and trace will be very onerous and difficult to achieve, compliance will also be an issue. It should be clear how this process covers digital sequence information. 13(3)(b) may be too onerous. It should be sufficient to provide the identifier to the user that accesses the ex-situ materials. Sending that information to the clearing house every time someone access materials from an ex-situ collection is overly complicated. 13(3)(c) This system is used in national systems, such as in Fiji, for monitoring compliance with the Nagoya Protocol. It is not clear how it will work in a multilateral system. Who will collect, check and curate information? Most MSR will have a null return each year unless there is a change of use. 13(5) This is potentially very onerous. How can

assigned when databases, repositories and gene banks submit the list mentioned in article 51 (3) (b) to the clearing-house mechanism;] [(b) Databases, repositories and gene banks within their jurisdiction are required to [notify the [clearing-house mechanism] [Scientific and Technical Body]] [send a notification through the obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]] when marine genetic resources of areas beyond national jurisdiction, including derivatives, are accessed;] [(c) Proponents of marine scientific research in areas beyond national jurisdiction submit periodic status reports [to the clearing-house mechanism] [to the Scientific and Technical Body] [through the obligatory prior electronic notification system managed by the secretariat and mandated existing international institutions set forth in Part [...]], as well as research findings, including data collected and all associated documentation.]] [4. States Parties shall make available to the clearing-house mechanism information on the legislative, administrative and policy measures that have been adopted in accordance with this Part.] [5. States Parties shall submit reports to the Conference of the Parties about their utilization of marine genetic resources of areas beyond national jurisdiction. The Conference shall review such reports and make recommendations.]		states collect this information?

PART III MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

Draft text	Proposed text	Commentary
Article 14 Objectives The objectives of this Part are to: [(a) Enhance cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, which will also promote a holistic and cross-sectoral approach to [ocean management] [conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction];] [(b) Implement effectively obligations under the Convention and other relevant international obligations and commitments;] [(c) Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of area-based management tools, including marine protected areas;] [(d) Establish a system of ecologically representative marine protected areas that are connected [and effectively and equitably managed];] [(e) Rehabilitate and restore biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine	Article 14 Objectives The objectives of this Part are to: 14(a) Establish a system of ecologically representative marine protected areas that are connected and effectively and equitably managed and protected (currently 14(d)) 14(c) [(c) Conserve and sustainably use areas to promote the protection of ecosystems, natural habitats and maintenance of viable populations of species in natural surroundings, including by establishing a comprehensive system of area-based management tools, including marine protected areas and other effective area-based conservation measures; 14(e) Protect, maintain, and rehabilitate and restore where necessary, biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to but not limited to, marine pollution, the impacts of climate change, such as ocean acidification, increasing sea-surface temperatures and ocean deoxygenation and marine pollution;	14(a) The primary objective of this Part, to establish a system of effectively protected marine protected areas, should be stated first. MPA networks are crucial for maintaining the full range of biodiversity; safeguarding key habitats for migratory species; linking sources and sinks of food supply and larval flow; and encompassing other ecological, oceanographic and genetic connectivities. 14(c) In addition to MPAs, an array of ABMTs may be needed to promote the protection of ecosystems, natural habitats and maintenance of viable populations of species in natural surroundings (cf CBD Article 8(d)) and other areas of ecological, biological, scientific or cultural significance. 14(e) The “Rehabilitate/restore” objective here should be broadened to include protect and maintain, consistent with the precautionary approach and Rio+20, in particular Para 158. A/RES/66/288 - The Future We Want (see comment on preamble).

pollution;] [(f) Support food security and other socioeconomic objectives, including the protection of cultural values;] [(g) Create scientific reference areas for baseline research;] [(h) Safeguard aesthetic, natural or wilderness values;] [(i) Promote coherence and complementarity.]		
Article 15 International cooperation and coordination 1. [To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,] States Parties shall promote coherence and complementarity in the establishment of area-based management tools, including marine protected areas, through: [(a) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, without prejudice to their respective mandates, in accordance with this Part;] [(b) The process in relation to area-based management tools, including marine protected areas, set out in this Part, including by: (i) Adopting conservation and [management] [sustainable use] measures to complement measures designated under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies; [(ii) Establishing area-based management tools, including marine protected areas, and adopting conservation and [management] [sustainable use] measures where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.] [(b) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral	15(1) ~~[To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,]~~ States Parties shall promote coherence and complementarity in the establishment of area-based management tools, including marine protected areas, through: ~~[(b-a) The process in relation to area-based management tools, including marine protected areas, set out in this Part, including by:~~ ~~(i) Adopting conservation and [management] [sustainable use] measures to complement measures designated under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies;~~ ~~[(ii) Establishing area-based management tools, including marine protected areas, and adopting conservation and [management] [sustainable use] measures where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.]]~~ (b) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral	15(1) This paragraph should clearly state that the obligation is to “promote the establishment of ABMTs including MPAs through...” The current emphasis on “coherence and complementarity” is vague and more akin to an objective than an elaboration of the duty to cooperate. Also missing is an obligation for States Parties to cooperate to promote a more biodiversity-inclusive, integrated and ecosystem-based approach to management both directly through the BBNJ Agreement and as members of global, regional and sector-based organisations. Such an explicit obligation could help to strengthen measures to protect ecosystems, habitats and species and require that ongoing or any future activities do not cause significant adverse effects. 15(1)(a) This provision should be clarified to refer more specifically to “competent international bodies” as it is the competence of the body to adopt conservation measures that may be most relevant. 15(1)(b)(i) and (ii). These provisions summarize parts of art. 19 and therefore are redundant and unnecessary. Moreover, they create a danger of different wording in different places leading to

measures where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.]] [2. Alt. to para. 1. (b) (ii) Where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body to establish area-based management tools, including marine protected areas, States Parties shall cooperate to establish such an instrument, framework or body and shall participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.] 3. States Parties shall make arrangements for consultation and coordination to enhance cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area -based management tools, including marine protected areas, as well as coordination among associated conservation and [management] [sustainable use] measures adopted under such instruments and frameworks and by such bodies. 4. Measures adopted in accordance with this Part shall not undermine the effectiveness of measures adopted by coastal States in adjacent areas within national jurisdiction and shall have due regard for the rights, duties and legitimate interests of all States, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to this end, in accordance with the provisions of this Part. 5. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls under the national jurisdiction of a coastal State, either wholly or in part, it shall be adapted to cover any	~~bodies, Competent international bodies,~~ without prejudice to their respective mandates, in accordance with this Part; [2. Alt. to para. 1. (b) (ii) Where there is no competent international body ~~relevant legal instrument or framework or relevant global, regional, subregional or sectoral body~~ to establish or coordinate area-based management tools; ~~including~~ or manage marine protected areas, States Parties ~~shall~~ may cooperate to establish such an instrument, framework or body and shall participate in its work to promote the objectives of this Part and to ensure the conservation and sustainable use of marine biological diversity within the relevant of areas beyond national jurisdiction.] 3. ~~States Under this agreement, The Conference of the Parties shall make arrangements for~~ establish a consultation and coordination to enhance cooperation with and among.... 4. Measures adopted in accordance with this Part shall be compatible with and complementary to ~~not undermine the effectiveness of~~ measures adopted by coastal States ... 5. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls under the national jurisdiction of a coastal State, either wholly or in part, it shall be adapted upon request to cover any remaining area beyond national jurisdiction ~~or otherwise cease to be in force~~	different interpretations. It would be advisable to delete these here, and include the detailed provisions in art. 19. 15(2) Atl. to para 1(b)(ii) The establishment of a new body should not be required, as it may be time-consuming and complex. However, the evolution of such bodies, based on the devolved authority of the COP, could be a useful way to support wider scale regional planning and implementation of ABMTs including MPAs. 15(3) The COP is the best place to charge with establishing an arrangement or arrangements for consultation and coordination. States Parties may not have equal capacities to establish their own coordination and collaboration mechanisms resulting in unequal progress across regions. This is an important paragraph for institutional cooperation. 15(4) A more proactive way to express this could be “measures adopted in accordance with this Part shall be compatible with and complementary to the ABMTs adopted by coastal States in adjacent areas within national jurisdiction.”

remaining area beyond national jurisdiction or otherwise cease to be in force.		
Article 16 Identification of areas [requiring protection] 1. Areas requiring protection through the establishment of area-based management tools, including marine protected areas, shall be identified on the basis of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities], the precautionary [approach] [principle] and an ecosystem approach. 2. Indicative criteria for the identification of areas requiring protection through the establishment of area-based management tools, including marine protected areas, under this Part, may include those specified in annex I. 3. The indicative criteria specified in annex I [shall] [may] be further developed and revised as necessary by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties. [4. The indicative criteria specified in annex I, as well as any that may be further developed and revised in accordance with paragraph 3, shall be applied, as relevant, by the proponents of a proposal under this Part and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part. [Such criteria shall also be [applied] [taken into account] by States Parties in the establishment of area-based management tools, including marine protected areas, under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.]]		16(1) ‘best available science’ could be defined somewhere in the text (e.g. Article 1). The role, credibility and authority of science for the identification of areas requiring protection should be further explored. 16(2) There are already well established principles and guidance for the establishment of MPAs, OECM, EBSAs, etc., their monitoring and their performance evaluation. These should be adapted (usually slightly) and applied. There is no need to restart from square one. 16(3) The process is unclear here. If the COP adopts revisions, what are their legal status as compared to the Annex? In multilateral environmental agreements, there would usually be a process to amend the Annex through a majority vote by the COP. It would be better if this process is specified in the Agreement text, instead of delaying further developments for the adoption of rules of procedure. 16(4) The text now in brackets regarding application of criteria by States Parties should be accepted and broadened to encourage States Parties and other competent bodies to also apply the criteria contained in the BBNJ agreement as this could encourage greater cooperation, consistency and coherence between existing bodies and the BBNJ agreement.

Article 17 Proposals 1. Proposals in relation to the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat. [2. States Parties may collaborate with relevant stakeholders in the development of proposals.] 3. Proposals shall be formulated on the basis specified in paragraph 1 of article 16. 4. Proposals shall include, at a minimum, the following elements: (a) A geographic or spatial description of the area that is the subject of the proposal; (b) Information on any of the indicative criteria specified in annex I, as well as any criteria that may be further developed and revised in accordance with paragraph 3 of article 16, applied in identifying the area; (c) Specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States; (d) A description of the state of the marine environment and biodiversity in the identified area; (e) A description of the specific conservation and sustainable use objectives that are to be applied to the area; (f) A description of the proposed [conservation and [management] [sustainable use] measures] [priority elements for a management plan] to be adopted to achieve the specified objectives; [(g) A duration for the proposed area and measures;]	(a) A geographic or spatial description of the area that is the subject of the proposal (d) A description of ~~the state~~ key aspects of the marine environment and biodiversity in the identified area	17. In this article and the following sections (Articles 17 and 18) it may be better to avoid being too specific in the Agreement as too much detail may make it hard if not impossible to adapt once adopted. It may be more appropriate to leave the details into annexes that may be more easily adapted to evolving knowledge and needs. 17(4)(d): The Agreement should avoid a requirement to have full info about the environment before an MPA can be established. 17(4)(e) As is reflected in the IUCN MPA Standards, the primary focus of MPAs should be conservation, while ABMTs could be established for both objectives: conservation and sustainable use. According to the IUCN MPA Standards, there is a need for clarity on conservation objectives for MPAs from the outset to determine the types of management measures needed. 17(4)(f) There may need to be different requirements for MPA proposals versus other ABMTs as other types of ABMTs may not require a management plan, simply a plan for monitoring and review. An MPA proposal should contain proposed conservation and management measures as well as “priority elements” for a management plan. The priority elements could be the categories of actions considered necessary to achieve the specific conservation objectives of a proposed MPA given the available knowledge at the time.

(h) A monitoring, research and review plan, including priority elements; (i) Information on any consultations undertaken with adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies. 5. Further requirements regarding the contents of proposals [shall] [may] be elaborated by the Scientific and Technical Body as necessary, for consideration and adoption by the Conference of the Parties.		
Article 18 Consultation on and assessment of proposals 1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all relevant stakeholders. 2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed by the secretariat to the proponent. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review of the Scientific and Technical Body. The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows: (a) States, in particular adjacent coastal States, shall be invited to submit, <i>inter alia</i>: (i) Views on the merits of the proposal; (ii) Any relevant [additional] scientific inputs; (iii) Information regarding any existing measures in adjacent areas within national jurisdiction; (iv) Views on the potential implications of the	4. The proponent shall ~~consider~~ take into account the contributions received during the consultation period and ~~may shall~~ either submit a revised the proposal accordingly or continue the consultation process.	18(1) In consultations on proposals, it would be helpful to explicitly include civil society, including IGOs, environmental NGOs and industry as well as scientific and technical experts. 18(2) what would the preliminary review entail? What criteria would be applied? Simply to ensure that the required elements are included, or would there be a more substantive review? The “assessment” should use to a large extent the same criteria required in the identification, for obvious coherence. 18(2)(a)(ii) should be strengthened to reflect the need to get access to data and information from sectoral actors in order to develop proposals for specific conservation measures. 18(2)(b)(vi) In addition to being invited to submit views, 18(2)(b)(vi) could be amended to explicitly request relevant legal instruments and bodies to share and facilitate access to data and information relevant to activities and potential conservation and management measures. 18(4) This provision is ambiguous as it could be interpreted to require the proponent to continue the consultation process ad infinitum until it has

proposal for areas under national jurisdiction; (v) Any other relevant information; (b) Bodies of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be invited to submit, <i>inter alia</i>: (i) Views on the merits of the proposal; (ii) Any relevant [additional] scientific inputs; (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas; (iv) Views regarding any aspects of the [conservation and [management] [sustainable use] measures] [priority elements for a management plan] identified in the proposal that fall within the competence of that body; (v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body; (vi) Any other relevant information; (c) Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, <i>inter alia</i>: (i) Views on the merits of the proposal; (ii) Any relevant [additional] scientific inputs; (iii) Any relevant traditional knowledge of indigenous peoples and local communities; (iv) Any other relevant information. 3. Contributions received pursuant to paragraph 2 shall be made publicly available by the		revised the proposal to embrace all comments from those consulted. It may be clearer if it said: the proponent “may” revise the proposal to “take into account” the contributions received. There should be no obligation to continue the consultation until consensus is achieved on its contents. 18(5) To prevent delays, relevant bodies and instruments should be requested to establish an expedited procedure for the consideration of MPA and other ABMT proposals.

secretariat. 4. The proponent shall consider the contributions received during the consultation period and shall either revise the proposal accordingly or continue the consultation process. 5. The consultation period shall be time-bound. 6. The revised proposal shall be submitted to the Scientific and Technical Body, which shall assess the proposal, and make recommendations to the Conference of the Parties. 7. The modalities of the consultation and assessment process shall be further elaborated by the [Scientific and Technical Body] [Conference of the Parties], as necessary [, and shall take into account the special circumstances of small island developing States].		
Article 19 Decision-making 1. The Conference of the Parties [shall] [may] take decisions on matters related to area-based management tools, including marine protected areas, with respect to: [(a) Objectives, criteria, modalities and requirements, as provided for under articles 14, 16, 17 and 18;] [Alt. 1 (b) Proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, including in relation to: (i) The identification of areas requiring protection;	[Alt. 1 (b) Proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, including in relation to: (i) The identification of areas requiring protection; (ii) The establishment of area-based management tools, including marine protected areas, (ii) bis: For an MPA, the adoption of a management plan and a research and monitoring plan including the identification of and related conservation and [management] [sustainable use] measures to be adopted to achieve the specified conservation objectives, taking into account existing measures under relevant legal instruments and frameworks and	Alt. 1 19(1)(b)(i) If the identification of areas requiring protection is intended as a separate step, one consequence of identification could be a legal obligation on States Parties to share information and to actively promote the adoption of measures to protect the area. Provisional measures might also be needed to freeze the expansion of existing activities and new activities by States Parties while the management plan is under development. Alt. 1 19(1)(c) The language as it stands creates confusion about who has the responsibility of decisions on area based management tools, (especially with regards to the chapeau and this section). Here the term “ relevant instruments or bodies” should be narrowed to “competent international organizations.” Neither instruments nor advisory bodies have the ability to adopt measures. Hence, such instruments and bodies

(ii) The establishment of area-based management tools, including marine protected areas, and related conservation and [management] [sustainable use] measures to be adopted to achieve the specified objectives, taking into account existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate; (c) Where there are relevant legal instruments or frameworks or relevant global, regional or sectoral bodies: (i) Whether to recommend that States Parties to this Agreement promote the adoption of relevant conservation and [management] [sustainable use] measures through such instruments, frameworks and bodies, in accordance with their respective mandates; (ii) Whether to adopt conservation and [management] [sustainable use] measures complementary to those adopted under such instruments, frameworks and bodies; (d) Where there are no relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, the adoption of conservation and [management] [sustainable use] measures.] [Alt. 2 (b) Matters related to identifying potential area-based management tools, including marine protected areas; (c) Recommendations relating to the implementation of related management measures, while recognizing the primary authority for the adoption of such measures within the respective mandates of relevant legal instruments and frameworks and relevant global, regional and	relevant <u>competent international organizations</u> ~~global, regional and sectoral bodies~~, as appropriate; (ii) ter: for other area-based management tools, the identification of conservation and [management] ~~[sustainable use]~~ measures to be adopted to achieve the specified objectives, taking into account existing measures under relevant legal instruments and frameworks and relevant <u>competent international organizations</u> ~~global, regional and sectoral bodies~~, as appropriate; (c) Where there are <u>relevant competent international organizations</u>: ~~relevant legal instruments or frameworks or relevant global, regional or sectoral bodies~~: (i) Whether to recommend that States Parties to this Agreement promote the adoption of conservation and [management] ~~[sustainable use]~~ measures <u>falling within the competence of such bodies through instruments, frameworks and those bodies</u>, in accordance with their respective mandates; (ii) Whether to adopt conservation ~~and [management] [sustainable use]~~ measures complementary to that are not inconsistent with those adopted under such instruments, frameworks and bodies; (d) Where there are no relevant ~~legal instruments or frameworks or relevant global, regional or sectoral bodies~~, competent international organizations the adoption of conservation and [management] ~~[sustainable use]~~ measures.]	would not be “relevant” to the adoption of conservation or management measures. “Competent international organization” is the term used in <u>UNCLOS</u>, which provides greater clarity over whether an organization has competence over any functions relevant to BBNJ, and what those functions are. Alt. 1 19(1)(c)(i) It will be important to clarify what “relevant measures” means. At minimum, such measures should be sufficient to achieve the objectives of the MPA, in accordance with the respective mandates of the competent organizations. 19(1)(d). <i>See</i> comment on section Alt. 1 19(1)(c) above, the provision “Where there are no relevant legal instruments or bodies” should be clarified to only refer to “competent international organizations”.

sectoral bodies.]		
Article 20 Implementation 1. States Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part. 2. Nothing in this Agreement shall prevent a State Party from adopting more stringent measures with respect to its vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law. [3. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States Parties, directly or indirectly.] [4. States Parties shall promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures adopted under this Part.] [5. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the conservation and management objectives of the measures adopted and area-based management tools established under this Part.] [6. A State Party that is not a participant in a		20(1) Activities under a State's jurisdiction or control should be read to include activities carried out by a country's flag vessels, nationals, state enterprises and corporations registered in or with significant linkages to the State or using its ports (UNCLOS art. 139; Port State Agreement; PCIJ Lotus Case; CBD art. 4). 20 (4), (5), (6) provide important reminders to encourage implementation. In practice it will be worth considering how States will work through existing instruments to implement the measures adopted. This should be considered in the process in which the implementing measures are adopted, during which relevant bodies should be consulted.

relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and management measures established under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area - based management tools, including marine protected areas, established under relevant frameworks, instruments and bodies.]]		
Article 21 Monitoring and review 1. States Parties, individually or collectively, shall report to the Conference of the Parties on the implementation of [area-based management tools, including marine protected areas] [relevant elements of the decisions of the Conference on area -based management tools, including marine protected areas], established under this Part. Such reports shall be made publicly available by the secretariat. 2. Area-based management tools, including marine protected areas, established under this Part, including related conservation and [management] [sustainable use] measures, shall be monitored and periodically reviewed by the Scientific and Technical Body. 3. The review referred to in paragraph 2 shall assess the effectiveness of measures and the progress made in achieving their objectives and provide advice and recommendations to the		21(1) It is good to have a reporting and review mechanism at the COP but it is also important to keep in mind that the daily monitoring could be put at the lowest appropriate level.

Conference of the Parties. 4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment or revocation of area-based management tools, including marine protected areas, including any associated conservation and [management] [sustainable use] measures, [as well as the extension of time-bound area-based management tools, including marine protected areas, which would otherwise automatically expire,] on the basis of an adaptive management approach and taking into account the best available [science] [scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities], the precautionary [approach] [principle] and an ecosystem approach. 5. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies [shall] [may] be invited to report to the Conference of the Parties on the implementation of measures that they have established.		

PART IV ENVIRONMENTAL IMPACT ASSESSMENTS

Draft text	Proposed text	Commentary
Article 21bis Objectives The objectives of this Part are to: [(a) Operationalise the provisions of the Convention on environmental impact assessment, by establishing processes, thresholds and guidelines for conducting and reporting assessments by States;] [(b) Enable consideration of cumulative impacts;] [(c) Provide for Strategic Environmental Assessments;] [(d) Achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction.]	(b) ~~Enable consideration of~~ Facilitate the examination of cumulative impacts in environmental assessments;	21(b) suggested amendment is intended to enhance the emphasis on cumulative impacts.
Article 22 Obligation to conduct environmental impact assessments 1. States Parties shall [as far as practicable] assess the potential effects of planned activities under their jurisdiction or control [on the marine environment] [in accordance with their obligations under articles 204 to 206 of the Convention]. 2. On the basis of articles 204 to 206 of the Convention, States Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement the provisions [of this Part] [[and any further measures [on the conduct of environmental impact assessments] adopted by the Conference of the Parties]. 3. The requirement in this Part to conduct an	1. States Parties shall ~~[as far as practicable]~~ assess the potential effects of planned activities under their jurisdiction or control before irretrievable commitments of resources have been made, [on the marine environment] [in accordance with their obligations under ~~articles 204 to 206 of the Convention~~ and international law]. 2. ~~On the basis of articles 204 to 206 of the Convention,~~ States Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement the provisions [of this Part] [[and any further measures [on the conduct of environmental impact assessments] adopted by the Conference of the Parties].	22(1) - EIA should be conducted at a stage when alternatives can be modified (Pulp Mills Case para 205). UNCLOS provides other obligations related to environmental impact assessment which should not be excluded; there is no need to specify selected articles. International law regarding EIA applies. 22(3) States have a legal obligation to conduct EIA for activities with impacts in ABNJ, as well as obligations to protect marine biodiversity, under UNCLOS and customary international law (UNCLOS art. 204-206; 1994 Agreement, Annex, Section 1(7); Pulp Mills Case, para. 204). This is consistent with existing rules of many States and

environmental impact assessment applies [only to activities conducted in areas beyond national jurisdiction] [to all activities that have an impact in areas beyond national jurisdiction].		with the ecosystem approach.
Article 23 Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies 1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with [the obligations under] the Convention. [2. Alt. 1. The Scientific and Technical Body shall consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment. [Procedures for consultation and/or coordination shall include the establishment of an ad hoc interagency working group or the participation of representatives of the scientific and technical bodies of those organizations in meetings of the Scientific and Technical Body].] [2. Alt. 2. State Parties shall cooperate in promoting the use of environmental impact assessments in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies for planned activities that meet or exceed the threshold contained in this Agreement.] [3. Alt. 1. [Global minimum standards] [and] [guidelines] for the conduct of environmental impact assessments [under relevant legal instruments and frameworks and relevant global,	3. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction. More detailed standards and guidelines may be set out in an annex to this Agreement and may be updated periodically. The Scientific and Technical Body shall develop recommendations through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies. 4. Alt. 1. Parties to this Agreement shall make best efforts to ensure that relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate in relation to marine biological diversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in this Part.	23(2)(Alt. 1) Consultation and coordination will be more efficient and comprehensive if conducted through the Scientific and Technical Body as in Alt 1. 23(2)(Alt. 2) lacks transparency and is likely to give rise to duplicative efforts and noncompliance. 23(3) - This Agreement should state specific elements of EIA in its main text and provide for further development of global minimum standards in cooperation with others. The Agreement should include: Process • Steps in the EIA, including screening, scoping, etc. • Modalities for notification and consultation with States, public, existing bodies, affected local communities • Incorporation of comments/revision • Monitoring and review • Scientific review Content • Minimum requirements, including management measures • Cumulative effects, including climate change • Transboundary effects 23(3)(Alt. 1) places responsibility for developing global minimum standards with the Scientific and Technical Body. It provides for a means to update them in cooperation with other relevant entities

regional, subregional and sectoral bodies] shall be developed [by the Scientific and Technical Body] [through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies]. [These [global minimum standards] [and] [guidelines] shall be set out in an annex to this Agreement and shall be updated periodically].] [3. Alt. 2. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.] [4. Alt. 1. Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate in relation to marine biological diversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in this Part.] [4. Alt. 2. No environmental impact assessment is required under this Agreement for any activity conducted in accordance with the rules and guidelines appropriately established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.] [4. Alt. 3. No environmental impact assessment is required under this Agreement where relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies with mandates for environmental impact assessments for planned activities [with impacts] in areas beyond national jurisdiction already exist, regardless of whether or not an environmental impact assessment is required for the planned		(see e.g., the appendices of the Espoo Convention and Annex I to the Madrid Protocol to the Antarctic Treaty). This will provide for an adaptive and future-proofed agreement that will be responsive to changing threats, technology and oceanographic conditions, while encouraging consistency and streamlining across EIA mandates. 23(4)(Alt. 1) While this instrument cannot control others, States Parties to both agreements have that power and can commit themselves to using it in pursuit of the goals of this Agreement. 23(4) Alt. 2-3 appear to authorise noncompliance with UNCLOS EIA obligations and should be deleted.. 23(4) Alt. 4 could be 23(5), and it could ensure that where multiple EIA obligations apply to an activity, the most stringent and comprehensive elements be used to conduct a single EIA process and set of documents. This is already done elsewhere.

activity under the jurisdiction or control of a State Party.] [4. Alt. 4. Where a planned activity under the jurisdiction or control of a State Party [with impacts] in areas beyond national jurisdiction is already covered by existing environmental impact assessment obligations and agreements, it is not necessary to conduct another environmental impact assessment of that activity under this Agreement [, provided that the [State with jurisdiction or control over the planned activity] [body set forth in Part [...]] [, following consultation with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,] determines that: [(a) The outcome of environmental impact assessment under those obligations or agreements is effectively implemented;] [(b) The environmental impact assessment already undertaken is [[functionally] [substantively] equivalent to the one required under this Part] [comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts];] [(c) The threshold for the conduct of environmental impact assessments meets or exceeds the threshold set out in this Part.]]		
Article 24 Thresholds and criteria for environmental impact assessments [1. Alt.1 1. When States have reasonable grounds for believing that planned activities under their jurisdiction or control [may cause substantial pollution of or significant and harmful changes to] [are likely to have more than a minor or transitory	1. Alt.2(1)(c) When the effects of the proposed activity are unknown or poorly understood, an environmental impact assessment will always be required.	24(1) Alt.2 – The “minor or transitory effect” threshold triggers a screening EIA; a fuller EIA is conducted if it appears that the higher threshold will be surpassed. Deep-sea habitats are characterized by enhanced vulnerability - activities that would not be considered ‘significant’ in other environments could have significant and irreversible impacts in

effect on] the marine environment [in areas beyond national jurisdiction], they shall, [individually or collectively,] as far as practicable, [assess the potential effects of such activities on the marine environment] [ensure that the potential effects of such activities on the marine environment are assessed].] [1. Alt.2 1. When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control: (a) Are likely to have more than a minor or transitory effect on the marine environment, they shall conduct an environmental impact assessment on the potential effects of such activities on the marine environment in the manner provided in this Part; (b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall [conduct] [ensure that] a [full] [comprehensive] environmental impact assessment [is conducted] on the potential effects of such activities on the marine environment [and ecosystems] and shall submit the results of such assessments [for technical review] in the manner provided in this Part. [2. Environmental impact assessments shall be conducted in accordance with the threshold and criteria [set out in this Part and as further elaborated upon pursuant to the procedure set out in paragraph [...]] [, which shall be developed by the Scientific and Technical Body].]		the deep-sea. A threshold for EIAs of “significant and harmful” will miss repetitive ongoing changes such as noise pollution that can negatively impact ecosystems but taken individually may be less than “significant”. Moreover, it is difficult to assess whether a change is significant and harmful given limited knowledge about much of the deep sea environment. Thresholds and criteria for EIAs should be in accordance with the precautionary principle.
Article 25 Cumulative impacts 1. Cumulative impacts shall [as far as possible] be [taken into account] [considered] in the conduct of		25(2) Assessment of cumulative impacts should follow consistent procedures. 25(2) Alt. 2, which leaves this up to individual States could result in

environmental impact assessments. [2. Alt. 1. Guidelines for assessing cumulative impacts in areas beyond national jurisdiction and how those impacts will be taken into account in the environmental impact assessment process for planned activities shall be developed by the Conference of the Parties.] [2. Alt. 2. In determining cumulative impacts, the incremental effect of a planned activity under the jurisdiction or control of a State Party when added to the effects of past, present and reasonably foreseeable future activities shall be examined regardless of whether the State Party exercises jurisdiction or control over those other activities.]		inconsistency and therefore, failure to meet objectives.
Article 26 Transboundary impacts 1. Possible transboundary impacts shall be taken into account in environmental impact assessments. 2. Where relevant, the environmental impact assessment process shall also take into account possible impacts in [adjacent] [coastal States] [areas within national jurisdiction, including the continental shelf beyond 200 nautical miles].		26(2) To effectively conserve and sustainably use BBNJ, possible impacts on areas within national jurisdiction should be considered because marine ecosystems within and beyond national jurisdiction are ecologically connected.
Article 28 Strategic environmental assessments 1. States Parties, individually or in cooperation with other States Parties, shall ensure that a strategic environmental assessment is carried out for plans and programmes relating to activities [under their jurisdiction or control,] [conducted] [with impacts] in areas beyond national jurisdiction, which meet the threshold/criteria established in article 24. [2. As one type of environmental assessment, strategic environmental assessments shall follow	2. Strategic environmental assessment processes shall ensure effective consultation, transparency and application of the best available scientific information. Where scientific information is inadequate to enable an informed decision, further scientific research shall be conducted.	28(2) SEAs are important to achieve the objectives of a future ILBI. SEAs are different from EIAs and require different processes.

mutatis mutandis the process set out in this Part.]		
Article 29 List of activities that [require] [or] [do not require] an environmental impact assessment [1. An indicative non-exhaustive list of activities that [normally] [require] [or] [do not require] an environmental impact assessment [is contained in annex [...]] [shall be [prepared by the Conference of the Parties as voluntary guidelines on the basis of recommendations by the Scientific and Technical Body]].] [2. The list shall be regularly updated by the Conference of the Parties.]		Not recommended.
Article 30 Screening 1. A State Party shall determine whether an environmental impact assessment is required in respect of a planned activity under its jurisdiction or control. [2. The initial screening of activities shall consider the characteristics of the area where the planned activity under the jurisdiction or control of a State Party is intended to take place, as well as where the potential effects are going to be felt. Should such planned activity take place in or adjacent to an area that has been identified for its significance or vulnerability, regardless of whether the impacts are expected to be minimal or not, an environmental impact assessment shall be required.] [3. If a State Party determines that an environmental impact assessment is not required for a planned activity under its jurisdiction or control, [the approval of the Scientific and Technical Body must be obtained] [it must provide information to support that conclusion]. [The		30(2) Guidelines for screening will provide consistency and predictability.

Scientific and Technical Body shall verify that the information provided by the [State Party] satisfies the requirements in this Part].]		
Article 32 Impact assessment and evaluation 1. A State Party [that has determined that a planned activity under its jurisdiction or control requires an environmental impact assessment under this Agreement] shall ensure that the identification and evaluation of impacts in such an assessment is conducted in accordance with this Part, using the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities [, and an examination of alternatives]. 2. Nothing in this Part precludes States Parties, in particular [small island] developing States, from conducting joint environmental impact assessments. [3. A State Party may designate a third party to conduct an environmental impact assessment required under this Agreement. Such third party [shall] [may] be drawn from the pool of experts created pursuant to paragraph 4 below. Environmental impact assessments conducted by such third parties must be submitted to the State for review and decision-making.] [4. A pool of experts shall be created under the Scientific and Technical Body. States Parties with capacity constraints may commission those experts to conduct and evaluate environmental impact assessments for planned activities.]		32(4) EIAs are complex processes and some States may not have the resources to fulfil their EIA obligations.
Article 34 Public notification and consultation 1. States Parties shall ensure early notification to stakeholders about planned activities under their		34(5) Confidentiality exclusions should not be allowed, or allowed in limited circumstances and subject to review by a third party. Experience

jurisdiction or control and effective, time-bound opportunities for stakeholder participation throughout the environmental impact assessment process, including through the submission of comments, before a decision is made as to whether to proceed with the activity. [2. Stakeholders in this process include potentially affected States, where those can be identified, [in particular adjacent coastal States] [, indigenous peoples and local communities with relevant traditional knowledge in adjacent coastal States,] relevant global, regional, subregional and sectoral bodies, non-governmental organizations, the general public, academia [, scientific experts] [, affected parties,] [adjacent communities and organizations that have special expertise or jurisdiction] [, interested and relevant stakeholders] [, and those with existing interests in an area].] 3. Public notification and consultation shall be transparent and inclusive [, and targeted and proactive when involving adjacent small island developing States]. 4. [Substantive] comments received during the consultation process [from adjacent coastal States] shall be considered and [addressed] [responded to] by States Parties. States Parties shall give particular regard to comments concerning potential transboundary impacts. States Parties shall make public the comments received and the descriptions of how they were addressed. 5. States Parties [undertaking an environmental impact assessment pursuant to this Agreement] shall establish procedures allowing for access to information related to the environmental impact assessment process under this Agreement. [Notwithstanding this, States Parties shall not be		shows that failure to disclose information can expose human and environmental health to risk. 34(6) is a key provision that should be included to facilitate the remainder of art. 34.

required to disclose non-public information or information that would undermine intellectual property rights or other interests]. [6. Procedures may be developed by the Conference of the Parties to facilitate consultation at the international level.]		
Article 35 Preparation and content of environmental impact assessment reports 1. States Parties shall [be responsible for] [ensure] the preparation of an environmental impact assessment report for any such assessment undertaken pursuant to this Part. 2. Where an environmental impact assessment is required in accordance with this Part, the environmental impact assessment report [shall] [may] include [as a minimum, the following information]: (a) A description of the planned activity under the jurisdiction or control of a State Party and its purpose [, including a description of the location of [the] [such a] planned activity]; (b) A description of the results of the scoping exercise; (c) A description of the marine environment likely to be affected; (d) A description of the potential effects of the planned activity under the jurisdiction or control of a State Party on the marine environment, including [social, economic, cultural and other relevant impacts,] and [reasonably foreseeable potential direct, indirect,] cumulative and transboundary impacts, [as well as an estimation of their significance] [, including a description of the likelihood that the assessed activity will cause		

substantial pollution of or other significant and harmful changes to the marine environment in areas beyond national jurisdiction and its biodiversity]; (e) A description [, where appropriate,] of reasonable alternatives to the planned activity under the jurisdiction or control of a State Party, including the no- action alternative; [(f) A description of the worst-case scenario that could be expected to occur as a result of the planned activity under the jurisdiction or control of a State Party;] (g) A description of any measures for avoiding, preventing [, minimizing] and mitigating impacts [and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment] [and other adverse social, economic, cultural and relevant impacts]; (h) A description of any follow-up actions, including any monitoring and management programmes, any plans for post-project analysis where scientifically justified, and plans for remediation; (i) Uncertainties and gaps in knowledge; (j) [A non-technical summary] [and/or a technical summary]; [(k) The identification of the sources of the information contained in the report;] [(l) An explicit indication of predictive methods and underlying assumptions, as well as the relevant environmental data used;] [(m) The methodology used to identify environmental impacts;]		

[(n) An environmental management plan, including a contingency plan for responding to incidents that have an impact on the marine environment;] [(o) The environmental record of the proponent;] [(p) A review of the business plan for the planned activity under the jurisdiction or control of a State Party;] (q) A description of consultations undertaken in the environmental impact assessment process, including with relevant global, regional, subregional and sectoral bodies. [3. Further [details] [guidance] regarding the required content of an environmental impact assessment report [shall] [may] be developed by the Conference of the Parties as an annex to this Agreement and shall be based on the best available scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities. [[These details] [This guidance] shall be reviewed regularly].]		
Article 36 Publication of [assessment] reports States Parties shall publish [and communicate] the reports of the results of the assessments in accordance with [articles 204 to 206 of] the Convention [, including through the clearing-house mechanism].		36 The assessment report <i>and</i> decision should be communicated, therefore art. 36 should be moved to after decision making. The final decision on whether and how the activity goes forward should also be reported. This contributes to the integrity of the EIA process and to the database of knowledge for future EIAs, including cumulative impacts analysis.

PART V CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

Draft text	Proposed text	Commentary
Article 42 Objectives The objectives of this Part are to: (a) Assist States Parties, in particular developing States Parties, in implementing the provisions of this Agreement, to achieve its objectives; (b) Enable inclusive and effective participation in the activities undertaken under this Agreement; [(c) [Promote and encourage] [Ensure] access to marine technology by and transfer of marine technology for peaceful purposes to developing States Parties for the attainment of the objectives of this Agreement;] (d) Increase, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; (e) Develop the marine scientific and technological capacity of States Parties with regard to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; (f) Ensure that developing States Parties have: [(i) Access to, and benefit from, the scientific information resulting from [the collection of] [access to] resources in areas beyond national jurisdiction, in particular marine genetic resources;] [(ii) Access to, and that their special requirements receive consideration in, the sharing of benefits from marine genetic resources and in marine scientific research;]		42(c) The clear and enforceable wording of 42(d), 42(e) and 42(f) could support the inclusion of “ensure” in 42(c). The word “ensure” brings a significant obligation and there are many uncertainties on funding, IP rights, capacity building, which must be addressed throughout the agreement to enable meeting this obligation.

[(iii) [Collection of] [Access to] marine genetic resources <i>in situ</i>, <i>ex situ</i> [and <i>in silico</i>] [[and] [as digital sequence information] [as genetic sequence data] [and their utilization];] [(iv) [Endogenous] [Local] research capabilities relating to marine genetic resources and products, processes and other tools;] (v) The capacity to develop, implement, monitor and manage, including to enforce, any area-based management tools, including marine protected areas; (vi) The capacity to conduct and evaluate environmental impact assessments [and strategic environmental assessments].		
Article 43 Cooperation in capacity-building and transfer of marine technology 1. States Parties, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall [promote] [ensure] cooperation, [in accordance with [this Agreement] [Part XIV of the Convention],] in accordance with their capabilities, in capacity-building and the transfer of marine technology to assist States Parties that need and request it, in particular developing States Parties in achieving the objectives of this Agreement. 2. Capacity-building and the transfer of marine technology under this Agreement shall be [carried out] [promoted] through enhanced cooperation at all levels and in all forms, including partnerships with and involving all relevant stakeholders, such as, where appropriate, [the private sector,] civil society and holders of traditional knowledge, and by strengthening cooperation, coordination and synergies between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.	2. Capacity-building and the transfer of marine technology under this Agreement shall be [carried out] [promoted] through enhanced cooperation at all levels and in all forms, including partnerships with and involving all relevant stakeholders, such as, where appropriate, ~~the private sector,~~ civil society and holders of traditional knowledge, and by strengthening cooperation, coordination and synergies between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.	43(1)/43(2) <i>See</i> comments on art. 42(c) referring to the wording. It would be useful to include references to engaging with the private sector, civil society and TK holders and for synergy between different agreements. For instance, no obligations are imposed on the private sector but it is recognised that they have a place in delivery on the ground and potentially in blocking.

frameworks and relevant global, regional, subregional and sectoral bodies. 3. In giving effect to the duty to [cooperate] [promote cooperation] under this article, States Parties shall give full recognition to the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.		
Article 44 Modalities for capacity-building and the transfer of marine technology 1. States Parties, recognizing that capacity-building, access to and the transfer of marine technology, including biotechnology, among States Parties are essential elements for the attainment of the objectives of this Agreement, [undertake to provide or facilitate] [shall promote] [shall ensure] access to and the transfer of marine technology, and capacity-building, for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries. 2. Capacity-building and the transfer of marine technology [shall] [may] be provided on a [mandatory and voluntary] [voluntary] [bilateral, regional, subregional and multilateral] basis. 3. Capacity-building and the transfer of marine technology shall be transparent and country-driven [, and shall not duplicate existing programmes]. Capacity-building and the transfer of marine		44(1) “Biotechnology” is singled out, but could be made broader to refer to technologies that relate to the use of marine genetic resources 44(2.) It is not clear how capacity building could be provided on a bilateral basis. There needs to be a clearing house for capacity building (that, among other things provides for needs identification, requests for assistance etc) and a multilateral fund that can be paid into, and to which developing countries can submit applications. Actual costs of monetary and non-monetary benefits should be accounted for so that it can be truly ‘equitable’ on all sides. 44(3) It is presumed that ‘and shall not duplicate existing programmes’ is meant to prevent double counting of existing capacity building. 44 (5) opens the possibility of an annex containing this information. It is not clear how this relates to the annex mentioned in article 46.

technology shall be guided by lessons learned, including those from capacity-building and the transfer of marine technology activities under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive. 4. Capacity-building and the transfer of marine technology shall be based on and be responsive to the needs and priorities of developing States Parties [as determined by] [informed by] a needs assessment [on an individual case-by-case, subregional or regional basis]. Such needs and priorities may be self-assessed or facilitated through a mechanism, which may be established by the Conference of the Parties. [5. Detailed modalities, procedures and guidelines for capacity-building and the transfer of marine technology [may] [shall] be developed and adopted by the Conference of the Parties.]		
Article 45 Additional modalities for the transfer of marine technology 1. The [development and] transfer of marine technology shall be carried out [on fair and most favourable terms, including on concessional and preferential terms] [according to mutually agreed terms and conditions]. [2. Alt. 1. The transfer of marine technology shall [take into account the need to protect intellectual property rights] [be carried out with due regard for all legitimate interests, including the rights and duties of holders, suppliers and recipients of marine technology].] [2. Alt. 2. States Parties shall [protect] [respect the	2. The transfer of marine technology shall be carried out with due regard for all legitimate interests, including the owners of intellectual property rights and rights and duties of holders, suppliers and recipients of marine technology. States shall ensure that intellectual property rights shall be subject to specific limitations which are permitted under international intellectual property framework in furtherance of technology transfer related to marine technology under this Agreement.	45(2) The points in 42(d), 43(2) and 44(2) can only be delivered effectively and certainly can only meet the ensuring threshold if there is an engagement with IP. The suggested wording provides an anchor for use of existing possibilities. For example, relevant possibilities in TRIPS are art. 9, art. 30, art. 31 . Particular reference could be made to enabling research and use of technology for energy transitions or ecologically sustainable products. A period during which secrecy is permitted and after which information must be available to all could be established (<i>see</i> comment on art.7).

protection of] intellectual property rights.] [2. Alt. 3. Intellectual property rights [related to resources of areas beyond national jurisdiction] shall [not preclude the transfer of marine technology] [be subject to specific limitations in furtherance of technology transfer related to marine technology] under this Agreement.] 3. Marine technology transferred pursuant to this Part shall be appropriate, reliable, affordable, up to date, environmentally sound, available in an accessible form for developing States Parties and relevant to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [States Parties shall ensure that such transfer is not conditional on onerous reporting requirements].		
Article 46 Types of capacity-building and transfer of marine technology 1. In support of the objectives set out in article 42, the types of capacity-building and transfer of marine technology may include, and are not limited to: (a) The sharing of relevant data, information, knowledge and research; (b) Information dissemination and awareness-raising, including with respect to relevant traditional knowledge of indigenous peoples and local communities; (c) The development and strengthening of relevant infrastructure, including equipment; (d) The development and strengthening of institutional capacity and national regulatory		46(1)(a) This should be consistent with the information sharing provisions under the MGR section. There is a possibility for conflicts if these provisions are not aligned. 46(3) provides for amendment of the annex, but the process for amendment is not described here or in the Final Provisions. It should be clear how the types of capacity building and technology transfer described in the Annex relate to the modalities, procedures and guidelines described in 44(5).

frameworks or mechanisms; (e) The development and strengthening of human resources and technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of technology; (f) The development and sharing of manuals, guidelines and standards; (g) The development of technical, scientific and research and development programmes, including biotechnological research activities. 2. Further details concerning the types of capacity-building and transfer of marine technology identified in this article are elaborated in annex II. 3. The types of capacity-building and transfer of marine technology set out in annex II [shall] [may] be reviewed, assessed and amended periodically by the Conference of the Parties to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, subregions and regions.		
Article 47 Monitoring and review 1. Capacity-building and the transfer of marine technology activities undertaken in accordance with this Agreement shall be monitored and reviewed periodically. 2. The monitoring and review referred to in paragraph 1 shall be aimed at: (a) Reviewing the needs and priorities of developing States Parties in terms of capacity-building and transfer of marine technology, including the support required, provided and mobilized, and gaps in meeting requirements of		47 This is a critical provision lacking a clear mechanism for it to be implemented. The Global Ocean Science report under the IOC tries to collate baseline information about marine science capacity - and it has proven to be challenging. One solution consists in:: 1) The S&T body could develop criteria for monitoring CB/TT. This could include the number of countries undertaking and publishing needs assessments on the CIHM and the number of initiatives to meet CB/TT needs.

developing States Parties; (b) Measuring performance on the basis of objective indicators and reviewing results-based analyses, including the output, progress and effectiveness of capacity- building and transfer of marine technology activities, successes and challenges; (c) Making recommendations for proposed ways forward and follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to allow developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle - income countries, to fully meet their obligations and exercise their rights under this Agreement. 3. Monitoring and review shall be carried out by the Conference of the Parties, which shall decide upon the details and modalities of such review and monitoring, including with regard to any subsidiary body that it may wish to establish in this respect. 4. The monitoring and review of capacity- building and transfer of marine technology activities under this Agreement shall include all relevant actors involved in the process, including at the subregional and regional levels. 5. In supporting the monitoring and review of capacity-building and the transfer of marine technology, States Parties [and regional committees on capacity-building and the transfer of marine technology] may submit, on a voluntary basis, reports, which may be made publicly available, on capacity-building and the transfer of marine technology given and received. States Parties shall ensure that reporting requirements for developing		2) A special committee under the S&T body could review progress, deliver periodic reports to the CoP identify gaps, share best-practice approaches and make recommendation. 3) Contribute to standard process for monitoring progress and feed into reports such as Ocean science report and others

States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, are streamlined and not onerous.		

PART VI INSTITUTIONAL ARRANGEMENTS

Draft text	Proposed text	Commentary
Article 48 Conference of the Parties 1. A Conference of the Parties is hereby established. 2. The first meeting of the Conference of the Parties shall be convened no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference shall be held at regular intervals to be determined by the Conference at its first meeting. 3. The Conference of the Parties shall agree upon and adopt rules of procedure for itself and for any subsidiary body that it may establish. [3bis. As a general rule, the decisions of the Conference of the Parties shall be taken by consensus. If all efforts to reach consensus have been exhausted, the procedure established in the rules of procedure adopted by the Conference shall apply.] [3ter. Decisions of the Conference of the Parties shall be made publicly available by the secretariat and shall be transmitted to all States Parties in a timely manner, [in particular, to adjacent coastal States] as well as to relevant legal instruments and		48(3bis) it is highly unusual not to have a decision making process set out in the treaty. If the procedure is not in the treaty, then there is the risk that a majority vote process could not be adopted because the COP could not reach consensus. References for decision making procedures include: Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, art. 16; Convention on the Conservation of Antarctic Marine Living Resources, art. 12.

frameworks and relevant global, regional, subregional and sectoral bodies.] 4. The Conference of the Parties shall [monitor and] keep under review the implementation of this Agreement and, for this purpose, shall: (a) Adopt decisions and recommendations related to the implementation of this Agreement; (b) Exchange information relevant to the implementation of this Agreement; (c) Promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts towards, and the harmonization of relevant policies and measures for, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction [, including by establishing processes for cooperation and coordination with and among relevant global, regional, subregional and sectoral bodies] [, including by inviting other global, regional, subregional and sectoral bodies to establish processes for cooperation]; (d) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement [, which may include: [(i) An access and benefit-sharing mechanism;] [(ii) A capacity-building and transfer of marine technology committee;] [(iii) An implementation and compliance committee;] [(iv) A finance committee]]; (e) Adopt, at each ordinary meeting, a budget for the financial period until the following ordinary meeting;		

(f) Undertake other functions identified in this Agreement or as may be required for its implementation. [5. The Conference of the Parties [shall] [may], at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]		
Article 49 Scientific and Technical Body 1. A Scientific and Technical Body is hereby established. 2. The Body shall be composed of experts, taking into account the need for multidisciplinary expertise [, including expertise in relevant traditional knowledge of indigenous peoples and local communities], gender balance and equitable geographical representation. 3. The Body may also draw on appropriate advice from [existing arrangements, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection] [relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies], as well as other scientists and experts, as may be required. 4. Under the authority and guidance of the Conference of the Parties, the Body shall: (a) Provide scientific and technical advice to the Conference of the Parties; [(b) Monitor the utilization of marine genetic resources of areas beyond national jurisdiction;]		49(4) - Alternatives in Article 22, Obligation to conduct environmental impact assessment, identify roles for the Scientific and Technical Body that would need to be provided for here.

[(c) Possess recommendatory functions with respect to measures such as area- based management tools, including marine protected areas, including regarding: (i) Standard-setting and review; (ii) The assessment of proposals; (iii) The monitoring and review of measures;] [(d) Elaborate guidelines with respect to environmental impact assessments;] [(e) Make recommendations to the Conference of the Parties with respect to environmental impact assessments;] [(f) Review environmental impact assessment standards to ensure consistency with the requirements under this Agreement;] [(g) Identify innovative, efficient and state-of-the-art technology and know- how relating to the conservation and sustainable use of marine biological diversity;] [(h) Advise on ways and means to promote the development and transfer of marine technology;] [(i) Assess the effectiveness of the implementation of measures and programmes for capacity-building and the transfer of marine technology, including by assessing whether capacity gaps are decreasing;] [(j) Collaborate with regional and subregional committees on capacity- building and the transfer of marine technology or regional needs assessment mechanisms;] [(k) Elaborate programmes for capacity-building and the transfer of marine technology;] [(l) Establish subsidiary bodies as required;]		

(m) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.		
Article 51 Clearing-house mechanism 1. A clearing-house mechanism is hereby established. 2. The clearing-house mechanism shall consist primarily of an open-access web- based platform. [It shall also include a network of experts and practitioners in relevant fields.] The specific modalities for the operation of the clearing-house mechanism shall be determined by the Conference of the Parties. 3. The clearing-house mechanism shall serve as a centralized platform to enable States Parties to have access to, [collect,] [evaluate,] [make public] and disseminate information with respect to: [(a) Activities related to marine genetic resources of areas beyond national jurisdiction, including notices of forthcoming <i>in situ</i> collection of marine genetic resources, research teams, ecosystems where the marine genetic resources are collected, the [digital] [genetic] properties of the marine genetic resources, their biochemical components, genetic sequence data [and information] [and the utilization of marine genetic resources];] [(b) Data and scientific information on, as well as [, in line with the principle of prior informed consent,] traditional knowledge associated with, marine genetic resources of areas beyond national jurisdiction, including through lists of databases, repositories or gene banks where marine genetic resources of areas beyond national jurisdiction are currently held, a registry of such resources, and a track-and-trace mechanism for marine genetic	2. The clearing-house mechanism shall include ~~consist primarily of an~~ one or more open-access web- based platforms. [It shall also include a network of experts and practitioners in relevant fields-] The specific modalities for the operation of the clearing-house mechanism shall be determined by the Conference of the Parties.	51(2) There are a number of existing platforms that provide access to scientific and technical ocean information; their users and hosts have suggested that a single may not be the most functional approach. It is similarly critical that the clearinghouse mechanism includes a human element, e.g., for providing assistance and training on use of said web-based platforms. 51(2) The term ‘open access’ is unclear and key questions will need to be addressed to make this a functional system. For example, is this free of charge/ use for any purposes or just non-commercial purposes? Addressing this point would cover points arising from substance of information to be delivered under 51(3)(b). There are a lot of existing platforms and they are hard to locate and use. The most important opportunity of the Clearing house is to make information findable, accessible and usable; and to enable community-wide engagement in information exchange. 51(3) It would be useful to have a catch-all clause such as "any other information that the COP may determine necessary". 51(3)(b) Utilise existing databases rather than developing new ones. Ensure identifier is associated with each database entry to allow traceability. Full track and trace will be difficult to achieve, hence traceability via a unique identifier may be the best option. 51(3)(c) Make sure that the actual value of ‘non-monetary benefit sharing’ is factored into this so it

resources of areas beyond national jurisdiction and their utilization;] [(c) The sharing of benefits, including through reports on the status of monetary benefits shared and on their use through the publication of the proceedings of the meetings of the Conference of the Parties;] [(d) Environmental impact assessments [, including: (i) Environmental impact assessment reports; (ii) Guidelines and technical methods on environmental impact assessments];] [(e) Opportunities for capacity-building and the transfer of marine technology, such as activities, programmes and projects being conducted in areas beyond national jurisdiction, including those relevant to building capacity for skills development in activities covered in this Agreement [, as well as availability of funding];] [(f) Requests for capacity-building and the transfer of marine technology on a case-by-case basis;] [(g) Research collaboration and training opportunities, including in relation to information on universities and other organizations that offer study grants and facilities in the field of marine science, marine research institutes that offer laboratory facilities, equipment and opportunities for research and training, and offers of cruise studies at the global, regional and subregional levels;] [(h) Information on sources and availability of technological information and data for the transfer of marine technology and opportunities for facilitated access to marine technology.]		is accounted for. 51(3)(d) The Clearing House Mechanism is needed to provide a central access point for notices of activities subject to screening and/or EIA, for submission of public comments, and for final EIAs. The centralized information provided by the Clearing House Mechanism can be used in preparing EIAs to reduce effort, cost, and time by avoiding duplication and facilitating access to information. The same resources will be valuable for cumulative effects analysis, as will the information referred to in (b) and (c). The Clearing House Mechanism can also provide technical support for national capacity to implement EIA obligations. 51(3)(f) <i>See</i> Minas, S. (2018). Marine Technology Transfer under a BBNJ Treaty: A Case for Transnational Network Cooperation. AJIL Unbound, 112, 144-149. doi:10.1017/aju.2018.46 51(4)(e) - a distinction then could or should be drawn between this openness and accessibility and the links to more private platforms in 51(4)(c). 51(7) Confidentiality should be limited and subject to review by an appropriate third party. This issue is discussed in relation to specific articles above. It is really important that in the same way that information can not be the subject of wide IP claims, it is not to be the subject of unchallenged and unjustified claims to confidentiality. “Due regard” to confidentiality of information could be appropriate. If there is a more direct engagement with IP in 51(2) then this could pick up the confidentiality point in more depth, making clear that not all claims to confidentiality need and should always be respected (<i>see</i> comment on art.

[4. The clearing-house mechanism shall: (a) Match capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and [provide] [facilitate] access to related know-how and expertise; [(b) Promote linkages to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases, repositories and gene banks [, including experts in relevant traditional knowledge of indigenous peoples and local communities];] [(c) Link to private and non-governmental platforms for the exchange of information;] [(d) Build on regional and subregional clearing-house institutions, if applicable, when establishing regional and subregional mechanisms under the global mechanism;] (e) Facilitate enhanced transparency, including by providing baseline data and information; (f) Facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration.] [5. The clearing-house mechanism shall recognize the special circumstances of small island developing States Parties [and archipelagic developing States Parties], facilitate access to the mechanism to enable those States to utilize it without undue obstacles or administrative burdens, and include information on activities to promote information-sharing, awareness-raising and dissemination in and with those States, as well as provide specific programmes for those States.]		45(2) above referring to the secrecy period). On the other hand, “due regard” could be seen as having inherent limits in it and if there is engagement with IP in this section the confidentiality provision could be argued to come within the same limits.

[6. The clearing-house mechanism shall be managed by [the secretariat] [the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, in association with relevant organizations, including the International Seabed Authority and the International Maritime Organization, and shall be informed by the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology].] [7. Due regard shall be given to the confidentiality of information provided under this Agreement.]		

[PART VII FINANCIAL RESOURCES [AND MECHANISM]]

Draft text	Proposed text	Commentary
[Article 52 Funding] [1. Funding in support of the implementation of this Agreement, in particular capacity-building and the transfer of marine technology under this Agreement, shall be adequate, accessible, transparent [, sustainable and predictable] and [both voluntary and mandatory] [voluntary].] 2. Funding may be provided through public and private sources, both national and international, including but not limited to contributions from States, international financial institutions, existing funding mechanisms under global and regional instruments, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons, and through public-private partnerships.		52(1) There should be a clear link between funding and the benefit sharing provisions, not only capacity building and technology transfer. Payments to a fund based on user fees could be calibrated to facilitate and promote benefit sharing and conservation goals. For example, payments to the fund could be lower for research used to develop and sell ecologically sustainable solutions. This type of incentive mechanism reflects the fact that in innovating in this manner, debts to the ocean and society can be seen as already paid in part. <i>Benefit sharing: combining intellectual property, trade secrets, science and an ecosystem-focused approach</i>, edited collection from Malmo conference May 2019). 52(2) Public-private partnerships will be an important option for funding. It may be important

3. States Parties shall ensure that, for the purposes of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, developing States Parties are granted preference by international organizations in the allocation of appropriate funds and technical assistance and the utilization of their specialized services. 4. A voluntary trust fund to facilitate the participation of representatives of developing States Parties in the meetings of the bodies under this Agreement shall be established by the Conference of the Parties. It shall be funded through voluntary contributions. [Alt.1 5. In addition to the voluntary trust fund, a special fund [may] [shall] be established by the Conference of the Parties to: (a) Fund capacity-building projects, including effective projects on the conservation and sustainable use of marine biological diversity; (b) Fund activities and programmes, including training, related to the transfer of technology; (c) Assist developing States Parties to implement this Agreement; (d) Finance the rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction; (e) Support conservation and sustainable use programmes by holders of traditional knowledge of indigenous peoples and local communities; (f) Support public consultations at the national, subregional and regional levels; (g) Undertake any other functions as agreed by		to consider how this can work in practice. 52 Alt. 1(5) The reference to a special fund is key, but the list provided can be streamlined. The reference under a) to “effective” projects is not clear and the reference under d) to restoration in BBNJ should be complemented by work to preserve and maintain. Restoration of marine biodiversity and ecosystems may be very challenging and expensive, hence efforts to preserve and maintain should also be prioritized 52 Alt.1(5bis)(b) The inclusion of MGR payments and EIAs under these provisions unnecessarily adds complexity. These aspects can be settled in the respective MGR and EIA sections and art. 52 can only include a catch-all provision to state that payments under this Agreement will be made into the Special Fund. 52 Alt.1(5bis)(c) The inclusion of Endowments only works if this is a list of voluntary measures. From a drafting perspective it would be preferable to list the various voluntary measures and have a single reference to any mandatory payments agreed to elsewhere under the agreement to be paid into the finance mechanism to be set up. 52 Alt.1(5bis)(d) The reference to existing financial mechanisms is unclear. As far as the GEF is concerned it would be more appropriate to consider language similar to the CBD Article 21 and Article 39 if a GEF arrangement is to be considered. The reference to the GCF is not appropriate, unless it is proposed that a separate financial ocean institution is suggested. This would require a separate proposal. 52 Alt.1(5bis)(e) Art. 52(2) already provides for the ability of funds to come from various private entities and such donations should not be restricted purely to those undertaking marine biodiversity

the States Parties. 5bis. The special fund shall be funded through: (a) Voluntary contributions; [(b) Mandatory sources, including: (i) Contributions from States Parties and royalties and milestone payments resulting from the utilization of marine genetic resources; (ii) Payments as a condition of access to, and utilization of, marine genetic resources, premiums paid during the approval process of environmental impact assessments, in addition to cost recovery, fees and penalties, and other avenues for mandatory payments;] (c) Endowments by States Parties; (d) Existing financial mechanisms, such as the Global Environment Facility and the Green Climate Fund; [(e) Private entities wishing to engage in the exploration and exploitation of marine biological diversity of areas beyond national jurisdiction.]] [Alt.2 5. States Parties shall cooperate to establish appropriate funding mechanisms to assist developing States Parties with achieving the objectives of capacity-building and the transfer of marine technology under this Agreement.] 6. The funding mechanisms established under this Agreement shall be aimed at ensuring efficient access to funding through simplified approval procedures and enhanced readiness of support for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States,		exploration and exploitation. 52 Alt.2(5) Restricts the funding mechanism to capacity-building and the transfer of technology which is unnecessarily restrictive and ignores the potentially significant funding needs to deliver the appropriate measures under the BBNJ. A streamlined Alt.1(5) would be preferable. In the event that the Parties agree to language under 5, it may be desirable to be more explicit about the institutional mechanism to handle implementation, for instance by setting up a Finance Committee under the COP that would be authorised to engage external parties.

small island developing States, coastal African States and developing middle - income countries. 7. Access to funding under this Agreement shall be open to developing States Parties [on the basis of need] [, taking into account the needs for assistance of States Parties with special requirements, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries].		

PART VIII IMPLEMENTATION [AND COMPLIANCE] – No Comments

[PART IX SETTLEMENT OF DISPUTES]

Draft text	Proposed text	Commentary
[Article 55 Procedures for the settlement of disputes] [1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply <i>mutatis mutandis</i> to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.] [2. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.] [3. A State Party to this Agreement that is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a	4. Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes. 5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention and of this Agreement as well as generally accepted standards for the conservation and management of marine biodiversity and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of marine biodiversity in areas beyond national jurisdiction.	A provision to authorise a request for an advisory opinion from ITLOS is an option that seemed attractive to some delegations at IGC3 and one that seems advantageous. An advisory opinion could be requested by the COP or possibly another IGO if there is a question about the intersection between the BBNJ and another instrument. Should that be desired, <i>see</i> Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission ITLOS Reports 2015, paras 37-69. Other parts of the UNFSA provisions that could be brought into BBNJ, with some minor changes, are art. 29, proposed here as art. 55(4), and art. 30(5), proposed here as art. 55(5). Art. 31 on provisional measures does makes some advances on art. 290 of UNCLOS, but not so much that it needs to be repeated here.

party that is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in annex V, article 2, annex VII, article 2, and annex VIII, article 2, for the settlement of disputes under this Part.]		

[PART X NON-PARTIES TO THIS AGREEMENT] – No Comments

PART XI GOOD FAITH AND ABUSE OF RIGHTS – No Comments

PART XII FINAL PROVISIONS – No Comments

[ANNEX I Indicative criteria for identification of areas]

Draft text	Proposed text	Commentary

[(a) Uniqueness; [(b) Rarity;] (c) Special importance for the life history stages of species; (d) Special importance of the species found therein; (e) The importance for threatened, endangered or declining species or habitats; (f) Vulnerability, including to climate change and ocean acidification; (g) Fragility; (h) Sensitivity; (i) Biological diversity [and productivity]; [(j) Representativeness;] (k) Dependency; [(l) Exceptional naturalness;] (m) Ecological connectivity [and/or coherence]; (n) Important ecological processes occurring therein; [(o) Economic and social factors;] [(p) Cultural factors] [(q) Cumulative and transboundary impacts;] (r) Slow recovery and resilience; (s) Adequacy and viability; (t) Replication; (u) Feasibility.]		The list of indicative criteria is good but should be amended slightly to be consistent with the criteria used in CBD COP Decision IX/20 (annex 1) to describe ecologically or biologically significant areas (EBSAs), e.g. the CBD EBSA criteria only refer to “naturalness” and not “exceptional naturalness” “Productivity” is missing from the Annex. Feasibility” the last item in the Annex, is not relevant to ecological values and should be deleted (Further details on the EBSA criteria are available at: https://www.cbd.int/doc/meetings/mar/ebsaws-2014-01/other/ebsaws-2014-01-azores-brochure-en.pdf). The consistent application of the CBD EBSA criteria in ABNJ would enable more consistent description and protection of ecosystems and habitats within and beyond national jurisdiction.

*These comments were prepared by the
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Comments on the revised draft text of an agreement under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

Deep-Ocean Stewardship Initiative, 20 February 2020

The Deep-Ocean Stewardship Initiative (DOSI) congratulates the President on the [revised draft text](#) of an agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ agreement) (A/CONF.232/2020/3). DOSI welcomes this opportunity to provide comments on some scientific and technical aspects of the text.

Preamble

→ **Interconnectivity and importance of biodiversity beyond national jurisdiction**

The draft text does not currently acknowledge the importance of BBNJ, the value of biodiversity or its components such as genetic resources, or the interconnections between BBNJ and coastal and atmospheric processes. The ocean is dynamic and interconnected, from the surface to the seafloor and from the coasts to the high seas. Timescales governing relevant ecosystems vary for each environment. Ecological connectivity, whether through carbon and energy flow or species' dispersal and migration, plays a critical role in maintaining healthy ocean functions ([DOSI, 2020](#)). Biodiversity beyond national jurisdiction provides a suite of functions that maintain ecosystem integrity and benefit humans in myriad ways, including: carbon sequestration and storage, nutrient recycling, food provision, scientific inspiration, and cultural significance (DOSI 2019a; Hoagland et al., 2019; Rogers et al., 2014). The Preamble of the BBNJ agreement could make reference to the broad importance of biodiversity beyond national jurisdiction and the environmental, economic, cultural, social, and scientific value of biodiversity and genetic and biological resources of ABNJ.

Part I: General Provisions

Article 1, Use of Terms

→ **Definitions of “marine genetic material” and “marine genetic resources” are open to interpretation**

The draft text currently includes definitions of “marine genetic material” and “marine genetic resources”:

[8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity]

[9.Alt. 1. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties.]

[9.Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.]

Ensuring that such definitions align with those under the Convention on Biological Diversity and the Nagoya Protocol has merit. However, as noted in the DOSI commentary on the first draft text of the

BBNJ agreement, these definitions are open to interpretation. Specifically, ‘functional units of heredity’, and ‘genetic and biochemical properties’ are ambiguous and require scientific clarity.

Clarity on the meaning of “value” would help interpret the definition of marine genetic resources as per article 1 [9]. The value of marine genetic resources could be seen as scientific, educational, ecological, environmental, and cultural (DOSI 2019b). The meaning of “actual or potential value” is ambiguous, in the absence of any other reference to value in the text. For example, the Forest Genetic Resources Plan (FAO, 2014) broadly defines genetic resources as genetic material of “actual or potential economic, environmental, scientific or societal value”. Similarly, the BBNJ agreement could make reference to the multiple dimensions of value.

→ Definitions of “marine technology” and “transfer of marine technology” may be too limited

The draft text currently includes the following definition of marine technology:

[11. “Marine technology” means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for in situ and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]

This definition reflects the 2005 IOC Criteria and Guidelines on the Transfer of Marine Technology and encompasses a broad range of equipment, knowledge, and information for marine scientific research. All of these forms of technology will be important for building capacity for the conservation and sustainable use of BBNJ. However, this definition does not appear to cover all forms of technology relevant to the conservation and sustainable use of BBNJ. For example, monitoring, control, and surveillance technologies could offer crucial tools for implementing the BBNJ agreement; some practitioners may not consider these tools as marine scientific research, thus placing them outside the scope of the present definition of marine technology. Other examples that may fall outside of the scope as currently defined include environmentally-sound technologies for sustainable use of BBNJ such as those for the conduct of environmental impact assessments, manage human activities involved with the acquisition or utilisation of marine resources or decision-making support tools for spatial conservation planning.

To “future-proof” this definition and avoid the need for an exhaustive list in the face of rapidly advancing techniques, the designation of appropriate technology could be a duty of the Scientific and Technical Body. However, if a list is incorporated into the text, we urge the inclusion of the following categories of useful tools / technologies: research submersibles, remotely operated and autonomous vehicles, camera sleds, seafloor samplers, equipment for in situ and laboratory observations, analysis and experimentation (including field-based genetic isolation, amplification, sequencing, and imaging technologies).

→ The draft text currently includes the following definition of ‘transfer of marine technology’:

[14. “Transfer of marine technology” means the transfer of the instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.]

The current definition includes some, but not all, forms of technology referred to in the draft definition of technology at paragraph [11]. In particular, it excludes skills, expertise, or information. Consideration could be given to broadening the definition to include these additional elements. Furthermore, the reference to the transfer of technologies “required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean” may be overly restrictive because: (i) technologically-limited states might not produce knowledge but would make use of knowledge produced by others, and (ii) the conservation and sustainable use of biodiversity may require more than improved study and understanding of the nature and resources of the ocean - but rather more proactive measures to monitor human activities, such as for the implementation of area-based management tools. In order to capture the full range of technologies potentially needed to enable the conservation and sustainable use of BBNJ, this definition could be expanded, e.g:

*“Transfer of marine technology” means the transfer of the instruments, equipment, vessels, processes and methodologies required to produce **and/or use** knowledge to improve the study and understanding of the nature and resources of the ocean **and enable the conservation and sustainable use of biodiversity beyond national jurisdiction**.*

→ **Strategic environmental assessment**

Strategic environmental assessments are an important tool for planning and could usefully advance scientific research and technology transfer. For this reason, paragraph [13] represents an important part of the draft BBNJ agreement, as does the reference to Strategic environmental assessments in Article 28.

→ **Marine protected area**

The draft text currently provides the following draft definition of Marine Protected Area:

10. “Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas].

The text in square brackets would facilitate the conservation and sustainable use goals put forth elsewhere in the draft text. Marine protected can address a range of objectives (Day et al., 2012), however, fully protected marine reserves are demonstrably best for conserving biological diversity, as they protect communities and the ecological processes that sustain them from direct and indirect forms of human disturbance (Sala et al. 2018). Given the importance of connectivity in marine systems (DOSI, 2020), allowing for networks of protected areas that consider geographically distributed and/or shifting habitats and species distributions would be helpful in achieving a range of “conservation and sustainable use objectives.”

Article 2, General objective

→ **‘Long-term’ conservation and sustainable use**

Much of the life in the deep-sea is slow-growing and long-lived (e.g. some corals can live up to thousands of years); the physical and chemical processes that support these ecosystems take place over similarly long periods. Conservation and sustainable use measures for BBNJ should include the provision of a

“long-term” vantage, recognizing the extended timescales required for deep-sea environments to recover from disturbance.

Article 3, Application

→ Clarify implications for publicly-funded marine scientific research

2. This Agreement does not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service...

A substantial proportion of fundamental research into biodiversity beyond national jurisdiction, including the properties of marine genetic resources, initially takes place on State-owned or -operated research vessels on non-commercial service (Oldham et al., 2014). Measures should be taken to ensure that this provision does not have unintended consequences, missing opportunities to strengthen scientific best-practice by incorporating information about marine scientific research and resulting data into regional and global repositories and reference collections that play important roles in sharing benefits from marine genetic resources. International scientific cooperation and benefit-sharing would improve if all research-based activity on the high seas - State-enabled or otherwise - adhered to provisions of this agreement especially in relation to information sharing (Rabone et al., 2019) that include LDC, SIDS, and developing countries institutions.

Part II

Marine Genetic Resources, including questions on the sharing of benefits

Article 7, Objectives

The draft text refers to four objectives [a], [b], [c], [d], all currently in square brackets, that can be broadly summarised as follows: (a) Promote benefit sharing; (b) Build capacity; (c) Promote generation of knowledge and technology including marine scientific research; and (d) Promote development and transfer of technology and capacity. All of these objectives are consistent with scientific best practice relating to BBNJ (Rabone et al., 2019) and could usefully contribute to the conservation and sustainable use of BBNJ, such as by advancing scientific understanding of marine genomics and access to such knowledge. In this context, these factors are relevant and appropriate objectives that should be included in the text.

Article 10, ‘Collection’ / ‘access’

→ *Pre-cruise notification*

Prior notification would be broadly consistent with scientific best practice (Rabone et al., 2019), thereby avoiding unnecessary hindrances to scientific research activities while delivering transparency. Much of this information is already made publicly available on national Research Vessel Planning websites - a clearinghouse could make such information more easily discoverable and streamline international best practice approaches. However, a permit or license scheme, especially for *in situ* collection of samples for marine genetic resources, would require resources and an institutional mechanism to review proposals and make decisions. There are concerns that this could be overly restrictive and cause delays.

→ *Post-cruise notification (In situ collection of or access to MGR)*

[2. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that in situ [collection of] [access to] marine genetic resources within the scope of this Part shall be subject to: (a) An indication of the geographical coordinates of the location where marine genetic resources were [collected] [accessed];

After sample collection, it would be useful to include more than just geographical coordinates in the reporting platform. Metadata such as depth, temperature, sampling equipment, time, and date would all enhance the inter-operability of data sets. The precise parameters to be reported should be regularly updated in accordance with evolving standards and practices and could be set by the Scientific and Technical Body.

→ ‘Collection’ and ‘access’

Here and at several points throughout the text, the option of ‘collection’ or ‘access’ is presented. Both of these terms should be defined in order to clarify their intended meaning and enable informed decision-making - currently the term “collection” is not defined. One interpretation is that collection means ‘in situ’ access and physical recovery, such as collecting a sample containing marine genetic material from the high seas. However, without collection, there can be no other forms of access. A further possible point of confusion is that “collection” also means repository of samples (e.g. a museum collection, scientific reference collection).

Article 11, ‘Sharing of benefits’

[(c) To build capacity to [collect] [access] and utilize marine genetic resources of areas beyond national jurisdiction [, including through common funding or pool funding for research cruises and collaboration in sample collection and data access where adjacent coastal States [shall] [may] be invited to participate, taking into account the varying economic circumstances of States that wish to participate];]

Research cruises are essential aspects of the discovery, investigation, and monitoring of marine genetic resources and the broader systems they impact. The development of a mechanism to facilitate collaborative scientific research cruises that specifically incorporates the interests and needs of developing States, including adjacent coastal States would support the agreement’s capacity building goals. Clarifying that these research cruises are “scientific research cruises” would be a useful addition to signal the intent of fundamental research rather than commercially motivated activities.

Part III Measures such as area-based management tools, including marine protected areas

Article 14, Objectives

→ **Rehabilitation and restoration**

The current draft text refers to:

[(fe) Rehabilitating and restoring biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution;]

It would be important to clarify what is meant by the terms ‘rehabilitation’ and ‘restoration’ in the context of the BBNJ agreement and to ensure that these take into account the specificity of deep and open ocean ecosystems in ABNJ. Any rehabilitation or restoration activities pertinent to ABNJ should be mindful of the immense time and spatial scales associated with these domains. Objectives surrounding such activities and their assessment should be designed accordingly.

→ **Baseline research**

[(g) Creating scientific reference areas for baseline research;]

Baseline data on ecosystem structure and health are essential when assessing the effects of human activities and global environmental change. This provision is therefore highly relevant, and could also include ‘long-term monitoring’ to more easily assess environmental change and inform conservation needs.

Article 17, Proposals

[2. States Parties may collaborate with relevant stakeholders in the development of proposals.]

This option would be useful for providing the opportunity for non-state actors to contribute expertise to the development of proposals and promote the best-available scientific input.

(d) A description of the state of the marine environment and biodiversity in the identified area;

In some cases, the state of the marine environment and biodiversity therein may be unknown, or subject to knowledge gaps. A slight modification to the text could allow for this uncertainty to be acknowledged and valued, e.g. "and the extent to which it is understood as well as identified gaps in knowledge that may prove pivotal in delineating the area and measure".

[(g) A duration for the proposed area and measures;]

Processes in the deep and open ocean operate over extended time frames that are often incommensurate with decade-scale assessment approaches. Any duration or time limit associated with ABMT and MPAs should account for the characteristics of those ecosystems and be justified based on the best-available scientific information. An alternative option would be to make the default protection “in perpetuity” unless a good reason is given to do otherwise.

Time is not the only variable to consider in the application and assessment of MPAs: spatial shifts in ecological parameters warranting protection should also be provided for through the application of mobile protected areas (Maxwell et al., 2020).

Article 21, Monitoring and review

3. The review referred to in paragraph 2 shall assess the effectiveness of measures and the progress made in achieving their objectives and provide advice and recommendations to the Conference of the Parties.

The effectiveness of measures can only be assessed against clearly articulated conservation goals, well defined conservation objectives, and targets that are based on these objectives. A monitoring plan will be

essential in deciding whether the conservation objectives are achieved and will feed into the review. The time frame for this monitoring plan should be based on the best available science related to the lifespans of the target organisms and other species that will be impacted by the activities. For example, if the target organism exclusively inhabits deep-sea coral reefs, then the appropriate monitoring program will be on the scale of decades. Should the monitoring plan indicate that the targets of the selected indicators are not met and consequently the conservation objectives will also not be met, a process can be triggered to review activities that may be posing a threat to BBNJ. Monitoring plans will need to be designed to take into account natural variability in the system, as well as long-term changes due to external stressors such as climate change. The use of long-term monitoring locations as reference sites, as well as control sites monitored repeatedly inside and outside MPAs are some of the approaches to consider. The research plan should address critical gaps in the knowledge on which the monitoring plan is based (such as the age and growth rates of the target species) or scientific hypotheses that need to be fulfilled (such as habitat use and fidelity).

Part IV Environmental impact assessments

Article 25, Cumulative impacts

The draft text refers to:

[2. Alt. 1. Guidelines for assessing cumulative impacts in areas beyond national jurisdiction and how those impacts will be taken into account in the environmental impact assessment process for planned activities shall be developed by the Conference of the Parties.]

[2. Alt. 2. In determining cumulative impacts, the incremental effect of a planned activity under the jurisdiction or control of a State Party when added to the effects of past, present and reasonably foreseeable future activities shall be examined]

Alt. 1 and Alt. 2 are not alternatives that are mutually exclusive. In fact both are needed for the assessment of cumulative effects to be most effective.

Article 35, Preparation and content of environmental impact assessment reports

(e) A description [, where appropriate,] of reasonable alternatives to the planned activity under the jurisdiction or control of a State Party, including the no-action alternative;

The inclusion of a no-action alternative is a useful component in the preparation of EIA reports. However, an assessment of the potential environmental impacts of this alternative should be performed.

Article 38, Decision-making

[2. No decision allowing the planned activity under the jurisdiction or control of a State Party to proceed shall be made where the environmental impact assessment indicates that the planned activity under the jurisdiction or control of a State Party would have severe adverse impacts on the environment.]

“Severe adverse impacts” need to be defined, where “severe” needs to include consideration of the time scale for recovery and effects should be considered in the context of cumulative impacts including global ocean change.

Part V: Capacity-building and Transfer of marine technology

Article 46

1. In support of the objectives set out in article 42, the types of capacity-building and transfer of marine technology may include, and are not limited to:

- (a) The sharing of relevant data, information, knowledge and research;*
- (b) Information dissemination and awareness-raising, including with respect to relevant traditional knowledge of indigenous peoples and local communities;*
- (c) The development and strengthening of relevant infrastructure, including equipment;*
- (d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms;*
- (e) The development and strengthening of human resources and technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of technology;*
- (f) The development and sharing of manuals, guidelines and standards;*
- (g) The development of technical, scientific and research and development programmes, including biotechnological research activities.]*

All of the forms of capacity building and technology transfer listed above can both enable and be supported by international marine scientific research collaborations. Under (a), the sharing of data would preferably adhere to FAIR and open principles - findable, accessible, interoperable and reusable - the scope of “relevant data” could be determined by the scientific and technical body. CB / TMT provisions also present a compelling opportunity to build partnerships between industrial actors and noncommercial scientific research. Modifications to existing or planned infrastructure (e.g., adding sensors, hydrophones, etc.) would bolster research capabilities in far-reaching ways.

Article 47, Monitoring and review

Monitoring and review will be critical to track progress, share best-practice approaches, and focus efforts. Improving information sharing about scientific research activities, for example, could build on existing processes and be beneficial to scientific research.

Part VI Institutional arrangements

Article 49, Scientific and technical body

2. The Scientific and Technical Body shall be composed of experts, taking into account the need for multidisciplinary expertise [, including expertise in relevant traditional knowledge of indigenous peoples and local communities], gender balance and equitable geographical representation.

Scientific and technical expertise is essential to the implementation of this agreement. To engage the most representative and effective group of experts, details on the terms of reference for the Scientific and Technical Body and mechanisms of participation should be clarified as early as possible.

Article 51, Clearinghouse mechanism

1. The clearing-house mechanism shall consist primarily of an open-access web-based platform. [It shall also include a network of experts and practitioners in relevant fields.] The specific modalities for the operation of the clearing-house mechanism shall be determined by the Conference of the Parties.

The clearinghouse mechanism represents the publicly-facing repository of knowledge gleaned from research concerning BBNJ. Including experts and practitioners in the development of this platform is critical in order to bolster the mechanism's value and usability. Consistent engagement with the Scientific and Technical body will ensure that the provisioning of information evolves in step with technical developments and scientific and management priorities.

3 [(a) Activities related to marine genetic resources of areas beyond national jurisdiction, including notices of forthcoming in situ collection of marine genetic resources, research teams, ecosystems where the marine genetic resources are collected, the [digital] [genetic] properties of the marine genetic resources, their biochemical components, genetic sequence data [and information] [and the utilization of marine genetic resources];]

Information on the eventual results of BBNJ-related research should also be included in the web-based platform. Such products - which may consist of datasets or peer-reviewed publications, as well as instances of knowledge transfer and capacity building - would help ensure that research benefits are shared.

3 [(d) Environmental impact assessments [, including:

(i) Environmental impact assessment reports;

(ii) Guidelines and technical methods on environmental impact assessments];]

To allow full transparency on the processes and assessments of potential activities in ABNJ, expert reviews of proposed EIAs should be included as a part of the clearinghouse mechanism. Such resources will help guide future proponents of relevant activities and establish a degree of community-driven accountability for their sustainable use.

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About DOSI

DOSI is an international network of deep ocean scientists and experts from other disciplines. DOSI seeks to integrate science, technology, policy, law and economics to advise on ecosystem-based management of resource use in the deep ocean and strategies to maintain the integrity of deep-ocean ecosystems within and beyond national jurisdiction. <https://www.dosi-project.org/>

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TEXTUAL PROPOSALS OF THE INTERNATIONAL CABLE PROTECTION COMMITTEE (ICPC)

PART I GENERAL PROVISIONS

Article 5 General [principles] [and] [approaches]

In order to achieve the objective of this Agreement, States Parties shall be guided by the following:

- [(a) The principle of non-regression;]
- (b) [The polluter pays principle] [The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment];
- [(c) The principle of the common heritage of mankind;]
- [(d) The principle of equity;]
- (e) The precautionary [principle] [approach];
- (f) An ecosystem approach;
- [(g) An integrated approach;]
- (h) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;
- (i) The use of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities];
- (j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another;
- (k) **An approach that does not restrict the freedoms of the high seas more than necessary to achieve the objective of this Agreement.**

PART III MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

Article 17 Proposals

1. Proposals in relation to the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.
- [2. States Parties may collaborate with relevant stakeholders in the development of proposals.]
3. Proposals shall be formulated on the basis specified in paragraph 1 of article 16.
4. Proposals shall include, at a minimum, the following elements:
 - (a) A geographic or spatial description of the area that is the subject of the proposal;

- (b) Information on any of the indicative criteria specified in annex I, as well as any criteria that may be further developed and revised in accordance with paragraph 3 of article 16, applied in identifying the area;
 - (c) Specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States, **and the presence of existing or planned submarine cables;**
 - (d) A description of the state of the marine environment and biodiversity in the identified area;
 - (e) A description of the specific conservation and sustainable use objectives that are to be applied to the area;
 - (f) A description of the proposed [conservation and [management][sustainable use] measures] [priority elements for a management plan] to be adopted to achieve the specified objectives;
 - [(g) A duration for the proposed area and measures;]
 - (h) A monitoring, research and review plan, including priority elements;
 - (i) Information on any consultations undertaken with adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies.
5. Further requirements regarding the contents of proposals [shall] [may] be elaborated by the Scientific and Technical Body as necessary, for consideration and adoption by the Conference of the Parties.

PART IV ENVIRONMENTAL IMPACT ASSESSMENTS

Article 23 **Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies**

1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with [the obligations under] the Convention.
- [2. Alt. 1. The Scientific and Technical Body shall consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment. [Procedures for consultation and/or coordination shall include the establishment of an ad hoc interagency working group or the participation of representatives of the scientific and technical bodies of those organizations in meetings of the Scientific and Technical Body].]
- [2. Alt. 2. State Parties shall cooperate in promoting the use of environmental impact assessments in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies for planned activities that meet or exceed the threshold contained in this Agreement.]
- [3. Alt. 1. [Global minimum standards] [and] [guidelines] for the conduct of environmental impact assessments [under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies] shall be developed [by the Scientific and Technical Body] [through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies]. [These [global minimum standards] [and] [guidelines] shall be set out in an annex to this Agreement and shall be updated periodically].]
- [3. Alt. 2. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.]
- [4. Alt. 1. Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate in relation to marine biological

diversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in this Part.]

[4. Alt. 2. No environmental impact assessment is required under this Agreement for any activity conducted in accordance with the rules and guidelines appropriately established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.]

[4. Alt. 3. No environmental impact assessment is required under this Agreement where relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies with mandates for environmental impact assessments for planned activities [with impacts] in areas beyond national jurisdiction already exist, regardless of whether or not an environmental impact assessment is required for the planned activity under the jurisdiction or control of a State Party.]

[4. Alt. 4. Where a planned activity under the jurisdiction or control of a State Party [with impacts] in areas beyond national jurisdiction is already covered by existing environmental impact assessment obligations and agreements, it is not necessary to conduct another environmental impact assessment of that activity under this Agreement [, provided that the [State with jurisdiction or control over the planned activity] [body set forth in Part [...]] [, following consultation with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,] determines that:

[(a) The outcome of environmental impact assessment under those obligations or agreements is effectively implemented;]

[(b) The environmental impact assessment already undertaken is [[functionally] [substantively] equivalent to the one required under this Part] [comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts];]

The threshold for the conduct of environmental impact assessments meets or exceeds the threshold set out in this Part.]]

[5. States Parties and the Scientific and Technical Body shall consult and cooperate with the proponents of activities for which there exists no relevant legal instruments and frameworks and no relevant global, regional, subregional or sectoral bodies with mandates for environmental impact assessments, with a view to avoiding that such activities be subject to a disproportionate burden under this Part.]

Article 27

Areas identified as ecologically or biologically significant or vulnerable

[1. For areas identified as requiring protection [or special attention] by any other [relevant instrument or competent body] [legal instruments and frameworks or by relevant global, regional, subregional, and sectoral [bodies][organizations]], or areas [ecologically or culturally] connected to such areas, environmental impact assessments shall be required for planned activities **that are likely to have more than a minor or transitory effect on the marine environment.**]

[2. Additional guidelines on the conduct of environmental impact assessments in [or adjacent to][or connected to] areas identified [by other legal instruments and frameworks or by relevant global, regional, subregional, and sectoral [bodies] [organizations]] as requiring protection or special attention may be elaborated by the scientific technical and technological body in cooperation with relevant competent bodies for the consideration and adoption of the Conference of the Parties.]

Article 30

Screening

1. A State Party shall determine whether an environmental impact assessment is required in respect of a planned activity under its jurisdiction or control.

[2. The initial screening of activities shall consider the characteristics of the area where the planned activity under the jurisdiction or control of a State Party is intended to take

place, as well as where the potential effects are going to be felt. Should such planned activity take place in or adjacent to an area that has been identified for its significance or vulnerability, regardless of whether the impacts are expected to be minimal or not, an environmental impact assessment shall be required.]

[3. _____ If a State Party determines that an environmental impact assessment is not required for a planned activity under its jurisdiction or control, [the approval of the Scientific and Technical Body must be obtained] [it must provide information to support that conclusion]. [The Scientific and Technical Body shall verify that the information provided by the [State Party] satisfies the requirements in this Part].] [4. In case of emergency, a State Party may approve a planned activity without requiring an environmental impact assessment regardless of whether the effects are expected to be minimal or not. A State Party that approves an activity on an emergency basis shall thereafter provide information to the Scientific and Technical Body to support that decis

MARINE BIODIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION

COMMENTS ON REVISED DRAFT NEGOTIATING TEXT

SUBMISSION TO FOURTH INTERGOVERNMENTAL CONFERENCE
(23 MARCH - 3 APRIL 2020)

Key messages:

1. ICC supports the objective of ensuring the long-term conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction.
2. The facilitation of research, including research utilising marine genetic resources, is fundamental to achieving this objective.
3. The treaty should support - and not discourage - public and private research activities, investment and innovation with MGRs in order to achieve its objectives.

The International Chamber of Commerce (ICC), as the voice of global business, recognises the urgency of addressing continuing global biodiversity loss, as demonstrated by scientific evidence, and indicated by the IPBES Global Assessment Report on Biodiversity and Ecosystem services.¹ Together with 13 partners, ICC launched Business for Nature, a global coalition calling for action to reverse nature loss and restore the planet's vital natural systems, and to deliver solutions that will effectively address the challenges of biodiversity loss and promote sustainable use of the world's biological resources.

Building on its long-term engagement on climate change, business is increasingly mobilising for biodiversity through business coalitions and platforms or individual company initiatives and commitments. These initiatives support biodiversity conservation and/or sustainable use in different areas, such as oceans, forests, agriculture, plastics, and genetic resources.

ICC supports the objective of the Revised Draft Negotiating Text (Draft Treaty)² of ensuring the long-term conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. While ICC recognises the importance of the other themes addressed in the Draft Treaty for advancing this objective, these comments focus principally on marine genetic resources (MGRs).

MARINE GENETIC RESOURCES

A fundamental requirement for achieving the objectives set out in the Draft Treaty is the facilitation of research, including research that utilises MGRs. ICC therefore supports references to the facilitation and promotion of marine scientific research in the Draft Treaty. Such research, itself a sustainable use of MGRs, contributes to advancing scientific knowledge and understanding of oceans, and particularly that of the high seas and sea beds in areas beyond national jurisdiction which is limited compared to terrestrial and coastal environments.

Business investments in research and development (R&D) can also contribute to advancing scientific knowledge by generating new information, technologies and technological advancements. R&D for commercial purposes may include the utilisation of MGRs, although the use of MGRs from areas beyond national jurisdiction is currently limited. The outcomes of private investment in R&D can therefore contribute to our scientific understanding of the oceans, which in turn supports the objectives of the conservation and sustainable use of marine biological diversity.

ICC is concerned that certain elements currently included in the Draft Treaty could have far-reaching application and a negative impact on R&D. There is the potential for the creation of encumbrances on R&D that utilises MGRs that will disproportionately increase costs, create unworkable administrative burdens, and increase uncertainty. These are disincentives for investment and innovation by the business community, as well as for public and private research activities with MGRs. These concerns are not unfounded – encumbrances imposed by the Nagoya Protocol of the Convention on Biological Diversity (CBD)³ have had the inadvertent effect of discouraging both public and private R&D activities that could contribute to its objectives of the conservation and sustainable use of biological diversity.^{4, 5}

¹ See <https://www.ipbes.net/global-assessment-report-biodiversity-ecosystem-services>.

² Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. A/CONF.232/2020/11. Available at: https://www.un.org/bbni/sites/www.un.org.bbni/files/revised_draft_text_a.conf_232.2020.11_advance_unedited_version.pdf.

³ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity. In force 12 Oct 2014, 122 Parties.

⁴ For example, public scientists have publicly acknowledged the limitations placed upon their conservation research efforts by the costs, administrative burden and uncertainty associated with genetic resources under the Nagoya Protocol.

⁵ See: K. Divakaran Prathapan, Rohan Pethiyagoda, Kamaljit S. Bawa, Peter H. Raven, Priyadarsanan Dharma Rajan and 172 co-signatories from 35 countries (2018) When the Cure Kills – CBD Limits Biodiversity Research. Science 360:1405-1406. DOI: 10.1126/science.aat9844.

ICC recognises that certain elements of the Draft Treaty are intended to address concerns expressed by some countries that they are not able to participate in or benefit from R&D and other research activities related to marine biological diversity in their own waters or in adjacent high seas. These concerns could be more effectively addressed by supporting and encouraging training, capacity building, and research collaborations, rather than through mandatory obligations that would create disincentives for research and innovation using MGRs.

SPECIFIC CONCERNS WITH ELEMENTS OF THE DRAFT NEGOTIATING TEXT

The Draft Treaty proposes several encumbrances on R&D with MGRs that create disincentives for investment by the business community. This would have detrimental impacts on the development of new innovative products with broad societal benefits, and on the objectives of the Draft Treaty, as there are outcomes of private investment in R&D that contribute to advancing our scientific knowledge and capabilities. To create a regime that is broadly supportive of these interests, ICC cautions against the inclusion of several elements set out below.

- Mandatory monetary benefit sharing and technology transfer: the substantial investments made in R&D in time, finances and other resources for the development of new innovative products and technologies are often overlooked in discussions on benefit sharing, which focus on the monetary value of the expected commercial product. These discussions also overlook the substantial risks involved for developers. While the aim is to eventually generate revenue, there is no guarantee of success with any product development endeavor (including those that involve MGRs) as they can have long timelines, low commercial success rates, and low margins even where success rates are high. These realities have in fact generated frustration and misunderstanding under the Nagoya Protocol and would likely have the same result in relation to MGR. Conversely, there may be more immediate value in the non-monetary benefits arising from private investment in R&D involving MGRs, e.g. the information and technology generated reach the public in a variety of ways, with these having potential application in different areas of scientific investigation, including research on the conservation and sustainable use of marine biological diversity.

With regard to technology transfer, it should be borne in mind that the ability of a country to use technology depends on its absorptive capacity, including a work force with the relevant technological skills, and necessary infrastructure and equipment.⁶ To build technological capacity and create an environment that supports local research and innovation, investments have to be made in the necessary infrastructure, skills building and long-term collaborations. Mandatory obligations to transfer technology will not achieve the aims of building local technological capacity and will instead discourage investment and partnerships which could contribute to this objective.

Consequently, we caution against the imposition of obligations to share monetary benefits and transfer technology in the Draft Treaty.

- Measures that impact intellectual property rights or their value: the Draft Treaty potentially creates new disclosure obligations for patent applications, and limits patent acquisitions and enforcement options.⁷ The text should not impose requirements or restrictions that are incompatible with established intellectual property systems. These systems aim to promote innovation, which involves substantial investment of resources and risk. Such changes would create significant disincentives for investment in

⁶ See "The Dynamics of Global Technology and Knowledge Flows" by Jennifer Brant and Balaji Parthasarathy (ICC Innovation and Intellectual Property series) at <https://iccwbo.org/publication/the-dynamics-of-global-technology-and-knowledge-flows/>.

⁷ Part II, Article 12, paragraphs 1-3.

R&D involving marine genetic resources and could therefore in fact negatively impact conservation and sustainable use of those resources.

- Application beyond utilisation of marine genetic resources accessed *in situ*
The Draft Treaty is potentially broadly inclusive of MGRs collected or accessed *in situ*, accessed *ex situ* or *in silico* (which is interpreted to be inclusive of the alternative terms of digital/genetic sequence data/and information) and their utilisation,⁸ with benefit sharing potentially arising from any or all of these activities.⁹ Such broad application would create significant legal uncertainty and an unworkable, time-consuming and costly administrative burden, which in turn would have a significantly negative impact on the use of MGRs in R&D and the benefits that this investment could provide. ICC emphasizes that the text should apply only to the utilisation of physical marine genetic resources accessed *in situ*, and it should not include MGRs accessed *ex situ*, or to information or data obtained from MGRs.

With regard to information (referred to in the Draft Treaty as digital/genetic sequence data/and information, or within the broader term *in silico*), ICC has made submissions to the Convention on Biological Diversity on the topic of “digital sequence information”¹⁰ where it has expressed concern about the negative implications for including such information within the scope of benefit sharing regimes. Unencumbered access to this information is essential for achieving the objectives of the CBD, which are analogous to the objectives of the Draft Treaty: the conservation and sustainable use of biological diversity. Such access is also essential for the broader goals of the advancement of scientific knowledge, which is of particular importance for areas beyond national jurisdiction where this knowledge is currently limited, and an open access culture is critical to ethical and responsible research. Towards this, ICC emphasizes the importance of ensuring that the current scientific practice of open access and exchange of such information is maintained. It also emphasizes that information that is currently in the public domain must remain freely accessible – this view is supported by a broad range of stakeholders including public sector organisations, scientific and academic institutions, data repositories and collections.¹¹

- Retroactive application on access or use/utilisation: the Draft Treaty creates the potential for retroactive application to MGRs collected or accessed *in situ* before its entry into force, then accessed *ex situ* or *in silico* (or as digital/genetic sequence data/and information) or utilised after its entry into force.¹² Again, such broad application creates an unworkable situation, with significant legal uncertainty and administrative burden, and disincentives for the use of MGRs in R&D. The text should only apply to physical marine genetic resources accessed *in situ* after the treaty enters into force.

⁸ Part I, Article 1, paragraph 1; Part II, Article 8, paragraphs 1-2.

⁹ Part II, Article 7, paragraph (a).

¹⁰ See: <https://www.cbd.int/abs/DSI-views/2019/ICC-DSI.pdf> (2019); <https://www.cbd.int/abs/DSI-views/ICC-DSI.pdf> (2017); <https://iccwbo.org/content/uploads/sites/3/2017/05/ICC-IP-position-paper-on-digital-sequence-information.pdf> (2016).

¹¹ See the Joint Stakeholder Statement, “Promoting Sustainable Use and Conservation of Biological Diversity through Open Exchange of Digital Sequence Information”; available at: <https://iccwbo.org/publication/promoting-sustainable-use-conservation-biodiversity-open-exchange-digital-sequence-information/>.

¹² Part II, Article 8, paragraph 3.



About The International Chamber of Commerce (ICC)

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International Chamber of Shipping Proposals for Textual Amendments

Key to the document

Blue bold = Proposal for addition

~~Strikethrough~~ = proposed deletion

Blue Italics = additional comment or explanation from ICS

Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

PREAMBLE

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea, including the obligation to protect and preserve the marine environment,

Stressing the need to respect the balance of rights, obligations and interests set out in the Convention,

Stressing the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,

Desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations,

Respecting the sovereignty, territorial integrity and political independence of all States,

Respecting relevant legal instruments and frameworks and relevant global, regional, and sectoral bodies [in the achievement of the objectives],

Desiring to promote sustainable development,

Aspiring to achieve universal participation,

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1

Use of terms

For the purposes of this Agreement:

[1. “Access” means, in relation to marine genetic resources, the collection of marine genetic resources [, including marine genetic resources accessed *in situ*, *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data]]].]

2. “Activity under a State’s jurisdiction or control” means an activity over which a State has effective control or exercises jurisdiction.

[2bis **“Activity” means all activities of exploration for and exploitation of the resources in areas beyond national jurisdiction**]

3. “Area-based management tool” means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording higher protection than that provided in the surrounding areas].
4. “Areas beyond national jurisdiction” means the high seas and the Area.
5. “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.

[6. “Cumulative impacts” means impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts.]

[7. ~~Alt. 1. “Environmental impact assessment” means a process to evaluate the environmental impact of an activity [to be carried out in areas beyond national jurisdiction [, with an effect on areas within or beyond national jurisdiction]] [, taking into account [, inter alia,] interrelated [socioeconomic] [social and economic], cultural and human health impacts, both beneficial and adverse].~~

[7. ~~Alt. 2.~~ “Environmental impact assessment” means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment.] *ICS prefers this option.*

[7bis **“Planned Activity” means**] *ICS does not have any drafting to propose here, but suggests that it would be useful if States considered what is meant by “Planned Activity” as distinct from “Activity” or “Activities” under the Convention.*

[8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity.]

[9. Alt. 1. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties.]

[9. Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.]

10. “Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas].

[11. “Marine technology” means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for *in situ* and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling

techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]

12. (a) “States Parties” means States that have consented to be bound by this Agreement and for which this Agreement is in force.

(b) This Agreement applies mutatis mutandis:

- (i) To any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention, and
- (ii) Subject to article 67, to any entity referred to as an “international organization” in annex IX, article 1, of the Convention that becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.

[13. “Strategic environmental assessment” means the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.] *This definition is very unclear and is not understood by ICS.*

[14. “Transfer of marine technology” means the transfer of the instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.]

[15. “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources [, as well as the exploitation thereof].]

Article 2

General objective

The objective of this Agreement is to ensure the [long-term] conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction through **strengthening and enhancing international cooperation and coordination and promoting a holistic and cross-sectoral approach in the implementation of the principles and relevant provisions of the Convention.** ~~effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.~~

Article 3

Application

1. This Agreement applies to **activities (defined in Article 1) in** areas beyond national jurisdiction.
2. **It shall not apply to activities:**

- (a) Undertaken or permitted by States to occur within their national jurisdiction [unless those activities pose a risk of substantial negative impacts to biodiversity or significant and harmful changes to the marine environment in areas beyond national jurisdiction];
 - (b) Enumerated in Article 87(1) Freedom of the High Seas, [subject to certain further limitations and requirements] [set forth herein as may be necessary from time to time] to protect and conserve biodiversity, marine resources and the environment;
 - (c) Related to mining in the Area as governed by the provisions of Part XI and the Agreement relating thereto;
 - (d) Related to fishing, as governed by Part VII and the United Nations Fish Stocks Agreement;
 - (e) Subject to the regulation or supervision of specialized agencies of the United Nations or the programs instituted thereby;
 - (f) Subject to the regulation or supervision by, or under the jurisdiction of, recognised global, regional, sub-regional or sectoral bodies, agreements, treaties or other binding agreements among States.
3. This Agreement does not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement.

Article 4

Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.
2. The rights and jurisdiction of coastal States in all areas under national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone, shall be respected in accordance with the Convention.
3. This Agreement shall be interpreted and applied in a manner that **fully** {respects the competences of and} does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.
- [4. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.]

Article 5

General [principles] [and] [approaches]

In order to achieve the objective of this Agreement, States Parties shall be guided by the following:

- [(a) The principle of non-regression;]
- (b) [The polluter pays principle] {The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment}; *ICS believes that the second alternative is clearer and a similar approach should be taken to define or reference the other principles.*
- [(c) The principle of the common heritage of mankind;]
- [(d) The principle of equity;]
- (e) The precautionary [principle] [approach];
- (f) An ecosystem approach;
- [(g) An integrated approach;]
- (h) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;
- (i) The use of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities];
- (j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another.

Article 6

International cooperation

1. States Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and members thereof in the achievement of the objective of this Agreement. *Text for a cooperation and coordination mechanism or drafting on how cooperation will be achieved should be included here or later in the Agreement.*
2. States Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objective of this Agreement.
- [3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary.]

PART III MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

Article 14 Objectives

The objectives of this Part are to:

{(a) Enhance cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, which will also promote a holistic and cross-sectoral approach to ~~{ocean management}~~ ~~{the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction}~~};

~~{(b) Implement effectively obligations under the Convention and other relevant international obligations and commitments;}~~

ICS prefers that this is deleted. If it cannot be deleted suggest that it is amended to:

(b) Facilitate cooperation and coherence in the effective implementation of obligations under the Convention;

[(c) Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of area-based management tools, including marine protected areas;]

~~{(d) Establish a system of ecologically representative marine protected areas that are connected {and effectively and equitably managed};}~~ *already covered in under (c)*

[(e) ~~Rehabilitate and restore~~ **Support the rehabilitation and restoration of** biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution;]

[(f) Support food security and other socioeconomic objectives, including the protection of cultural values;]

[(g) Create scientific reference areas for baseline research;]

[(h) Safeguard aesthetic, natural or wilderness values;]

~~{(i) Promote coherence and complementarity.}~~ *Already captured in (a)*

Article 15

International cooperation and coordination

1. [To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,] States Parties shall promote coherence and complementarity in the establishment of area-based management tools, including marine protected areas, through:

[(a) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, without prejudice to their respective mandates, in accordance with this Part;]

[(b) The process in relation to area-based management tools, including marine protected areas, set out in this Part, including by:

(i) ~~Adopting conservation and [management] [sustainable use] measures to complement measures designated under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies;~~ *If complementary measures are needed they should be referred to the appropriate body. To do otherwise is to undermine that body. If this cannot be deleted, alternative drafting as follows:*

[recommending] [promoting] conservation and management measures designated under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies;

[(ii) Establishing area-based management tools, including marine protected areas, and adopting conservation and [management] [sustainable use] measures where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.]]

~~[2. Alt. to para. 1. (b) (ii) Where there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body to establish area-based management tools, including marine protected areas, States Parties shall cooperate to establish such an instrument, framework or body and shall participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]~~

3. States Parties shall make arrangements for consultation and coordination to enhance cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among associated conservation and [management] [sustainable use] measures adopted under such instruments and frameworks and by such bodies.

4. Measures adopted in accordance with this Part shall not undermine the effectiveness of measures adopted by coastal States in adjacent areas within national jurisdiction and shall have due regard for the rights, duties and legitimate interests of all States, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to this end, in accordance with the provisions of this Part.

4bis Measures adopted in accordance with this Part shall not undermine the effectiveness of measures adopted by other relevant legal instruments and global, regional, subregional and sectoral bodies.

5. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls under the national jurisdiction of a coastal State, either wholly or in part, it shall be adapted to cover any remaining area beyond national jurisdiction or otherwise cease to be in force.

Article 16

Identification of areas [requiring protection]

1. Areas requiring protection through the establishment of area-based management tools, including marine protected areas, shall be identified on the basis of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities], the precautionary [approach] [principle] and an ecosystem approach.

2. Indicative criteria for the identification of areas requiring protection through the establishment of area-based management tools, including marine protected areas, under this Part, may include those specified in annex I.

3. The indicative criteria specified in annex I [shall] [may] be further developed and revised as necessary by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties.

[4. The indicative criteria specified in annex I, as well as any that may be further developed and revised in accordance with paragraph 3, shall be applied, as relevant, by the proponents of a proposal under this Part and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part. ~~[Such criteria shall also be [applied] [taken into account] by States Parties in the establishment of area based management tools, including marine protected areas, under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.]]~~ *If this is not deleted recommend: Such criteria may also be taken into account by States Parties in the establishment of area based management tools [etc...]*

Article 17

Proposals

1. Proposals in relation to the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by States Parties, individually or collectively, to the secretariat.

[2. States Parties may collaborate with relevant stakeholders in the development of proposals.]

3. Proposals shall be formulated on the basis specified in paragraph 1 of article 16.

4. Proposals shall include, at a minimum, the following elements:

(a) A geographic or spatial description of the area that is the subject of the proposal;

-
- (b) Information on any of the indicative criteria specified in annex I, as well as any criteria that may be further developed and revised in accordance with paragraph 3 of article 16, applied in identifying the area;
 - (c) Specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States **and international shipping activity**;
 - (d) A description of the state of the marine environment and biodiversity in the identified area;
 - (e) A description of the specific conservation and sustainable use objectives that are to be applied to the area;
 - (f) A description of the proposed [conservation and [management] [sustainable use] measures] [priority elements for a management plan] to be adopted to achieve the specified objectives;
 - {(g) A duration for the proposed area and measures;}
 - (h) A monitoring, research and review plan, including priority elements;
 - (i) Information on any consultations undertaken with adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies.
5. Further requirements regarding the contents of proposals [shall] [may] be elaborated by the Scientific and Technical Body as necessary, for consideration and adoption by the Conference of the Parties.

Article 18

Consultation on and assessment of proposals

This Article could be supported as it mandates that the input of relevant bodies, such as IMO, be sought for each proposal for a new ABMT.

- 1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all relevant stakeholders.
- 2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed to the proponent by the secretariat. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review by the Scientific and Technical Body. The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows:
 - (a) States, in particular adjacent coastal States, shall be invited to submit, inter alia:
 - (i) Views on the merits of the proposal;
 - (ii) Any relevant [additional] scientific inputs;
 - (iii) Information regarding any existing measures in adjacent areas within national jurisdiction;
 - (iv) Views on the potential implications of the proposal for areas under national jurisdiction;
 - (v) Any other relevant information;

-
- (b) Bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be invited to submit, inter alia:
- (i) Views on the merits of the proposal;
 - (ii) Any relevant [additional] scientific inputs;
 - (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;
 - (iv) Views regarding any aspects of the [conservation and [management] [sustainable use] measures] [priority elements for a management plan] identified in the proposal that fall within the competence of that body;
 - (v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body;
 - (vi) Any other relevant information;
- (c) Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, inter alia:
- (i) Views on the merits of the proposal;
 - (ii) Any relevant [additional] scientific inputs;
 - (iii) Any relevant traditional knowledge of indigenous peoples and local communities;
 - (iv) Any other relevant information.
3. Contributions received pursuant to paragraph 2 shall be made publicly available by the secretariat.
4. The proponent shall consider the contributions received during the consultation period and shall either revise the proposal accordingly or continue the consultation process.
5. The consultation period shall be time-bound.
6. The revised proposal shall be submitted to the Scientific and Technical Body, which shall assess the proposal, and make recommendations to the Conference of the Parties.
7. The modalities of the consultation and assessment process shall be further elaborated by the [Scientific and Technical Body] [Conference of the Parties], as necessary [, and shall take into account the special circumstances of small island developing States].

Article 19

Decision-making

The Conference of the Parties [shall] [may] take decisions on matters related to area-based management tools, including marine protected areas, with respect to:

[(a) Objectives, criteria, modalities and requirements, as provided for under articles 14, 16, 17 and 18;]

~~[Alt. 1~~

~~(b) Proposals submitted under this Part, on a case by case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, including in relation to:~~

- ~~(i) The identification of areas requiring protection;~~
- ~~(ii) The establishment of area based management tools, including marine protected areas, and related conservation and [management] [sustainable use] measures to be adopted to achieve the specified objectives, taking into account existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate;~~

~~(c) Where there are relevant legal instruments or frameworks or relevant global, regional or sectoral bodies:~~

- ~~(i) Whether to recommend that States Parties to this Agreement promote the adoption of relevant conservation and [management] [sustainable use] measures through such instruments, frameworks and bodies, in accordance with their respective mandates;~~
- ~~(ii) Whether to adopt conservation and [management] [sustainable use] measures complementary to those adopted under such instruments, frameworks and bodies;~~

~~(d) Where there are no relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, the adoption of conservation and [management] [sustainable use] measures.}~~

~~[Alt. 2~~

(b) Matters related to identifying potential area-based management tools, including marine protected areas;

(c) Recommendations relating to the implementation of related management measures, while recognizing the primary authority for the adoption of such measures within the respective mandates of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. *ICS prefers this alternative. If alternative 1 is selected, (c)ii should be deleted. In b(ii) “fully respecting” should be substituted for “taking into account”.*

Article 20 Implementation

ICS has no drafting suggestions on this Article but comments that its operation is unclear. Consideration of the potential application of clause 5 demonstrates the difficulties that may be encountered in enforcing ABMTs across the activities of all States equally in high seas areas under the Agreement. For shipping, this is addressed at IMO through the principle of “no more favourable treatment”.

1. States Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.

2. Nothing in this Agreement shall prevent a State Party from adopting more stringent measures with respect to its vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law.

[3. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States Parties, directly or indirectly.]

[4. States Parties shall promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures adopted under this Part.]

[5. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the conservation and management objectives of the measures adopted and area-based management tools established under this Part.]

[6. A State Party that is not a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and management measures established under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area based management tools, including marine protected areas, established under relevant frameworks, instruments and bodies.]]

Article 21

Monitoring and review

1. States Parties, individually or collectively, shall report to the Conference of the Parties on the implementation of [area-based management tools, including marine protected areas] [relevant elements of the decisions of the Conference on area-based management tools, including marine protected areas], established under this Part. Such reports shall be made publicly available by the secretariat.

2. Area-based management tools, including marine protected areas, established under this Part, including related conservation and [management] [sustainable use] measures, shall be monitored and periodically reviewed by the Scientific and Technical Body.

3. The review referred to in paragraph 2 shall assess the effectiveness of measures and the progress made in achieving their objectives and provide advice and recommendations to the Conference of the Parties.

4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment or revocation of area-based management tools, including marine protected areas, including any associated conservation and [management] [sustainable use] measures, [as well as the extension of time-bound area-based management tools, including marine protected areas, that would otherwise automatically expire.,] ~~on the basis of an adaptive management approach and taking into account the best available [science] [scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities], the precautionary [approach] [principle] and an ecosystem approach.~~ *ICS could support this revised Article but suggests that it would be clearer to end*

clause 4 as illustrated, since the criteria for consideration of measures are specified under Article 16.

5. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies [shall] [may] be invited to report to the Conference of the Parties on the implementation of measures that they have established.

PART IV ENVIRONMENTAL IMPACT ASSESSMENTS

Article 21bis Objectives

The objectives of this Part are to:

[(a) Operationalize the provisions of the Convention on environmental impact assessment by establishing processes, thresholds and guidelines for conducting and reporting assessments by States;]

[(b) Enable the consideration of cumulative impacts;]

[(c) Provide for strategic environmental assessments;]

[(d) Achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction.]

Article 22

Obligation to conduct environmental impact assessments

1. States Parties shall [, as far as practicable,] assess the potential effects of planned activities under their jurisdiction or control [on the marine environment] [in accordance with their obligations under articles 204 to 206 of the Convention].

2. On the basis of articles 204 to 206 of the Convention, States Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement the provisions [of this Part] [and any further measures [on the conduct of environmental impact assessments] adopted by the Conference of the Parties].

3. The requirement in this Part to conduct an environmental impact assessment applies ~~{only to activities conducted in areas beyond national jurisdiction} [to all activities that have an impact in areas beyond national jurisdiction].~~

Article 23

Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with [the obligations under] the Convention.

[2. Alt. 1. The Scientific and Technical Body shall consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment. [Procedures for consultation and/or coordination shall include the establishment of an ad hoc inter-agency working group or the participation of representatives of the scientific and technical bodies of those organizations in meetings of the Scientific and Technical Body].]

[2. Alt. 2. State Parties shall cooperate in promoting the use of environmental impact assessments in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies for planned activities that meet or exceed the threshold contained in this Agreement.]

[3. Alt. 1. [Global minimum standards] [and] [guidelines] for the conduct of environmental impact assessments [under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies] shall be developed [by the Scientific and Technical Body] [through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies]. [These [global minimum standards] [and] [guidelines] shall be set out in an annex to this Agreement and shall be updated periodically].]

[3. Alt. 2. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.]

[4. ~~Alt. 1. Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate in relation to marine biological diversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in this Part.~~ *Strongly opposed by ICS.*]

[4. Alt. 2. No environmental impact assessment is required under this Agreement for any activity conducted in accordance with the rules and guidelines appropriately established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.]

[4. Alt. 3. ~~No environmental impact assessment is required under this Agreement where relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies with mandates for environmental impact assessments for planned activities [with impacts] in areas beyond national jurisdiction already exist, regardless of whether or not an environmental impact assessment is required for the planned activity under the jurisdiction or control of a State Party.~~]

[4. Alt. 4. ~~Where a planned activity under the jurisdiction or control of a State Party [with impacts] in areas beyond national jurisdiction is already covered by existing environmental impact assessment obligations and agreements, it is not necessary to conduct another~~]

~~environmental impact assessment of that activity under this Agreement [, provided that the
[State with jurisdiction or control over the planned activity] [body set forth in Part [...]] [,
following consultation with relevant legal instruments and frameworks and relevant global,
regional, subregional and sectoral bodies,] determines that:~~

~~[(a) The outcome of the environmental impact assessment under those
obligations or agreements is effectively implemented;]~~

~~[(b) The environmental impact assessment already undertaken is
[[functionally] [substantively] equivalent to the one required under this Part] [comparably
comprehensive, including with regard to such elements as the assessment of cumulative
impacts];]~~

~~[(c) The threshold for the conduct of environmental impact assessments meets or exceeds
the threshold set out in this Part.]]~~

ICS supports the adoption of Alt.2

*Articles 24-27: ICS does not believe these provisions are intended for application to
international shipping activity, being already regulated by IMO and flag states and this
should be made clear via an exclusion. Any thresholds established should be fully
consistent with UNCLOS.*

Article 24

Thresholds and criteria for environmental impact assessments

[1. Alt.1

1. When States have reasonable grounds for believing that planned activities under their jurisdiction or control [may cause substantial pollution of or significant and harmful changes to] [are likely to have more than a minor or transitory effect on] the marine environment [in areas beyond national jurisdiction], they shall, [individually or collectively,] as far as practicable, [assess the potential effects of such activities on the marine environment] [ensure that the potential effects of such activities on the marine environment are assessed].]

[1. Alt.2

1. When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control:

(a) Are likely to have more than a minor or transitory effect on the marine environment, they shall conduct an environmental impact assessment of the potential effects of such activities on the marine environment in the manner provided in this Part;

(b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall [conduct] [ensure that] a [full] [comprehensive] environmental impact assessment [is conducted] on the potential effects of such activities on the marine environment [and ecosystems] and shall submit the results of such assessment [for technical review] in the manner provided in this Part.

[2. Environmental impact assessments shall be conducted in accordance with the threshold and criteria [set out in this Part and as further elaborated upon pursuant to the procedure set out in paragraph [...]] [, which shall be developed by the Scientific and Technical Body].]

Article 25

Cumulative impacts

1. Cumulative impacts shall [, as far as possible,] be [taken into account] [considered] in the conduct of environmental impact assessments.

[2. Alt. 1. Guidelines for assessing cumulative impacts in areas beyond national jurisdiction and how those impacts will be taken into account in the environmental impact assessment process for planned activities shall be developed by the Conference of the Parties.]

[2. Alt. 2. In determining cumulative impacts, the incremental effect of a planned activity under the jurisdiction or control of a State Party, when added to the effects of past, present and reasonably foreseeable future activities, shall be examined regardless of whether the State Party exercises jurisdiction or control over those other activities.]

Article 26

Transboundary impacts

1. Possible transboundary impacts shall be taken into account in environmental impact assessments.

2. Where relevant, the environmental impact assessment process shall also take into account possible impacts in [adjacent] [coastal States] [areas within national jurisdiction, including the continental shelf beyond 200 nautical miles].

Article 27

Areas identified as ecologically or biologically significant or vulnerable

[1. For areas identified as requiring protection [or special attention] by any other [relevant instrument or competent body] [legal instruments and frameworks or by relevant global, regional, subregional, and sectoral [bodies][organizations]], or areas [ecologically or culturally] connected to such areas, environmental impact assessments shall be required for planned activities.]

[2. Additional guidelines on the conduct of environmental impact assessments in [or adjacent to] [or connected to] areas identified [by other legal instruments and frameworks or by relevant global, regional, subregional and sectoral [bodies] [organizations]] as requiring protection or special attention may be elaborated by the scientific technical and technological body in cooperation with relevant competent bodies for the consideration and adoption of the Conference of the Parties.]

Article 28

Strategic environmental assessments

See comments under Article 1.13. ICS believes SEA should be further clarified.

1. States Parties, individually or in cooperation with other States Parties, shall ensure that a strategic environmental assessment is carried out for plans and programmes relating to activities [under their jurisdiction or control,] [conducted] [with impacts] in areas beyond national jurisdiction, which meet the threshold/criteria established in article 24.
- [2. As one type of environmental assessment, strategic environmental assessments shall follow mutatis mutandis the process set out in this Part.]

Article 29

List of activities that ~~{require}~~ ~~{or}~~ ~~{do not require}~~ an environmental impact assessment

- [1. An indicative non-exhaustive list of activities that ~~{normally}~~ ~~{require}~~ ~~{or}~~ ~~{do not require}~~ an environmental impact assessment ~~{is contained in annex [...]} ~~{shall be prepared by the Conference of the Parties as voluntary guidelines on the basis of recommendations by the Scientific and Technical Body}.~~ *International Shipping should be part of this non-exhaustive list to provide absolute clarity that the assessment of shipping's impact on the marine environment is dealt with by IMO.*~~
- [2. The list shall be regularly updated by the Conference of the Parties.]

PART V CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

Article 43

Cooperation in capacity-building and transfer of marine technology

1. States Parties, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall [promote] [ensure] cooperation, [in accordance with [this Agreement] [Part XIV of the Convention],] in accordance with their capabilities, in capacity-building and the transfer of marine technology to assist States Parties that need and request it, in particular developing States Parties, in achieving the objectives of this Agreement.
2. Capacity-building and the transfer of marine technology under this Agreement shall be ~~{carried out}~~ ~~{promoted}~~ through enhanced cooperation at all levels and in all forms, including partnerships with and involving all relevant stakeholders, such as, where

appropriate, ~~[the private sector,]~~ civil society and holders of traditional knowledge, as well as through strengthening cooperation, coordination and synergies between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

3. In giving effect to the duty to [cooperate] [promote cooperation] under this article, States Parties shall give full recognition to the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.



**DEVELOPMENT OF AN UNCLOS IMPLEMENTING AGREEMENT ON THE
CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL
DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION (BBNJ)**

ICS¹, ECSA² ASA³ POSITION PAPER

February 2020

Introduction

The global shipping industry has been participating in the discussions for the development of a legally binding instrument under the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) on the conservation and sustainable use of marine Biological diversity of areas Beyond National Jurisdiction (BBNJ).

Following three sessions of the Intergovernmental Conference (IGC) in which diverse views have been put forward by governments and observer organisations on the scope of the proposed instrument, the international shipping industry welcomes the progress that has been made towards the further protection of the world's oceans with the publication of a revised draft text in November 2019. The international shipping industry has carefully reviewed the revised draft text and submits the following comments.

Recalling that almost 90% of international trade is seaborne, it is again emphasised that it is imperative for the new instrument to fully respect the rights of navigation and freedom of the high seas enshrined in articles 87 and 90 of UNCLOS. These principles are essential to the smooth operation of shipping and therefore to the safe and efficient delivery of food, energy, vital raw materials and goods needed to support the world economy and the smooth functioning of society.

UNCLOS carefully balances the rights and obligations of flag states, coastal states and port states. While UNCLOS provides the basic legal framework for ocean governance, detailed regulation of the shipping

¹ **The International Chamber of Shipping (ICS)** is the principal global trade association for the shipping industry engaged in international trade, representing shipowners and operators in all sectors and trades. Its membership comprises national shipowners' associations in Asia, Europe and the Americas whose member shipping companies operate over 80% of the world's merchant tonnage. Its primary role is to represent shipowners with the various international regulatory bodies that impact on shipping, including and most especially the International Maritime Organization and the International Labour Organization.

² **The European Community Shipowners' Associations (ECSA)** is a trade association whose membership comprises the national shipowner associations of the European Union and Norway and whose focus is representation at the EU regulatory institutions. Many of the members of ECSA are also members of the International Chamber of Shipping.

³ **The Asian Shipowners' Association** is a trade association whose membership comprises eight national shipowner associations from the Asia-Pacific Region.

industry is carried out by member states at the International Maritime Organization (IMO), operating under delegated authority from the UN.

The international shipping industry strongly believes that IMO's global mandate to regulate the international shipping industry on matters that may be the subject of the new agreement on BBNJ, should be duly recognised in the new agreement.

The IMO, which pre-dates UNCLOS, is recognised in UNCLOS as having authority and competence to make effective regulation for the protection of the marine environment, including its biodiversity, from the impacts of international commercial shipping activity including in the high seas. IMO's global mandate is shown by provisions in the Convention referring to the "competent international organization" - by which is meant IMO - in connection with the adoption of international rules and standards in matters concerning maritime safety, efficiency of navigation, and the prevention and control of pollution from vessels and by dumping. IMO's rules and standards are implemented by flag states and enforced globally by port states via port state control. This means that a ship is never really beyond national jurisdiction. IMO also upholds a principle of "no more favourable treatment" by which port states party to a Convention must apply it to any ship that voluntarily enters their ports, whether or not the flag state of the ship has ratified that Convention. This ensures that regulations adopted apply to all ships equally and that economic advantage is not gained by those countries that choose not to adopt, ultimately ensuring that regulation of ships is effective.

In order to successfully achieve its goals, the new agreement must be absolutely clear on the intended relationship between any bodies that it may establish, and relevant legal instruments and international bodies. The industry therefore fully supports proposals for the inclusion of legally clear provisions on conflict of laws. Clarity is especially important with regard to arrangements under the new instrument for the implementation of Area-Based Management Tools (ABMTs) and Environmental Impact Assessments (EIAs). With regard to shipping activity, overall competence for designating ABMTs and taking due account of EIAs is vested in the IMO and this responsibility should continue to remain with the IMO. Despite some improvements in this respect, there remain options within the revised draft text of the agreement that could result in conflict or duplication with the mandate of IMO. To avoid this, it should be made clear that this new Agreement will only regulate activity that is not within the mandate of another international body or relevant instrument.

The new instrument and any new organisation or body that may be established should coordinate and promote coherence and complementarity and not undermine the present system of ocean governance.

The co-sponsors trust that the information above will assist consideration of the draft text of the agreement and the discussions at IGC4 and stand ready to provide clarification of any aspects of the position of the shipping industry.

OceanCare Briefing for IGC 4

Proposed Text on Transboundary Pollution for the New Instrument

6th February 2020

This Briefing is intended to support OceanCare's recommended text on Provisions of the President's Draft of the BBNJ Agreement dated November 27, 2019. Please see the respective table on pages 3-7.

OceanCare's position is that UNGA resolution 72/249 is a legal **outcome document** that charges the IGC with putting into place processes and measures pursuant to UNCLOS and other international law **to achieve the result** of the conservation and sustainable use of marine biological diversity beyond national jurisdiction (BBNJ). This UNGA mandate encompasses all living resources that comprise BBNJ and all measures for conservation and sustainable use of BBNJ. **OceanCare advocates for incorporating provisions for management of transboundary pollution** into the sections of the BBNJ Agreement for environmental impact assessments and strategic environmental assessments, and for area-based management tools, including marine protected areas.

Although the new Agreement will have no legal authority within national jurisdiction, resolution 72/249 clearly mandates the inclusive conservation and sustainable use of BBNJ without reference to the jurisdiction where the risks to BBNJ, including transboundary pollution, may physically originate. Human **activities that take place within the jurisdiction of a coastal state may generate transboundary pollution that crosses into the adjacent area beyond national jurisdiction** causing significant adverse impacts to BBNJ and vice versa.

The BBNJ Agreement should provide robust authority without regard to the jurisdiction where the transboundary pollution originates or the location of the activity that generates the transboundary pollution,

- For assessing all significant adverse impacts to BBNJ due to transboundary pollution, and
- For considering transboundary pollution in any framework for conservation management of BBNJ.

The inclusion of the term 'transboundary pollution' is relevant insofar as:

- Transboundary pollution is easily defined and can be readily measured through scientific investigation, whereas transboundary impact is vague and it may be difficult to establish criteria acceptable to all parties.
- Transboundary pollution is referred to in an extensive body of existing international law, whereas transboundary impact is not.
- Transboundary pollution can be addressed and mitigated through practical concrete measures mandating the reduction of the polluting emissions. Conversely, there is no practical way to mitigate transboundary impacts without also addressing the causes at its source.
- Article 1 of UNCLOS defines marine pollution and can easily be used as a starting point to define transboundary pollution that impacts BBNJ.
- The argument that transboundary pollution is too narrow a category does not stand up to scrutiny; transboundary pollution potentially includes a vast assortment of destructive pollutants—from plastics to chemicals to oil to noise and much more.

The Case of Ocean Noise Pollution: A severe transboundary threat to BBNJ

Levels of ocean noise have doubled every decade for the past 70 years in some regions. Indeed, it is now scientifically well-established that both non-impulsive (e.g. commercial shipping) and impulsive noise (e.g. hydrocarbon exploration) can have **detrimental effects on many species beyond the 200-mile Exclusive Economic Zones (EEZ), hence also inflicting significant harm to Biodiversity of Areas Beyond National Jurisdiction (BBNJ)**. The General Assembly also acknowledged as much when it adopted Resolution 74/19, noting “that ocean noise has potential significant adverse impacts on living marine resources” (UNGA 74/19: 2019, para. 279). Noise pollution is particularly alarming considering that a wide variety of species rely on sound for their vital life functions, including communication, orientation, prey detection and predator avoidance, and for sensing surroundings. In 2017, a study by Australian scientists determined that a single seismic airgun had killed all krill larvae and also a large part of the adult zooplankton at a distance of 1.2 kilometres in the entire study area¹. These findings are particularly worrying as there is now evidence that even the smallest organism suffers from the impact of anthropogenic noise, potentially having devastating consequences for the entire marine food web. So far, around 130 marine species, practically all exposed to related scientific research, are shown to be impacted by underwater noise, including more than 30 species of marine mammals, around 66 species of fish and at least 36 species of invertebrates.

Evidence furthermore suggests, that noise levels in the ocean present a growing threat to fish stocks and the sustainability of fisheries the world over. In this regard, studies have shown that fish catch rates can drop substantially, with larger fish leaving an area coincident with ocean noise events². By-catch rates have also been observed to increase in the presence of noise whereas fish abundance decreases. Across the world, unchecked propagation of ocean noise is now undermining efforts to achieve healthy, sustainable oceans and restore fish stocks, with serious implications for human livelihoods and food security³.

As the 4th Intergovernmental Conference is rapidly approaching in March 2020, OceanCare continues to advocate for managing transboundary pollution and its impact through the new BBNJ Instrument. With this mission in mind, we have taken the opportunity to provide a number of text-edits that we believe are essential for ensuring a meaningful Instrument in conserving biodiversity in areas beyond national jurisdiction.

¹ See McCauley et al.’s “Widely used marine seismic survey air gun operations negatively impact zooplankton” for further findings and explanation.

² See for example Weilgart’s “The Impact Of Ocean Noise Pollution On Fish And Invertebrates” for further reading on the impacts of noise on fish.

³ Other impacts include: body malformations and higher egg or immature mortality; internal injuries, causing disorientation and even death; damage to hearing structures which can worsen over time, temporary hearing loss which can last for months, or even permanent hearing loss; stress, with negative consequences on the immune system and reproductive rates; behavioural changes, including aggression, flight reactions, reduced communication and foraging; high mortality in the presence of noise was suffered by zooplankton.

Part I - General Provisions

Our recommended text is in **bold**, and replaces original text (~~strikethrough~~)

Draft Text	Suggested text	Comments
Article 1 Use of terms Article 1.6. [6. "Cumulative impacts" means impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts.]	~~{6. "Cumulative effects impacts"~~ means ~~effects impacts~~ on the same ecosystems resulting from different activities and effects, including past, present or reasonably foreseeable activities and effects, or from the repetition of similar activities over time, including climate change, ocean acidification and related ~~effects impacts~~, and transboundary effects including pollution.}	The term 'effect' is a term used in UNCLOS whereas 'impact' is not. Similarly, transboundary pollution is easily defined and can be readily measured through scientific investigation, whereas transboundary impact is vague and it may be difficult to establish criteria acceptable to all parties. Moreover, transboundary pollution is referred to in an extensive body of existing international law, whereas transboundary impact is not. A possible definition of transboundary pollution could read as follows: "Transboundary pollution" for the purposes of this Instrument means the introduction, directly or indirectly, of substances or energy, including acoustic energy, into the marine environment (a) that is generated by human activities in, or adjacent to, areas beyond national jurisdiction, (b) that disperses across more than one jurisdiction, including dispersing into areas beyond national jurisdiction from areas within national jurisdiction, and (c) that results in, or is likely to result in, significant harm to marine biological diversity beyond national jurisdiction.
Article 5 General [principles] [and] [approaches]	Add additional paragraph	Consistent with the obligation expressed in Article 194(2) to ensure activities under States' jurisdiction or control are so

	(k) Take all appropriate and effective measures to prevent, reduce, mitigate and control transboundary pollution from proposed or existing activities.	conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with the Convention.

Part II Measures Such As Area-Based Management Tools, Including Marine Protected Areas

Draft Text	Suggested text	Comments
Article 17 Proposals 4. Proposals shall include, at a minimum, the following elements: (f) A description of the proposed [conservation and [management] [sustainable use] measures] [priority elements for a management plan] to be adopted to achieve the specified objectives;	4. Proposals shall include, at a minimum, the following elements: (f) A description of the proposed conservation and management measures and priority elements for a management plan to be adopted including, when relevant, a description of activities to be managed, restricted or prohibited to achieve the specified objectives; <i>ADDITION OF NEW TEXT (this text was included in earlier versions of the Agreement)</i> (j) Information on transboundary pollution that is known, likely and has the potential to adversely impact the area.	For the Agreement to be effective the proposal should include a description of the proposed conservation and management measures and the activities to be managed. This is particularly critical for pollutants, such as ocean noise, that are transboundary in nature and which effects reach, in many cases, into ABNJ.

Part III Environmental Impact Assessments

Draft Text	Suggested text	Comments
Article 25 Cumulative Impacts 1. Cumulative impacts shall [as far as possible] be [taken into	1. Cumulative ~~effects~~ ~~impacts~~ shall [as far as possible] be taken into	If the phrasing “as far as possible” remains included, a significant

account] [considered] in the conduct of environmental impact assessments. 2. Alt. 1. Guidelines for assessing cumulative impacts in areas beyond national jurisdiction and how those impacts will be taken into account in the environmental impact assessment process for planned activities shall be developed by the Conference of the Parties. [2. Alt. 2. In determining cumulative impacts, the incremental effect of a planned activity under the jurisdiction or control of a State Party when added to the effects of past, present and reasonably foreseeable future activities shall be examined regardless of whether the State Party exercises jurisdiction or control over those other activities.]	account ~~[considered]~~ in the conduct of environmental impact assessments. 2. We suggest deletion of 2. Alt. 1 ~~2. Alt. 1. Guidelines for assessing cumulative impacts in areas beyond national jurisdiction and how those impacts will be taken into account in the environmental impact assessment process for planned activities shall be developed by the Conference of the Parties.~~ 2. Alt. 2. In determining cumulative effects impacts, the incremental effect of a planned activity under the jurisdiction or control of a State Party when added to the effects of past, present and reasonably foreseeable future activities and effects, including those related to climate change and transboundary pollution, shall be examined regardless of whether the State Party exercises jurisdiction or control over those other activities.	loophole in addressing cumulative impacts will remain. Paragraph 2 Alt. 1 would put off the requirement to consider cumulative effects to the Conference of the Parties (CoP) to the Agreement. This process would take a number of years, leaving a significant loophole in the EIA process potentially over the next decades. As above - The term 'effect' is a term used in UNCLOS whereas 'impact' is not. Similarly, transboundary pollution is easily defined and can be readily measured through scientific investigation, whereas transboundary impact is vague and it may be difficult to establish criteria acceptable to all parties. Moreover, transboundary pollution is referred to in an extensive body of existing international law, whereas transboundary impact is not.

Article 26 Transboundary impacts 1. Possible transboundary impacts shall be taken into account in environmental impact assessments. 2. Where relevant, the environmental impact assessment process shall also take into account possible impacts in [adjacent] [coastal States] [areas within national jurisdiction,	1. Possible transboundary effects, impacts including from transboundary pollution, shall be taken into account in environmental impact assessments. 2. Where relevant, the environmental impact assessment process shall also take into account possible effects impacts in ~~[adjacent] [coastal States]~~ areas within national jurisdiction,	The Agreement needs to take into account potential effects on all States, not just adjacent coastal States or coastal States. In the case of climate change mitigation for example, some mitigation schemes conducted within ABNJ could have effects that reach far beyond coastal states. Furthermore, the Agreement must provide robust authority without regard to the jurisdiction of where the transboundary pollution originates or the location of the activities that generates the

including the continental shelf beyond 200 nautical miles].	including the continental shelf beyond 200 nautical miles.	transboundary pollution. Conversely, this Article should thus not be limited to impacts in adjacent coastal States but must be more comprehensive.
Article 35 Preparation and content of environmental impact assessment reports (d) A description of the potential effects of the planned activity under the jurisdiction or control of a State Party on the marine environment, including [social, economic, cultural and other relevant impacts,] and [reasonably foreseeable potential direct, indirect,] cumulative and transboundary impacts, [as well as an estimation of their significance] [, including a description of the likelihood that the assessed activity will cause substantial pollution of or other significant and harmful changes to the marine environment in areas beyond national jurisdiction and its biodiversity]; (g) A description of any measures for avoiding, preventing [, minimizing] and mitigating impacts [and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment] [and other adverse social, economic, cultural and relevant impacts];	(d) A description of the potential effects of the planned activity under the jurisdiction or control of a State Party on the marine environment, including social, ~~economic~~ cultural and other relevant ~~effects-impacts~~, and reasonably foreseeable potential direct, indirect, cumulative and transboundary ~~pollution impacts~~ as well as an estimation of their significance including a description of the likelihood that the assessed activity will cause ~~substantial pollution of or other significant adverse effects and harmful changes~~ to the marine environment in areas beyond national jurisdiction and its biodiversity; (g) A description of any measures for avoiding, preventing, ~~minimizing~~ and mitigating ~~impacts~~ [and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment] and other adverse social, economic, cultural and relevant impacts effects, including those that are transboundary in nature;	As above – “impacts” is vague and it may be difficult to establish criteria acceptable to all parties. Note also UNGA Resolution 74/19: 2019, Para. 281. “Calls upon States to consider appropriate cost-effective measures and approaches to assess and address the potential socioeconomic and environmental impacts of anthropogenic underwater noise, taking into account the precautionary approach and ecosystem approaches and the best available scientific information, as appropriate.” As above.

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About OceanCare:

OceanCare is a Swiss non-profit organisation. It was founded in 1989 and has a strong commitment to realistic and cooperative initiatives. The organisation works at national and international level in the areas



of marine pollution, environmental changes, fisheries, whaling, sealing, captivity of marine mammals and public education.

OceanCare holds Special Consultative Status with the Economic and Social Council of the United Nations (ECOSOC) and is a partner of the General Fisheries Commission for the Mediterranean (GFCM), the Convention on Migratory Species (CMS), and the UNEP/CMS Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS), as well as UNEP/MAP. OceanCare has also been accredited as a Major Group to the United Nations Environment Assembly (UNEA), which is the governing body of UNEP, and is a part of the UNEP Global Partnership on Marine Litter.

OceanCare started its involvement in the BBNJ process since the beginning in 2007, attending the subsequent Ad Hoc Open-Ended Working Group meetings as well as the four preparatory committee meetings in 2016 and 2017. The primary objective pursued by OceanCare has been to raise awareness of the threat posed by transboundary pollution, such as underwater noise, in Areas Beyond National Jurisdiction (ABNJ).

www.oceancare.org