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**Cross-**

<p>and political independence of all States, <i>Desiring</i> to promote sustainable development, Aspiring to achieve universal participation, <i>Have agreed</i> as follows:</p>		
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## PART I GENERAL PROVISIONS

Draft text	Proposed text	Commentary
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### Article 1 Use of terms

For the purposes of this Agreement:





<p>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].</p> <p>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.]</p> <p>have consented to be bound by this Agreement and for which this Agreement is in force.</p> <p>(b) This Agreement applies mutatis mutandis:</p> <p>(i) To any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention, and</p> <p>(ii) Subject to article 67, to any entity annex IX, article 1, of the Convention that becomes a Party to this Agreement, and to</p>	<p><del>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.</del></p> <p><b>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.</b></p> <p>the transfer of the instruments, equipment, <b>expertise</b>, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.]</p> <p><b>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.</b></p>	<p>paragraph above. The integrated aspect of SEA should be emphasized.</p> <p>Suggested additional terms to define:</p> <p>- ecosystem</p> <p>5 (General principles and approaches) but it would be an opportunity to clarify and unify terminology (e.g. refer to <a href="#">CBD COP Decision V/6</a>)</p>
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<p>entities.</p> <p>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.]</p> <p>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.]</p> <p>means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources [, as well as the exploitation thereof].]</p>		
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## **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](#)

<p>beyond 200 nautical miles and the exclusive economic zone, shall be respected in accordance with the Convention.</p> <p>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.</p> <p>[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.]</p>		
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**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];

<p><b>Article 6 International cooperation</b></p> <p>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.</p> <p>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.</p> <p>[3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary.]</p>	<p>2. States Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology <del>consistent with the Convention</del> in support of the objective of this Agreement.</p> <p>{3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary <b>to support the objective of this Agreement.</b>}</p>	<p>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 (see comment on art. 4(4) above).</p>
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## PART II MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

Draft text	Proposed text	Commentary
<p><b>Article 7 Objectives</b></p> <p>The objectives of this Part are to:</p> <p>[(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;]</p> <p>[(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;]</p> <p>[(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;]</p> <p>[(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].]</p>	<p>(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</p>	



		information is used to contribute to ecologically sustainable practices. (see comment on art. 45). <i>Benefit sharing: combining intellectual property, trade secrets, science and an ecosystem-focused approach</i> , edited collection from Malmo conference May 2019)
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**[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 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*

sequence data]] [or utilized] after it.]		
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jurisdiction shall be carried out exclusively for peaceful purposes.]		
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**[Article 10 [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].]

[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;

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](#),







**[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?

[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:

[(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]

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

discussed and adopted at the COP. *Benefit sharing: combining intellectual property, trade secrets, science and an ecosystem-focused approach*, chapter to edited collection from

international practice in t he 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 take the necessary legisl

of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.]		
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**[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 undermine benefit-sharing and the traceability of marine genetic resources of areas beyond national jurisdiction].]

		<p>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 (see <a href="#">WIPO, disclosure requirements table</a>) and research shows it would not be expensive (see Castalia (2018). <a href="#">Economic Evaluation of Disclosure of Origin Requirements</a>).</p> <p>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.</p> <p>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.</p> <p>12(3)(b) Would be a problem under TRIPS.</p>
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**[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

[3. States Parties shall take the necessary legislative, administrative or policy mea1 77.\*ni

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



## **PART III MEASURES SUCH AS AREA**

<p>acidification and marine pollution;]</p> <p>[(f) Support food security and other socioeconomic objectives, including the protection of cultural values;]</p> <p>[(g) Create scientific reference areas for baseline research;]</p> <p>[(h) Safeguard aesthetic, natural or wilderness values;]</p> <p>[(i) Promote coherence and complementarity.]</p>		
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<p><b>Article 16 Identification of areas [requiring protection]</b></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>[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.]]</p>		<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
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## **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



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.

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<p>to the Scientific and Technical Body, which shall assess the proposal, and make recommendations to the Conference of the Parties.</p> <p>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].</p>		
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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, e



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

<p>communities], the precautionary [approach] [principle] and an ecosystem approach.</p> <p>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.</p>		
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## PART IV ENVIRONMENTAL IMPACT ASSESSMENTS

Draft text	Proposed text	Commentary
Article 21bis Objectives		



**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

<p>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].]</p> <p>[3. Alt. 2. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.]</p> <p>[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.]</p> <p>[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.]</p> <p>[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,</p>		<p><a href="#">Treaty</a>). 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.</p> <p>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.</p> <p>23(4) Alt. 2-3 appear to authorise noncompliance with UNCLOS EIA obligations and should be deleted..</p> <p>23(4) Alt. 4 should be 23(5), and it should 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.</p>
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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

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



<p>[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</p> <p>shall be developed by the Scientific and Technical Body].]</p>		
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## **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.]



<p>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.</p> <p>[2. As one type of environmental assessment, strategic environmental assessments shall follow mutatis mutandis the process set out in this Part.]</p>	<p><b>Where scientific information is inadequate to enable an informed decision, further scientific research shall be conducted.</b></p>	
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<p><b>Article 29 List of activities that [require] [or] [do not require] an environmental impact assessment</b></p> <p>[1. An indicative non-exhaustive list of activities that [normally] [require] [or] [do not require] an environmental impact assessment</p> <p>by the Conference of the Parties as voluntary guidelines on the basis of recommendations by the Scientific and Technical Body].]</p> <p>[2. The list shall be regularly updated by the Conference of the Parties.]</p>		<p>Not recommended.</p>
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**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

support that conclusion]. [The Scientific and Technical Body shall verify that the information provided by the [State Party] satisfies the requirements in this Part].		
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**Article 32 Impact assessment and  
evaluation**





**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







<p>[(ii) Access to, and that their special requirements receive consideration in, the sharing of benefits from marine genetic resources and in marine scientific research;]</p> <p>[(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];]</p> <p>[(iv) [Endogenous] [Local] research capabilities relating to marine genetic resources and products, processes and other tools;]</p> <p>(v) The capacity to develop, implement, monitor and manage, including to enforce, any area-based management tools, including marine protected areas;</p> <p>(vi) The capacity to conduct and evaluate environmental impact assessments [and strategic environmental assessments].</p>		
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**Article 43 Cooperation in capacity-building  
and transfer of marine technology**

1. States Parties, directly







**Article 46 Types of capacity-building and**



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.		
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## PART VI INSTITUTIONAL ARRANGEMENTS

Draft text	Proposed text	Commentary
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### 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 1qQ ( th)4(.r

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];

<p>(f) Undertake other functions identified in this Agreement or as may be required for its implementation.</p> <p>[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.]</p>		
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## **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;

<p>[(e) Make recommendations to the Conference of the Parties with respect to environmental impact assessments;]</p> <p>[(f) Review environmental impact assessment standards to ensure consistency with the requirements under this Agreement;]</p> <p>[(g) Identify innovative, efficient and state-of-the-art technology and know-how relating to the conservation and sustainable use of marine biological diversity;]</p> <p>[(h) Advise on ways and means to promote the development and transfer of marine technology;]</p> <p>[(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;]</p> <p>[(j) Collaborate with regional and subregional committees on capacity-building and the transfer of marine technology or regional needs assessment mechanisms;]</p> <p>[(k) Elaborate programmes for capacity-building and the transfer of marine technology;]</p> <p>[(l) Establish subsidiary bodies as required;]</p> <p>(m) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.</p>		
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## **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

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

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 institutioBT/F3 9P72.48 83.4p[(-]

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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.]



<p>funded through voluntary contributions.</p> <p>[Alt.1</p> <p>5. In addition to the voluntary trust fund, a special fund [may] [shall] be established by the Conference of the Parties to:</p> <p>(a) Fund capacity-building projects, including effective projects on the conservation and sustainable use of marine biological diversity;</p> <p>(b) Fund activities and programmes, including training, related to the transfer of technology;</p> <p>(c) Assist developing States Parties to implement this Agreement;</p> <p>(d) Finance the rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction;</p> <p>(e) Support conservation and sustainable use programmes by holders of traditional knowledge of indigenous peoples and local communities;</p> <p>(f) Support public consultations at the national, subregional and regional levels;</p> <p>(g) Undertake any other functions as agreed by the States Parties.</p> <p>5bis. The special fund shall be funded through:</p> <p>(a) Voluntary contributions;</p> <p>[(b) Mandatory sources, including:</p> <p>(i) Contributions from States Parties and royalties and milestone payments resulting from the utilization of marine genetic</p>		<p>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.</p> <p>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.</p> <p>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 <a href="#">Article 21</a> and <a href="#">Article 39</a> 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.</p> <p>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 exploration and exploitation.</p> <p>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.</p> <p>In the event that the Parties agree to language</p>
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<p>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].</p>		
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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.]		
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## [ANNEX I Indicative criteria for identification of areas]

Draft text	Proposed text	Commentary
<p>[(a) Uniqueness;</p> <p>[(b) Rarity;]</p> <p>(c) Special importance for the life history stages of species;</p> <p>(d) Special importance of the species found therein;</p> <p>(e) The importance for threatened, endangered or declining species or habitats;</p> <p>(f) Vulnerability, including to climate change and ocean acidification;</p> <p>(g) Fragility;</p> <p>(h) Sensitivity;</p> <p>(i) Biological diversity [and productivity]; [(j) Representativeness;]</p> <p>(k) Dependency;</p> <p>[(l) Exceptional naturalness;]</p> <p>(m) Ecological connectivity [and/or coherence];</p> <p>(n) Important ecological processes occurring therein;</p> <p>[(o) Economic and social factors;]</p> <p>[(p) Cultural factors]</p> <p>[(q) Cumulative and transboundary impacts;]</p> <p>(r) Slow recovery and resilience;</p> <p>(s) Adequacy and viability;</p>		<p>The list of indicative criteria is good but should be amended slightly to be consistent with the criteria used in <a href="#">CBD COP Decision IX/20 (annex 1)</a> to describe ecologically or biologically significant areas (EBSAs), e.g. the</p>

(t) Replication; (u) Feasibility.]		
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