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The Permanent Mission of the People's Republic of China to the United Nations presents its compliments to the Division for Ocean Affairs and the Law of the Sea of Office of Legal Affairs of the United Nations (DOALOS), and has the honor to transmit herewith, in Chinese and English versions, the Written Submission of the Chinese Government on Elements of a Draft 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.

It will be appreciated if DOALOS could make this Written Submission be transmitted to the Chair of the Preparatory Committee established by General Assembly resolution 69/292, circulated to all the Permanent Missions of the Member States to the United Nations and made available on the website of DOALOS.

The Permanent Mission of the People's Republic of China to the United Nations avails itself of this opportunity to renew to the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs of the United Nations the assurances of its highest consideration.

New York, 23 March 2017



Division for Ocean Affairs and the Law of the Sea,
Office of Legal Affairs, United Nations
New York

Written Submission of the Chinese Government on Elements of a Draft 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

(March 7, 2017)

1. The Chinese Government attaches great importance to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). China actively participated in all the previous meetings of the Ad Hoc Open-ended Informal Working Group of BBNJ and the previous two sessions of the BBNJ Preparatory Committee (PrepCom). China is willing to continue playing a constructive role in the future BBNJ consultations and make contributions for the international community to better address the conservation and sustainable use of BBNJ.
2. The Chinese Government supports the statements made by the Group of 77 and China during the previous two BBNJ PrepCom sessions and the views expressed by the Group and China in its written submission relating to BBNJ issues. Besides the aforementioned views, the Chinese Government would like to make some additional comments in its own capacity. It is noted that this Submission should be without prejudice for the Chinese Government to make further comments or proposals in future discussions.

I. GENERAL POSITION

3. China supports Resolution 69/292 entitled “ Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the new international instrument) ” as adopted by the General Assembly of the United Nations, highlighting that the mandate of the PrepCom is to “make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under the Convention ”. The relevant work should be carried out by parties concerned strictly in accordance with the authorization of the Resolution. The final substantive recommendations to be made by the PrepCom should, with the greatest efforts, be based on consensus and reflect the common understanding of all parties. Meanwhile, the Chinese Government supports the PrepCom in addressing the topics identified in the 2011 package, namely marine genetic resources, including 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, together and as a whole.
4. Firstly, the new international instrument, as a legally binding document under the framework of the UNCLOS, should be consistent with the objectives and purposes of the UNCLOS, playing a supplementary and complementary role. It should not deviate from the principles and spirits of the UNCLOS or undermine its existing framework. Nor should it impair the integrity and delicate balance of the UNCLOS. The freedoms and rights in respect of navigation, scientific research and fishing enjoyed by States under UNCLOS should not be derogated. The provisions of the UNCLOS concerning the rights and obligations of the coastal States, including the rights and obligations over the outer continental shelf beyond 200 nautical miles, should not be affected.

5. Secondly, the new international instrument should not contravene with current international law and global, regional or sectoral marine mechanisms. Nor should it undermine existing relevant legal instruments or frameworks as well as the relevant global, regional and sectoral bodies. In particular it should refrain from interfering with the mandates of the Food and Agriculture Organization of the United Nations, Regional Fisheries Management Organizations, the International Maritime Organization and the International Seabed Authority. The new international instrument should facilitate cooperation and coordination with existing relevant international bodies, and avoid duplication or conflict of functions.
6. Thirdly, the relevant institutional arrangements of the new international instrument should have sound legal bases and solid scientific evidences and maintain a reasonable balance between marine environmental protection and sustainable use.
7. Fourthly, the new international instrument should accommodate the interests and concerns of all sides. It should also base itself on the interests and needs of the international community as a whole and the absolute majority of States, especially those of the developing States. It should not overburden States particularly developing States by adding obligations and responsibilities beyond their capacity.

II. MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS

8. Marine genetic resources in areas beyond national jurisdiction are of tremendous actual or potential value for human beings. The institutional arrangements of the new international instrument should be conducive to promote scientific research, encourage innovation, facilitate fair and equitable share of the benefits from conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, with a view to advancing the common well-being of humankind.

A. Definition

9. The Chinese Government considers that the definitions of genetic resource contained in the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) could serve as references for discussion on the definition of marine genetic resources (MGRs) in the new international instrument. The definition in the new instrument should include the following four elements: (1) the animal, plant, microbial or other origin derived from oceans and seas; (2) genetic materials containing functional units of heredity; (3) the resources of actual or potential value; (4) the resources derived from areas beyond national jurisdiction. The Chinese Government noticed that the definitions of genetic resources contained in the CBD and ITPGRFA do not encompass derivative, which is the product of biochemical synthesis without functional units of heredity.

B. Access

10. During the meetings of the PrepCom, some States argued that access to the MGRs consists of three types, namely *in situ* collection, *ex situ* collection and *in silico* analysis. The *in situ* collection means obtaining or collecting MGRs in natural environments in areas beyond national jurisdiction. The *ex situ* collection and the *in silico* analysis refer to the collection of useful resources, information, materials and data resulted from the laboratory separation, identification, selection, cultivation and computer-based simulation analysis of the MGRs samples obtained from *in situ* collection. The Chinese government is of the view that the *in situ* collection in essence falls within the scope of scientific research in areas beyond national jurisdiction as stipulated by the UNCLOS, therefore free Access arrangements should be applied so as to facilitate the exploitation and sustainable use of MGRs.

C. Benefit sharing

11. Collection of samples of MGRs in areas beyond national jurisdiction, subsequent research and development, and further commercialization of useful products, are characterized by demands for high technology, long period of time, large investments and uncertain outcomes, etc. The benefit sharing arrangement of MGRs should in general promote the conservation and sustainable use of BBNJ, encourage marine scientific research, and facilitate benefit sharing of MGRs for all humankind. The Chinese Government is of the opinion that on the premise of fully accommodating the concerns and needs of developing States, the PrepCom should give priority to non-monetary benefit sharing mechanism such as easy access to samples, information exchange, transfer of technology and capability building. Meanwhile, The Chinese Government is open to discuss and explore the establishment of a monetary benefit sharing mechanism.

III. AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

12. The Chinese Government supports the promotion of the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction and attaches great importance to area-based management tools, including marine protected areas.

A. Definition

13. Area-based management tools include different management forms and approaches besides marine protected areas. The Chinese Government maintains that the definition of area-based management tools to be regulated by the new international instrument should include but not limited to the following three basic elements: (1) The objective element. The area-based management tools should be aimed at the conservation and sustainable use of marine biological diversity. (2) The geographic

scope element. The area-based management tools should be applied only to areas in the high seas and the international seabed area. (3) The function elements. The area-based management tools should include different functions and management approaches.

B. Principles and approaches of establishing marine protected areas

14. The preamble of the UNCLOS clearly stipulates that: “Conscious that the problems of ocean space are closely interrelated and needs to be considered as a whole.” In compliance with this spirit, when it comes to the principles and approaches of establishing marine protected areas, the integrated marine management approach could be taken into account in order to fill the gaps among the current regional or sectoral management approaches.
15. With regard to the specific guiding principles of establishing marine protected areas to be developed in the new international instrument, the Chinese Government in general associates itself with the statements on this issue made by G77 and China at the Second Session of the PrepCom and additionally emphasizes the following principles: (1) The principle of necessity. Marine protected areas are tools rather than objectives, so marine protected areas should be established on the premise of necessity. (2) The principle of proportionality. Conservation measures must be proportional to the objectives and effects of conservation and should be applied in a cost-benefit manner. (3) The principle of scientific evidence. The establishment of marine protected areas needs solid scientific evidence, evaluating the potential threats and risks to the ecosystems, habitats and populations to be protected. (4) The principle of different levels of protection. Different management tools should be applied according to the respective characteristics of different sea waters, ecosystems, habitats and populations. (5) The principle of international cooperation. All countries and international organizations

are obliged to collaborate with each other in the establishment of marine protected areas.

16. The establishment of marine protected areas should have clear conservation objectives, certain conservation targets, specific protection scope, appropriate protection measures and reasonable time limit etc. The establishment of marine protected areas should follow specific procedures, including submission, consultation, review, decision-making, management, monitoring and surveillance.

IV. ENVIRONMENTAL IMPACT ASSESSMENTS

17. The Chinese Government attaches great importance to marine environmental impact assessments, and believes that the institutional arrangements in respect of environmental impact assessments in the new international instrument should comply with the basic legal framework and the procedural elements provided by the UNCLOS. It should also take into account the provisions in respect of environmental impact assessments in other international instruments.
18. Article 206 of the UNCLOS provides that: “When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment.” In accordance with this Article, the Chinese Government submits that the subject of environmental impact assessments under the new international instrument should be States planning to undertake marine activities. The object of environmental impact assessments should be the planned “activities” under the jurisdiction or control of States, according to which strategic environmental impact assessment is not appropriate. The threshold to trigger environmental impact assessments is to “have reasonable ground for believing” that such activities “may cause substantial pollution of or significant and harmful

changes to the marine environment”. In addition, in light of the factors such as scientific information, technical methods, cost and capability, it should be carefully deliberated to ascertain whether assessment of cumulative impacts is “as far as practicable”.

19. Article 194 of the UNCLOS specifies that States shall ensure that “pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.” The Chinese Government believes that since the UNCLOS has made provisions for trans-boundary impact of activities within the areas of national jurisdiction, the scope of environmental impact assessments under the new international instrument should be limited to activities in the areas beyond national jurisdiction, including activities that may cause significant environmental impacts to the areas under the jurisdiction of the coastal States, but excluding activities that take place in the areas within national jurisdiction.

V. CAPACITY-BUILDING AND THE TRANSFER OF MARINE TECHNOLOGY

20. Capacity building and the transfer of marine technology are among the important means to improve the capacity of developing countries in the conservation and sustainable use of BBNJ, and remain indispensable for realizing the overall objective of marine environmental protection and sustainable development. The Chinese Government is supportive of the general position of the Group of 77 and China on capacity building and the transfer of marine technology, and wishes to make the following additional points of views:
21. Firstly, the new international instrument should follow the principles of pertinence, effectiveness, equality and mutual benefit, win-win cooperation.

22. Secondly, the new international instrument should take full account of the needs and interests of developing countries, in particular small islands developing countries, the least developed countries, landlocked and geographically disadvantaged countries as well as countries with special interests.
23. Thirdly, the new international instrument should encourage various forms of international cooperation, including the installation of international cooperation platform, the establishment of information sharing mechanism as well as the utilization of the Intergovernmental Oceanographic Commission and other relevant international organizations, with a view to strengthening capacity-building of and the transfer of marine technology to the developing countries.
24. Fourthly, the Chinese Government concurs with the African Group for its proposal that capacity-building should be "meaningful". The Chinese Government advocates not only "to give fish", but more importantly to "teach how to fish", which means that through approaches such as education, technical training and joint research, the endogenous capacity of developing countries in the conservation and sustainable use of BBNJ could be conscientiously improved.

VI. Cross-cutting issues

25. The Chinese Government is of the view that the key for discussing cross-cutting issues is to follow the provisions and spirits of the UNCLOS, upholding the established international maritime legal order and maintaining a reasonable balance between the rights and obligations conferred by the UNCLOS.
26. Article 4 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks stipulates that "Nothing in this

Agreement should prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement should be interpreted and applied in the context of and in a manner consistent with the Convention." It is the view of the Chinese Government that this Article does provide some guidance to address the relationship between the new international instrument and the UNCLOS.

中国政府关于国家管辖范围以外区域海洋生物多样性 养护和可持续利用问题国际文书草案要素的书面意见

(2017年3月7日)

1. 中国政府高度重视国家管辖范围以外区域海洋生物多样性（“BBNJ”）的养护与可持续利用问题，派代表团积极参与了历次 BBNJ 特设全体非正式工作组会议和预备委员会（“预委会”）前两次会议。中国政府愿在后续磋商中继续发挥建设性作用，为国际社会更好养护和可持续利用 BBNJ 贡献力量。

2. 中国政府支持 77 国集团加中国在前两次预委会期间发表的有关意见以及就 BBNJ 问题提交的书面意见，并愿在此基础上以政府名义表达如下看法。本书面意见不妨碍中国政府在今后讨论中进一步提出意见和建议。

一、基本立场

3. 中国政府支持联合国大会通过题为“根据《联合国海洋法公约》（“《公约》”）的规定就国家管辖范围以外区域海洋生物多样性的养护和可持续利用问题拟订一份具有法律约束力的国际文书（“新国际文书”）”的第 69/292 号决议，强调预委会的职权是“就根据《公约》的规定拟订一份具有法

律约束力的国际文书的案文草案要点向大会提出实质性建议”。有关各方应严格按照决议授权开展相关工作，预委会最终所提实质性建议应尽最大努力在协商一致的基础上反映各方共识。同时，中国政府支持预委会以 2011 年各方达成的共识为基础，“一揽子”同步处理海洋遗传资源包括惠益分享、划区管理工具包括海洋保护区、环境影响评价、能力建设和海洋技术转让等问题。

4. 第一，新国际文书是在《公约》框架下制定的国际法律文件，应符合《公约》的目的和宗旨，应是对《公约》的补充和完善，不能偏离《公约》的原则和精神，不能损害《公约》建立的制度框架，不能损害《公约》的完整性和平衡性。各国根据《公约》在航行、科研、捕鱼等方面享有的自由和权利不应受到减损。《公约》关于沿海国的权利和义务的规定，包括对 200 海里以外大陆架的权利和义务的规定，不应受到影响。

5. 第二，新国际文书不能与现行国际法以及现有的全球性、区域性和专门性的海洋机制相抵触，不能损害现有相关法律文书或框架以及相关全球性、区域性和专门性机构，特别是不能干预联合国粮农组织、区域性渔业组织、国际海事组织、国际海底管理局等机构的职权。新国际文书应促进与现有相关国际机构的协调与合作，避免职权重复或冲突。

6. 第三，新国际文书的有关制度安排应有充分的法律依据和坚实的科学基础，并在 BBNJ 养护与可持续利用之间保持合理平衡。

7. 第四，新国际文书应兼顾各方利益和关切，立足于国际社会整体和绝大多数国家的利益和需求，特别是应顾及广大发展中国家的利益，不能给各国尤其是发展中国家增加超出其承担能力的义务和责任。

二、海洋遗传资源包括惠益分享

8. 国家管辖范围以外区域海洋遗传资源对于人类具有巨大实际或潜在价值。新国际文书的有关制度安排应有利于促进科研和鼓励创新，公平公正地分享养护和可持续利用国家管辖范围以外区域海洋遗传资源所产生的惠益，提升人类共同福祉。

（一）定义

9. 中国政府认为《生物多样性公约》和《粮食和农业植物遗传资源国际条约》中关于遗传资源的定义是讨论新国际文书中海洋遗传资源定义的参考。新国际文书中关于海洋遗传资源的定义应包括以下四个要素：一是来自于海洋的动物、植物和微生物或其他来源；二是含有遗传功能单元的遗传材料；三是具有实际或潜在价值；四是来源于国家管辖范围以外区域。中国政府注意到，衍生物是生物化学合成的产物，不含有遗传功

能单元，而且《生物多样性公约》和《粮食和农业植物遗传资源国际条约》关于遗传资源的定义本身都没有包括衍生物。

（二）获取

10. 在预委会讨论中，有些国家提出海洋遗传资源获取包括原生境获取、非原生境获取和生物信息数据获取三种类型。原生境获取是指从国家管辖范围以外区域的自然环境中获取或采集海洋遗传资源。非原生境获取和生物信息数据获取，是对由原生境获取的海洋遗传资源进行实验室分离、鉴定、筛选、培养和计算机模拟分析后所得的资源、信息、材料和数据等的获取。中国政府认为，原生境获取活动本质上属于《公约》规定的国家管辖范围外区域的海洋科学研究，应适用自由获取制度，以促进海洋遗传资源的开发和可持续利用。

（三）惠益分享

11. 国家管辖范围以外区域海洋遗传资源的采样、研发和商业化具有技术要求高、时间消耗长、资金投入大、结果不确定等特点。有关海洋遗传资源惠益分享安排应总体有利于 BBNJ 的养护和可持续利用，鼓励海洋科学研究，促进全人类对海洋遗传资源的惠益分享。中国政府认为，在充分照顾发展中国家关切和需求的前提下，预委会应优先考虑样本的便利获取、信息交流、技术转让和能力建设等非货币化惠益分享机制。同时，中国政府对探讨建立货币化惠益分享机制持开放态度。

三、划区管理工具包括海洋保护区

12. 中国政府支持促进 BBNJ 的养护和可持续利用，高度重视划区管理工具包括海洋保护区。

(一) 定义

13. 划区管理工具包括多种管理形式和方法，不限于海洋保护区。中国政府认为，新国际文书所规范的划区管理工具定义应包括但不限于以下三个基本要素：一是目标要素，划区管理工具应旨在养护和可持续利用海洋生物多样性。二是地理范围要素，划区管理工具应仅适用于公海和国际海底区域。三是功能要素，划区管理工具应涵盖不同功能和管理方法。

(二) 设立海洋保护区的原则和制度

14. 《公约》序言明确规定：“意识到各海洋区域的种种问题都是彼此密切相关的，有必要作为一个整体来加以考虑”。按照此种精神，在设立海洋保护区的原则和制度上，可考虑采取一体化海洋管理方法，以弥补目前分区域、按部门管理方法的不足。

15. 对于新国际文书有关设立海洋保护区的具体指导原则，中国政府总体支持 77 国集团加中国在预委会第二次会议上关于此议题的发言，并强调以下原则：一是必要性原则。海洋保护区是工具，而不是目标，建立海洋保护区应以确有必要为前提。二是比例原则。保护措施须与保护目标和效果相适应，在符合成本效益的前提下予以适用。三是科学证据原则。设立海洋保护区需有坚实的科学证据，评估受保护生态系统、栖息

地和种群等的潜在威胁和风险。四是区别保护原则。按照不同海域、生态系统、栖息地和种群等各自的特点，适用不同的管理工具予以保护。五是国际合作原则。各国及国际组织应在建立海洋保护区问题上加强合作。

16. 海洋保护区的设立应有明确的保护目标、确定的保护对象、具体的保护范围、适当的保护措施、合理的保护期限等。设立海洋保护区应遵循特定的程序，包括申请、咨询、审查、决策、管理和监督等。

四、环境影响评价

17. 中国政府高度重视海洋环境影响评价，认为新国际文书有关环境影响评价的制度安排应遵循《公约》所确定的基本法律框架和程序要素，同时顾及其他国际文书有关环境影响评价的规定。

18. 《公约》第 206 条规定：“各国如有合理根据认为在其管辖或控制下的计划中的活动可能对海洋环境造成重大污染或重大和有害的变化，应在实际可行范围内就这种活动对海洋环境的可能影响作出评价”。根据该条，中国政府认为，新国际文书有关环境影响评价的主体应是拟开展海洋活动的国家；对象应是各国管辖或控制下的计划中的“活动”，不包括战略环境影响评价；启动门槛应是“有合理依据认为”“可能造成重大污染或重大和有害的变化”。另外，考虑到科学信息、

技术方法、成本、能力等因素，累积影响评价是否“在实际可行范围内”值得商榷。

19. 《公约》第 194 条第 2 款规定：“各国应确保……在其管辖或控制范围内的事件或活动所造成的污染不致扩大到其按照本公约行使主权权利的区域之外”。中国政府认为，《公约》对国家管辖范围内的活动的跨界影响已作出规定，新国际文书所规定的环境影响评价的范围应限于国家管辖范围以外区域的活动，包括可能对沿海国管辖海域产生重大环境影响的活动，而不应包括发生在国家管辖海域内的活动。

五、能力建设和海洋技术转让

20. 能力建设和海洋技术转让是提升发展中国家养护和可持续利用 BBNJ 能力的重要手段，对实现海洋环境保护和可持续发展整体目标不可或缺。中国政府支持 77 国集团加中国关于能力建设和海洋技术转让的总体立场，愿补充如下意见：

21. 第一，新国际文书在能力建设和海洋技术转让方面应遵循针对性、有效性、平等互利、合作共赢等原则。

22. 第二，新国际文书应充分照顾发展中国家的需要和利益，特别是小岛屿发展中国家、最不发达国家、内陆国和地理不利国以及有特殊利益需求的国家。

23. 第三，新国际文书应鼓励通过多种形式的国际合作，加强发展中国家能力建设和海洋技术转让，包括搭建国际合作

平台、建立信息分享机制、发挥政府间海洋学委员会等相关国际组织的作用。

24. 第四，中国政府支持非洲集团提出的能力建设须是“有意义的”，倡导既要“授人以鱼”，更要“授人以渔”，通过教育、技术培训、联合研究等方式，切实提升发展中国家在养护和可持续利用 BBNJ 方面的内生能力。

六、跨领域问题

25. 中国政府认为，讨论跨领域问题的关键是遵循《公约》的规定和精神，切实维护《公约》确立的国际海洋法律秩序，在《公约》所赋予的各项权利和义务之间保持合理平衡。

26. 《1982 年 12 月 10 日〈联合国海洋法公约〉有关养护和管理跨界鱼类和高度洄游鱼类种群的规定执行协定》第 4 条规定：“本协定的任何规定均不应妨害《公约》所规定的国家权利、管辖权和义务。本协定应参照《公约》的内容并以符合《公约》的方式予以解释和适用。”中国政府认为，该规定为确定新国际文书与《公约》的关系提供了指引。