

Advance, unedited version (English only)

**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**

Second session

New York, 25 March – 5 April 2019

President's aid to negotiations

Part one

Introduction

1. The Intergovernmental Conference has been convened pursuant to General Assembly resolution 72/249 of 24 December 2017 to consider the recommendations of the Preparatory Committee established pursuant to Assembly resolution 69/292¹ on the elements and to elaborate the text of 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, with a view to developing the instrument as soon as possible.²

2. The negotiations shall address the topics identified in the package agreed in 2011, namely, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.³

¹ A/AC.287/2017/PC.4/2.

² Resolution 72/249, para. 1.

³ Ibid., para. 2.

3. The work and results of the Conference should be fully consistent with the provisions of the Convention.⁴ The process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.⁵
4. Following the first session of the Conference, held from 4 to 17 September 2018, which discussed the topics identified in the package of 2011 and some cross-cutting issues, the present document was prepared by the President of the Conference, with the assistance of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, in response to the request by the Conference to prepare a document, with the aim of facilitating focused discussions and text-based negotiations. In her closing statement, the President had indicated that the document would contain treaty language and reflect options concerning the four elements of the package, and that its preparation would take into account the views and options presented at the first session, as well as other materials produced in the context of the Preparatory Committee.
5. The present aid to negotiations aims to respond to the request by the Conference. The options presented are based on the discussions held to date in the context of the Conference and take into account the discussions in the Preparatory Committee drawing from section III of the report of the Preparatory Committee. The present document attempts to translate ideas and proposals generated during the discussions thus far into treaty text where possible. While not every individual idea or proposal was given specific expression in the document, the options presented attempt to reflect the general thrust of these ideas and proposals. The presentation of an option indicating “*no text*” reflects suggestions that no provision would be necessary in the instrument for a particular issue. Apart from the “*no text*” option, there are some other options presented in italics. There are also options where the text is incomplete. These options indicate that the ideas and proposals generated thus far on a particular issue may benefit from more elaboration to allow for the further development of treaty text.
6. The options and sub-options are presented according to the following structure:

OPTION I

Option A

Option 1

Option a

The order in which options appear in the present document should not be construed as indicating a suggested order of priority, nor should it be taken as an indication of the level of support for any particular option.

7. For ease of reference, the structure of the document follows generally that of the President’s aid to discussions,⁶ including the numbering of the sections and sub-sections. There are three exceptions, as follows: (i) general elements, including use of terms, scope of application, objectives and relationship to the Convention and other instruments and frameworks and relevant global, regional and sectoral bodies; (ii) general principles and approaches, and international cooperation, and (iii)

⁴ Ibid., para. 6.

⁵ Ibid., para. 7.

⁶ A/CONF.232/2018/3

institutional arrangements. For each of these sections, while the issues were reflected in the context of each of the elements of the package in the President's aid to discussions, treaty text reflecting ideas and proposals expressed on these issues has been placed together, with sub-headings for each of the elements. This is to assist delegations in identifying common aspects or ideas, as well as ideas which are specific to a particular element. In addition, in order to reflect some of the ideas and proposals raised, the present document also includes two sections that did not appear in the aid to discussions, namely a sub-section entitled "Other subsidiary bodies" under the section on institutional arrangements, and a section entitled "Review", the latter being included in section III.A of the report of the Preparatory Committee.

8. The structure of this document is without prejudice to the structure of the future instrument. The content of this document is also without prejudice to the position of any delegation on any of the matters referred to therein. Further, the options listed are not intended to be exhaustive and do not preclude consideration of matters not included in this document.

9. The aim of the aid to negotiations is to facilitate focused discussion and text-based negotiations. To this end, delegations are encouraged to study the aid to negotiations with a view to understanding the key issues requiring further discussions and the range of options that have been proposed. Delegations may also wish to consider ideas and proposals that may narrow the range of options, including by developing textual proposals that can help to bridge the differences in the options presented. Finally, delegations are invited to consider the cross-cutting issues that were not included in the President's aid to discussions: preambular elements; financial resources and issues; compliance; settlement of disputes; responsibility and liability; review and final clauses, in light of the options presented in the present document.

Part two

The aid to negotiations

II. General elements

1. Use of terms⁷

For the purposes of this instrument:

[Terms raised in relation to marine genetic resources, including questions on the sharing of benefits]

- 1) **OPTION I:** “Access” means ...
OPTION II: *No text*
- 2) **OPTION I:** “Bioprospecting” means ...
OPTION II: *No text*
- 3) **OPTION I:** “Biotechnology” means ...
OPTION II: *No text*
- 4) **OPTION I:** “Derivatives” means ...
OPTION II: *No text*
- 5) **OPTION I:** “*Ex situ*” means ...
OPTION II: *No text*
- 6) **OPTION I:** “*In silico*” means ...
OPTION II: *No text*
- 7) **OPTION I:** “*In situ*” means ...
OPTION II: *No text*
- 8) **OPTION I:** “Marine genetic material” means any material of plant, animal, or microbial origin containing functional units of heredity collected from the Area; it does not include material made from material, such as derivatives, or information describing material, such as genetic sequence data.
OPTION II: *No text*
- 9) **OPTION I:** “Marine genetic resources” means:
Option A: 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, as well as any material, derivatives and/or data thereof, with actual or potential value, of their genetic and biochemical properties.

⁷ Suggestions were made that some specific definitions of relevance to only one part of the instrument could be included under the respective parts. Suggestions were also made to draw from the definitions under existing instruments and bodies.

Option B: any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.

Option C: any marine genetic material of plant, animal, or microbial origin of actual or potential value collected from the Area.

OPTION II: *No text*

10) **OPTION I:** “Marine scientific research” means ...

OPTION II: *No text*

11) **OPTION I:** “Origin” means ...

OPTION II: *No text*

12) **OPTION I:** “Source” means ...

OPTION II: *No text*

13) **OPTION I:** “Use” means...

OPTION II: *No text*

14) **OPTION I:** “Utilization of marine genetic resources” means ...

OPTION II: *No text*

[Terms raised in relation to measures such as area-based management tools, including marine protected areas]

15) “Area-based management tool” means:

OPTION I: a tool designed and applicable in a specified area located beyond national jurisdiction with a view to achieving defined objectives.

OPTION II: a spatial management tool for a geographically defined area through which one or several sectors/activities are managed with the aim of achieving particular conservation objectives and affording higher protection than the surrounding areas.

16) “Marine protected area” means a geographically defined marine area which is designated or regulated and managed to achieve specific conservation objectives.

[Terms raised in relation to environmental impact assessments]

17) **OPTION I:** “Cumulative impacts” means impacts on the same ecosystems resulting from different activities, or from the repetition of similar activities over time.

OPTION II: *No text*

18) **OPTION I:** “Strategic environmental assessment” means ...

OPTION II: *No text*

19) “Environmental impact assessment” means a process to evaluate the environmental impacts 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-related socioeconomic, cultural and human health impacts, both beneficial and adverse.

20) “Environment” means ...

21) “Thresholds” means ...

22) “Criteria” means ...

[Terms raised in relation to capacity-building and the transfer of marine technology]

23) **OPTION I:** “Transfer of marine technology” means ...

Option A: transfer of 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 oceans.

Option B: transfer of information on the use of technology, including intellectual property rights.

OPTION II: *No text*

24) **OPTION I:** “Marine technology” means information and data, 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; expertise, knowledge, skills, technical/scientific/legal know-how and analytical methods related to marine scientific research and observation.

OPTION II: *No text*

25) “Capacity-building” means ...

2. Scope of application

2.1 Geographical scope

- 1) The provisions of this instrument apply to areas beyond national jurisdiction.
- 2) The rights and jurisdiction of coastal States over all areas under their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone shall be respected.

2.2 Material scope

- 1) Unless otherwise provided, this instrument applies to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as

area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.

- 2) **OPTION I**: This instrument 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 shall ensure, by the adoption of appropriate measures not impairing 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 instrument.

OPTION II: *No text*

3. Objectives

- 1) The objective of this instrument is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction through effective implementation of the Convention.
- 2) **OPTION I**: To ensure the achievement of this overall objective, this instrument also aims to further international cooperation and coordination.

OPTION II: *No text*

4. Relationship to the Convention and other instruments and frameworks and relevant global, regional and sectoral bodies

- 1) Nothing in this instrument shall prejudice the rights, jurisdiction and duties of States under the Convention. This instrument shall be interpreted and applied in the context of and in a manner consistent with the Convention.
- 2) **OPTION I**: This instrument shall promote greater coherence with and complement existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. This instrument shall be interpreted and applied in a manner which does not undermine these instruments, frameworks and bodies.

OPTION II: The implementation of this instrument shall not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

OPTION III: This instrument shall be implemented in a mutually supportive manner with other international instruments relevant to this instrument. Due regard should be paid to useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the Convention and this instrument.

- 3) **OPTION I:** The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this instrument.

OPTION II: *No text*

III. Conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

1. General principles and approaches⁸

- 1) In order to conserve and sustainably use marine biological diversity of areas beyond national jurisdiction, States Parties shall:
- (a) Respect the balance of rights, obligations and interests enshrined in the Convention
 - (b) Have due regard to the rights, duties and interests of other States as reflected in relevant provisions of the Convention
 - (c) Respect the rights and jurisdiction of coastal States over all areas under their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone
 - (d) Respect the sovereignty and territorial integrity of all States
 - (e) Use marine biological diversity of areas beyond national jurisdiction for peaceful purposes only
 - (f) Promote both the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
 - (g) Promote sustainable development
 - (h) Promote international cooperation and coordination, at all levels, including north-south, south-south, and triangular cooperation
 - (i) Promote relevant stakeholders' engagement
 - (j) Apply an ecosystem approach
 - (k) Apply a precautionary approach
 - (l) Apply an integrated approach
 - (m) Apply a science-based approach, using the best available scientific information and knowledge, including traditional knowledge
 - (n) Adopt measures to ensure an adaptive management of marine biological diversity of areas beyond national jurisdiction
 - (o) Adopt measures to build resilience to the effects of climate change
 - (p) Act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another
 - (q) 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

⁸ Suggestions were made that some of these principles and approaches would be included in a separate article and some in the preamble.

- (r) Promote and facilitate public participation in addressing the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction and developing adequate responses
- (s) Ensure transparency and availability of information
- (t) Take into account the special requirements of small islands developing States and least developed countries, including by ensuring that measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing countries
- (u) Fulfil in good faith the obligations assumed under this instrument and exercise the rights recognized in this instrument in a manner which would not constitute an abuse of right
- (v) Take into account adjacency

[General principles and approaches raised in relation to marine genetic resources, including questions on the sharing of benefits]

- 1) The following general principles and approaches apply to marine genetic resources of areas beyond national jurisdiction, including questions on the sharing of benefits:
 - (a) **OPTION I**: Common heritage of mankind
OPTION II: *No text*
 - (b) **OPTION I**: Freedom of the high seas
OPTION II: The freedom of the high seas shall govern the provisions for access to marine genetic resources of areas beyond national jurisdiction while the common heritage of mankind shall govern their exploitation
 - (c) Recognition of the special case of small island developing States
 - (d) Duty to protect and preserve the marine environment
 - (e) Marine scientific research shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole
 - (f) Equity/equitable sharing of benefits
 - (g) Intra- and intergenerational equity
 - (h) Non-appropriation
 - (i) Best available scientific information
 - (j) Traditional knowledge
 - (k) Common concern of humankind
 - (l) Duty to share information and knowledge
 - (m) **OPTION I**: Precautionary approach
OPTION II: Precautionary principle
 - (n) Adjacency
 - (o) Compatibility
 - (p) The right to conduct marine scientific research
 - (q) Promotion of marine scientific research and technological innovation
 - (r) Common but differentiated responsibilities
 - (s) Sustainable development
 - (t) Transparency
 - (u) Accountability

[General principles and approaches raised in relation to area-based management tools, including marine protected areas]

- 1) The following general principles and approaches apply to measures such as area-based management tools, including marine protected areas:
 - (a) Transparency
 - (b) **OPTION I:** Precautionary approach
OPTION II: Precautionary principle
 - (c) Science-based approach
 - (d) Integrated management approach
 - (e) Ecosystem approach
 - (f) Protection and preservation of the marine environment
 - (g) Sustainable and equitable use, which also relates to the principle of common heritage of mankind
 - (h) Adaptive management
 - (i) Accountability
 - (j) Liability
 - (k) International cooperation and coordination
 - (l) Use of the best available science
 - (m) Intergenerational equity
 - (n) Special case of small island developing States
 - (o) No disproportionate burden of conservation on small island developing States
 - (p) Regional characteristics
 - (q) **OPTION I:** Adjacency
OPTION II: *No text*
 - (r) Compatibility
 - (s) Due regard
 - (t) Inclusivity
 - (u) Differentiated protection
 - (v) Balance between conservation and sustainable use
 - (w) Necessity and proportionality
 - (x) Restoration of integrity of ecosystems
 - (y) Good environmental governance

[General principles and approaches raised in relation to environmental impact assessments]

- 1) The following general principles and approaches apply to environmental impact assessments:
 - (a) Responsibility to protect and preserve marine environment
 - (b) Due diligence
 - (c) **OPTION I:** Precautionary approach
OPTION II: Precautionary principle
 - (d) Common heritage of mankind
 - (e) Universal participation
 - (f) Public participation
 - (g) Respect for traditional knowledge and practices
 - (h) The special circumstances of small island developing States shall be taken into account
 - (i) Ecosystem-based approach

- (j) Science-based approach
- (k) Transparency in decision-making
- (l) Intra- and intergenerational equity
- (m) Non-regression
- (n) Compliance
- (o) Polluter-pays principle
- (p) Liability
- (q) Connectivity
- (r) Adjacency
- (s) Compatibility
- (t) Peaceful purposes
- (u) Marine scientific research activities shall not constitute the legal basis for any claim to any part of the marine environment or its resources

[General principles and approaches raised in relation to capacity-building and the transfer of marine technology]

- 1) The following general principles and approaches apply to capacity-building and the transfer of marine technology:
 - (a) Responsiveness to the objective of this instrument
 - (b) Responsiveness to the needs of developing countries, including:
 - (i) Small island developing States
 - (ii) Least developed countries
 - (iii) Landlocked developing countries
 - (iv) Geographically disadvantaged developing States
 - (v) Coastal African States
 - (vi) Developing middle income countries
 - (vii) Environmentally challenged and vulnerable States
 - (c) Recognition of the special circumstances of developing countries
 - (d) Full recognition of the special case of small island developing States/special circumstances and needs of small island developing States
 - (e) Be needs-based and country driven
 - (f) **OPTION I:** Duty to provide preferential treatment to developing countries
OPTION II: *No text*
 - (g) Involvement of relevant stakeholders
 - (h) Duty to cooperate / collaborate
 - (i) Duty to promote the development of marine scientific and technological capacity of States
 - (j) Duty to share information/provide data
 - (k) Recognition and sharing of traditional knowledge
 - (l) Best available science
 - (m) Inter- and intra-generational equity
 - (n) Equitable access
 - (o) Empowerment
 - (p) Transparency
 - (q) Accountability

- (r) Flexibility
- (s) Pertinence
- (t) Effectiveness
- (u) Inclusiveness
- (v) Good governance and best practices
- (w) Sector-specific and multidisciplinary
- (x) Transfer of marine technology for peaceful purposes

2. International cooperation

States Parties shall cooperate for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

3. Marine genetic resources, including questions on the sharing of benefits

The provisions of this Part and the Convention shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Part and the Convention, the provisions of this Part shall prevail.

3.1 Scope

[Geographical scope]

1) **OPTION I**: This Part applies to marine genetic resources:

Option A: of the high seas and the Area.

Option B: accessed in areas beyond national jurisdiction.

Option C: of the Area.

OPTION II: *No text*

2) **OPTION I**:

(a) **Option A**: Nothing in this Part shall prejudice the rights, jurisdiction and duties of States under the Convention. This Part shall be interpreted and applied in the context of and in a manner consistent with the Convention.

Option B: This Part is without prejudice to the sovereign rights and jurisdiction of coastal States in areas within their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone.

(b) **Option A**: Measures for the conservation and sustainable use of marine genetic resources of areas beyond national jurisdiction and those adopted for areas within national jurisdiction shall be compatible in order to ensure the conservation and

sustainable use of marine genetic resources found in areas both within and beyond national jurisdiction.

Option B: *No text*

- (c) **Option A:** Activities with respect to marine genetic resources of areas beyond national jurisdiction which are also found in areas within national jurisdiction shall be conducted with due regard to the rights and legitimate interests of any coastal State under whose jurisdiction such resources are found. Consultations, including a system of prior notification, shall be undertaken with the State concerned, with a view to avoiding infringement of such rights and interests. In cases where activities with respect to marine genetic resources of areas beyond national jurisdiction may result in the exploitation of marine genetic resources which are found in areas both within and beyond national jurisdiction, the prior consent of the coastal State concerned shall be required.

Option B: *No text*

- (d) **Option A:** Adjacent coastal States which have made a submission to the Commission on the Limits of the Continental Shelf shall also be consulted.

Option B: *No text*

OPTION II: *No text*

[Material scope]

1) This instrument applies to:

- (a) **OPTION I:** the use of fish and other biological resources for research into their genetic properties.

OPTION II: *No text*

- (b) **OPTION I:** marine genetic resources collected *in situ*, accessed *ex situ*, and *in silico* and digital sequence data.

OPTION II: marine genetic resources collected *in situ* and accessed *ex situ*.

OPTION III: marine genetic resources collected *in situ*.

- (c) **OPTION I:** derivatives.

OPTION II: *No text*

2) **OPTION I:** This instrument does not apply to:

- (a) **Option A:** the use of fish and other biological resources as a commodity.

- (i) **Option 1:** Fish and other biological resources that are collected beyond a threshold amount shall be considered as a commodity. The threshold amount shall be determined by the body set forth in Part ...

Option 2: If a species of fish is found to have value for its genetic material, that species of fish shall be treated as a marine genetic resource, regardless of the volume of the catch.

Option B: *No text*

- (b) **Option A:** marine genetic resources accessed *ex situ* and *in silico* and digital sequence data

Option B: marine genetic resources *in silico* and digital sequence data

Option C: *No text*

- (c) **Option A:** derivatives.

Option B: *No text*

OPTION II: *No text*

[Temporal scope]

OPTION I: This instrument applies to marine genetic resources collected after its entry into force.

OPTION II: *No text*

3.2 Access and benefit-sharing

OPTION I: States Parties shall cooperate in the conservation and sustainable use of marine genetic resources of areas beyond national jurisdiction, including questions on the sharing of benefits, taking into account

- (a) the special requirements of developing countries for capacity-building and the transfer of marine technology.

- (b) the special circumstances and needs of small island developing States.

OPTION II: Having regard to Part XIV, section 2, of the Convention, States Parties shall cooperate with respect to marine genetic resources of areas beyond national jurisdiction, including questions on the sharing of benefits.

3.2.1 Access

OPTION I: Access to marine genetic resources of areas beyond national jurisdiction shall be governed by the provisions of the Convention.

OPTION II:

- 1) Access to marine genetic resources of areas beyond national jurisdiction shall be undertaken in accordance with the provisions of this Part.
- 2) The provisions of this Part apply to:

Option A:

- (a) access for bioprospecting purposes; and
- (b) access to marine genetic resources of the Area.
- (c) The provisions of this Part do not apply to marine scientific research activities.

Option B: access to marine genetic resources of areas beyond national jurisdiction for commercial purposes.

Option C: all activities related to marine genetic resources of areas beyond national jurisdiction.

- 3) Conditions to promote and encourage marine scientific research which contributes to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, taking into account the need to address a change of intent for such research, shall be established.
- 4) Marine scientific research activities shall not constitute the legal basis for any claim to any part of the marine environment or its resources.
- 5) Access to marine genetic resources *in situ* within the scope of this Part shall be subject to:

- (a) **Option A:** a prior notification to the body set forth in Part ..., which shall include an indication of the location and date of access, the resources to be accessed, the purposes for which the resources will be used and what body will access the resources.

Option B: notification of collection of marine genetic research of areas beyond national jurisdiction as a first step of the sharing of non-monetary benefits.

Option C: a permit in the manner and under the terms and conditions set forth in this Part.

Option D: a license in the manner and under the terms and conditions set forth in this Part.

(b) **Option A:** the following terms and conditions:

- (i) an indication of the geographical coordinates of the location where marine genetic resources were collected;
- (ii) capacity-building;
- (iii) transfer of marine technology;
- (iv) the deposit of samples, data and related information in open source platforms such as databases, biorepositories and/or biobanks; and/or
- (v) contribution to an access and benefit-sharing fund.

Option B: *No text*

(c) **Option A:** additional requirements to be determined by the body set forth in Part ... for access to marine genetic resources in ecologically and biologically significant areas, vulnerable marine ecosystems and other specially protected areas in order to ensure conservation and sustainable use of the resources therein.

Option B: environmental impact assessments

Option C: *No text*

- 6) *Ex situ* access to marine genetic resources within the scope of this Part shall be free and open.
- 7) Access to *in silico* information and data shall be facilitated.
- 8) State Parties shall take measures with the aim of ensuring that traditional knowledge associated with marine genetic resources of areas beyond national jurisdiction that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.
- 9) State Parties shall take appropriate and effective legislative, administrative or policy measures to ensure that genetic resources of areas beyond national jurisdiction utilized within their jurisdiction have been accessed in accordance with this instrument.

OPTION III: *No text*

3.2.2 Sharing of benefits

(i) *Objectives*

OPTION I: Benefit-sharing under this instrument shall:

- (a) Contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

- (b) Build the capacity of developing countries to access and use marine genetic resources of areas beyond national jurisdiction
- (c) Promote marine scientific research conducted in accordance with the Convention
- (d) Promote knowledge generation and innovation
- (e) Promote equitable sharing of benefits arising from the use of marine genetic resources of areas beyond national jurisdiction
- (f) Support the realization of a just and equitable international economic order
- (g) Address the special case of small island developing States and aim to support their empowerment to effectively conserve as well as benefit from the sustainable use of biological diversity of areas beyond national jurisdiction
- (h) Recognize the needs and special circumstances of landlocked developing countries
- (i) Facilitate the transfer of technology
- (j) Ensure intergenerational equity

OPTION II: *No text*

(ii) *Principles and approaches guiding benefit-sharing*

OPTION I: The following principles and approaches apply to benefit-sharing:

- (a) **Option A:** Common heritage of mankind
Option B: *No text*
- (b) **Option A:** Freedom of the high seas
Option B: *No text*
- (c) Benefit of mankind as a whole
- (d) Use of areas beyond national jurisdiction and their resources by all States Parties shall be exclusively for peaceful purposes
- (e) No claim or exercise of sovereignty or sovereign rights over areas beyond national jurisdiction nor any appropriation shall be recognized
- (f) Benefits shall be shared equitably for present and future generations
- (g) The activities of exploration and exploitation of the resources of areas beyond national jurisdiction are governed by the international regime set out in this Part
- (h) The special case of small islands developing States shall be taken into account
- (i) Due consideration shall be given to the special needs of land-locked developing countries
- (j) Benefit-sharing shall be based on best available science
- (k) Benefit-sharing shall take into account traditional knowledge
- (l) Benefit-sharing shall take into account adjacency
- (m) Being beneficial to current and future generations
- (n) Promotion of marine scientific research and research and development
- (o) Sustainable use
- (p) Ecosystem-based management

OPTION II: *No text in this section*

(iii) *Benefits*

OPTION I:

- 1) For the purposes of this Part, “benefits” mean monetary and non-monetary benefits.
- 2) **Option A:** These benefits include but are not limited to those listed in annex ...,⁹ which shall be reviewed and further developed by the body set forth in Part ...

Option B: The body set forth in Part ... shall develop a non-exhaustive list of benefits, which shall be periodically reviewed.

OPTION II: For the purposes of this Part, “benefits” mean non-monetary benefits, and include but are not limited to capacity-building, exchange and public availability of information and scientific knowledge, access to samples and sample collections, access to technology and technical knowledge and transfer of technology.¹⁰

(iv) *Benefit-sharing modalities*¹¹

OPTION I: Benefits arising from the use of marine genetic resources of areas beyond national jurisdiction may be shared on a voluntary basis.

OPTION II:

- 1) Benefits arising from the utilization of marine genetic resources of areas beyond national jurisdiction shall be shared:

Option A: in accordance with this Part.

Option B: in accordance with the modalities adopted by the body set forth in Part ...

- 2) **Option A:** Entities which benefit from the exploitation of marine genetic resources shall share such benefits.

Option B: All users of marine genetic resources of areas beyond national jurisdiction shall share benefits arising out of the utilization of those resources.

⁹ Suggestions were made to draw from the following instruments to develop a list of benefits: Annex to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity; Part IV of the International Treaty on Plant Genetic Resources for Food and Agriculture; Parts XIII and XIV of the United Nations Convention on the Law of the Sea.

¹⁰ Suggestions were made to draw from Parts XIII (articles 242 and 244) and XIV (articles 266 and 269) of the United Nations Convention on the Law of the Sea.

¹¹ Suggestions were made to take into account the following instruments and frameworks when developing modalities for benefit-sharing: United Nations Convention on the Law of the Sea; Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity; International Seabed Authority; International Treaty on Plant Genetic Resources for Food and Agriculture; World Health Organization Pandemic Influenza Preparedness (PIP) Framework for the Sharing of Influenza Viruses and Access to Vaccines and other Benefits; Intergovernmental Oceanographic Commission of UNESCO; Global Environment Facility; World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights and World Intellectual Property Organization for matters related to intellectual property rights.

Option C: Those conducting marine scientific research shall share the benefits arising therefrom.

Option D: States Parties accessing, conducting research on, as well as exploiting and utilizing marine genetic resources of areas beyond national jurisdiction shall share the benefits arising therefrom.

Option E: Proponents of activities related to marine genetic resources of areas beyond national jurisdiction and companies that have patented and developed a commercial product shall share the benefits arising therefrom.

- 3) Benefits arising from the utilization of marine genetic resources of areas beyond national jurisdiction shall be shared with:

Option A: States Parties.

Option 1: States Parties, with special regard to developing countries such as small island developing States, least developed countries and geographically disadvantaged States, based on a needs assessment.

Option 2: States Parties, recognizing the needs and special circumstances of landlocked developing countries.

Option B: developing States Parties, with a specific allocation for small island developing States and some benefits prioritized to adjacent small island developing States. Recipients of benefits may also include non-governmental entities such as academic, research institutions, or coastal communities among others.

Option C: all States, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States and coastal African States.

Option D: developing countries, particularly least developed countries, landlocked developing countries, small islands developing States and coastal African States.

Option E: States Parties which may need and request technical assistance, particularly developing countries.

- 4) The benefits accrued shall be used to:
- (a) Contribute to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction
 - (b) Promote scientific research and facilitate access to marine genetic resources
 - (c) Build capacity to access and use marine genetic resources of areas beyond national jurisdiction
 - (d) Finance the activities of the bodies set forth in Part ...

- (e) Create and strengthen the capacity of States Parties to conserve and sustainably use marine biological diversity of areas beyond national jurisdiction, with a focus on small islands developing States
- (f) Support the transfer of marine technology

5) **Option A:** Benefits arising from the access and use of marine genetic resources of areas beyond national jurisdiction shall be shared at different stages in accordance with the following provisions.

(a) Option 1:

- (i) Non-monetary benefits shall be shared upon access to marine genetic resources of areas beyond national jurisdiction.
- (ii) Monetary benefits shall be shared against an embargo period for genetic sequence data or at the commercialization of products based on marine genetic resources of areas beyond national jurisdiction.
- (iii) The level of payments shall be as follows:
 - Option a: based on a sector-specific and pre-defined percentage (higher percentage if patented)*
 - Option b: one percent of net revenue originated from the commercial use of marine genetic resources of areas beyond national jurisdiction*

Option 2:

- (i) At the point of collection, samples, data and related information shall be available through open access.
- (ii) At the point of commercialization, benefits shall be shared in the form of milestone payments.

Option 3:

- (i) Access to samples, information exchange, technology transfer and capacity-building shall be provided at the time of access to, research on as well as exploitation and utilization of marine genetic resources.
- (ii) Access to samples and data shall be provided after ... years.

Option 4: Genetic sequence information related to marine genetic resources of areas beyond national jurisdiction shall be published and used taking into account current international practice in this field.

(b) Option 1: Monetary benefits shall be paid to the Fund set forth in Part ...

Option 2: *No text*

[Clearing-house mechanism]

OPTION I:

- 1) The clearing-house mechanism set forth in Part ... shall promote transparency in the use of marine genetic resources, disseminate data and scientific information, disseminate information concerning capacity-building and transfer of technology and improve cooperation and coordination.
- 2) The clearing-house mechanism shall perform the following functions in respect of marine genetic resources, including questions on the sharing of benefits:
 - (a) Promote and facilitate technical and scientific cooperation, knowledge and data sharing
 - (b) Serve as a platform to access, evaluate, publish and disseminate information
 - (c) Disseminate information related to marine genetic resources-related activities, including notice of upcoming *in situ* collections; research teams; information on the ecosystem where samples were collected, the genetic properties of the samples, their biochemical components and the genetic sequence data; regional centres or capacity-building and transfer of marine technology committees; benefit-sharing projects; reports on the status of monetary benefits shared and on use through publication of proceedings of the bodies set forth in Part ...; list of repositories, collections and data banks where marine genetic resources are currently present; a registry of marine genetic resources of areas beyond national jurisdiction; and a track and trace mechanism of organisms, genetic material and genetic resource and their utilization
 - (d) Disseminate information on research/study related to, and on traditional knowledge associated with, marine genetic resources of areas beyond national jurisdiction
 - (e) Disseminate information regarding capacity-building and transfer of marine technology opportunities, proceedings of capacity-building trainings, advertisement of trainings, best practices, or other tools to facilitate access to relevant expertise, and training on the use of the clearing-house mechanism
 - (f) Support the monitoring of compliance with this instrument
- 3) A protocol/code of conduct/guidelines to ensure environmental protection compliance and transparency in the use of marine genetic resources of areas beyond national jurisdiction shall be developed within the clearing-house mechanism.
- 4) A trust fund for the fair and effective sharing of benefits shall be established within the clearing-house mechanism.
- 5) States Parties shall provide access and benefit-sharing information to the clearing-house mechanism, including legislative, administrative and policy measures that have been adopted, and national focal points for access and benefit-sharing.

OPTION II: *No text in this section*

3.2.3 Intellectual property rights

OPTION I:

- 1) Marine genetic resources accessed in accordance with this instrument shall not be subject to patents except where these resources are modified by human intervention resulting in a product capable of industrial application.
- 2) States Parties shall take appropriate and effective legislative, administrative or policy measures to ensure that users of marine genetic resources shall disclose the origin of the marine genetic resources they utilize.
- 3) **Option A:** States Parties shall take appropriate and effective legislative, administrative or policy measures to ensure that intellectual property rights applications related to the use of marine genetic resources which do not comply with the regulations established under this Part shall not be approved.

Option B: States Parties shall take appropriate and effective legislative, administrative or policy measures to ensure that, when applying for patents, entities consult the body set forth Part ..., and propose benefit-sharing agreements in accordance with this Part.

OPTION II:

- 1) With respect to intellectual property rights, States Parties shall implement this instrument consistently with the rights and obligations of States under the relevant agreements concluded under the auspices of the World Intellectual Property Organization and the World Trade Organization.
- 2) States Parties shall cooperate to ensure that intellectual property rights are supportive of and do not run counter to the objectives of this instrument.

OPTION III: *No text*

3.3 Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction

OPTION I:

- 1) The utilization of marine genetic resources of areas beyond national jurisdiction shall be monitored in accordance with the provisions set out in this Part.
- 2)
 - (a) States Parties shall take appropriate and effective legislative, administrative or policy measures to provide that marine genetic resources of areas beyond national jurisdiction utilized within their jurisdiction have been accessed in accordance with this instrument.

- (b) Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction shall be carried out through the obligatory prior electronic notification system managed by:
Option A: *a mandated existing international institution*
Option B: the secretariat set forth in Part ...
- (c) An identifier shall be assigned to marine genetic resources collected *in situ*. In the case of marine genetic resources accessed *ex situ* or *in silico*, such identifier shall be assigned when repositories, gene banks or collections submit the list mentioned in paragraph [page 22, *OPTION I, para.2(c)*] to the clearing-house mechanism.
- (d) Repositories, gene banks and collections shall be required to notify the body set forth in Part ... when marine genetic resources, including derivatives, are accessed.
- (e) Proponents of marine scientific research in areas beyond national jurisdiction shall submit periodic status reports to the body set forth in Part ... as well as research findings, including data collected and all associated documentation.
- (f) States Parties shall submit reports to the decision-making body/forum set forth in Part ... about their utilization of marine genetic resources of areas beyond national jurisdiction. The decision-making body/forum shall review such reports and make recommendations.
- (g) Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction shall be carried by:
Option A: The scientific/technical body set forth in Part ...
Option B: The clearing-house mechanism set forth in Part ...

OPTION II: *No text*

4. Measures such as area-based management tools, including marine protected areas

4.1 Objectives of area-based management tools, including marine protected areas

- 1) Area-based management tools, including marine protected areas, shall contribute to the objective of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.
- 2) **OPTION I:** Depending on the type of tool, specific 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 and existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies
 - (b) effectively implementing existing international obligations, in particular those under the Convention, and international commitments
 - (c) promoting a holistic and cross-sectoral approach to ocean management

- (d) conserving and sustainably using areas designated to have special value under existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies
- (e) **Option A:** establishing a connected network of effective and equitably managed, ecologically representative marine protected areas
Option B: *no text*
- (f) rehabilitating and restoring ecosystems and biodiversity, including with a view to enhancing productivity, health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution
- (g) supporting food security and other socioeconomic objectives
- (h) creating scientific reference areas for baseline research
- (i) safeguarding aesthetic, natural or wilderness values

OPTION II: A non-exhaustive list of specific objectives shall be developed by the body set forth in Part ...

4.2 Relationship to measures under relevant instruments, frameworks and bodies

- 1) The implementation of this Part shall not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

[Promotion of coherence and complementarity in measures related to area-based management tools, including marine protected areas]

OPTION I:

- 2) States Parties shall promote coherence and complementarity in measures related to area-based management tools, including marine protected areas, through:

Option A: the global overarching framework for the recognition, establishment, implementation, enforcement, monitoring and review of such measures set out in this Part.

Option B: the global overarching framework for the establishment of a global network of marine protected areas, set out in this Part.

- 3) **Option A:** Measures related to area-based management tools, including marine protected areas, may be established, in accordance with this Part, where there is no competent global, regional or sectoral body.

Option B: Measures related to area-based management tools, including marine protected areas, may be established, in accordance with this Part, to complement measures designated under existing instruments and frameworks and relevant global, regional and sectoral bodies.

Option C: Marine protected areas may be established to complement measures designated under existing instruments and frameworks and relevant global, regional and sectoral bodies, in accordance with this Part.

4)

- (a) **Option A:** Without prejudice to the mandates of existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, area-based management tools, including marine protected areas, established under such instruments, frameworks and bodies shall go through a process of recognition by the global mechanism set forth in Part

Option B: Without prejudice to the mandates of existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, marine protected areas, established under such instruments, frameworks and bodies shall be recognized under this instrument, provided that such measures are established in accordance with the requirements set out in this Part.

Option C: Area-based management tools, including marine protected areas, established under existing relevant legal instruments and frameworks as well as under relevant global, regional or sectoral bodies shall automatically be recognized under this instrument, provided that such measures are established in accordance with the requirements set out in this Part.

- (b) Non-recognition of a measure established under an existing relevant legal instrument or framework or a relevant global, regional or sectoral body under this instrument shall not affect the legal effect of that measure in relation to the Parties to that instrument, framework or body.

OPTION II:

- 2) States Parties shall promote coherence and complementarity in measures related to area-based management tools, including marine protected areas, through:

Option A: the application of the general principles and approaches set out in this Part in designating such measures under existing relevant legal instruments and frameworks as well as under relevant global, regional and sectoral bodies.

Option B: the application of the requirements for the process of identification, designation and monitoring set out in this Part in designating such measures under existing relevant legal instruments and frameworks as well as under relevant global, regional and sectoral bodies.

Option C: the application of the requirements for consultation, cooperation and information sharing between relevant global, regional and sectoral bodies set out in this Part.

Option D:

- (a) the application of the guidelines, standards and objectives developed under this instrument in designating such measures under existing relevant legal instruments and frameworks as well as under relevant global, regional and sectoral bodies,
 - (b) the requirements for consultation, cooperation and information sharing set out in this Part, and
 - (c) the process established under this Part for the identification of areas.
- 3) Where there is no relevant legal instrument, framework or global, regional or sectoral body to establish area-based management tools, including marine protected areas, relevant 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.

[Enhanced cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, with regard to area-based management tools, including marine protected areas, without prejudice to their respective mandates]

- 1) Cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, with regard to area-based management tools, including marine protected areas, shall be enhanced, without prejudice to their respective mandates.
- 2) **OPTION I:** A coordination mechanism(s) shall be established to enhance cooperation and coordination between existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies with regard to area-based management tools, including marine protected areas.

OPTION II: Cooperation and coordination shall be enhanced through the consultation process established under this Part.

OPTION III: A working group comprised of scientific bodies under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be established to enhance cooperation and coordination.

OPTION IV: Coordination mechanisms shall be established at the regional level to enhance cooperation and coordination between existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies with regard to area-based management tools, including marine protected areas. Model cooperation agreements, contained in annex ..., shall guide such cooperation and coordination mechanisms.

OPTION V: *No text*

[Respect for the rights of coastal States over all areas under their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone]

- 1) **OPTION I**: This Part is without prejudice to the sovereign rights and jurisdiction of coastal States in areas within their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone.

OPTION II: This Part is without prejudice to the rights, jurisdiction, freedoms and duties of States under the Convention, including the sovereign rights and jurisdiction of coastal States in areas within their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone.

- 2) In cases where a marine protected area established under this Part falls under the national jurisdiction of a coastal State at a future point in time, either wholly or in part, it shall be amended accordingly or otherwise cease to be in force.

[Relationship between measures under this instrument and those established by adjacent coastal States, including issues of compatibility]

OPTION I: Measures established under this instrument and those adopted for adjacent areas under national jurisdiction shall be compatible.

- (a) **Option A**: Consultations shall be undertaken with the States concerned, including adjacent coastal States, to this end, in accordance with the process established under this Part.

Option B: Consultations shall be undertaken with adjacent coastal States, including indigenous peoples and local communities with relevant traditional knowledge in those States, as well as relevant global, regional and sectoral bodies, to this end, in accordance with the process established under this Part.

OPTION II: In establishing measures under this Part, States Parties shall have due regard to the rights and legitimate interests of coastal States. Consultations shall be undertaken with the States concerned, including coastal States, in accordance with the process established under this Part, with a view to avoiding infringement of such rights and interests.

4.3 Process in relation to area-based management tools, including marine protected areas

4.3.1 Identification of areas

- 1) Identification of areas shall be based on the best available scientific information, traditional knowledge and internationally accepted scientific standards and criteria.

2) **OPTION I**:

- (a) Standards and criteria for the identification of areas include:

- (i) Uniqueness
- (ii) Rarity
- (iii) Special importance for life history stages of species
- (iv) Special importance of the species
- (v) Importance for threatened, endangered or declining species and/or habitats

- (vi) Vulnerability
- (vii) Fragility
- (viii) Sensitivity
- (ix) Biological productivity
- (x) Biological diversity
- (xi) Representativeness
- (xii) Dependency
- (xiii) Naturalness
- (xiv) Connectivity
- (xv) Ecological processes
- (xvi) **Option A:** Economic and social factors
Option B: *No text*
- (xvii) Adverse impacts of climate change and ocean acidification
- (xviii) Cumulative and transboundary impacts

(b) Additional standards and criteria for the identification of areas shall be elaborated by the decision-making body/forum set forth in Part ... on the basis of the best available scientific information, and on the advice of the scientific/technical body set forth in Part ...

OPTION II: Standards and criteria for the identification of areas shall be elaborated by

Option A: the body set forth in Part ...

Option B: the scientific/ technical body set forth in Part ... and approved by the decision-making body/forum set forth in Part ...

3) Standards and criteria for the identification of areas shall be reviewed, revised and updated at regular intervals to reflect international best practice and the best available scientific information.

4) **OPTION I:** Areas shall be identified

Option A: in proposals submitted in accordance with this Part.

Option B: by States Parties within the relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, in accordance with the requirements set out in this Part.

OPTION II: *No text*

5) **OPTION I:** Decisions on identification of areas based on proposals submitted under this Part shall be taken by the decision-making body/forum set forth in Part ...

OPTION II: *No text*

4.3.2 Designation process

(i) *Proposal*

OPTION I:1) **Option A:** Proposals may be submitted by:

- (a) States Parties
- (b) Option 1: States Parties together with non-States Parties, on the understanding that the latter would be bound by any relevant measures established
Option 2: States entitled to become Parties
- (c) Option 1: relevant global, regional and sectoral bodies
Option 2: relevant global, regional and sectoral bodies together with States Parties
- (d) the scientific/technical body set forth in Part ...
- (e) natural or juridical persons sponsored by a State Party
- (f) civil society, as contributors to other proponents

Option B: Proposals shall be developed by States Parties within a regional seas mechanism, in accordance with the requirements set out in this Part.

2) Proposals shall be submitted to:

Option A: The decision-making body/forum set forth in Part ...

Option B: The scientific/technical body set forth in Part ..., directly or through the decision-making body/forum set forth in Part ...

Option C: The secretariat set forth in Part ...

3) Proposals shall be based on the best scientific evidence available, apply the precautionary approach/principle and the ecosystem approach, and take into account relevant traditional knowledge of indigenous peoples.

4) **Option A:** Required elements of proposals include:

- (a) Geographic/spatial description
- (b) Threats/vulnerabilities and values, including cultural, social and economic values
- (c) Ecological factors related to identification criteria
- (d) Scientific data concerning the standards and criteria for the identification of the area
- (e) Conservation and sustainable use objectives
- (f) The role and activities of relevant global, regional and sectoral bodies
- (g) Information on neighbouring areas, including any areas under national jurisdiction
- (h) Existing measures in the area or areas adjacent to it

- (i) Description of how the proposed site would contribute to ecologically representative networks of marine protected areas, if relevant
- (j) Specific human activities in the area, including uses by local communities in adjacent coastal States
- (k) Impacts, including cumulative impacts
- (l) Socio-economic considerations
- (m) Option 1: A draft management plan
Option 2: Conservation and management measures to be adopted to reach the specified objective, based on the best available scientific information
Option 3: specific recommendations tailored to the area to be considered for identification
- (n) Monitoring, research and review plan, including priority elements
- (o) Consideration of options for the type of tool(s) to be used
- (p) Option 1: A duration, which is linked to the conservation and sustainable use objectives
Option 2: *No text*
- (q) An outline of the process followed to develop the proposal, including consultation
- (r) Consideration of monitoring, compliance and enforcement requirements
- (s) Legal basis for the marine protected area.

Option B: The format of proposals shall be elaborated by the body set forth in Part ...

OPTION II: *No text*

(ii) *Consultation on and assessment of the proposal*

OPTION I:

- 1) Consultation on proposals shall be inclusive, transparent and open to all relevant stakeholders.
- 2) **Option A:** Relevant stakeholders include:
 - (a) all States, including
 - (b) Option 1: adjacent coastal States
Option 2: potentially affected States, including adjacent coastal States
 - (c) relevant global, regional and sectoral bodies
 - (d) industry
 - (e) civil society
 - (f) scientific community
 - (g) academic community
 - (h) indigenous peoples and local communities with relevant traditional knowledge

Option B:

- (a) A list of stakeholders to be consulted on proposals shall be developed by the decision-making body/forum set forth in Part ..., on the advice on the scientific/technical body set forth in Part ...
- (b) Adjacent coastal States shall be actively consulted. The modalities of such consultations shall take into account the special circumstances of small island developing States.

Option C: *No text*

- 3) The proposal shall be published by the secretariat set forth in Part ...
- 4) Any contributions received during the consultation process shall be published by the secretariat.
- 5) The consultation period shall be time-bound.
- 6) The proponents shall consider the contributions received during the consultation period and may revise the proposal to reflect those contributions.
- 7) **Option A:** The scientific/technical body set forth in Part ... shall review the proposal and any comments received during the consultation process and make a recommendation to the decision-making body/forum set forth in Part ...
 - (a) In conducting its assessment, the scientific/technical body shall consult with relevant global, regional and sectoral bodies. Memoranda of understanding may be concluded to facilitate such consultations.

Option B: A group of ... experts selected from the pool of independent scientific experts set forth in Part ... shall review the proposal and any comments received during the consultation process and make a recommendation to the decision-making body/forum set forth in Part ...

Option C: An *ad hoc* scientific/technical body shall review the proposal and any comments received during the consultation process and make a recommendation to the decision-making body/forum set forth in Part ...

Option D: An existing scientific/technical body shall be designated to review the proposal and any comments received during the consultation process and make a recommendation to the decision-making body/forum set forth in Part ...

Option E: One or more independent scientists recognized under the instrument shall carry out the scientific peer review of the proposal.

OPTION II: *No text*

(iii) *Decision-making*

OPTION I:

- 1) The decision-making body/forum set forth in Part ... shall take decisions on:

Option A: the designation of:

Option 1: area-based management tools, including marine protected areas,

Option 2: marine protected areas,

in light of the scientific advice or recommendations and the contributions received during the consultation and assessment process established under this Part.

Option B: matters related to area-based management tools, including marine protected areas, with respect to the following, while recognizing the primary authority for the designation of area-based management tools, including marine protected areas, of relevant global, regional and sectoral bodies within their respective mandates:

- (a) High-level objectives, guidelines and standards for States and regional and sectoral bodies
- (b) Identification of areas
- (c) Option 1: Determining, on a case-by-case basis, whether to designate an area-based management tool at the global level or recommend that a measure, or certain aspects of a measure, be adopted by relevant global, regional or sectoral bodies
Option 2: Recommending that measures be adopted by relevant global, regional or sectoral bodies
- (d) Establishing processes for cooperation and coordination among existing global, regional and sectoral bodies and States

2) **Option A:** Decisions under paragraph (1) shall be taken by consensus.

Option B: As a general rule, decision-making by the decision-making body/forum set forth in Part ... under paragraph (1) shall be by consensus. If all efforts to reach consensus have been exhausted, the following procedure shall apply ...

3) **Option A:** The consent of adjacent coastal States shall be required to establish measures under paragraph (1).

Option B: *No text*

4) In circumstances where a decision taken under paragraph (1) may impact on the activities regulated by a global, regional or sectoral body, or require the cooperation of such a body, the decision-making body/forum set forth in ... shall request the secretariat to communicate that decision to the relevant global, regional or sectoral body and request its cooperation in giving effect to the decision.

OPTION II: Decisions on the designation of marine protected areas shall be taken by a regional seas mechanism, in accordance with the requirements of this Part.

OPTION III: *No text*

4.4 Implementation

OPTION I:

1) States Parties shall ensure that processes and activities under their jurisdiction or control are conducted consistently with measures adopted under this Part.

- 2) States Parties shall ensure compliance by vessels flying their flags and enforcement of measures adopted in conformity with this Part.
- 3) States Parties shall promote the adoption of measures within competent global, regional and sectoral bodies of which they are members to support the conservation and management objectives of measures adopted under this Part.
- 4) Nothing in this instrument prevents a State Party from adopting measures with respect to their vessels or with regard to activities and processes under their jurisdiction or control additional to those adopted under this Part, in conformity with international law.
- 5) States Parties shall encourage non-parties to this instrument to adopt measures to support the conservation and management objectives of measures adopted under this Part.
- 6) The implementation of measures adopted under this Part shall not impose a disproportionate burden on small island developing States.

OPTION II:

- 1) Relevant global, regional or sectoral bodies shall be responsible for implementation and/or enforcement of conservation and management measures established by those bodies in relation to area-based management tools, including marine protected areas.
- 2) **Option A:**
 - (a) A State Party which is not a participant in a relevant instrument or framework, or a member of a relevant global, regional or sectoral body, and which 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 instrument, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.
 - (b) Such States Parties shall ensure that processes and activities under their jurisdiction or control are conducted consistently with measures related to area-based management tools, including marine protected areas, designated under relevant frameworks, instruments and bodies

Option B: *No text*

4.5 Monitoring and review

OPTION I:

- 1) States Parties shall report to the body set forth in Part ... on the implementation of measures such as area-based management tools, including marine protected areas, designated under this Part.

- 2) Measures such as area-based management tools, including marine protected areas designated under this Part, shall be monitored and periodically reviewed by:

Option A: the scientific/ technical body set forth in Part ...

Option B: the monitoring and compliance committee set forth in Part ...

- 3) The review under paragraph (2) shall assess the effectiveness of measures and the progress made in achieving their objectives and provide advice and recommendations to the decision-making body/forum set forth in Part ...
- 4) Following the process of review, the decision-making body/forum set forth in Part ... shall, as necessary, take decisions on:

Option A: the amendment or revocation of area-based management tools, including marine protected areas, including any associated conservation and management measures, on the basis of an adaptive management approach and taking into account the best available science.

Option B: the amendment or revocation of marine protected areas, including any associated conservation and management measures, on the basis of an adaptive management approach and taking into account the best available science.

OPTION II:

- 1) Relevant global, regional or sectoral bodies shall be responsible for monitoring and review of measures established by those bodies.
- 2) **Option A:** The decision-making body/forum set forth in Part ... shall review implementation of this instrument at regular intervals, including through receiving reports from relevant global, regional and sectoral bodies on implementation of measures designated under such bodies.

Option B: The decision-making body/forum set forth in Part ... shall receive reports from the regional seas mechanism on implementation of measures designated under such bodies.

Option C: The review conference set forth in Part ... shall review implementation of this Part at relevant intervals.

OPTION III: *No text*

5. Environmental impact assessments

5.1 Obligation to conduct environmental impact assessments

- 1) **OPTION I:** States Parties shall assess the potential effects of planned activities under their jurisdiction or control in areas beyond national jurisdiction in accordance with their obligation under articles 204 to 206 of the Convention.

(a) and applicable customary international law.

OPTION II: 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 the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment.

OPTION III: *No text*

- 2) **OPTION I:** On the basis of articles 204 to 206 of the Convention, State Parties shall take legal, administrative or other measures to implement the provisions of this Part and any further measures decided by the body set forth in Part...

OPTION II: States Parties shall require any proponent of an activity falling within its jurisdiction or control, to conduct an environmental impact assessment for an activity intended to be carried out in areas beyond national jurisdiction when that activity meets the threshold requirement for an environmental impact assessment, in line with article 206 of the Convention.

(a) For the purposes of this instrument, planned activities under a State's jurisdiction or control are activities over which it has effective control or exercises jurisdiction in the form of licensing or funding of the activities.

- 3) **OPTION I:** The requirement in this instrument to conduct an environmental impact assessment applies only to activities conducted in areas beyond national jurisdiction.

OPTION II: The requirement in this instrument to conduct an environmental impact assessment applies to all activities with impacts in areas beyond national jurisdiction.

5.2 Relationship to environmental impact assessment processes under relevant instruments, frameworks and bodies

- 1) The conduct of environmental impact assessments pursuant to this instrument shall be consistent with the obligations under the Convention and customary international law.¹²

¹² Suggestions were made to draw from the following instruments to develop provisions relating to the conduct of environmental impact assessments: Voluntary guidelines for biodiversity-inclusive impact assessment of the Convention on Biological Diversity; International Seabed Authority Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for polymetallic nodules in the Area; and FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas.

- 2) **OPTION I**: The environmental impact assessment process set out in this Part shall not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

OPTION II: The provisions in this Part shall be interpreted in such manner as to respect the obligations in other relevant instruments, and be mutually supportive, in order to achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction.

- 3) **OPTION I**: The bodies set forth in Part ... shall consult and/or coordinate with relevant global, regional and sectoral bodies with a mandate to regulate activities in areas beyond national jurisdiction or to protect the marine environment in accordance with the following procedures...

- (a) Such procedures shall include the establishment of an *ad hoc* interagency working group or the participation of representatives of these organizations' scientific and technical bodies in meetings of the scientific/technical body set forth in Part ...

- 4) **OPTION I**:

Option A: Minimum global standards and/or guidelines for the conduct of environmental impact assessments shall be developed through the scientific/technical body set forth in Part ... and/or through consultation or collaboration with relevant global, regional and sectoral bodies.

Option B: Guidelines for the conduct of environmental impact assessment processes under existing relevant global, regional and sectoral bodies shall be developed in accordance with ...

OPTION II:

- (a) The provisions of this Part constitute global standards and minimum requirements for environmental impact assessments for areas beyond national jurisdiction.
- (b) All other instruments and frameworks and relevant global, regional and sectoral bodies with a mandate in relation to marine biodiversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in paragraph....

OPTION III: Guidelines for conducting environmental impact assessments are set out in annex ...

- 5) **OPTION I**: No environmental impact assessment is required under this instrument for any activity conducted in accordance with the rules and guidelines appropriately established by existing relevant global, regional and sectoral bodies, irrespective of whether or not an environmental impact assessment is required under those rules or guidelines.

OPTION II: Where relevant global, sectoral or regional bodies with mandates for environmental impact assessments in areas beyond national jurisdiction already exist, no environmental impact assessment is required under this instrument.

OPTION III: Where an activity in areas beyond national jurisdiction is already covered by existing obligations and agreements, it is not necessary to conduct another environmental impact assessment for this activity under this instrument,

- (a) **Option A:** provided that the outcome of environmental impact assessment under those obligations or agreements is effectively implemented.

Option B: provided that the environmental impact assessment already undertaken is functionally equivalent.

Option C: provided that the threshold for the conduct of environmental impact assessments meets or exceeds the threshold set out in paragraph ...

- (b) if it is determined that the minimum standard as set out in this instrument has been met by the environmental impact assessment process in another relevant global, regional and sectoral body with a mandate in relation to marine biodiversity of areas beyond national jurisdiction through the consultation mechanism with the relevant global, regional or sectoral bodies set out in paragraph ...

OPTION IV: States Parties shall ensure that environmental impact assessments are conducted for any activity regulated under other relevant instruments, frameworks and relevant global, regional or sectoral bodies which meet or exceed the threshold for environmental impact assessments set out in this instrument.

5.3 Activities for which an environmental impact assessment is required

[The thresholds and criteria for environmental impact assessments]

OPTION I:

- 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 the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment.
- 2) The potential effects shall be assessed.

OPTION II:

- 1) When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control are likely to have more than a minor or transitory effect on the marine environment, they shall assess the potential effects of such activities on the marine environment.

- 2) 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 the marine environment, they shall conduct a full environmental impact assessment on the potential effects of such activities on the marine environment and shall communicate the results of such assessments in the manner provided in this Part.

OPTION III: When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control are likely to have more than a minor or transitory effect on the marine environment, they shall assess the potential effects of such activities on the marine environment.

OPTION IV: An environmental impact assessment shall be required unless the proponent can demonstrate that the potential impacts of the proposed activity would be very minimal, by reference to the criteria, standards and threshold elaborated by the scientific/ technical body set forth in Part

OPTION V: Environmental impact assessments shall be conducted in accordance with the threshold and criteria

Option A: as set out in paragraph... and as further elaborated upon pursuant to the procedure set out in paragraph

Option B: to be developed by the scientific/ technical body set forth in Part¹³

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

- 1) **OPTION I:** An indicative non-exhaustive list of activities that require or do not require an environmental impact assessment

Option A: is contained in annex ...

Option B: shall be developed by the body set forth in Part ...

Option C: shall be prepared as voluntary guidelines for each State Party based on the recommendations of the scientific/technical body set forth in Part ...

OPTION II: An indicative non-exhaustive list of activities that require an environmental impact assessment shall be developed by the body set forth in Part

OPTION III: An indicative non-exhaustive list of activities that do not require an environmental impact assessment shall be developed by the body set forth in Part

OPTION IV: *No text*

¹³ Suggestions were made to draw from the following instruments to develop provisions relating to thresholds and criteria for environmental impact assessments: Voluntary guidelines on biodiversity-inclusive impact assessment of the Convention on Biological Diversity; and Guidelines on environmental impact assessments for Pacific Island countries and territories.

2) **OPTION I**: The list shall be regularly updated.

OPTION II: *No text*

[Cumulative impacts]

1) **OPTION I**: Cumulative impacts shall be taken into account in the conduct of environmental impact assessments.

(a) **Option A**: The process for assessing cumulative impacts in areas beyond national jurisdiction and how these impacts shall be taken into account in the environmental impact assessment process for planned activities consists of the following ...

Option B: Guidelines containing criteria and thresholds for when to conduct environmental impact assessments and when to take cumulative impacts into account shall be developed by the body set forth in Part

OPTION II: *No text*

2) In determining cumulative impacts, the incremental effect of an activity 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.

[Transboundary impacts]

1) 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 areas.

[Specific provision for environmental impact assessments in areas identified as ecologically or biologically significant or vulnerable]

OPTION I:

1) A lower threshold, as set out below, shall apply to the conduct of environmental impact assessments for activities undertaken in areas identified as ecologically or biologically significant or vulnerable.

2) **Option A**: Environmental impact assessments for planned activities to be undertaken in areas identified as ecologically or biologically significant or vulnerable shall be conducted in accordance with the following provisions ...

(a) The initial screening of activities shall consider the characteristics of the area where the activity is intended to take place, as well as where the potential

effects are going to be felt. Should the project be located 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.

Option B: Detailed guidance on the conduct of environmental impact assessments in areas identified as ecologically or biologically significant or vulnerable shall be elaborated by the decision-making body/forum set forth in Part ...

Option C: Environmental impact assessments shall be conducted in areas of interest, or existing protected areas, in accordance with the relevant international agreements for those areas.

OPTION II: *No text*

5.4 Environmental impact assessment process

OPTION I: *Details regarding the process for conducting an environmental impact assessment report would be developed at a later stage.*

OPTION II: *The instrument would include a general description of the procedural steps for the conduct of environmental impact assessments as well as a description of roles, obligations, and responsibilities of States involved in the process. These provisions could be developed on the basis of articles 5-9 of the Convention on Environmental Impact Assessment in a Transboundary Context.*

OPTION III:

1) The process for conducting an environmental impact assessment shall include the steps set out below:

(a) Screening to determine whether an environmental impact assessment is required

Option A: States Parties shall be responsible for determining whether an environmental impact assessment is required in accordance with the requirements in this instrument.

Option B: States Parties shall be responsible for determining whether an environmental impact assessment is required in accordance with the requirements in this instrument. If the State Party determines that an environmental impact assessment is not required for the planned activity, the approval of the scientific/technical body set forth in Part.... must be obtained.

Option C: The proponent of the planned activity is responsible for determining whether an environmental impact assessment is required. If the proponent determines that an environmental impact assessment is not required for the planned activity, the proponent must provide information to support this conclusion. The

body set forth in Part ... shall verify that the information provided by the proponent of the activity satisfies the requirements in this instrument.

(b) Scoping

Option A: including identified cumulative impacts, best available scientific information and traditional knowledge.

Option B: to identify impacts and alternatives for analysis.

Option C: to identify key environmental issues.

Option D: to determine the potential damage caused by the planned activity, including a detailed description of potential environmental consequences.

(c) **Option A:** Impact prediction and evaluation, using the best available scientific information, including traditional knowledge

Option B: Impact prediction and evaluation, using the best available scientific information, including traditional knowledge and an examination of alternatives

(i) **Option A:** The proponent of the planned activity is responsible for conducting the environmental impact assessment.

- a. and may contract with a third party to conduct the environmental impact assessment.

Option B: The State Party with jurisdiction and control over the planned activity shall be responsible for the conduct of an environmental impact assessment.

Option 1: The State Party responsible for the conduct of an environmental impact assessment may require the proponent of the activity to conduct the environmental impact assessment.

Option 2: The State Party responsible for the conduct of an environmental impact assessment may contract with a third party to conduct the environmental impact assessment. Environmental impact assessments conducted by such a third party must be submitted to the State for review and decision-making.

Option C: The environmental impact assessment shall be conducted by an independent consultant appointed by a panel of experts designated by the scientific/technical body set forth in Part

- (ii) States Parties, in particular small island developing States, are not precluded from submitting joint environmental impact assessments.
- (iii) A pool of experts shall be created under the scientific/technical body set forth in Part States Parties with capacity constraints may commission these experts to conduct and evaluate environmental impact assessments for planned activities.
- (d) Mitigation and impact management and reporting
- (e) Identification of alternatives for mitigation, prevention and compensation for potential adverse effects
- (f) Public notification and consultation
 - (i) Public notification and consultation shall take place with:
 - a. Adjacent coastal States
 - Option A:** that would be impacted by the planned activity
 - Option B:** when the planned activity may have significant environmental impacts on marine areas within their national jurisdiction
 - Option C:** in particular, small island developing States
 - b. Other States
 - i. in particular, potentially affected States where those can be identified.
 - c. Indigenous peoples and local communities with relevant traditional knowledge in adjacent coastal States
 - d. Relevant global, regional and sectoral bodies
 - i. including the International Seabed Authority and the International Maritime Organization
 - e. Non-governmental organizations
 - f. The general public
 - g. Academia
 - h. Scientific experts

- i. Affected parties
 - j. Adjacent communities and organizations that have special expertise or jurisdiction
 - k. Interested and relevant stakeholders
 - l. Those with existing interests in an area
- (ii) **Option A:** Public notification and consultation shall be required at each stage of the environmental impact assessment process
- a. The type and frequency of public notification and consultation shall reflect the activity's level of risk and its anticipated impacts.
 - b. Stakeholders shall be given an opportunity to provide inputs before decisions are made.

Option B: A time-bound opportunity shall be provided for the public, States, and international organizations to submit comments during scoping and on draft environmental impact assessment documents.

Option C: An opportunity shall be provided for adjacent coastal States, other States, in particular potentially affected States where those can be identified, and, where appropriate, competent international organizations and civil society to provide relevant information during the scoping stage of the environmental impact assessment process.

- (iii) Public notification and consultation shall be:
- a. transparent and inclusive.
 - b. targeted and pro-active when consulting with adjacent small island developing States.
- (iv) a. Substantive comments received during the consultation process shall be considered and responded to.
- b. The comments made by adjacent coastal States, and a description of how these comments have been addressed, should be made publicly available.
 - c. The consultation process shall address the specific concerns of coastal States where those concerns arise.
 - d. States Parties shall have regard to the comments received during the consultation process when considering, in particular, transboundary impacts.

(v) *Procedures may be developed to facilitate the consultation process at the international level.*

(g) Publication of reports and public availability of reports

(i) States Parties shall publish and communicate the reports of the results of the assessments in accordance with articles 204 to 206 of the Convention.

(h) Consideration and review of reports

Option A: The review shall be

Option 1: carried out by the body set forth in Part...

Option 2: based on approved scientific methods.

Option B: *No text*

(i) Decision-making

(i) **Option A:** Where a planned activity is under the jurisdiction and control of a State Party, that State shall be responsible for determining whether the planned activity may proceed.

Option B: The body set forth in Part ... shall be responsible for determining whether an activity may proceed in accordance with the following procedural requirements:

a. Option 1: The complete environmental impact assessment shall first be submitted to a panel of experts, appointed by the scientific/technical body set forth in Part ..., for review, which shall recommend to the decision-making body/forum set forth in Part ... whether the planned activity should proceed.

Option 2: The complete environmental impact assessment shall first be submitted to the scientific/technical body set forth in Part ... for review, which shall, having regard to the inputs received during public consultation, review the environmental impact assessment and recommend to the decision-making body/forum set forth in Part ... whether the planned activity should proceed.

b. Option 1: A revised environmental impact assessment may be submitted to the panel of experts for reconsideration.

Option 2: *No text*

c. Option 1: The decision-making body/forum may delegate its decision-making function to a relevant regional body in accordance with the conditions and requirements set out below...

Option 2: No text**Option C:**

- a. The complete environmental impact assessment shall be submitted to technical expert review for recommendations on whether or not the activity should proceed.
 - b. The results of this review shall be publicly available. Any State that could be affected by the proposed activity shall be notified of the results of this review.
 - c. The environmental impact assessment shall be subject to an independent assessment. The results of this review shall be publicly available and subject to appeal.
 - d. The complete environmental impact assessment shall then be submitted to a panel of experts.
 - e. The panel of experts shall review the report and make recommendations, based on the independent review.
 - f. A revised environmental impact assessment may be submitted to the panel of experts for reconsideration.
- (ii) **Option A:** No decision allowing the planned activity to proceed shall be made where the environmental impact assessment indicates that the planned activity would have severe adverse impacts on the environment.

Option B: No text

- (j) **Option A:** Publication of decision-making documents

Option B: No text

- (k) Access to information
 - (i) States Parties shall not be required to disclose non-public information or information that would undermine intellectual property rights or other interests.

- (l) **Option A:** Monitoring and review

Option B: Monitoring

- (m) Compliance
- (n) Enforcement

- (o) Auditing
 - (p) Examination of residual effects
 - (q) Consideration of post-monitoring measures
- 2) The proponent is responsible for the cost of the environmental impact assessment process, including consultation.
 - 3) States Parties shall cooperate with respect to the conduct of environmental impact assessments in areas beyond national jurisdiction taking into account the special needs of developing countries, including by providing necessary technical and financial assistance as well as development of institutional capacity and transfer of marine technology.
 - 4) **Option A:** Further details regarding the process for conducting an environmental impact assessment shall be developed
 - (a) by the body set forth in Part ...
 - (b) in the form of
 - Option 1: recommendations or guidelines.
 - Option 2: an annex to this instrument.
 - (c) These guidelines shall be regularly reviewed.

Option B: *No text*

5.5 Content of environmental impact assessment reports

OPTION I: *Details regarding the required content of an environmental impact assessment report would be developed at a later stage.*

OPTION II:

- 1) Where an environmental impact assessment is required in accordance with this instrument, the environmental impact assessment shall include:
 - (a) **Option A:** A description of the planned activities
 - Option B:** A description of the proposed activity and its purpose
 - (b) **Option A:** A description of reasonable alternatives to the planned activities, including non-action alternatives
 - Option B:** A description, where appropriate, of reasonable alternatives to the proposed activity and also the non-action alternative

- (c) A description of the results of the scoping exercise
- (d) **Option A:** A description of the potential effects of the planned activities on the marine environment including cumulative impacts and any transboundary impacts
- Option B:** A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance
- Option C:** A description of the potential environmental impact and social impact of the proposed activity and its alternatives, and an estimation of its significance
- Option 1: 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.
- Option 2: including consideration of reasonably foreseeable potential direct, indirect, and cumulative impacts of the proposed activity and reasonable alternatives.
- (e) A description of the environment likely to be affected
- (i) including a description of the location of the proposed activity.
- (f) **Option A:** A description of any socio-economic impacts
Option B: A description of any social impacts
Option C: *No text*
- (g) A description of the worst-case scenario that could be expected to occur as a result of the planned activity
- (h) **Option A:** A description of any measures for avoiding, preventing and mitigating impacts
Option B: A description of mitigation measures to keep adverse environmental impacts to a minimum
Option C: A description of mitigation measures to keep adverse environmental and social impacts to a minimum
Option D: A description of alternatives and measures to prevent, mitigate or compensate for environmental impacts
Option E: A description of the measures for avoiding, preventing, mitigating and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment
- (i) A description of any follow-up actions, including any monitoring and management programmes
- (i) and any plans for post-project analysis

- a. Post-project analysis shall only be required where scientifically justified.
 - (ii) and plans for remediation.
 - (j) Uncertainties and gaps in knowledge
 - (k) A non-technical summary
 - (l) Identification of the sources of the information contained in the report
 - (m) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used
 - (n) The methodology used to identify environmental impacts
 - (o) An environmental management plan, including a contingency plan for responding to incidents that impact the marine environment
 - (p) The environmental record of the proponent
 - (q) A review of the business plan for the activity
- 2) This list may be updated in accordance with the following procedures ...
- 3) **Option A:** Further details regarding the required content of an environmental impact assessment report shall be developed
- (a) by the body set forth in Part ...
 - (b) in the form of an annex to this instrument.
 - (c) and shall be based on science.
 - (d) This guidance shall be regularly reviewed.

Option B: *No text*

5.6 Monitoring, reporting and review

OPTION I:

- 1) **Option A:** Based on and consistent with articles 204 to 206 of the Convention, States Parties shall ensure that the impacts of authorized activities in areas beyond national jurisdiction are monitored, reported and reviewed.

Option B: States Parties as well as proponents of planned activities shall continuously monitor and supervise the effects of activities approved under this instrument.

- 2) **Option A:** States Parties shall submit periodic reports of monitoring and review of planned activities conducted under their jurisdiction or control to the scientific/technical body set forth in Part...

(a) which may request independent consultants or an expert panel to review reports submitted to it under paragraph ...

(b) and competent regional organizations and other States, which may analyse these reports and highlight cases of non-compliance, the lack of information or other shortcomings.

Option B: *No text*

- 3) Third parties or international bodies may provide recommendations regarding the assessment and review.
- 4) **Option A:** A non-adversarial consultation process shall be established to resolve controversies in respect of monitoring and supervision, without recourse to judicial or non-judicial bodies.

Option B: *No text*

OPTION II: *No text*

[Compliance]

OPTION I: Compliance shall be facilitated through the body set forth in Part... and supervision mechanisms, such as periodic reports, periodic evaluation or review, and individual complaints.

OPTION II:

- 1) The compliance committee set forth in Part ... shall review reports under this section to ensure implementation of relevant provisions.
- 2) The compliance committee set forth in Part ... shall report to the decision-making body/forum set forth in Part...
- 3) In the case of non-compliance, the decision-making body/forum set forth in Part... shall take adequate measures.

OPTION III: Non-compliance with the provisions of this Part shall be reported to the decision-making body/forum set out in Part... for its consideration.

OPTION IV: *No text*

[Involvement of other States]

OPTION I: Adjacent coastal States shall be kept informed of the monitoring, reporting and review process in respect of an activity approved under this instrument.

OPTION II: Adjacent coastal States shall be notified and consulted about monitoring, reporting and review processes in respect of activities in areas beyond national jurisdiction.

OPTION III: Adjacent coastal States and small island developing States shall be actively consulted in the monitoring, reporting and review processes in respect of activities in areas beyond national jurisdiction.

5.7 Strategic environmental assessments

OPTION I: Each Party shall ensure that a strategic environmental assessment is carried out for plans and programmes under their jurisdiction or control, affecting areas beyond national jurisdiction, which meet the threshold/criteria established in paragraph...

OPTION II: *The instrument would set out rules and conditions to carry out strategic environmental assessments as one type of environmental impact assessment.*

OPTION III: *No text*

6. Capacity-building and the transfer of marine technology

OPTION I:

- 1) States Parties, directly or through competent international organizations, shall promote cooperation in capacity-building and the transfer of marine technology to assist developing countries in achieving the objectives of this instrument.
- 2) Capacity-building and the transfer of marine technology shall be provided on a multilateral basis to assist developing countries in achieving the objectives of this instrument.

OPTION II: *No text*

6.1 Objectives of capacity-building and the transfer of marine technology

[General objectives and principles]

OPTION I:

- 1) Capacity-building and the transfer of marine technology shall:

- (a) assist States Parties, in particular developing States based on their needs and requirements
 - (b) support the implementation of this instrument
 - (c) enable inclusive and effective participation in the activities undertaken under this instrument
 - (d) promote and encourage access to technology by, and transfer of marine technology to, developing countries for the attainment of the objectives of this instrument
- 2) **Option A:** States Parties, recognizing that marine technology includes biotechnology and that both access to and transfer of marine technology among States Parties are essential elements for the attainment of the objectives of this instrument, undertake to provide and/or facilitate access for and transfer to other States Parties of marine technologies that are relevant to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction and do not cause significant damage to the environment.

Option B: *No text*

OPTION II: Capacity-building and the transfer of marine technology shall:

- (a) contribute to assisting States Parties, that may need and request assistance, in particular developing countries
- (b) increase, disseminate and share knowledge on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction
- (c) develop the marine scientific and technological capacity of States Parties in accordance with Parts XIII and XIV of the Convention
- (d) aim to strengthen cooperation and coordination and synergies between relevant organizations in the achievement of the objectives of this instrument.

[Specific objectives]

OPTION I: Additional objectives of capacity-building and the transfer of marine technology under this instrument include:

- 1) the development of the marine scientific and technological capacity of States Parties with regard to the exploration, exploitation, conservation and sustainable use of marine biological resources of areas beyond national jurisdiction, the protection and preservation of the marine environment, marine scientific research and other activities in areas beyond national jurisdiction compatible with this instrument with a view to accelerating the social and economic development of developing countries
- 2) the development of technical, scientific, and research and development programmes, including biotechnological research activities
- 3) ensuring that developing countries have:
 - (a) access to and benefit from the scientific information resulting from access to resources in areas beyond national jurisdiction, in particular marine genetic resources
 - (b) access to and benefit-sharing from marine genetic resources and marine scientific research

- (c) access to marine genetic resources *in situ*, *ex situ* and *in silico*
 - (d) endogenous research capabilities relating to marine genetic resources and products, processes and other tools
- 4) the development, implementation, monitoring and management, including enforcement, of any area-based management tools, including marine protected areas
 - 5) the conduct and evaluation of environmental impact assessments and strategic environmental assessments.

OPTION II: Capacity-building and the transfer of marine technology under this instrument shall contribute to assist States that may need and request it, in particular developing countries, to:

- 1) support the implementation of Part ... on marine genetic resources, including questions on the sharing of benefits
- 2) carry out and participate in environmental impact assessments of activities
- 3) undertake and participate in measures to conserve and sustainably use marine biological diversity of areas beyond national jurisdiction, *inter alia*, through the establishment of area-based management tools, including marine protected areas

OPTION III: *No text*

[Categories of States and special requirements of developing countries]¹⁴

- 1) States Parties, in promoting cooperation under this Part, shall take into account the special needs for assistance of / special circumstances of / recognize the special circumstances or special case of / give full recognition to the special requirements of:
 - (a) landlocked and geographically disadvantaged developing countries
 - (b) least developed countries
 - (c) coastal developing States
 - (d) coastal African States
 - (e) small island developing States
 - (f) developing middle income countries
 - (g) environmentally challenged and vulnerable States
- 2) **OPTION I:** States Parties, in promoting cooperation under this Part, shall:

Option A: provide preferential treatment to developing countries

Option B: grant priority to small island developing States in any capacity-building and transfer of marine technology activities.

¹⁴ Suggestions were made to draw from the following instruments on how to reflect the recognition of the special requirements of developing countries: articles 202, 266, 267 and 268 of the United Nations Convention on the Law of the Sea; articles 25 and 26 of the United Nations Fish Stocks Agreement; articles 16 and 20 of the Convention on Biological Diversity; article 1 of the Paris Agreement ; and article 13 of the Minamata Convention on Mercury.

Option C: give special consideration to the needs and interests of small island developing States with regard to access to benefits, both monetary and non-monetary.

OPTION II: *No text*

6.2 Types of and modalities for capacity-building and transfer of marine technology

[Types]¹⁵

OPTION I:

- 1) Types and activities of capacity-building and the transfer of marine technology include:
 - (a) technical support for the implementation of provisions, including for data monitoring and reporting
 - (b) infrastructure
 - (c) institutional capacity, including governance, policy and legal frameworks and mechanisms
 - (d) scientific and research capacity
 - (e) knowledge sharing and technical cooperation
 - (f) sharing of information and technologies
 - (g) information dissemination
 - (h) data collection and exchange
 - (i) capacity to translate into effective and efficient policies
 - (j) programmes of research, education and training taking into account the IOC Criteria and Guidelines on Transfer of Marine Technology and the practices of the International Seabed Authority
 - (k) education and training in science and technologies, policy and governance
 - (l) development of regional centres of excellence
 - (m) increasing cooperative links between regional institutions, for example North-South and South-South collaboration and collaboration between regional seas organizations and regional fisheries management organizations
 - (n) designation/creation of a financial mechanism to support implementation of activities
 - (o) financial and technical expertise and resources, particularly for small island developing States concerning environmental impact assessments
 - (p) technical exchange and cooperation on marine science
 - (q) open access and wide dissemination of environmental and biological information collected through research conducted in areas beyond national jurisdiction as well as in the Area
 - (r) establishment of national and regional scientific centres, including as data repositories

¹⁵ Suggestions were made to draw from the following existing instruments to develop a list of broad categories of types of capacity-building and the transfer of marine technology: article 16 of the Convention on Biological Diversity; article 5(8) of the IOC Criteria and Guidelines on Transfer of Marine Technology; annex III to the United Nations Convention on the Law of the Sea; United Nations Conference on Trade and Development Draft International Code on the Transfer of Technology; article 22(5)(g) of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization; the capacity-building and transfer of marine technology activities conducted by the International Seabed Authority; and the United Nations Framework Convention on Climate Change.

- (s) development of joint scientific research projects in cooperation with institutions in developing countries
 - (t) collaboration and international cooperation in scientific research projects and programmes
 - (u) development and establishment of necessary infrastructure
 - (v) awareness-raising and knowledge-sharing programmes, including on marine scientific research
 - (w) sharing of marine scientific knowledge and information exchange on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
 - (x) provision of information and data, in a user-friendly format, on marine sciences and related marine operations and services
 - (y) establishment or strengthening of the institutional capacities of relevant national and regional organizations and institutions
 - (z) acquisition of necessary equipment to sustain and further develop research and development capabilities, including data management, in the context of access to and use of marine genetic resources, area-based management tools, including marine protected areas, and conduct of environmental impact assessments
 - (aa) information sharing concerning environmental impact assessments, including a repository for manuals and relevant information to share knowledge and capacity on how to conduct environmental impact assessments, lessons learned, and best practices
 - (bb) information sharing concerning area-based management tools
 - (cc) development of manuals, guidelines, criteria, standards, reference materials
 - (dd) development of technology standards and rules
 - (ee) provision of sampling and methodology equipment (e.g. for water, geological, biological, chemical samples)
 - (ff) development of human resources and individual capacity-building, including in natural and social sciences, both basic and applied, through exchange of experts, short-term, medium-term and long-term training and the establishment of a global scholarship fund
 - (gg) provision of scholarships or other grants for representatives of small island developing States in workshops, programmes or other relevant training programmes in order to develop their specific capacities
 - (hh) establishment of a networking mechanism among trained human resources
 - (ii) exchange of experts
 - (jj) assistance in the development, implementation and enforcement of national legislative, administrative or policy measures, including associated regulatory, scientific and technical requirements on a national or regional level
 - (kk) facilitation of access to and acquisition of necessary knowledge, information and data in order to inform decision-makers of developing countries
 - (ll) raising of awareness on stressors on the oceans that affect marine biodiversity of areas beyond national jurisdiction
 - (mm) assistance with marine science and technology research and application
 - (nn) development of regional centres for skill development
 - (oo) knowledge sharing through sharing the results of research and development.
- 2) **Option A:** The list shall be periodically reviewed, assessed and adjusted to reflect technological progress and innovation and to respond and adapt to the evolving needs of States and regions.

Option B: Subsequent to the entry into force of this instrument, the list shall be further developed by the body set forth in Part...

Option C: The list shall be updated through a review mechanism.

Option D: The list shall be updated on the basis of consultations with States Parties.

Option E: *No text*

OPTION II:

Option A: The *ad hoc* working group or subsidiary body set forth in Part ... shall develop an indicative, non-exhaustive and flexible list of activities or of a broad set of categories of types of capacity-building and the transfer of marine technology.

Option B: The decision-making body/forum set forth in Part ... shall develop, update and regularly review a list of a broad set of categories of types of capacity-building and the transfer of marine technology.

Option C: Upon entry into force of this instrument, a broad list of types of capacity-building and the transfer of marine technology shall be developed at the regional level.

OPTION III: *No text*

*[Modalities]*¹⁶

OPTION I: Specific modalities, procedures and guidelines for capacity-building and the transfer of marine technology shall be developed and adopted by the decision-making body/forum set forth in Part..., drawing from the Intergovernmental Oceanographic Commission of UNESCO Criteria and Guidelines on Transfer of Marine Technology and other relevant instruments.

OPTION II: Capacity-building and the transfer of marine technology shall be undertaken in accordance with the modalities set out below.

1) Capacity-building and the transfer of marine technology shall be:

Option A: based on the needs and priorities of developing countries

Option B: responsive to the specific needs of the beneficiary country/region

Option C: needs-based and country-driven based on the needs identified by developing countries, in particular small island developing States and least developed countries

¹⁶ Suggestions were made to draw from existing instruments in identifying capacity-building and transfer of marine technology needs of developing countries, including the Programme of Action for the Least Developed Countries for the Decade 2011-2020. Suggestions were made to draw from existing mechanisms, such as the United Nations Technology Bank for the Least Developed Countries, as a possible body with which to coordinate with regards to issues relating to the transfer of marine technology and intellectual property rights.

Option D: based on the needs and requests of developing countries

2) Capacity-building and the transfer of marine technology shall be carried out:

Option A: as determined by a needs assessment, on an individual case-by-case basis

Option B: through a mechanism for needs assessment at the regional level in coordination with a global body

Option C: through a mechanism as set forth in paragraph ... to assist States Parties in identifying needs for capacity-building and transfer of marine technology

3) The identified needs and priorities for capacity-building and the transfer of marine technology shall be reviewed by the advisory body and the decision-making body/forum set forth in Part

4) The transfer of marine technology shall be carried out so as to give access to appropriate, reliable, affordable, modern and environmentally sound technologies.

5) The transfer of marine technology shall be needs-driven and carried out in a transparent manner.

6) **Option A:**

Option 1: Capacity-building and the transfer of marine technology shall be carried out in a fair and reasonable manner through favourable terms and conditions.

Option 2: The development and transfer of marine scientific knowledge and marine technology shall be carried out on the basis of fair and reasonable terms and conditions

Option 3: The transfer of marine technology shall be provided under fair and most favourable terms, including on concessional and preferential terms.

Option 4: The transfer of marine technology shall be carried out on voluntary and mandatory bases, on fair and most favourable terms.

Option B: The transfer of marine technology shall be carried out on a voluntary basis, according to mutually agreed terms and conditions.

(a) The transfer of marine technology shall be carried out with due regard for all legitimate interests, including, *inter alia*, the rights and duties of holders, suppliers and recipients of marine technology.

Option C: The terms of technology transfer shall be freely arrived at between the supplier and the recipient on the basis of equality and voluntariness, fairness and reasonableness, as well as mutual benefits and reciprocity.

Option D: Capacity-building and the transfer of marine technology shall be conducted pursuant to a “keep well” agreement.

7) The transfer of marine technology shall ensure ease of access by small islands developing States and not be conditional on onerous reporting requirements.

8) **Option A:** The transfer of marine technology shall take into account the need to protect intellectual property rights.

Option B: The promotion and dissemination of technology under this instrument shall be balanced with the protection of intellectual property rights.

Option C: Intellectual property rights shall not preclude the transfer of technology under this instrument.

Option D: States Parties shall respect the protection of intellectual property rights in capacity-building and the transfer of marine technology.

Option E: *No text*

9) **Option A:** States Parties have the duty to cooperate with respect to capacity-building and the transfer of marine technology in accordance with this instrument and where appropriate and feasible also at the regional, subregional and bilateral levels, including with the view to establishing appropriate funding for capacity-building and the transfer of marine technology.

Option B: States Parties shall cooperate, including through mandatory consultations with adjacent coastal States and consultations with States Parties and non-States Parties, with respect to capacity-building and the transfer of marine technology for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Option C: In promoting capacity-building and the transfer of marine technology, States Parties shall cooperate in accordance with Part XIV, including article 266 of the Convention.

10) Capacity-building and the transfer of marine technology shall be carried out through enhanced cooperation at all levels including:

(a) North-South and South-South cooperation, as well as partnerships with relevant stakeholders with specific expertise

(b) North-South, South-South and triangular cooperation, as well as with industry and/or private sector

(c) Consultative relationships with stakeholders, including relevant global, regional and sub-regional organizations

- 11) Capacity-building measures shall be open to States Parties and all stakeholders, such as civil society organizations, groups of indigenous peoples and local communities, and other non-State actors and holders of traditional knowledge.

*[Clearing-house mechanism]*¹⁷

OPTION I: The functions of the clearing-house mechanism shall be developed upon entry into force of this instrument by the decision-making body/forum set forth in Part....

OPTION II:

- 1) The clearing-house mechanism set forth in Part ... shall:
 - (a) provide access to, evaluate, publish and disseminate information
 - (b) provide centralized information access and sharing on activities, programmes and projects occurring in areas beyond national jurisdiction, including those relevant to building capacity for skills development in activities covered under this instrument
 - (c) develop and establish a protocol or code of conduct or guidelines for environmental protection
 - (d) foster compliance and transparency in the use of marine genetic resources of areas beyond national jurisdiction
 - (e) provide a trust fund to guarantee a fair and concrete sharing of benefits
 - (f) provide a central repository for baseline data and as an online compilation of good practices as well as reports of environmental impact assessments
 - (g) allow requests for capacity building and transfer of marine technology on a case-by-case basis
 - (h) match capacity-building needs with the support available
 - (i) implement specific activities to enhance and promote information sharing among and with small island developing States
 - (j) provide ways for small island developing States to contribute to the expansion of the clearing-house mechanism
 - (k) match providers for transfer of technology and give access to the related know-how and expertise
 - (l) match sources of funding to those seeking access to funding
 - (m) provide support and advice to assess needs in relation to the objectives of the instrument
 - (n) facilitate partnership, regional cooperation; and enhance participation in scientific research and training
 - (o) collect and disseminate details of States Parties' capacity building and technology transfer projects and opportunities for developing State participation.
- 2) The clearing-house mechanism shall provide centralized, open access to information regarding:
 - (a) opportunities for facilitated access to marine technology, knowledge and funding

¹⁷ Suggestions were made to draw from the following existing mechanisms with regard to possible functions for a clearing-house mechanism: the Biosafety Clearing-House under the Cartagena Protocol on Biosafety; the Ad Hoc Report of the Intergovernmental Oceanographic Commission of UNESCO to the Preparatory Committee established by General Assembly resolution 69/292.

- (b) capacity-building
- (c) relevant traditional knowledge
- (d) opportunities for projects or initiatives related to the transfer of marine technology
- (e) sources, availability and cost of marine scientific and technological information and data for transfer in different disciplines of marine sciences
- (f) a directory of marine research institutes which offer laboratory facilities, equipment and opportunities for research and training
- (g) research collaboration opportunities
- (h) offers of cruise studies at the global, regional and sub-regional levels
- (i) environmental information
- (j) best practices in management
- (k) universities and other organizations offering study grants and facilities in marine science
- (l) workshops, seminars and training courses at global, regional, and subregional level, in particular those offering financial support
- (m) studies on national, sub-regional and/or regional rules and regulations, and case law studies concerning the transfer of marine technology and marine scientific research
- (n) a list of governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology. Such list should include information on the contact focal points, addresses, fields of competence, items to be transferred, and, eventually, cost and conditions for transfer
- (o) a list of available experts/specialists who can provide scientific and technical assistance
- (p) national, sub-regional and/or regional agreements, institutions and centres holding information, experience and technical expertise of scientific relevance to the region concerned.
- (q) other existing databases or repositories that may be relevant and informational

6.3 Funding

OPTION I:

- 1) Funding in support of capacity-building and the transfer of marine technology under this instrument shall be adequate, accessible, sustainable and predictable.
- 2) Funding in support of capacity-building and the transfer of marine technology under this instrument shall be:

Option A: both voluntary and mandatory

Option B: mandatory

Option C: voluntary

- 3) Funding shall be provided through:

- (a) existing private and public sources, including Official Development Assistance
- (b) existing funding mechanisms under global and regional instruments¹⁸

¹⁸ Suggestions were made to draw from existing mechanisms such as: the Endowment Fund of the International Seabed Authority;

(c) public/private partnerships

4) In addition to relevant existing mechanisms mentioned in paragraph ..., the funding mechanism shall also be composed of:

Option A: the voluntary trust fund set forth in paragraph to facilitate the participation of representatives of developing countries in the meetings of bodies under this instrument.

Option B: the special fund composed of: (i) the operational fund, (ii) the endowment fund, (iii) the contingency fund, and (iv) the rehabilitation fund/liability fund.

Option 1: and a voluntary trust fund

(a) The special fund shall:

- (i) promote meaningful projects on the conservation and sustainable use of marine biological diversity.
- (ii) promote capacity-building and the transfer of marine technology.

(b) The operational fund shall:

- (i) fund the participation of developing States Parties in this instrument's processes
- (ii) assist developing countries in implementing this instrument, including through the conduct of environmental impact assessments
- (iii) fund capacity-building activities
- (iv) fund technology transfer-related activities and programmes, including training
- (v) support conservation and sustainable use programmes by holders of traditional knowledge in local communities, including in areas within national jurisdiction
- (vi) support public consultations at the national and regional levels.

a. It shall be funded through:

i. Option 1: Mandatory sources, including

- contributions from States Parties and royalties and milestone payments from exploitation or use of marine genetic resources/resulting from benefit-sharing.
- 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.

Option 2: *No text*

ii. Voluntary contributions from States Parties, States non-parties, international financial institutions, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons

the Global Environment Facility; the Global Compact Fund; the Global Forest Financing Facilitation Network; the Convention on Biological Diversity; the Intergovernmental Oceanographic Commission of UNESCO mechanisms; and the Trust Fund hosted under the Association for Sustainable Financing of Mediterranean Marine Protected Areas.

- iii. The endowment fund
 - iv. Other existing financial mechanisms, such as the Global Environment Facility and the Green Climate Fund.
- b. It shall address the special case of small island developing States by:
- i. Providing for a small island developing States' specific allocation in the fund(s)
 - ii. Providing for a special small island developing States procedure with a pre-application process, which shall then trigger a support mechanism to prepare the required application. This procedure shall be clear, simple and accessible.
- (c) The endowment fund shall be funded through initial endowments by States Parties and other stakeholders as well as further voluntary contributions and shall
- (d) The contingency fund shall
- (e) (i) The rehabilitation/liability fund shall be used to finance the rehabilitation and/or ecological restoration of marine biological diversity of areas beyond national jurisdiction, including its natural environments, in the event of pollution or other damaging impacts on marine biological diversity and ecosystems of areas beyond national jurisdiction.
- (ii) Private entities wishing to engage in the exploration and exploitation of marine biological diversity of areas beyond national jurisdiction shall be required to contribute to the fund.

Option C: *No text*

- 5) Access to funding in accordance with this Part shall be open to:

Option A: developing countries taking into account the needs for assistance of landlocked and geographically disadvantaged developing countries, small island developing States, least developed countries, coastal African States as well as the specific development challenges of developing middle income countries.

Option B: developing countries taking into account the needs for assistance of landlocked and geographically disadvantaged developing countries, small island developing States, least developed countries, coastal African States as well as the specific development challenges of developing middle income countries as well as environmentally challenged and vulnerable States.

Option C: developing countries primarily, with priority granted to countries with special circumstances, such as small island developing States.

- (a) and other stakeholders from small island developing States, including traditional knowledge holders.

OPTION II: *No text*

6.4 Monitoring and review

OPTION I:

- 1) Monitoring and review of capacity-building and transfer of marine technology activities shall be undertaken in order to periodically:
 - (a) **Option A:** review capacity-building and transfer of marine technology needs and priorities
Option B: review whether the needs of small island developing States are being met and whether improvements in capacity-building and the transfer of marine technology are necessary to allow small island developing States to sufficiently meet their obligations and equitably use their rights.
Option C: assess capacity-building and transfer of marine technology needs
 - (b) measure objective performance indicators
 - (c) review the support required, provided and mobilized, and gaps in meeting these requirements
 - (d) assess the successes of capacity-building and the transfer of marine technology efforts and achieve the objectives of capacity-building and transfer of marine technology in this instrument
 - (e) review results-based analyses coupled with recommendations for follow-up activities
 - (f) review progress and output delivered, effectiveness of capacity-building and transfer of marine technology activities, challenges and proposed ways forward
- 2) The review process shall include all relevant actors involved in the process of capacity-building and the transfer of marine technology.
- 3) States Parties may undertake on a voluntary basis, regular, transparent and comprehensive reporting on capacity-building and the transfer of marine technology given and received.

Option A: Reporting shall be done through the submission of regular and comprehensive voluntary reports by States Parties and/or by regional capacity-building and transfer of marine technology committees which may be made publicly available.

Option 1: Reporting requirements of small island developing States shall be streamlined and not be onerous.

Option B: Details of the procedures of review and monitoring shall be determined by the decision-making body/forum set forth in Part

- 4) Monitoring and review of capacity-building and the transfer of marine technology undertaken under this instrument shall be:

Option A: carried out by the monitoring and review committee set forth in Part

Option B: carried out by the decision-making body/forum set forth in Part ... and the review conference set forth in Part ...

Option C: carried out by the advisory body set forth in Part ... which shall report to the decision-making body/forum set forth in Part ...

Option D: carried out by an auditing team of experts from States Parties which shall report to the decision-making body/forum set forth in Part ...

Option E: carried out in consultations with States Parties and regional bodies.

Option F: coordinated by regional capacity-building and transfer of marine technology committees.

OPTION II: *No text*

IV. Institutional arrangements¹⁹

1. Decision-making body/forum

1) **OPTION I:**

Option A: A Conference of the Parties/Meeting of States Parties is hereby established as the decision-making body/forum for this instrument.

Option B: is hereby designated to serve as the Conference of the Parties/Meeting of States Parties of this instrument and shall be the decision-making body/forum for this instrument

OPTION II:

- (a) An Assembly and a Council are hereby established, as the principal organs of this instrument's decision-making body/forum.
- (b) The Assembly shall consist of all States Parties.
- (c) The Council shall consist of elected members of the decision-making body/forum.

OPTION III: *No text*

2) **OPTION I:** The decision-making body/forum shall perform the following functions:

¹⁹ Suggestions were made to take into account the structure, lessons learned and best practices of the following bodies and frameworks in developing provisions on institutional arrangements: International Seabed Authority; International Maritime Organization; Food and Agriculture Organization of the United Nations; and the United Nations Framework Convention on Climate Change. Other suggestions were made to utilise existing bodies, such as the Intergovernmental Oceanographic Commission of UNESCO; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the Convention on Biological Diversity; and the International Seabed Authority.

- (a) Adopt its rules of procedure
- (b) Review implementation of this instrument
- (c) Exchange information relevant to the implementation of this instrument
- (d) Promote coherence among efforts towards the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- (e) Promote harmonization of appropriate policies and measures for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- (f) Promote cooperation and coordination, including with relevant global, regional and sectoral bodies towards the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
 - Option A:** including by establishing processes for cooperation and coordination between relevant global, regional and sectoral bodies
 - Option B:** including by conducting cooperation programmes with existing programmes
- (g) **Option A:** Follow up on implementation of provisions and progress in meeting global objectives
 - Option B:** *No text*
- (h) Make decisions and recommendations related to the implementation of this instrument
- (i) **Option A:** Establish subsidiary bodies as necessary for the performance of its functions, in a cost-effective manner
 - Option B:** Establish and coordinate *ad hoc* working groups or committees, including with other relevant stakeholders and relevant scientific and technical bodies
- (j) **Option A:** Monitoring and review
 - Option B:** *No text*
- (k) **Option A:** Institute proceedings on behalf of the States Parties in cases of non-compliance
 - Option B:** *No text*
- (l) Set rules and procedures for *in situ* access to marine genetic resources of areas beyond national jurisdiction based on the recommendations of the scientific/technical body. It shall also coordinate and collaborate with the bodies established pursuant to other relevant instruments.
- (m) Set standards and review measures such as area-based management tools, including marine protected areas
- (n) Receive and consider reports from relevant global, regional and sectoral bodies concerning area-based management tools, including marine protected areas, designated by those bodies
- (o) Review the recommendations of the scientific/technical body with respect to environmental impact assessments
- (p) Take decisions with respect to environmental impact assessments based on the recommendations of the scientific/technical body
- (q) Receive reports from States Parties with respect to environmental impact assessments
- (r) Elaborate types and modalities of capacity-building and the transfer of marine technology
- (s) Identify needs for capacity-building and the transfer of marine technology
- (t) Draft procedures for and conduct monitoring and review of capacity-building and transfer of marine technology activities
- (u) Monitor and review capacity-building and the transfer of marine technology
- (v) Undertake other functions identified in this instrument

OPTION II: *No text*

- 3) **Option A:** The Council set forth in paragraph ... shall perform the following functions:
- (a) Make policies, standards and rules in accordance with the provisions of this instrument.
 - (b) Establish standing and non-standing committees as necessary for the performance of its functions.

Option B: *No text***2. Scientific/technical body**

- 1) **OPTION I:** A scientific/technical body / committee / *ad hoc* scientific and technical body / pool of independent scientific experts is hereby established.
- (a) It shall be composed of independent experts from different regions, including from existing scientific bodies.
 - (b) The composition shall ensure that the body / committee / *ad hoc* scientific and technical body / pool of independent scientific experts comprises diverse, multi-disciplinary areas of expertise.
 - (c) The composition of the body / committee / *ad hoc* scientific and technical body / pool of independent scientific experts shall ensure equitable geographical representation

OPTION II: Existing arrangements, such as the Joint Group of Experts on Marine Environmental Protection, shall perform scientific and technical advisory functions.

OPTION III: *No text*

- 2) **OPTION I:** The scientific/technical body / committee / *ad hoc* scientific and technical body / pool of independent scientific experts shall:
- (a) Provide scientific and technical advice to the decision-making body/forum
 - (b) Have advisory competence with regard to marine genetic resources, including questions on the sharing of benefits
 - (c) Elaborate a benefit-sharing mechanism
 - (d) **Option A:** Monitor the utilization of marine genetic resources of areas beyond national jurisdiction
Option B: *No text*
 - (e) **Option A:** 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) assessment of proposals
 - (iii) monitoring and review of measures**Option B:** *No text*
 - (f) Establish guidelines with respect to environmental impact assessments

- (g) **Option A:** Make recommendations to the decision-making body/forum with respect to environmental impact assessments
Option B: *No text*
- (h) Review environmental impact assessment standards to ensure consistency with the requirements of this instrument
- (i) Identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of marine biological diversity
- (j) Advise on ways and means to promote the development and transfer of marine technology
- (k) Assess the effectiveness of the implementation of capacity-building and transfer of marine technology measures and/or programmes, including by assessing whether capacity gaps are decreasing
- (l) Collaborate with regional capacity-building and transfer of marine technologies committees or regional needs assessment mechanisms
- (m) Elaborate capacity-building and transfer of marine technology programmes.
- (n) Perform such other functions as may be determined by the decision-making body/forum or assigned to it by this instrument

OPTION II: *No text*

3. Other subsidiary bodies

OPTION I:

- 1) An *ad hoc* working group on measures such as area-based management tools, including marine protected areas, is hereby established to examine measures designated under Part ... in light of the scientific advice or recommendations and the contributions received during the consultation and assessment process established under Part ...
- 2) A capacity-building and transfer of marine technology committee is hereby established.
- 3) An access and benefit-sharing mechanism is hereby established to regulate access to marine genetic resources and the sharing of benefits.
- 4) Regional committees on capacity-building and transfer of marine technology are hereby established to: coordinate activities; explore merging or associations with existing regional or sub-regional capacity-building and transfer of marine technology mechanisms, where relevant and appropriate; and establish regional mechanisms for capacity and technology needs assessments, where feasible.
- 5) An advisory body is hereby established.
- 6) An implementation committee is hereby established to facilitate compliance with this instrument and measures thereunder.
- 7) A compliance committee is hereby established to review compliance with measures and make recommendations for measures to be taken in cases of non-compliance.

- 8) A monitoring and review committee is hereby established.
- 9) A legal committee is hereby established to provide advice to the decision-making body/forum.
- 10) **Option A:** A financial mechanism to support implementation of this instrument is hereby established.

Option B: A finance committee is hereby established to oversee the Fund set forth in Part This committee shall regularly report to the decision-making body/forum.

OPTION II: *No text*

4. Secretariat

- 1) **OPTION I:** A secretariat is hereby established.

OPTION II: The decision-making body/forum shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this instrument.

OPTION III: The secretariat functions for this instrument shall be performed by the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations.

- 2) **OPTION I:** Without prejudice to the functions of relevant existing global, regional and sectoral bodies specified in this instrument, the secretariat shall:
- (a) Provide administrative and logistical support
 - (b) Report to States Parties on matters related to the implementation of this instrument and developments related to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction as requested by the Parties
 - (c) Convene and service the meetings of the decision-making body/forum, and any other bodies as may be established by the decision-making body/forum
 - (d) Circulate information relating to the implementation of this instrument
 - (e) Ensure the necessary coordination with the secretariats of other relevant international bodies
 - (f) Provide assistance for the implementation of this instrument as mandated by the decision-making body/forum
 - (g) Manage the clearing-house mechanism and an access and benefit-sharing fund as part of the Fund established under Part ...
 - (h) Coordinate consultation on proposals and with relevant organizations in relation to measures such as area-based management tools, including marine protected areas
 - (i) Coordinate consultations with the proponent of a planned activity for the purposes of environmental impact assessments
 - (j) Play a facilitation role in regard to capacity-building and the transfer of marine technology, including as a coordinating mechanism
 - (k) Host the clearing-house mechanism set forth in Part...

- (l) Perform other secretariat functions specified in this instrument and such other functions as may be determined by the decision-making body/forum.

OPTION II: The secretariat shall organize the review conference set forth in Part

OPTION III: *No text*

V. Clearing-house mechanism²⁰

OPTION I: The decision-making body/forum set forth in Part ... shall, at its first meeting, determine how to establish a clearing-house mechanism.

OPTION II:

- 1) A clearing-house mechanism is hereby established to perform the functions listed in this instrument.
- 2) The clearing-house mechanism shall consist of an open-access web-based platform providing a central repository of information and tools for information exchange enabling centralized access and sharing of information
 - (a) and including a network of experts and practitioners in relevant fields.
 - (b) and including:
 - (i) environmental impact assessment reports
 - (ii) baseline data/information
 - (iii) a database of good practice
 - (iv) statements of the reasons underlying decisions related to environmental impact assessments and how environmental concerns have been taken into account
 - (v) State Parties' policies, guidelines and technical methods on environmental impact assessments
 - (vi) guidelines and technical methods on environmental impact assessments
 - (vii) a network/roster of international experts on environmental impact assessments.
- 3) In addition to the functions set out for the clearing-house mechanism under Parts ..., the clearing-house mechanism shall serve as a platform for States Parties to:

²⁰ Suggestions were made to take into account existing institutions and frameworks in developing the functions and modalities of a clearing-house mechanism under the instrument, including: Intergovernmental Oceanographic Commission of UNESCO, Ocean Biogeographic Information System and the IOC-UNESCO Guidelines on Capacity Building and the Transfer of Marine Technology; International Seabed Authority; Convention on Biological Diversity and Nagoya Protocol; UNFCCC Climate Technology Centre and Network and the Technology Needs Assessment; Global Environment Facility; FAO and International Treaty on Plant Genetic Resources for Food and Agriculture; United Nations Environment Programme; Environmental Impact Assessment guidelines for Pacific Island Countries and territories.

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- (a) access, evaluate, publish and disseminate information with respect to environmental impact assessments
 - (b) provide a case-by-case option upon request for capacity-building and the transfer of marine technology
 - (c) promote capacity-building and the transfer of marine technology
 - (d) provide access to relevant experience and know-how
 - (e) facilitate enhanced transparency
 - (f) keep track of cumulative impacts with respect to environmental impact assessments
 - (g) indicate areas in which proposed planned activities will take place with respect to environmental impact assessments
 - (h) facilitate international cooperation and collaboration
 - (i) exchange best practices on environmental impact assessments
- 4) Due regard shall be given to the confidentiality of information provided under this instrument.
- 5) The clearing-house mechanism shall:
- (a) link to existing relevant global, regional, sub-regional, national and sectoral clearing-house mechanisms and other repositories.
- Option A:** as well as collections and gene banks
- Option B:** *No text*
- (b) link to private and non-governmental information exchange platforms.
 - (c) build on existing regional and sub-regional clearing-house institutions, if applicable, when establishing regional and sub-regional mechanisms under the global mechanism.
- 6) The clearing-house mechanism shall recognize the special circumstances of small island developing States, afford simplified access to enable small island developing States to utilize the mechanism without undue obstacles or administrative burdens, and include information on activities to promote information sharing and dissemination in and with small island developing States, as well as provide for specific programmes for small island developing States.
- 7) The clearing-house mechanism shall be managed by:
- Option A:** the secretariat set forth in Part ...
- Option B:** the Intergovernmental Oceanographic Commission of UNESCO in association with relevant agencies, including the International Seabed Authority and the International Maritime Organization, and be informed by the IOC Criteria and Guidelines on the Transfer of Marine Technology.
- 8) **Option A:** The clearing-house mechanism shall assist the administration of the fund set forth in Part ...

Option B: *No text*

VI. Review

OPTION I: ... years after the date of entry into force of this instrument, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this instrument in securing the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

OPTION II: *No text*