**Submission of proposals during BBNJ IGC-5**

**Template**

*Please fill out one form for each article which your delegation(s) or group(s) wish(es) to propose, amend or delete.*

1. **Name(s) of Delegation(s) and/or Group(s) making the proposal:**

AFRICAN GROUP, CARICOM, CLAM and PSIDS

1. **Please indicate the relevant part of the Revised draft text (as reflected in A/CONF.232/2020/3) that this proposal relates to, using the drop-down menu below.**

PART V CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

1. **Please indicate the relevant article of the Revised draft text (as reflected in A/CONF.232/2020/3) that this proposal relates to or indicate if this is a proposal for an additional article. If the proposal is for an additional article, please indicate where the article is to be inserted by citing the article that will immediately precede the proposed additional article.**

Definitions and Part II

1. **Kindly provide the amendments to the article that are being proposed in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the article that are being amended or deleted - examples are attached for reference.**

**PART II – MARINE GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS**

**Article 1 – Use of terms**

For the purposes of this Agreement:

1. “Access” refers to, in relation to marine genetic resources, the collection and utilization of marine genetic resources or derivatives thereof *in situ, ex situ*, *~~in silico~~* or other methods of information storage as digital sequence information.

5. “Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

6. “Collection”, in relation to marine genetic resources, means the collection or sampling of marine genetic resources in areas beyond national jurisdiction.

9. “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.

11. **Option A**: “Marine genetic resources” means any genetic material of marine plant, animal, microbial or other origin containing functional units of heredity, as well as any material, derivative and noncoding regions of nucleic acids, with actual or potential value of their genetic, chemical and biochemical properties, including digital sequence information and data.

19. “Utilization of marine genetic resources” means to conduct research and development on the genetic, biochemical, informational and sequence composition of marine genetic resources and their derivatives thereof, as well as subsequent applications and commercialization of products arising from or related to marine genetic resources of areas beyond national jurisdiction, including biotechnology as defined in this Agreement.

20. “Digital sequence information” means any information in electronic or other format including DNA, RNA and protein sequence information or information on derivatives resulting from the utilization of marine genetic resources of areas beyond national jurisdiction.

**Article 7**

**Objectives**

The objectives of this Part are to:

(a) Ensure the fair and equitable sharing of benefits arising from marine genetic resources, including as digital sequence information, of areas beyond national jurisdiction;

(b) Build and develop the capacity of developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to collect *in situ*, access *ex situ*, including as digital sequence information, 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) Ensure the development and transfer of marine technology.

**Article 8**

**Application**

1. The provisions of this Agreement shall apply to the collection *in situ* of, access *ex situ*, including as digital sequence information, to, and to the utilization of marine genetic resources and their derivatives of areas beyond national jurisdiction, as defined in this Agreement.

2. The provisions of this Part shall not apply to [the use of fish and other biological resources as a commodity] [fishing and fishing activities regulated under relevant international law].

3. **Option A**: The provisions of this Agreement shall apply to marine genetic resources collected *in situ*, and accessed *ex situ*, including as digital sequence information, after the entry into force of the Agreement, as well as to those resources collected *in situ* before its entry into force but utilized after its entry into force.

**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 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 in areas within the national jurisdiction of which such resources are found.]

*[The proposal supports having due regard for the rights of coastal States, and working with the Small Working Group to find a landing to cover art. 9(2) and art. 10(6).*

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.~~]~~

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

**Article 10**

**[Access][Collection] *in situ* of*,* access *ex situ* to*,* including as digital sequence information, and utilization of marine genetic resources of areas beyond national jurisdiction**

2. Collection *in situ* of marine genetic resources within the scope of this Part shall be subject to [an electronic] self-declaratory notification to the clearing-house mechanism.

3. Parties shall ensure that the following information regarding the collection *in situ* of marine genetic resources of areas beyond national jurisdiction is [periodically] [annually] transmitted to the open and self-declaratory electronic system within the clearing-house mechanism at least six months prior to the collection *in situ* of marine genetic resources of areas beyond national jurisdiction:

(a) The repository or database where environmental meta-data, taxonomic information and digital sequence information related to marine genetic resources, where available, are or will be deposited;

(b) Where the original samples, if available, are or will be held;

(c) The results of the project, including a report detailing the geographical area from which marine genetic resources were collected, including information on the latitude, longitude, and depth of collection, and, to the extent available, the findings of the activity undertaken, including, but not limited to:

(i) The nature, ~~and~~ the objectives and the time length of the project, including as appropriate, any programme(s) of which they form part;

(ii) The resources collected including their unique identifiers associated with the original samples, and the purposes for which these resources were collected;

(iii) The geographical areas in which the collection was undertaken;

(iv) The date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;

(v) A summary of the method and means ~~to be~~ used for collection, including the name, tonnage, type and class of vessels, scientific equipment and/or study methods employed;

(vi) The name(s) of the sponsoring institution(s), the director(s), and the person in charge of the project;

(vii) Indication of opportunities, for scientists of all States, in particular for scientists from developing countries to be involved/associated in the Project and further developments;

(viii) 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 and further developments;~~.~~

(ix) Development of any commercial products including marine genetic resources of areas beyond national jurisdiction in their composition;

(x) Submission for intellectual property rights and/or the intellectual property right licences, including the indication of the respective jurisdictions of interest;

(xi) Contact details for enquiries or access to samples.

4. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that databases, repositories and gene banks under their jurisdiction are required to periodically notify the open and self-declaratory notification system within the clearing-house mechanism regarding marine genetic resources of areas beyond national jurisdiction that were accessed during that period of time, including as digital sequence information, based on recommendations of the access and benefit sharing mechanism.

5. The utilization of marine genetic resources of areas beyond national jurisdiction, such as defined in this Agreement, shall be subject to self-declaratory electronic notification to the clearing-house mechanism, and shall include an indication of the location, collection or database of the used resources, the date of utilization of the resources, the resources that were utilized, the purposes for which the resources were utilized and the person or entity that utilized the resources, among other recommendations of the access and benefit sharing mechanism, in accordance with the following provisions:

(a) in the case of research and development, the notification of utilization shall be made no later than the moment when the results are made public in scientific publications or databases;

(b) in the case of commercialization, the notification of utilization shall be made no later than the commercialization of a final product; and

(c) in the case of intellectual property rights claims, such as patents and cultivars, the notification of utilization shall be made no later than the deposit of such claim at the intellectual property rights correspondent office.

6. The open and self-declaratory notification system within the clearing-house mechanism shall operate according to, but no limited to, the following provisions:

(a) Users of marine genetic resources of areas beyond national jurisdiction shall have a valid profile in the electronic system and accept the terms and conditions as internationally agreed;

(b) The valid profile in the electronic system shall be used to notify activities related to the collection in situ of, access ex situ, including as digital sequence information, to, and utilization of marine genetic resources of areas beyond national jurisdiction, and benefit-sharing, in accordance to this Article;

(c) Users shall regularly update their profiles by providing the appropriate notifications in accordance to this Article;

(d) For each self-declaratory notification made under this Article, a [receipt] [certificate] will be automatically [generated] [provided] by the electronic system, which will be called Internationally Recognised Certificate of Compliance.

7. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that:

(a) Users under their jurisdiction are required to notify the open and self-declaratory notification system within the clearing-house mechanism in the cases of collection in situ of, access ex situ, including as digital sequence information, to, and utilization of marine genetic resources of areas beyond national jurisdiction, in accordance with this Article;

(b) Profiles in the electronic system are properly updated by their users;

(c) The information provided to the open and self-declaratory electronic system is accurate and reliable.

8. Parties shall promote cooperation in collection *in situ* ofmarine genetic resources of areas beyond national jurisdiction*,* such as giving information on current and future cruise opportunities for the benefit of developing countries, and cooperation in access *ex situ* to, including as digital sequence information, and utilization of marine genetic resources of areas beyond national jurisdiction.

9. Parties shall transmit information received from natural or juridical persons under their jurisdiction or control to the clearing-house mechanism in case of commercialization of products containing marine genetic resources of areas beyond national jurisdiction. The access and benefit sharing mechanism shall review such information and make recommendations to the Conference of the Parties.

10. Parties shall nominate a National Focal Point to the clearing-house mechanism with a view to monitoring compliance with this agreement by their nationals.

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

**Article 10bis**

**Access to traditional knowledge of indigenous peoples and local**

**communities associated with marine genetic resources of areas**

**beyond national jurisdiction**

Parties shall take legislative, administrative or policy measures, where relevant and as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources 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. Access to such traditional knowledge may be facilitated by the clearing-house mechanism. Access to and use of such traditional knowledge shall be on mutually agreed terms.

**Article 11**

**Fair and equitable sharing of benefits**

**OPTION II:**

1. The benefits arising from marine genetic resources of areas beyond national jurisdiction shall be shared in a fair and equitable manner according to this Part.

2. Benefits shall include monetary and non-monetary benefits, including various types of contributions to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

3. Non-monetary benefits shall be shared in the form of:

(a) Access to samples and sample collections;

(b) Collection, access and utilization information contained in the notifications to the electronic system within the clearing-house mechanism provided in accordance with article 10;

(c) Transfer of technology;

(d) Capacity-building, including by financing dedicated initiatives, and partnership opportunities in research projects, particularly for developing countries;

(e) Findable, accessible, interoperable and reusable scientific data, including digital sequence information according to international practice in these fields;

(f) Access to digital sequence information and data related to marine genetic resources of areas beyond national jurisdiction, taking into account current international practice in the field;

(g) Increased scientific cooperation, particularly with scientists and scientific institutions from developing countries;

(h) Other forms as determined by the Conference of the Parties based on recommendations of the access and benefit sharing mechanism.

4. Monetary benefits shall be shared through the modalities determined by the Conference of the Parties such as:

(a) Milestone payments;

(b) Royalties;

(c) The initial rate of payment shall be 2 per cent of the value of sales of the Product at the first year. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 8 per cent thereafter, except as otherwise determined by the Access and Benefit Sharing Mechanism;

(d) Other forms as are determined by the Conference of the Parties based on recommendations of the access and benefit sharing mechanism.

5. The Conference of the Parties shall determine the rate of payments related to monetary benefits based on the recommendations of the access and benefit sharing mechanism.

6. The payments shall be made through the financial mechanism established under article 52, which shall distribute them to Parties to this Agreement, on the basis of equitable sharing criteria, taking into account the interests and needs 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, according to mechanisms established by the access and benefit sharing mechanism.

7. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the collection *in situ* of, access *ex situ*, including as digital sequence information, to, and 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.

8. Parties shall promote cooperation on compliance concerning benefit sharing according to this Agreement.

**Article 11bis**

**Access and benefit sharing mechanism**

1. An access and benefit sharing mechanism is hereby established. It shall serve, *inter alia*, as a means for establishing mandatory guidelines for benefit-sharing, in accordance with article 11, providing transparency and ensuring a fair and equitable sharing of both monetary and non-monetary benefits.

2. The access and benefit sharing mechanism shall be composed of members elected by the Conference of the Parties from among the candidates nominated by the Parties. If necessary, the Conference of the Parties may decide to increase the size of the mechanism having due regard to economy and efficiency. In the election of members of the mechanism, due account shall be taken of the need for equitable geographical representation, and majority of the members shall be from developing States.

3. Members of the mechanism shall have appropriate qualifications in the area of competence of that mechanism. Parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the mechanism.

4. The mechanism shall:

(a) Make recommendations to the Conference of the Parties on matters relating to this Part of the agreement;

(b) Propose measures to implement decisions taken in accordance with this Agreement;

(c) Propose rates or mechanisms for the sharing of monetary benefits according to article 11;

(d) Review reports from Parties made under article 13;

(e) Make recommendations on matters relating to the clearing-house mechanism according to article 51 on access and benefit-sharing;

(f) Make recommendations on matters relating to the financial mechanism established under article 52;

(g) Make recommendations on other matters relating to this Part of the agreement.

5. Parties shall make available to the access and benefit sharing mechanism the information required by this Agreement, which shall include:

(a) Legislative, administrative and policy measures on access and benefit sharing;

(b) Information on national focal points;

(c) Other information required pursuant to the decisions taken by the Conference of the Parties.

6. The access and benefit sharing mechanism shall collect information on current international best practices relating to marine genetic resources of areas beyond national jurisdiction and make recommendations to the Conference of the Parties in the adoption of appropriate rules, guidelines or a code of conduct for the collection *in situ* of, access *ex situ*, including as digital sequence information, to, the utilization of such resources, and benefit sharing, according to this Agreement.

**Article 13**

**OPTION I:**

**Monitoring and transparency system for benefit sharing**

~~2.~~ 1. Monitoring and transparency of the collection *in situ* of, access *ex situ*, including as digital sequence information, to, and the utilization of marine genetic resources of areas beyond national jurisdiction shall be carried out through an open and self-declaratory [electronic] system within the clearing-house mechanism, according to rules, regulations and procedures adopted by the Conference of the Parties as recommended by the access and benefit sharing mechanism.

2 Parties shall [annually] [biennially] [periodically] submit reports to the access and benefit sharing mechanism about the utilization of marine genetic resources of areas beyond national jurisdiction under their national jurisdiction and sharing of benefits therefrom. Such reports shall be submitted through a national focal point designated by each Party. The access and benefit sharing mechanism shall review such reports and make recommendations to the Conference of the Parties.

3. The access and benefit sharing mechanism shall gather the information received through the clearing-house mechanism, including that submitted by national focal points, and make it available to Parties, which may submit comments.

4. The access and benefit sharing mechanism will prepare a report that shall include the comments received in accordance with paragraph 5 above, for the consideration of the Conference of the Parties, and the Conference of the Parties may adopt the recommendations of the access and benefit sharing mechanism to facilitate the implementation of this Part.

5 The Conference of the Parties shall determine appropriate guidelines for the implementation of this [article] [Part], which shall consider the national capabilities and circumstances of Parties.

1. **Rationale for the proposal, if any.**

The text highlighted in yellow indicates the cross-regional proposal has these issues open at this time.