

# **ADVANCE, UNEDITED VERSION (ENGLISH ONLY)**

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

### **Note by the President**

#### **Introduction**

1. The Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction is being convened pursuant to General Assembly resolution 72/249 to consider the recommendations of the Preparatory Committee established pursuant to Assembly resolution 69/292 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 (resolution 72/249, para. 1).
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 (*ibid.*, para. 2).
3. The work and results of the Intergovernmental Conference should be fully consistent with the provisions of the Convention, and the process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies (*ibid.*, paras. 6 and 7).
4. As part of the process for the preparation of the zero draft of the instrument, at the first substantive session of the Intergovernmental Conference, held from 4 to 17 September 2018, participants discussed the topics identified in the package agreed in 2011 and some cross-cutting issues on the basis of a President's aid to discussions (A/CONF.232/2018/3), bearing in mind the recommendations concerning sections III. A and B of the report of the Preparatory Committee (A/AC.287/2017/PC.4/2) and

taking into account other material produced in the context of the Preparatory Committee. At the second session of the Conference, held from 25 March to 5 April 2019, delegations engaged in discussions based on the ideas and proposals contained in a President's aid to negotiations (A/CONF.232/2019/1), which was aimed at facilitating text-based negotiations and included treaty language and options concerning the four elements of the package and some cross-cutting issues. At the third session of the Conference, held from 19-30 August 2019, participants discussed the draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, which had been prepared by the President of the Conference (A/CONF.232/2019/6). At the conclusion of the third session, the President was requested to prepare a revised draft text that would take into account comments made during discussions held during the third session, as well as to consider textual proposals made by delegations and contained in the various conference room papers issued during the third session of the Conference.

5. The annex to the present note contains the revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, prepared by the President of the Conference in response to that request. To facilitate consideration of the revised draft text, an informal document, in which revisions to the draft text are reflected in bold, underline and strike-through, has also been made available to delegations for their reference.

6. The revisions in the revised draft text focus primarily on streamlining the text, where possible, including elimination of certain options. Textual edits have also been incorporated. In some instances, taking into account the views expressed and the textual proposals made at the third session of the Conference, ideas that gained a certain degree of support from different delegations have been incorporated, although the precise textual formulations proposed by delegations may not always have been utilized. Occasionally, new language has been proposed in an attempt to find a way forward.

7. Square brackets have been used to indicate the following: (a) there are two or more alternative options within a provision; and (b) support has been expressed for a "no text" option, either within a provision or in relation to a provision as a whole. However, the absence of square brackets does not imply agreement on the ideas or specific language reflected in a provision. Equally, text that has not been revised should not be taken as indicating agreement on the unrevised text.

8. The structure of the revised draft text remains largely unchanged from the draft text considered at the third session of the Conference, although the placement of certain paragraphs have been shifted. Due note has been taken of proposals made during the third session for adjustments in the structure of the draft text and the structure of the revised draft text is without prejudice to the final structure of the future instrument. Its content is also without prejudice to the position of any delegation on any of the matters referred to therein and does not preclude consideration of matters not included in the document.

9. The aim of the revised draft text is to enable delegations to take stock and to facilitate further progress in the negotiations at the fourth session of the Conference. Delegations are encouraged to study it, together with the compilation of textual proposals contained in the conference room paper issued at the conclusion of the third session, with a view to considering whether agreement might be reached on specific provisions, or whether additional proposals might be suggested for the purpose of reaching agreement. In this regard, delegations are strongly encouraged to consult

with each other, with a view to presenting consolidated proposals, to the extent possible.

10. Delegations are invited to submit to the secretariat (doalos@un.org), beginning 2 January 2020, but no later than 3 February 2020, textual proposals for consideration at the fourth session of the Conference. A compilation of proposals received in advance by this deadline will be published on the website of the Conference (<https://www.un.org/bbnj>) thereafter by the secretariat in advance of the opening of the fourth session. Proposals that had been submitted during the third session do not need to be resubmitted as they are already contained in the compilation of textual proposals referred to above. Delegations will also be able to submit proposals during the fourth session itself.

## Annex

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

## PREAMBLE

*The States Parties to this Agreement,*

*Recalling* the relevant provisions of the United Nations Convention on the Law of the Sea, including the obligation to protect and preserve the marine environment,

*Stressing* the need to respect the balance of rights, obligations and interests set out in the Convention,

*Stressing* the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,

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

*Respecting* the sovereignty, territorial integrity and political independence of all States,

*Desiring* to promote sustainable development,

*Aspiring* to achieve universal participation,

*Have agreed* as follows:

## PART I GENERAL PROVISIONS

### Article 1 Use of terms

For the purposes of this Agreement:

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

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

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

4. “Areas beyond national jurisdiction” means the high seas and the Area.

5. “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.
- [6. “Cumulative impacts” means impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts.]
- [7. Alt. 1. “Environmental impact assessment” means a process to evaluate the environmental impact of an activity [to be carried out in areas beyond national jurisdiction [, with an effect on areas within or beyond national jurisdiction]] [, taking into account [, inter alia,] interrelated [socioeconomic] [social and economic], cultural and human health impacts, both beneficial and adverse].]
- [7. Alt. 2. “Environmental impact assessment” means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment.]
- [8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity.]
- [9. Alt. 1. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties.]
- [9. Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.]
10. “Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas].
- [11. “Marine technology” means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for *in situ* and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]
12. (a) “States Parties” means States that have consented to be bound by this Agreement and for which this Agreement is in force.
- (b) This Agreement applies *mutatis mutandis*:
- (i) To any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention, and
- (ii) Subject to article 67, to any entity referred to as an “international organization” in annex IX, article 1, of the Convention that becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.
- [13. “Strategic environmental assessment” means the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public

participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.]

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

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

## **Article 2**

### **General objective**

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

## **Article 3**

### **Application**

1. This Agreement applies to areas beyond national jurisdiction.
2. This Agreement does not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement.

## **Article 4**

### **Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies**

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.
2. The rights and jurisdiction of coastal States in all areas under national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone, shall be respected in accordance with the Convention.
3. This Agreement shall be interpreted and applied in a manner that [respects the competences of and] does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.
4. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.]

## **Article 5**

### **General [principles] [and] [approaches]**

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

- [(a) The principle of non-regression;]
- (b) [The polluter pays principle] [The endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [, in principle,] bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment];
- [(c) The principle of the common heritage of mankind;]
- [(d) The principle of equity;]
- (e) The precautionary [principle] [approach];
- (f) An ecosystem approach;
- [(g) An integrated approach;]
- (h) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;
- (i) The use of the best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities];
- (j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another.

## **Article 6**

### **International cooperation**

1. States Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and members thereof in the achievement of the objective of this Agreement.
2. States Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objective of this Agreement.
- [3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary.]

## **PART II**

### **MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS**

#### **Article 7**

#### **Objectives**

The objectives of this Part are to:

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

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

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

[(d) Promote the development and transfer of marine technology [, subject to all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology].]

## **[Article 8 Application]**

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

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

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

[(c) Derivatives.]]

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

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

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

[(c) Derivatives;]

[(d) Marine scientific research.]]

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



**[Article 9  
Activities with respect to marine genetic resources of areas beyond  
national jurisdiction]**

- [1. Activities with respect to marine genetic resources of areas beyond national jurisdiction may be carried out by all States Parties and their natural or juridical persons under the conditions laid down in this Agreement.]
- [2. In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State under the jurisdiction of which such resources are found.]
- [3. No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction [, nor shall any State or natural or juridical person appropriate any part thereof]. No such claim or exercise of sovereignty or sovereign rights [nor such appropriation] shall be recognized.]
- [4. The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of mankind as a whole, taking into consideration the interests and needs of developing States, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.]
- [5. Activities with respect to marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.]

**[Article 10  
[Collection of] [and] [Access to] marine genetic resources of areas  
beyond national jurisdiction]**

- [1. *In situ* [collection of] [access to] marine genetic resources within the scope of this Part shall be subject to [Alt. 1. [prior] [and] [post-cruise] notification to the secretariat [, which shall include an indication of the location and date of [collection] [access], the resources to be [collected] [accessed], the purposes for which the resources will be utilized and the entity that will [collect] [access] the resources] [of [collection of] [access to] marine genetic resources of areas beyond national jurisdiction].]
- [Alt. 2. a [permit] [licence] issued in the manner and under the terms and conditions set forth in paragraph 2.]]
- [2. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that *in situ* [collection of] [access to] marine genetic resources within the scope of this Part shall be subject to:
  - (a) An indication of the geographical coordinates of the location where marine genetic resources were [collected] [accessed];
  - (b) Capacity-building;
  - (c) The transfer of marine technology;
  - (d) The deposit of samples, data and related information in open source platforms, such as databases, repositories or gene banks;
  - (e) Contributions to the special fund;
  - (f) Environmental impact assessments;

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

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

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

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

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

#### **[Article 10bis**

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

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

#### **[Article 11**

#### **[Fair and equitable] sharing of benefits]**

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

[2. Benefits [shall] [may] include [monetary and] non-monetary benefits.]

[3. Benefits arising from the [collection of] [access to] [utilization of] marine genetic resources of areas beyond national jurisdiction [shall] [may] be shared at different stages, in accordance with the following provisions:

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

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

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

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

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

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

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

[(e) To support the transfer of marine technology;]

[(f) To assist developing States Parties in attending the meetings of the Conference of the Parties.]]]

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

## **[Article 12 Intellectual property rights]**

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

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

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

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

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

### **[Article 13 Monitoring]**

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

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

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

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

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

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

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

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

### **PART III**

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

### **Article 14**

#### **Objectives**

The objectives of this Part are to:

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

[(b) Implement effectively obligations under the Convention and other relevant international obligations and commitments;]

[(c) Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of area-based management tools, including marine protected areas;]

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

[(e) Rehabilitate and restore biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution;]

[(f) Support food security and other socioeconomic objectives, including the protection of cultural values;]

[(g) Create scientific reference areas for baseline research;]

[(h) Safeguard aesthetic, natural or wilderness values;]

[(i) Promote coherence and complementarity.]

### **Article 15**

#### **International cooperation and coordination**

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

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

[(b) The process in relation to area-based management tools, including marine protected areas, set out in this Part, including by:

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

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

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

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

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

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

## **Article 16**

### **Identification of areas [requiring protection]**

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

2. Indicative criteria for the identification of areas requiring protection through the establishment of area-based management tools, including marine protected areas, under this Part, may include those specified in annex I.

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

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

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

## **Article 17**

### **Proposals**

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

[2. States Parties may collaborate with relevant stakeholders in the development of proposals.]

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

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

(a) A geographic or spatial description of the area that is the subject of the proposal;

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

(c) Specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States;

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

(e) A description of the specific conservation and sustainable use objectives that are to be applied to the area;

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

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

(h) A monitoring, research and review plan, including priority elements;

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

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

## **Article 18**

### **Consultation on and assessment of proposals**

1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all relevant stakeholders.

2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed by the secretariat to the proponent. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review of the Scientific and Technical Body. The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows:

(a) States, in particular adjacent coastal States, shall be invited to submit, *inter alia*:

- (i) Views on the merits of the proposal;
- (ii) Any relevant [additional] scientific inputs;
- (iii) Information regarding any existing measures in adjacent areas within national jurisdiction;
- (iv) Views on the potential implications of the proposal for areas under national jurisdiction;
- (v) Any other relevant information;

(b) Bodies of relevant legal instruments and frameworks and relevant global, regional and sectoral bodies shall be invited to submit, *inter alia*:

- (i) Views on the merits of the proposal;
- (ii) Any relevant [additional] scientific inputs;
- (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;
- (iv) Views regarding any aspects of the [conservation and [management] [sustainable use] measures] [priority elements for a management plan] identified in the proposal that fall within the competence of that body;
- (v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body;
- (vi) Any other relevant information;

(c) Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, *inter alia*:

- (i) Views on the merits of the proposal;
- (ii) Any relevant [additional] scientific inputs;
- (iii) Any relevant traditional knowledge of indigenous peoples and local communities;
- (iv) Any other relevant information.

3. Contributions received pursuant to paragraph 2 shall be made publicly available by the secretariat.

4. The proponent shall consider the contributions received during the consultation period and shall either revise the proposal accordingly or continue the consultation process.

5. The consultation period shall be time-bound.

6. The revised proposal shall be submitted to the Scientific and Technical Body, which shall assess the proposal, and make recommendations to the Conference of the Parties.



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

## **Article 19**

### **Decision-making**

1. The Conference of the Parties [shall] [may] take decisions on matters related to area-based management tools, including marine protected areas, with respect to:

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

[Alt. 1

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

(i) The identification of areas requiring protection;

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

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

(i) Whether to recommend that States Parties to this Agreement promote the adoption of relevant conservation and [management] [sustainable use] measures through such instruments, frameworks and bodies, in accordance with their respective mandates;

(ii) Whether to adopt conservation and [management] [sustainable use] measures complementary to those adopted under such instruments, frameworks and bodies;

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

[Alt. 2

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

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

## **Article 20 Implementation**

1. States Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.
2. Nothing in this Agreement shall prevent a State Party from adopting more stringent measures with respect to its vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law.
- [3. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States Parties, directly or indirectly.]
- [4. States Parties shall promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures adopted under this Part.]
- [5. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the conservation and management objectives of the measures adopted and area-based management tools established under this Part.]
- [6. A State Party that is not a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the conservation and management measures established under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area-based management tools, including marine protected areas, established under relevant frameworks, instruments and bodies.]]

## **Article 21 Monitoring and review**

1. States Parties, individually or collectively, shall report to the Conference of the Parties on the implementation of [area-based management tools, including marine protected areas] [relevant elements of the decisions of the Conference on area-based management tools, including marine protected areas], established under this Part. Such reports shall be made publicly available by the secretariat.
2. Area-based management tools, including marine protected areas, established under this Part, including related conservation and [management] [sustainable use] measures, shall be monitored and periodically reviewed by the Scientific and Technical Body.
3. The review referred to in paragraph 2 shall assess the effectiveness of measures and the progress made in achieving their objectives and provide advice and recommendations to the Conference of the Parties.

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

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

## **PART IV ENVIRONMENTAL IMPACT ASSESSMENTS**

### **Article 21bis Objectives**

The objectives of this Part are to:

[(a) Operationalise the provisions of the Convention on environmental impact assessment, by establishing processes, thresholds and guidelines for conducting and reporting assessments by States;]

[(b) Enable consideration of cumulative impacts;]

[(c) Provide for Strategic Environmental Assessments;]

[(d) Achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction.]

### **Article 22 Obligation to conduct environmental impact assessments**

1. States Parties shall [as far as practicable] assess the potential effects of planned activities under their jurisdiction or control [on the marine environment] [in accordance with their obligations under articles 204 to 206 of the Convention].

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

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

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

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

[2. Alt. 1. The Scientific and Technical Body shall consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment. [Procedures for consultation and/or coordination shall include the establishment of an ad hoc interagency working group or the participation of representatives of the scientific and technical bodies of those organizations in meetings of the Scientific and Technical Body].]

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

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

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

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

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

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

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

instruments and frameworks and relevant global, regional, subregional and sectoral bodies,] determines that:

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

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

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

## **Article 24**

### **Thresholds and criteria for environmental impact assessments**

[1. Alt.1

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

[1. Alt.2

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

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

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

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

## **Article 25**

### **Cumulative impacts**

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

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

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

## **Article 26**

### **Transboundary impacts**

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

## **Article 27**

### **Areas identified as ecologically or biologically significant or vulnerable**

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

## **Article 28**

### **Strategic environmental assessments**

1. States Parties, individually or in cooperation with other States Parties, shall ensure that a strategic environmental assessment is carried out for plans and programmes relating to activities [under their jurisdiction or control,] [conducted] [with impacts] in areas beyond national jurisdiction, which meet the threshold/criteria established in article 24.
- [2. As one type of environmental assessment, strategic environmental assessments shall follow mutatis mutandis the process set out in this Part.]

## **Article 29**

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

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

## **Article 30 Screening**

1. A State Party shall determine whether an environmental impact assessment is required in respect of a planned activity under its jurisdiction or control.
- [2. The initial screening of activities shall consider the characteristics of the area where the planned activity under the jurisdiction or control of a State Party is intended to take place, as well as where the potential effects are going to be felt. Should such planned activity take place in or adjacent to an area that has been identified for its significance or vulnerability, regardless of whether the impacts are expected to be minimal or not, an environmental impact assessment shall be required.]
- [3. If a State Party determines that an environmental impact assessment is not required for a planned activity under its jurisdiction or control, [the approval of the Scientific and Technical Body must be obtained] [it must provide information to support that conclusion]. [The Scientific and Technical Body shall verify that the information provided by the [State Party] satisfies the requirements in this Part].]

## **Article 31 Scoping**

- [1. States Parties shall establish procedures to define the scope of the environmental impact assessments that shall be conducted [under the provisions of this Part].]
- [2. Such scope shall include, the identification of key environmental [, social, economic, cultural and other relevant] [impacts] [issues], including identified cumulative impacts, using the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities [, alternatives for analysis] [and a determination of the potential effects of the planned activity under the jurisdiction or control of a State Party, including a detailed description of potential environmental consequences].]

## **Article 32 Impact assessment and evaluation**

1. A State Party [that has determined that a planned activity under its jurisdiction or control requires an environmental impact assessment under this Agreement] shall ensure that the identification and evaluation of impacts in such an assessment is conducted in accordance with this Part, using the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities [, and an examination of alternatives].
2. Nothing in this Part precludes States Parties, in particular [small island] developing States, from conducting joint environmental impact assessments.
- [3. A State Party may designate a third party to conduct an environmental impact assessment required under this Agreement. Such third party [shall] [may] be drawn from the pool of experts created pursuant to paragraph 4 below. Environmental impact assessments conducted by such third parties must be submitted to the State for review and decision-making.]
- [4. A pool of experts shall be created under the Scientific and Technical Body. States Parties with capacity constraints may commission those experts to conduct and evaluate environmental impact assessments for planned activities.]

### **Article 33**

#### **Mitigation, prevention and management of potential adverse effects**

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

### **Article 34**

#### **Public notification and consultation**

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

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

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

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

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

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

### **Article 35**

#### **Preparation and content of environmental impact assessment reports**

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



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

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

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

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

(d) A description of the potential effects of the planned activity under the jurisdiction or control of a State Party on the marine environment, including [social, economic, cultural and other relevant impacts,] and [reasonably foreseeable potential direct, indirect,] cumulative and transboundary impacts, [as well as an estimation of their significance] [, including a description of the likelihood that the assessed activity will cause substantial pollution of or other significant and harmful changes to the marine environment in areas beyond national jurisdiction and its biodiversity];

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

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

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

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

(i) Uncertainties and gaps in knowledge;

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

[(k) The identification of the sources of the information contained in the report;]

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

[(m) The methodology used to identify environmental impacts;]

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

[(o) The environmental record of the proponent;]

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

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

[3. Further [details] [guidance] regarding the required content of an environmental impact assessment report [shall] [may] be developed by the Conference of the Parties as an annex to this Agreement and shall be based on the best available scientific information and knowledge, including relevant traditional knowledge of indigenous

peoples and local communities. [[These details] [This guidance] shall be reviewed regularly].]

### **Article 36**

#### **Publication of [assessment] reports**

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

### **[Article 37**

#### **Consideration and review of [assessment] reports]**

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

### **Article 38**

#### **Decision-making**

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

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

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

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

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

[3. Decision-making-related documents shall be made public, including through the clearing-house mechanism.]

### **Article 39**

#### **Monitoring**

In accordance with articles 204 to 206 of the Convention, States Parties shall [[continuously] monitor the effects of authorized activities] [ensure that the environmental impacts of the authorized activity are [continuously] monitored [and

supervised]] [, in accordance with the conditions set out in the approval of the activity].

## **Article 40 Reporting**

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

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

[2. Reports shall be submitted to [the clearing-house mechanism] [the Scientific and Technical Body] [ relevant legal instruments or frameworks or relevant global, regional, subregional and sectoral bodies and other States].]

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

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

## **Article 41 Review**

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

[(a) Should the results of the monitoring required under article 39 identify adverse impacts not foreseen in the environmental impact assessment, the [State with jurisdiction or control over the activity] [Scientific and Technical Body] shall:

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

[(ii) Halt the activity;]

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

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

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

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

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

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

### **Article 42 Objectives**

The objectives of this Part are to:

- (a) Assist States Parties, in particular developing States Parties, in implementing the provisions of this Agreement, to achieve its objectives;
- (b) Enable inclusive and effective participation in the activities undertaken under this Agreement;
- [(c) [Promote and encourage] [Ensure] access to marine technology by and transfer of marine technology for peaceful purposes to developing States Parties for the attainment of the objectives of this Agreement;]
- (d) Increase, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- (e) Develop the marine scientific and technological capacity of States Parties with regard to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- (f) Ensure that developing States Parties have:
  - [(i) Access to, and benefit from, the scientific information resulting from [the collection of] [access to] resources in areas beyond national jurisdiction, in particular marine genetic resources;]
  - [(ii) Access to, and that their special requirements receive consideration in, the sharing of benefits from marine genetic resources and in marine scientific research;]
  - [(iii) [Collection of] [Access to] marine genetic resources *in situ*, *ex situ* [and *in silico*] [[and] [as digital sequence information] [as genetic sequence data] [and their utilization];]
  - [(iv) [Endogenous] [Local] research capabilities relating to marine genetic resources and products, processes and other tools;]
  - (v) The capacity to develop, implement, monitor and manage, including to enforce, any area-based management tools, including marine protected areas;
  - (vi) The capacity to conduct and evaluate environmental impact assessments [and strategic environmental assessments].

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

1. States Parties, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall [promote] [ensure] cooperation, [in accordance with [this Agreement] [Part XIV of the Convention],] in accordance with their capabilities, in capacity-building and the

transfer of marine technology to assist States Parties that need and request it, in particular developing States Parties in achieving the objectives of this Agreement.

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

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

#### **Article 44**

### **Modalities for capacity-building and the transfer of marine technology**

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

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

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

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

[5. Detailed modalities, procedures and guidelines for capacity-building and the transfer of marine technology [may] [shall] be developed and adopted by the Conference of the Parties.]

#### **Article 45**

### **Additional modalities for the transfer of marine technology**

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

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

[2. Alt. 2. States Parties shall [protect] [respect the protection of] intellectual property rights.]

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

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

## **Article 46**

### **Types of capacity-building and transfer of marine technology**

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

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

2. Further details concerning the types of capacity-building and transfer of marine technology identified in this article are elaborated in annex II.

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

## **Article 47**

### **Monitoring and review**

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

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

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

(b) Measuring performance on the basis of objective indicators and reviewing results-based analyses, including the output, progress and effectiveness of capacity-building and transfer of marine technology activities, successes and challenges;

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

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

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

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

## **PART VI**

### **INSTITUTIONAL ARRANGEMENTS**

#### **Article 48**

##### **Conference of the Parties**

1. A Conference of the Parties is hereby established.

2. The first meeting of the Conference of the Parties shall be convened no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference shall be held at regular intervals to be determined by the Conference at its first meeting.

3. The Conference of the Parties shall agree upon and adopt rules of procedure for itself and for any subsidiary body that it may establish.

[3bis. As a general rule, the decisions of the Conference of the Parties shall be taken by consensus. If all efforts to reach consensus have been exhausted, the procedure established in the rules of procedure adopted by the Conference shall apply.]

[3ter. Decisions of the Conference of the Parties shall be made publicly available by the secretariat and shall be transmitted to all States Parties in a timely manner, [in particular, to adjacent coastal States] as well as to relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.]

4. The Conference of the Parties shall [monitor and] keep under review the implementation of this Agreement and, for this purpose, shall:

(a) Adopt decisions and recommendations related to the implementation of this Agreement;

(b) Exchange information relevant to the implementation of this Agreement;

(c) Promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts towards, and the harmonization of relevant policies and measures for, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction [, including by establishing processes for cooperation and coordination with and among relevant global, regional, subregional and sectoral bodies] [, including by inviting other global, regional, subregional and sectoral bodies to establish processes for cooperation];

(d) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement [, which may include:

[(i) An access and benefit-sharing mechanism;]

[(ii) A capacity-building and transfer of marine technology committee;]

[(iii) An implementation and compliance committee;]

[(iv) A finance committee]];

(e) Adopt, at each ordinary meeting, a budget for the financial period until the following ordinary meeting;

(f) Undertake other functions identified in this Agreement or as may be required for its implementation.

[5. The Conference of the Parties [shall] [may], at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]

## **Article 49**

### **Scientific and Technical Body**

1. A Scientific and Technical Body is hereby established.

2. The Body shall be composed of experts, taking into account the need for multidisciplinary expertise [, including expertise in relevant traditional knowledge of



indigenous peoples and local communities], gender balance and equitable geographical representation.

3. The Body may also draw on appropriate advice from [existing arrangements, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection] [relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies], as well as other scientists and experts, as may be required.

4. Under the authority and guidance of the Conference of the Parties, the Body shall:

(a) Provide scientific and technical advice to the Conference of the Parties;

[(b) Monitor the utilization of marine genetic resources of areas beyond national jurisdiction;]

[(c) Possess recommendatory functions with respect to measures such as area-based management tools, including marine protected areas, including regarding:

(i) Standard-setting and review;

(ii) The assessment of proposals;

(iii) The monitoring and review of measures;]

[(d) Elaborate guidelines with respect to environmental impact assessments;]

[(e) Make recommendations to the Conference of the Parties with respect to environmental impact assessments;]

[(f) Review environmental impact assessment standards to ensure consistency with the requirements under this Agreement;]

[(g) Identify innovative, efficient and state-of-the-art technology and know-how relating to the conservation and sustainable use of marine biological diversity;]

[(h) Advise on ways and means to promote the development and transfer of marine technology;]

[(i) Assess the effectiveness of the implementation of measures and programmes for capacity-building and the transfer of marine technology, including by assessing whether capacity gaps are decreasing;]

[(j) Collaborate with regional and subregional committees on capacity-building and the transfer of marine technology or regional needs assessment mechanisms;]

[(k) Elaborate programmes for capacity-building and the transfer of marine technology;]

[(l) Establish subsidiary bodies as required;]

(m) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

## **Article 50**

### **Secretariat**

[1. Alt. 1. A secretariat is hereby established.]

[1. Alt. 2. The Conference of the Parties shall [, at its first ordinary meeting,] designate the secretariat from among those existing competent international

organizations that have signified their willingness to carry out the secretariat functions under this Agreement.]

[1. Alt. 3. The secretariat functions for this Agreement shall be performed by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations.]

2. The secretariat shall:

(a) Provide administrative and logistical support;

(b) Convene and service the meetings of the Conference of the Parties and of any other bodies as may be established by the Conference;

(c) Circulate information relating to the implementation of this Agreement;

[(d) Facilitate [appropriate] coordination with the secretariats of other relevant international bodies;]

[(e) Provide assistance with the implementation of this Agreement, as mandated by the Conference of the Parties;]

[(f) Prepare reports on the execution of its functions under this Agreement and submit them to the Conference of the Parties;]

(g) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

## **Article 51**

### **Clearing-house mechanism**

1. A clearing-house mechanism is hereby established.

2. The clearing-house mechanism shall consist primarily of an open-access web-based platform. [It shall also include a network of experts and practitioners in relevant fields.] The specific modalities for the operation of the clearing-house mechanism shall be determined by the Conference of the Parties.

3. The clearing-house mechanism shall serve as a centralized platform to enable States Parties to have access to, [collect,] [evaluate,] [make public] and disseminate information with respect to:

[(a) Activities related to marine genetic resources of areas beyond national jurisdiction, including notices of forthcoming *in situ* collection of marine genetic resources, research teams, ecosystems where the marine genetic resources are collected, the [digital] [genetic] properties of the marine genetic resources, their biochemical components, genetic sequence data [and information] [and the utilization of marine genetic resources];]

[(b) Data and scientific information on, as well as [, in line with the principle of prior informed consent,] traditional knowledge associated with, marine genetic resources of areas beyond national jurisdiction, including through lists of databases, repositories or gene banks where marine genetic resources of areas beyond national jurisdiction are currently held, a registry of such resources, and a track-and-trace mechanism for marine genetic resources of areas beyond national jurisdiction and their utilization;]

[(c) The sharing of benefits, including through reports on the status of monetary benefits shared and on their use through the publication of the proceedings of the meetings of the Conference of the Parties;]

[(d) Environmental impact assessments [, including:

(i) Environmental impact assessment reports;

(ii) Guidelines and technical methods on environmental impact assessments];]

[(e) Opportunities for capacity-building and the transfer of marine technology, such as activities, programmes and projects being conducted in areas beyond national jurisdiction, including those relevant to building capacity for skills development in activities covered in this Agreement [, as well as availability of funding];]

[(f) Requests for capacity-building and the transfer of marine technology on a case-by-case basis;]

[(g) Research collaboration and training opportunities, including in relation to information on universities and other organizations that offer study grants and facilities in the field of marine science, marine research institutes that offer laboratory facilities, equipment and opportunities for research and training, and offers of cruise studies at the global, regional and subregional levels;]

[(h) Information on sources and availability of technological information and data for the transfer of marine technology and opportunities for facilitated access to marine technology.]

[4. The clearing-house mechanism shall:

(a) Match capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and [provide] [facilitate] access to related know-how and expertise;

[(b) Promote linkages to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases, repositories and gene banks [, including experts in relevant traditional knowledge of indigenous peoples and local communities];]

[(c) Link to private and non-governmental platforms for the exchange of information;]

[(d) Build on regional and subregional clearing-house institutions, if applicable, when establishing regional and subregional mechanisms under the global mechanism;]

(e) Facilitate enhanced transparency, including by providing baseline data and information;

(f) Facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration.]

[5. The clearing-house mechanism shall recognize the special circumstances of small island developing States Parties [and archipelagic developing States Parties], facilitate access to the mechanism to enable those States to utilize it without undue obstacles or administrative burdens, and include information on activities to promote information-sharing, awareness-raising and dissemination in and with those States, as well as provide specific programmes for those States.]

[6. The clearing-house mechanism shall be managed by [the secretariat] [the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, in association with relevant organizations, including the International Seabed Authority and the International Maritime

Organization, and shall be informed by the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology].]

[7. Due regard shall be given to the confidentiality of information provided under this Agreement.]

## **[PART VII FINANCIAL RESOURCES [AND MECHANISM]]**

### **[Article 52 Funding]**

[1. Funding in support of the implementation of this Agreement, in particular capacity-building and the transfer of marine technology under this Agreement, shall be adequate, accessible, transparent [, sustainable and predictable] and [both voluntary and mandatory] [voluntary].]

2. Funding may be provided through public and private sources, both national and international, including but not limited to contributions from States, international financial institutions, existing funding mechanisms under global and regional instruments, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons, and through public-private partnerships.

3. States Parties shall ensure that, for the purposes of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, developing States Parties are granted preference by international organizations in the allocation of appropriate funds and technical assistance and the utilization of their specialized services.

4. A voluntary trust fund to facilitate the participation of representatives of developing States Parties in the meetings of the bodies under this Agreement shall be established by the Conference of the Parties. It shall be funded through voluntary contributions.

[Alt.1

5. In addition to the voluntary trust fund, a special fund [may] [shall] be established by the Conference of the Parties to:

(a) Fund capacity-building projects, including effective projects on the conservation and sustainable use of marine biological diversity;

(b) Fund activities and programmes, including training, related to the transfer of technology;

(c) Assist developing States Parties to implement this Agreement;

(d) Finance the rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction;

(e) Support conservation and sustainable use programmes by holders of traditional knowledge of indigenous peoples and local communities;

(f) Support public consultations at the national, subregional and regional levels;

(g) Undertake any other functions as agreed by the States Parties.

5bis. The special fund shall be funded through:

- (a) Voluntary contributions;
- [(b) Mandatory sources, including:
  - (i) Contributions from States Parties and royalties and milestone payments resulting from the utilization of marine genetic resources;
  - (ii) Payments as a condition of access to, and utilization of, marine genetic resources, premiums paid during the approval process of environmental impact assessments, in addition to cost recovery, fees and penalties, and other avenues for mandatory payments;]
- (c) Endowments by States Parties;
- (d) Existing financial mechanisms, such as the Global Environment Facility and the Green Climate Fund;
- [(e) Private entities wishing to engage in the exploration and exploitation of marine biological diversity of areas beyond national jurisdiction.]]

[Alt.2

5. States Parties shall cooperate to establish appropriate funding mechanisms to assist developing States Parties with achieving the objectives of capacity-building and the transfer of marine technology under this Agreement.]

6. The funding mechanisms established under this Agreement shall be aimed at ensuring efficient access to funding through simplified approval procedures and enhanced readiness of support for developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries.

7. Access to funding under this Agreement shall be open to developing States Parties [on the basis of need] [, taking into account the needs for assistance of States Parties with special requirements, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries].

## **PART VIII IMPLEMENTATION [AND COMPLIANCE]**

### **Article 53 Implementation [and compliance]**

1. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure the implementation of this Agreement.

[2. Each State Party shall monitor the implementation of its obligations under this Agreement and shall, at intervals and in a format to be determined by the Conference of the Parties, report to the Conference on measures that it has taken to implement this Agreement.]

[3. The Conference of the Parties shall consider and adopt cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Agreement and to address cases of non-compliance.]

## **PART IX SETTLEMENT OF DISPUTES**

### **Article 54 Obligation to settle disputes by peaceful means**

States Parties have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

### **[Article 55 Procedures for the settlement of disputes]**

- [1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.]
- [2. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.]
- [3. A State Party to this Agreement that is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party that is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in annex V, article 2, annex VII, article 2, and annex VIII, article 2, for the settlement of disputes under this Part.]

## **[PART X NON-PARTIES TO THIS AGREEMENT]**

### **[Article 56 Non-parties to this Agreement]**

[States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.]

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## **PART XI GOOD FAITH AND ABUSE OF RIGHTS**

### **Article 57 Good faith and abuse of rights**

States Parties shall fulfil in good faith the obligations assumed under this Agreement and exercise the rights recognized therein in a manner that would not constitute an abuse of right.

## **PART XII FINAL PROVISIONS**

### **Article 58 Signature**

[This Agreement shall be open for signature by all States and the other entities referred to in article [1 (12) (b)] from [insert date] and shall remain open for signature at United Nations Headquarters until [insert date].]

### **Article 59 Ratification, approval, acceptance and formal confirmation**

[This Agreement is subject to ratification, approval or acceptance by States and to formal confirmation by the other entities referred to in article [1 (12) (b)]. The instruments of ratification, approval, acceptance and formal confirmation shall be deposited with the Secretary-General of the United Nations.]

### **Article 60 Accession**

[This Agreement is open for accession by States and the other entities referred to in article [1 (12) (b)] from the day following the date on which it is closed for signature. The instruments of accession shall be deposited with the Secretary-General of the United Nations.]

### **Article 61 Entry into force**

[1. This Agreement shall enter into force [30] days after the date of deposit of the [...] instrument of ratification, approval, acceptance or accession.]

[2. For each State or entity that ratifies, approves or accepts the Agreement or accedes thereto after the deposit of the [...] instrument of ratification, approval, acceptance or accession, this Agreement shall enter into force on the [thirtieth] day following the deposit of its instrument of ratification, approval, acceptance or accession.]

## **[Article 62 Provisional application]**

- [1. This Agreement shall be applied provisionally by a State or entity that consents to its provisional application by so notifying the depositary in writing at the time of signature or deposit of its instrument of ratification, acceptance, approval, formal confirmation or accession. Such provisional application shall become effective from the date of receipt of the notification by the Secretary-General.]
- [2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate its provisional application.]

## **Article 63 Reservations and exceptions**

[No reservations or exceptions may be made to this Agreement.]

## **[Article 64 Relation to other agreements]**

- [1. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision the derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.]
- [2. States Parties intending to conclude an agreement referred to in paragraph 1 shall notify the other States Parties through the secretariat referred to in article 50 of their intention to conclude the agreement and of the modification or suspension that it provides.]

## **Article 65 Amendment**

- [1. A State Party may, by written communication addressed to the secretariat referred to in article 50, propose amendments to this Agreement. The secretariat shall circulate such communication to all States Parties. If, within [six] months from the date of the circulation of the communication, not less than [one half] of the States Parties reply favourably to the request, the proposed amendment shall be considered at the following meeting of the Conference of the Parties.]
- [2. The Conference of the Parties shall make every effort to reach agreement on the adoption of any proposed amendment by way of consensus. If all efforts to reach consensus have been exhausted, the procedures established in the rules of procedure adopted by the Conference shall apply.]
- [3. An amendment adopted in accordance with paragraph 2 of this article shall be communicated by the depositary to all States Parties for ratification, approval or acceptance.]



[4. Amendments to this Agreement shall enter into force for the States Parties ratifying, approving or accepting them on the [thirtieth] day following the deposit of instruments of ratification, approval or acceptance by [two-thirds] of the number of States Parties [at the time of adoption of the amendment] [at the time of ratification, approval or acceptance of the amendment]. Thereafter, for each State Party depositing its instrument of ratification, approval or acceptance of an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the [thirtieth] day following the deposit of its instrument of ratification, approval or acceptance.]

[5. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than required under this article.]

## **Article 66 Denunciation**

[1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect [one year] after the date of receipt of the notification, unless the notification specifies a later date.]

[2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.]

## **Article 67 Participation by international organizations**

[1. In cases where an international organization referred to in annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, annex IX to the Convention shall apply mutatis mutandis to participation by such international organization in this Agreement, except that the following provisions of that annex shall not apply:

- (a) Article 2, first sentence;
- (b) Article 3, paragraph 1.]

[2. In cases where an international organization referred to in annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) At the time of signature, formal confirmation or accession, such international organization shall make a declaration stating that:

- (i) It has competence over all matters governed by this Agreement;
- (ii) For this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility;
- (iii) It accepts the rights and obligations of States Parties under this Agreement;

(b) Participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) In the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.]

### **[Article 68 Annexes]**

[1. The annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the annexes relating thereto.]

[2. The annexes may be revised from time to time by States Parties. Notwithstanding the provisions of article 65, if a revision to an annex is adopted by consensus at a meeting of the Conference of the Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. Once adopted, the revised annex shall be submitted to the depositary for its circulation to all States. If a revision to an annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 65 shall apply.]

### **Article 69 Depositary**

[The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.]

### **Article 70 Authentic texts**

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

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**[ANNEX I  
Indicative criteria for identification of areas]**

- [(a) Uniqueness;
- [(b) Rarity;]
- (c) Special importance for the life history stages of species;
- (d) Special importance of the species found therein;
- (e) The importance for threatened, endangered or declining species or habitats;
- (f) Vulnerability, including to climate change and ocean acidification;
- (g) Fragility;
- (h) Sensitivity;
- (i) Biological diversity [and productivity];
- [(j) Representativeness;]
- (k) Dependency;
- [(l) Exceptional naturalness;]
- (m) Ecological connectivity [and/or coherence];
- (n) Important ecological processes occurring therein;
- [(o) Economic and social factors;]
- [(p) Cultural factors]
- [(q) Cumulative and transboundary impacts;]
- (r) Slow recovery and resilience;
- (s) Adequacy and viability;
- (t) Replication;
- (u) Feasibility.]

## [ANNEX II Types of capacity-building and transfer of marine technology]

[Under this Agreement, capacity-building and the transfer of marine technology initiatives may include, and are not limited to:

(a) The sharing of relevant data, information, knowledge and research, in user-friendly formats, including:

- (i) The sharing of marine scientific and technological knowledge;
- (ii) The exchange of information on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- (iii) The sharing of research and development results;

(b) Information dissemination and awareness-raising, including with regard to:

- (i) Marine scientific research, marine sciences and related marine operations and services;
- (ii) Environmental and biological information collected through research conducted in areas beyond national jurisdiction;
- (iii) Relevant traditional knowledge [, in line with the principle of prior informed consent];
- (iv) Stressors on the ocean that affect marine biological diversity of areas beyond national jurisdiction, including the adverse effects of climate change and ocean acidification;

(v) Measures such as area-based management tools, including marine protected areas;

(vi) Environmental impact assessments;

(c) The development and strengthening of relevant infrastructure, including equipment, such as:

- (i) The development and establishment of necessary infrastructure;
- (ii) The provision of technology, including sampling and methodology equipment (e.g., for water, geological, biological or chemical samples);
- (iii) The acquisition of the equipment necessary to support and further develop research and development capabilities, including in data management, in the context of [the collection of] [access to] and the utilization of marine genetic resources, measures such as area-based management tools, including marine protected areas, and the conduct of environmental impact assessments;

(d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms, including:

- (i) Governance, policy and legal frameworks and mechanisms;
- (ii) Assistance in the development, implementation and enforcement of national legislative, administrative or policy measures, including associated regulatory, scientific and technical requirements at the national, subregional or regional level;
- (iii) Technical support for the implementation of the provisions of this Agreement, including for data monitoring and reporting;

- (iv) Capacity to translate data and information into effective and efficient policies, including by facilitating access to and the acquisition of necessary knowledge to inform decision makers in developing States Parties;
- (v) The establishment or strengthening of the institutional capacities of relevant national and regional organizations and institutions;
- (vi) The establishment of national and regional scientific centres, including as data repositories;
- (vii) The development of regional centres of excellence;
- (viii) The development of regional centres for skills development;
- (ix) Increasing cooperative links between regional institutions, for example North-South and South-South collaboration and collaboration among regional seas organizations and regional fisheries management organizations;
- (e) The development and strengthening of human resources and technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of technology, such as:
  - (i) Collaboration and cooperation in marine science, including through data collection, technical exchange, scientific research projects and programmes, and the development of joint scientific research projects in cooperation with institutions in developing States;
  - (ii) [Short-term, medium-term and long-term] [Education] and training in:
    - a. The natural and social sciences, both basic and applied, to develop scientific and research capacity;
    - b. Technology, and the application of marine science and technology, to develop scientific and research capacities;
    - c. Policy and governance;
    - d. The relevance and application of traditional knowledge;
  - (iii) The exchange of experts, including experts on traditional knowledge;
  - (iv) The provision of funding for the development of human resources and technical expertise, including through:
    - a. The provision of scholarships or other grants for representatives of small island developing States Parties in workshops, programmes or other relevant training programmes to develop their specific capacities;
    - b. The provision of financial and technical expertise and resources, in particular for small island developing States, concerning environmental impact assessments;
  - (v) The establishment of a networking mechanism among trained human resources;
- (f) The development and sharing of manuals, guidelines and standards, including:
  - (i) Criteria and reference materials;
  - (ii) Technology standards and rules;
  - (iii) A repository for manuals and relevant information to share knowledge and capacity on how to conduct environmental impact assessments, lessons learned and best practices;

(g) The development of technical, scientific and research and development programmes, including biotechnological research activities.]

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