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

Third session

New York, 19–30 August 2019

**Drafting proposals relating to marine genetic resources, including questions on the**

**sharing of benefits**

# Group of 77 and China

No formatting = language from President’s draft, and G77 supports

Underline = new text proposed by G77

~~Cross out~~ = removal of text proposed by G77

**Bold = no official G77 position/text at this time**

*Italics* = G77 supports having an article, but no official position on text at this time

Article 1

Use of terms

[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] [genetic] sequence data [and information]]].]**

**~~[~~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.]~~

**~~[~~15. Alt. 1. “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~~]~~.~~]~~**

~~[15. Alt. 2. “Utilization of resources” means the taking, harvesting, recovery, extraction, collection, analysis, processing or use for commercial purposes, or that results in commercial advantage, of or from resources of actual or potential value located in areas beyond national jurisdiction.]~~

Article 7

Objectives

The objectives of this Part are to:

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

~~[~~(~~a~~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 access and utilize marine genetic resources of areas beyond national jurisdiction;~~]~~

~~[~~(~~b~~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;~~]~~

~~[(c) Promote the [fair and equitable] sharing of benefits arising from the utilization of marine genetic resources of areas beyond national jurisdiction;]~~

~~[~~(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];]**

~~[(e) Contribute to the realization of a just and equitable international economic order.]~~ **MOVE TO PREAMBULAR PARAGRAPH BUT KEEP**

~~[~~Article 8

Application of the provisions of this ~~[Part] [~~Agreement~~]]~~

~~[~~1. The provisions of this ~~[Part] [~~Agreement~~]~~ shall apply to marine genetic resources **[of] [accessed in] [originating from]** areas beyond national jurisdiction.~~]~~

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

[(a) ~~[The use of fish [samples] and other biological resources for research into their genetic properties]~~ [Marine genetic resources, ~~including fish,~~ insofar as they are collected for the purposes of being the subject of research into their genetic properties];] **REFORMULATION OF TEXT IN (A) NEEDED; BEYOND JUST “RESEARCH”**

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

**[(c) Derivatives.]]**

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

**[(a) [The use of fish and other biological resources as a commodity.] [Fish and other biological resources that are collected beyond a threshold amount shall be considered as a commodity. The threshold amount shall be determined by the [Scientific and Technical [Body] [Network]].] [If a species of fish is found to have value for its genetic material, that species shall be treated as a marine genetic resource, regardless of the volume of the catch.] [If a species of fish or other biological resources are found to have value for their genetic material, that species or those resources, where utilized for their genetic material, shall be treated as a marine genetic resource;]]**

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

**[(c) Derivatives;]**

**[(d) Marine scientific research.]]**

**[4. The provisions of this Agreement shall apply to marine genetic resources accessed *in situ*, *ex situ* [and *in silico*] [[and] [as] [digital] [genetic] sequence data [and information]] after its entry into force, including those resources accessed *in situ* before its entry into force, but [accessed] [or utilized] *ex situ* or [*in silico*] [[and] [as] [digital] [genetic] sequence data [and information]] after it.] SUPPORT FOR IDEA OF PARA. 4, FORMULATIONS TO COME FROM G77&CHINA DELEGATIONS.**

~~[~~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 ~~and with due regard for the rights, obligations and interests under the Convention~~.~~]~~

**[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*

*Access to marine genetic resources of areas beyond national jurisdiction~~]~~*

**[1. *In situ* access to marine genetic resources within the scope of this Part shall be subject to [Alt. 1. [prior] notification to the secretariat [, which shall include an indication of the location and date of access, the resources to be accessed, the purposes for which the resources will be utilized and the entity that will access the resources] [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* 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 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 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 [*in silico* information and data] [[and] [digital] [genetic] sequence data [and information]] 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 [consent] [,] [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, with the aim of ensuring that traditional knowledge [associated with marine genetic resources of areas beyond national jurisdiction that is held by indigenous peoples and local communities] [of indigenous peoples and local communities that is useful for unlocking the value of marine genetic resources of areas beyond national jurisdiction] is accessed with the prior informed consent or approval and involvement of those indigenous peoples and local communities, and that mutually agreed terms have been established.]**

**[7. 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 accessed in accordance with this Part.]**

~~[~~Article 11

~~[~~Fair and equitable~~]~~ sharing of benefits~~]~~

Articles 10 and 11 are at the heart of the President’s attempt to operationalize certain principles. It must be clear that any and all operationalizing therefore must be guided by and in line with those principles, and any and all proposals that would contradict, undermine or violate those principles will be rejected by the G77 & China.

The underlying legal and moral principles, reflecting the rights and obligations of UNCLOS and customary international law, is that MGRs are the *common heritage of mankind* and the primary *legal principle of equity* as embodied in UNCLOS. This has a number of consequences:

1. Benefit sharing **must be** **mandatory**

2. Benefits **must be** **equitably shared among all States**

3. Particular consideration to the specials needs, circumstances and requirements of **all developing States** must be set out

4. The benefits to be shared **must be both monetary and non-monetary**

5. All activities of exploration or exploitation with respect to MGRs in areas beyond national jurisdiction must be governed by **an international regime**

~~[~~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 [LINK TO ART. 8(1) CHOICE ON OF/IN/ACCESS/ORIGINATE/ETC]** 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] [Network]] [obligatory prior electronic notification system managed by [the secretariat] [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 *in situ*. In the case of marine genetic resources accessed *ex situ* [and *in silico*] [[and] [as] [digital] [genetic] sequence data [and information]], 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] [Network]]] [send a notification through the obligatory prior electronic notification system managed by [the secretariat] [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] [Network]] [through the obligatory prior electronic notification system managed by [the secretariat] [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**.~~]~~ **SUPPORT CONCEPT, FORMULATION TO BE DISCUSSED**

# European Union

*The suggestions of the EU and its Member States in the present context are without prejudice to their position that the definitions should be dealt with at a later stage of negotiations as what terms need to be defined depends on what terms will actually be used and require definition.*

**With regard to Article 1, paras 8 and 9, the EU and its MS propose the following:**

*[8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity.]*

The EU and its MS support Art. 1, para. 9, alt 2:

*[9. Alt. 2. “Marine genetic resources” means marine genetic material of actual or potential value.]*

The EU and its MS can also support an approach whereby the two definitions would be presented as one (i.e.: *“Marine genetic resources” means any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value).*

# Pacific Small Island Developing States, Australia, Maldives, New Zealand and Norway

**Article XX**

**Access to traditional knowledge of indigenous peoples and local communities associated with marine genetic resources collected 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 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.”

# Caribbean Community

**PART I**

**GENERAL PROVISIONS**

CARICOM’s position in this Part is without prejudice to the Group’s continued review of all the substantive elements of the Agreement as the negotiations progress.

**Article 1**

**Use of terms**

[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] [genetic] sequence data [and information]]].]

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| Access means, in relation, to marine genetic resources, the collection, taking, obtaining or exploitation of marine genetic resources for their utilisation, including marine genetic resources accessed in situ, ex situ and as digital sequence data and information (DSDI). |

[8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity ~~[collected from areas beyond national jurisdiction] [; it does not include material made from material, such as derivatives, or information describing material, such as genetic sequence data].]~~

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| Marine genetic material means any material of marine plant, animal, microbial or other origin, *found in the marine environment,* 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.]~~

[15. Alt. 1. “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].]

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| “Utilisation 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. |

[~~15. Alt. 2. “Utilization of resources” means the taking, harvesting, recovery, extraction, collection, analysis, processing or use for commercial purposes, or that results in commercial advantage, of or from resources of actual or potential value located in areas beyond national jurisdiction.]~~

**PART II**

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

CARICOM’s position in this Part is without prejudice to the Group’s continued review of all the substantive elements of the Agreement as the negotiations progress.

**Article 7**

**Objectives**

The objectives of this Part are to:

[(a) Promote the **~~[~~**fair and equitable**~~]~~** sharing of benefits arising from the **access and** 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 access and utilize marine genetic resources of areas beyond national jurisdiction, recognising the special circumstances of small island developing States;]

[(c) Promote the generation and sharing 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];~~]

[(e) ~~Contribute to the realization of a just and equitable international economic order.]~~

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| moving sub-paragraph (e) to the preamble |

**[Article 8**

**Application of the provisions of this [Part] [Agreement]]**

[1. The provisions of this [Part] [Agreement] shall apply to marine genetic resources [of] **[accessed in]** [originating from] areas beyond national jurisdiction.]

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

[(a) [~~The use of fish [samples] and other biological resources for research into their genetic properties~~] [Marine **~~genetic~~** biological resources, including fish, **~~insofar as they~~** **that** are **~~collected~~** **accessed and utilized** for **~~the purposes of being the subject of research into their~~** **research and development, including academic and commercial, of their** genetic **~~properties~~ material**];]

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| ‘Marine genetic resources, that are accessed and utilised for research and development, including academic and commercial, of their genetic material; |

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

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| marine genetic resources ‘accessed’ in situ, ex situ and as genetic sequence data and information. |

[(c) Derivatives.]]

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

~~[(a) [The use of fish and other biological resources as a commodity.] [Fish and other biological resources that are collected beyond a threshold amount shall be considered as a commodity. The threshold amount shall be determined by the [Scientific and Technical [Body] [Network]].] [If a species of fish is found to have value for its genetic material, that species shall be treated as a marine genetic resource, regardless of the volume of the catch.] [If a species of fish or other biological resources are found to have value for their genetic material, that species or those resources, where utilized for their genetic material, shall be treated as a marine genetic resource;]]~~

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

~~[(c) Derivatives;]~~

~~[(d) Marine scientific research.]]~~

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

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| ‘the provisions of this Agreement shall apply to marine genetic resources accessed after its entry into force, including those resources accessed *in situ* before its entry into force, but utilised 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 and their natural or juridical persons under the conditions laid down in this Agreement and with due regard for the rights, obligations and interests under the Convention.]

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| ‘Activities with respect to marine genetic resources of areas beyond national jurisdiction may be carried out by all States 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.]~~

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| “the utilisation of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of mankind as a whole, taking into consideration the interests and needs of developing States” |

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

**[Article 10**

**Access to marine genetic resources of areas beyond national jurisdiction]**

[1. *In situ* access to marine genetic resources within the scope of this Part shall be subject to [Alt. 1. [prior] notification to the secretariat [, which shall include an indication of the location and date of access, the resources to be accessed, the purposes for which the resources will be utilized and the entity that will access the resources] [of access to marine genetic resources of areas beyond national jurisdiction].]

**[Article 11**

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

[1. States Parties, including their nationals, that have [accessed] **and** [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 [,~~** **as provided for in this Par**t **and** **~~[in accordance with this Part] [and]~~** [ **any** modalities to be determined by the Conference of the Parties]], *as necessary*].

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| States Parties, including their nationals that have accessed and utilized marine genetic resources of areas beyond national jurisdiction shall share benefits arising therefrom with other States Parties, with consideration for the special requirements of developing States Parties as provided for in this Part and any modalities to be determined by the Conference of the Parties, *as necessary*. |

[2. Benefits may include [monetary and] non-monetary benefits.] Benefits arising from the [access to] [utilization of] marine genetic resources of areas beyond national jurisdiction shall be shared at different stages. ~~, in accordance with the following provisions~~:

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| ‘Benefits shall include monetary and non-monetary benefits. Benefits arising from the access and utilization of marine genetic resources of areas beyond national jurisdiction shall be shared at different stages. |

[(a) Monetary benefits [shall] ~~[may~~] be shared against an embargo period for [digital] [genetic] ~~sequence~~ data OR [~~and~~] information] (**digital genetic information)** 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];]

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| Monetary benefits shall be shared against an embargo period upon the commercialistion 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 established under this Agreement. |

[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 access to, research on and utilization of marine genetic resources of areas beyond national jurisdiction. Samples, data and related information shall be made available in open access [through the clearing-house mechanism [upon access] [after […] years]]. [[Digital] [~~Genetic]~~ sequence data OR [and information]related to marine genetic resources of areas beyond national jurisdiction shall be published [and used taking into account current international practice in the field.]]

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| 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 be shared upon access to, research on and utilization of marine genetic resources of areas beyond national jurisdiction. Samples, data and related information shall be made available in open access [through the clearing-house mechanism. Digital sequence data and information related to marine genetic resources of areas beyond national jurisdiction shall be published and used taking into account current international practice in the field. |

[4. Benefits shared in accordance with this Part shall be used in the manner determined by the Conference of the Parties, which shall ~~may~~ include using the benefits for the following purposes:

(a) To promote poverty alleviation in developing States Parties;

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

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

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

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

~~[~~(~~f~~g) To assist developing States Parties in attending the meetings of the Conference of the Parties and the Scientific, Technical and Technological Body.~~]]~~

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

[6. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge of indigenous communities and local communities referred to in article 10, paragraph 6, are shared in a fair and equitable way with indigenous peoples and local communities holding such knowledge.]

**[Article 12**

**Intellectual property rights]**

[1. States Parties shall implement this Agreement in a manner consistent with the rights and obligations of States under the relevant agreements concluded under the auspices of the World Intellectual Property Organization and the World Trade Organization.]

[2. States Parties shall cooperate to ensure that intellectual property rights are supportive of and do not run counter to the objectives of this 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].]

[3. [Marine genetic resources [accessed] and [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.]]~~

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| ‘Marine genetic resources accessed and utilised 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.] |

[4. 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) When [applying for patents, entities] [applications for patents on inventions that utilize or have utilized marine genetic resources of areas beyond national jurisdiction are made, applicants] consult the Scientific and Technical [Body] [Network] and propose benefit-sharing agreements in accordance with this Part [and comply with the decisions on benefit-sharing delivered by that [Body] [Network]];

(c) 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] [Network~~]] [obligatory prior electronic notification system managed by [the secretariat] [the secretariat and mandated existing international institutions set forth in Part […]]].]

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| Possible formulation: Monitoring of the utilization of marine genetic resources of areas beyond national jurisdiction shall be carried out through the Scientific and Technical Body in collaboration with the clearing-house mechanism. It will include an obligatory prior electronic notification system managed by the secretariat and any 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 *in situ*. In the case of marine genetic resources accessed *ex situ, in silico and as* ~~[and~~ *~~in silico~~*~~]~~ ~~[[and]~~ digital sequence data OR information ~~[as]~~ digital genetic information, ~~(3) (b) to the clearing-house mechanism;]~~ 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]

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| ‘An identifier is assigned to marine genetic resources collected *in situ*. In the case of marine genetic resources accessed *ex situ, and as* digital sequence data and information 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] [Network~~]]] [send a notification through the obligatory prior electronic notification system managed by [~~the secretariat~~] [the secretariat and mandated existing international institutions set forth in Part […]]] when marine genetic resources of areas beyond national jurisdiction, including derivatives, are accessed;]

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| ‘Databases, repositories and gene banks within their jurisdiction are required to periodically 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] [Network]~~] [through the obligatory prior electronic notification system managed by ~~[the secretariat~~] [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 **through the Scientific, Technical and Technological Body** 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.]

|  |
| --- |
| ‘States Parties shall submit status reports through the Scientific, Technical and Technological Body to the Conference of the Parties about their utilisation of marine genetic resources of areas beyond national jurisdiction. The Conference shall review such reports and any make recommendations. |

# Pacific Small Island Developing States

**Part I Use of Terms**

8. “Marine genetic material” means any DNA or RNA found in or originating from areas beyond national jurisdiction.

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 genetic information including information or data relevant to biochemical properties and derivatives.

15. Alt 1. “Utilization of marine genetic resources” means to conduct research and development on the genetic or biochemical composition and function of marine genetic resources, including derivatives, and commercial exploitation thereof.

**Part II Marine Genetic Resources, Including Questions on the Sharing of Benefits**

**Article 7**

**Objectives**

1. (b) Promote the generation of knowledge and technological innovations, in accordance with their technological capabilities, including by promoting and facilitating the development and conduct of marine scientific research in areas beyond national jurisdiction, in accordance with the Convention;

**Article 8**

**Application of the provisions of this Agreement**

1. The provisions of this ~~[Part]~~ Agreement shall apply to marine genetic resources ~~[of]~~ accessed in and originating from areas beyond national jurisdiction.

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

(a) ~~[The use of fish [samples] and other biological resources for research into their genetic properties]~~ Marine genetic resources, including fish, insofar as they are collected for the purposes of being the subject of research into their genetic properties including biochemical and other derivatives;

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

(c) Derivatives.

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

**Article 9**

**Activities with respect to marine genetic resources of areas beyond national jurisdiction**

3bis

“In cases where activities with respect to marine genetic resources of areas beyond national jurisdiction may result in the exploitation of resources lying within national jurisdiction or areas over which a coastal State exercises sovereign rights, the prior consent of the coastal State concerned shall be required.”

4bis.

“In cases where activities with respect to marine genetic resources are carried out in the superjacent waters above a coastal State’s continental shelf beyond 200 nautical miles from the baseline from which the territorial sea of the coastal State is measured, such activities shall be conducted with due regard for the rights and legitimate interests of such coastal State.”

*3bis and 4bis are new paragraph proposals to come after paragraph 2 in Article 9 but are not meant to replace the current paragraph 3 and 4 in the President’s Draft Text.*

**Article 10**

**Access to marine genetic resources of areas beyond national jurisdiction**

3. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that *ex situ* access to marine ‘genetic resources, including digital genetic sequence information and data within the scope of this Part is free and open , subject to articles 11 and 13 and facilitated by technology transfer where necessary.

**Article 12**

**Intellectual property rights**

~~[1. States Parties shall implement this Agreement in a manner consistent with the rights and obligations of States under the relevant agreements concluded under the auspices of the World Intellectual Property Organization and the World Trade Organization.]~~

1. *bis*  State Parties shall ensure that intellectual property rights are supportive of and do not run counter to the objectives of this Agreement and this Part and shall take effective measures to not limit benefit-sharing and the traceability of marine genetic resources of areas beyond national jurisdiction.

~~[3. [Marine genetic resources [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.]]~~

2 *bis* The access, utilisation and commercial exploitation of marine genetic resources under this Agreement and protected by intellectual property rights shall be subject to limitations that further the objectives of this Agreement and this Part, including equitable benefit sharing and capacity building and technology transfer.

4. States Parties shall take necessary legislative, administrative or policy measures ~~as appropriate~~, to ensure that:

(a) Users and 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 or seek to patent;

~~(b) When [applying for patents, entities] [applications for patents on inventions that utilize or have utilized marine resources of areas beyond national jurisdiction are made, applicants] consult the Scientific and Technical [Body] [Network] and propose benefit-sharing agreements in accordance with this Part [and comply with the decisions on benefit-sharing delivered by that [Body] [Network]];~~

(b) *bis* Patent applicants for inventions that are directly based on marine genetic resources of areas beyond national jurisdiction, and others engaged in its commercialization have taken all reasonable steps for effective compliance with the applicable terms and conditions in Article 10 and 11 of this Agreement;

~~(c) 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.]~~

(c) *bis* Users of marine genetic resources of areas beyond national jurisdiction respect all terms and conditions associated with the access or use of such resources and ensure compliance with any terms related to the change of intent from non-commercial to commercial use where applicable.

END

# Core Latin American Countries

Article 1 - Use of Terms

PLEASE NOTE THAT IN ADDITION TO EDITS TO THE DEFINITIONS PROPOSED BY THE CHAIR, CLAM PROPOSES THE ADDITION OF TWO NEW DEFINITIONS – BIOTECHNOLOGY AND DERIVATIVES.

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

4bis. “Biotechnology” means technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

6bis. “Derivative” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

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.

15. Alt. 1. “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, including through the application of biotechnology as defined in this Agreement.

# Australia

**AUSTRALIA**

**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,

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

*Affirming* that the high seas and the Area are reserved for peaceful purposes, in accordance with article 88 and article 141 of the Convention,

*Desiring* to promote sustainable development,

*Aspiring* to achieve universal participation,

*Have agreed as follows:*

# Canada

**[Article 12 Intellectual property rights]**

~~[~~1. States Parties shall implement this Agreement in a manner consistent with the rights and obligations of States under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and  relevant agreements concluded under the auspices of the World Intellectual Property Organization (WIPO) ~~and the World Trade Organization~~.~~]~~ (General comment: consider moving to Article 4)

(General comment: We would recommend to delete paragraphs 2 to 4.

# Holy See

**This would replace paragraphs 1 and 3 in Article 9. (Art. 9.1 and 9.3), but in addition, it would not appear in the Part on Marine Genetic Resources; rather it would be a new article in General Provisions.**

***New Article -. Right to utilization of resources***

1. [In accordance with and in furtherance of Article 116,] all States shall have the right for their nationals to engage in the utilization of resources both living and non-living in areas beyond national jurisdiction as defined in this Agreement, subject to:
2. Their treaty obligations;
3. The recognized regulation of particular activities excluded under this Agreement by established global, regional, sub-regional or sectoral bodies or organizations; and
4. The provisions of this Agreement.
5. Whereas rights and obligations may attach to States Parties to this Agreement or to other special conventions and agreements, or to non-party States, or to their nationals or natural or juridical persons under their jurisdiction in respect of utilization of resources in areas beyond national jurisdiction, these rights and obligations shall not confer on any single State or person the legal status associated with management, supervision, development or ownership with respect to activities or utilization of resources in areas beyond national jurisdiction.

**Article 9**

Addition to text:

5. Activities with respect to marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes. **Under no circumstances shall a State or its nationals conduct scientific research of marine genetic resources to the detriment of the human race for unethical and unapproved purposes as recognized by national or international law.**

**The following article would replace Article 12 regarding Intellectual Property Rights.**

**Article 12. Promotion of research of marine genetic resources**

1. **Licensing of data and information gleaned from marine genetic resources shall encourage equal access to marine genetic resources collected in areas beyond national jurisdiction, promote collaborative research with third parties, particularly with developing States and their nationals, and promote the rapid dissemination of information for scientific use by the global community.**
2. **Delays in publication of research regarding marine genetic resources should be limited and reasonable in the circumstances.**
3. **In order to broaden participation in the scientific research of marine genetic resources, States Parties agree to encourage the use of non-exclusive licenses, co-exclusive licenses and mandatory sublicensing; to promote the broadening of licenses that are exclusive by a single field of use or particular geographic location to allow application in different fields of use or in different territories; to encourage the use of diligence provisions, mutual termination agreements, and license audits; and to narrow confidentiality provisions and reach-through rights.**
4. **Commercial considerations in public research activities should not unduly hinder the research and use of marine genetic resources for the benefit of mankind.**
5. **License agreements pertaining to genetic resources sourced from the marine environment in areas beyond national jurisdiction must include a research exemption, thus permitting [scientists/the licensee’s researchers] to reserve their right to use the data for non-commercial research, or allow a grace period of time for scientists to share ideas, particularly where increased costs pose a barrier to research.**

# Philippines

**Article 1. Use of terms**

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

Clean text:

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

x x x

~~[~~8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity ~~[collected from areas beyond national jurisdiction]~~ [; ~~it does not~~ and includes ~~material made from material, such as~~ derivatives, ~~or~~ and as digital sequence information on genetic resources ~~describing material, such as genetic sequence data].]~~

Clean text:

8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity and includes derivatives, and as digital sequence information on genetic resources.

~~[~~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.]

Clean text:

8. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin, containing functional units of heredity with actual or potential value of their genetic and biochemical properties.

x x x

~~[~~15. ~~Alt. 1~~. “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic ~~resources~~ material ~~[~~, as well as the exploitation thereof~~]~~.~~]~~

Clean text:

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

**Article 7. Objectives**

The objectives of this Part are to:

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

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

~~[~~(~~b~~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;~~]~~

~~[(c) Promote the [fair and equitable] sharing of benefits arising from the utilization of marine genetic resources of areas beyond national jurisdiction;]~~

~~[~~(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~~]~~;~~]~~

~~[(e) Contribute to the realization of a just and equitable international economic order.]~~

*[Note: Subparagraph (e) to be transferred to the preambular paragraph]*

~~[~~**Article 8. Application of the provisions of this ~~[Part] [~~Agreement~~]]~~**

~~[~~1. The provisions of this ~~[Part]~~ [Agreement] shall apply to marine genetic resources ~~[of] [accessed in] [~~originating from~~]~~ areas beyond national jurisdiction.~~]~~

~~[~~2. The provisions of this ~~[Part]~~ [Agreement~~]~~ shall apply to:

~~[~~(a) ~~[The use of fish [samples] and other biological resources for research into their genetic properties] [~~Marine genetic resources, including fish used for their genetic material, insofar as they are collected for the purposes of being the subject of research and other developments into their genetic properties~~]~~;~~]~~

*Clean Text*

1. Marine genetic resources, including fish used for their genetic material, insofar as they are collected for the purposes of being the subject of research and other developments into their genetic properties;

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

*Clean Text*

(b) Marine genetic resources collected *in situ,* *ex situ, in silico,* and as digital sequence information of genetic resources;

~~[~~(c) Derivatives.~~]]~~

~~[3. The provisions of this [Part] [Agreement] shall not apply to:~~

~~[(a) [The use of fish and other biological resources as a commodity.] [Fish and other biological resources that are collected beyond a threshold amount shall be considered as a commodity. The threshold amount shall be determined by the [Scientific and Technical [Body] [Network]].] [If a species of fish is found to have value for its genetic material, that species shall be treated as a marine genetic resource, regardless of the volume of the catch.] [If a species of fish or other biological resources are found to have value for their genetic material, that species or those resources, where utilized for their genetic material, shall be treated as a marine genetic resource;]]~~

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

~~[(c) Derivatives;]~~

~~[~~4. The provisions of this Agreement shall apply to marine genetic resources and their derivatives included in this Part accessed *~~in situ~~*~~,~~ *~~ex situ~~* ~~[and~~ *~~in silico~~*~~] [[and] [as] [digital] [genetic] sequence data [and information]]~~ after its entry into force, including those resources accessed *in situ* before its entry into force, but ~~[~~accessed~~] [or utilized]~~ *ex situ* ~~or [~~*~~in silico~~*~~] [[and] [as] [digital] [genetic] sequence data [and information]]~~ after it.~~]~~

*Clean Text*

4. The provisions of this Agreement shall apply to those marine genetic resources and their derivatives included in this Part accessed after its entry into force, including those resources accessed in situ before its entry into force, but accessed or utilized ex situ 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 ~~and with due regard for the rights, obligations and interests under the Convention~~.~~]~~

~~[~~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, environmentally vulnerable States, 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. Access to marine genetic resources of areas beyond national jurisdiction~~]~~**

~~[~~1. *In situ* access to marine genetic resources within the scope of this Part shall be subject to

~~[Alt. 1. [prior] notification to the secretariat [, which shall include an indication of the location and date of access, the resources to be accessed, the purposes for which the resources will be utilized and the entity that will access the resources] [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* 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~~ will be 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 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.~~]~~

**Article 11. ~~[~~Fair and equitable~~]~~ sharing of benefits~~]~~**

~~[~~1. States Parties, including their nationals, that have ~~[~~accessed~~]~~ or ~~[~~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, environmentally vulnerable States, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries ~~[~~, ~~[~~in accordance with this Part~~]~~ ~~[~~and~~] [~~modalities to be determined by the Conference of the Parties~~]]~~.~~]~~

*Clean Text:*

1. States Parties, including their nationals, that have accessed or utilized marine genetic resources of areas beyond national jurisdiction shallshare 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, environmentally vulnerable States, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, in accordance with this Part andmodalities to be determined by the Conference of the Parties.

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

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

~~[~~(a) Monetary benefits ~~[~~shall~~] [may]~~ be shared against an embargo period for ~~[~~digital~~] [genetic]~~ sequence ~~data [and~~ information~~]~~ of genetic resources 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~~]~~;~~]~~

*Clean Text:*

(a) Monetary benefits shall be shared against an embargo period for digital sequence information of genetic resources or upon the commercialization of products that are based on marine genetic resources of areas beyond national jurisdiction. 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 access to, research on and utilization of marine genetic resources of areas beyond national jurisdiction. Samples, data and related information shall be made available in open access [through the clearing-house mechanism [upon access] [after […] years]]. ~~[[~~Digital~~] [Genetic]~~ sequence ~~data [~~and information~~]~~ of genetic resources related to marine genetic resources of areas beyond national jurisdiction shall be published and used taking into account current international practice in the field.~~]]~~

*Clean Text:*

(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 be shared upon access to, research on and utilization of marine genetic resources of areas beyond national jurisdiction. Samples, data and related information shall be made available in open access through the clearing-house mechanism upon access [after […] years]]. Digital sequence information of genetic resources related to marine genetic resources of areas beyond national jurisdiction shall be published and used taking into account current international practice in the field.

~~[~~4. Benefits shared in accordance with this Part shall be used in the manner determined by the Conference of the Parties, which may include using the benefits for the following purposes:

~~[~~(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 access to marine genetic resources of areas beyond national jurisdiction;~~]~~

~~[~~(c) To build capacity to 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 ~~may~~ shall be invited to participate, taking into account the varying economic circumstances of States that wish to participate~~]~~;~~]~~

*Clean Text:*

(c) To build capacity to access and utilize marine genetic resources of areas beyond national jurisdiction, including through collaboration in sample collection and data access where adjacent coastal States shall 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 and the Scientific, Technical and Technological Body.~~]]~~

*Clean Text:*

(f) To assist developing States Parties in attending the meetings of the Conference of the Parties and the Scientific, Technical and Technological Body.

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

~~[~~6. States Parties shall take the necessary legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge referred to in article 10, paragraph 6, are shared in a fair and equitable way with indigenous peoples and local communities holding such knowledge.~~]~~

**~~[~~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] [Network]] [obligatory prior electronic notification system managed by [the secretariat] [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 *in situ*. In the case of marine genetic resources accessed *ex situ* [and *in silico*] [[and] [as] [digital] [genetic] sequence data [and information]], 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] [Network]]] [send a notification through the obligatory prior electronic notification system managed by [the secretariat] [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 shall submit periodic status reports [to the clearing-house mechanism] [to the Scientific and Technical [Body] [Network]] [through the obligatory prior electronic notification system managed by [the secretariat] [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.~~]~~

# Turkey

**Article 1**

New Paragraph after Paragraph 4 (Based on the need arising from Articles 8 and 42.)

"Biological resources" means organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity, and includes genetic resources.

**Paragraph 8**

~~[~~8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity. ~~[collected from areas beyond national jurisdiction] [; it does not include material made from material, such as derivatives, or information describing material, such as genetic sequence data].]~~

**Paragraph 9**

Addition of the word "any" after means and before marine, so that it reads:

~~[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 [ADD] any marine genetic material of actual or potential value.~~]~~

**Paragraph 15**

~~[~~15. Alt. 1. “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources [ADD], including through the application of biotechnology ~~[, as well as the exploitation thereof]~~.~~]~~

~~[15. Alt. 2. “Utilization of resources” means the taking, harvesting, recovery, extraction, collection, analysis, processing or use for commercial purposes, or that results in commercial advantage, of or from resources of actual or potential value located in areas beyond national jurisdiction.]~~

**Article 9, paragraph 2:**

~~[~~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.~~]~~

# United States of America

**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] [genetic] sequence data [and information]]].]

**The United States requests deletion of Article 1(1).**

[8. “Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity [collected from areas beyond national jurisdiction] [; it does not include material made from material, such as derivatives, or information describing material, such as genetic sequence data].]

**U.S. suggested text for Article 1(8):** “‘Marine genetic material’ means any material of marine plant, animal, microbial or other origin containing functional units of heredity collected from areas beyond national jurisdiction; it does not include material made from material, such as derivatives, or information describing material, such as genetic sequence data*.*”

[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.]

**The United States requests deletion of Article 1(9, Alt 1).**

[15. Alt. 1. “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].]

**The United States requests deletion of Article 1(15, Alt 1).**

[15. Alt. 2. “Utilization of resources” means the taking, harvesting, recovery, extraction, collection, analysis, processing or use for commercial purposes, or that results in commercial advantage, of or from resources of actual or potential value located in areas beyond national jurisdiction.]

**The United States requests deletion of Article 1(15, Alt 2).**