IUCN commentary

on the

further revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (A/CONF.232/2022/5)

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Prepared by

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Guiding note for the IUCN COMMENTARY column:

- *Text in bold represents suggested additions;*
- *Struckthrough text represents suggested deletions;*
- *"Recommendation" is the IUCN primary preference, and "Alternative recommendation" its alternative option (if any);*
- *"Comment" provides background and/or the rationale for the suggested change; and*
- *An empty cell means IUCN does not have any suggested amendments on the further revised draft text; however, this does not imply IUCN's support or lack thereof at this time.*

FURTHER REVISED DRAFT TEXT	IUCN COMMENTARY
PREAMBLE	
The 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,	**Recommendation:** *Stressing* the need to respect the balance of rights, obligations and interests set out in the Convention, **as well as the rights and interests of future generations and marine life to a healthy, productive and resilient ocean,** **Comment:** The principle of intergenerational equity suggests it is time to consider the rights and interests of future generations of humankind as well as ocean life and its ecosystem processes in preventing the further erosion of options for a healthy, productive and resilient ocean across generations. What we do today will affect the availability of options for the future.
Recognizing the need to address, in a coherent and cooperative manner, biodiversity loss and degradation of ecosystems of the ocean, due to, in particular, climate change, pollution and overuse,	**Recommendation:** *Recognizing* the need to address, in a**n urgent,** coherent and cooperative manner, biodiversity loss and degradation of ecosystems of the ocean, due to, in particular, climate change, pollution and overuse,

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	Comment: It is similarly important to recognize the severity of the threats and need for timely and urgent action to enhance climate resilience and prevent further loss of biodiversity or environmental degradation.
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,	
Recalling the United Nations Declaration on the Rights of Indigenous Peoples, and affirming that nothing in this Agreement shall be construed as diminishing or extinguishing the existing rights of indigenous peoples and local communities,	
Desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations,	
Respecting the sovereignty, territorial integrity and political independence of all States,	**Recommendation:** Respecting the sovereignty, **sovereign rights,** territorial integrity and political independence of all States; **Comment:** IUCN suggests specifically noting "sovereign rights" as these are different to sovereignty under UNCLOS and are noted in articles 4bis, 9, 19, 34 and 55 of the further revised draft text.
Desiring to promote sustainable development,	**Recommendation:** *Desiring* to ~~promote~~ **ensure that human uses of marine areas, biodiversity, and other resources beyond national jurisdiction are** sustainable and **do not cause further biodiversity loss or degradation** ~~development~~ , **Comment**: As the Agreement addresses both conservation and sustainable use, it is essential to underscore that uses affecting marine biodiversity in ABNJ should be sustainable in the short term and over the long term to avoid further biodiversity loss and degradation.

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Aspiring to achieve universal participation,	**Recommendation:** *Aspiring* to achieve universal participation **but recognizing the need to also lead by example**, **Comment:** While it is admirable to aspire to universal participation, it will be essential to construct the Agreement to enable progress even absent 100% consensus to prevent further environmental degradation and biodiversity loss.
Have agreed as follows:	
PART I: GENERAL PROVISIONS	
Article 1- Use of terms	
For the purposes of this Agreement:	
1. "Access *ex situ*, including as digital sequence information", in relation to marine genetic resources of areas beyond national jurisdiction, means access to samples, data and information, including digital sequence information.	**Recommendation:** ~~1. "Access *ex situ*, including as digital sequence information", in relation to marine genetic resources of areas beyond national jurisdiction, means access to samples, data and information, including digital sequence information.~~ **Alternative recommendation**: "Access *ex situ*, ~~including as digital sequence information",~~ in relation to marine genetic resources of areas beyond national jurisdiction, means ~~access to samples, data and information, including digital sequence information.~~ **acquiring or making use of samples of MGR of areas beyond national jurisdiction for the purpose of utilization**.

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	Comment: There is no need for a definition of "access *ex situ*". The Nagoya Protocol and CBD do not define "access"; defining it here risks creating a separate standard. Many biorepositories and collections housing MGR *ex situ* hold genetic resources subject to ABS requirements under the CBD and Nagoya Protocol. If terms used in this agreement are congruent with those in the CBD/Nagoya, it will be far simpler for biorepositories to implement. Divergence will increase both the cost and complexity of implementation and the risk that they cannot be implemented effectively. Other uses of the term "access" throughout the draft text are undefined and will attract the ordinary meaning depending on circumstances. DSI have different properties and management systems than MGR samples, and will need special treatment. A separate definition of DSI will be necessary, but it will be essential to ensure consistency between the definition used under this Agreement and the definition used by the CBD/Nagoya. Given that a process is currently underway under the CBD to reach consensus regarding benefit-sharing from the use of digital sequence information (Decision 14/20), this Agreement should not adopt a definition that might conflict with the results of that process. Leaving "access *ex situ*" undefined can also help future proof the agreement in the context of, e.g., advances in AI, such as use of BLAST and other activities that do not involve active use, but instead computer generated comparison. If a definition of access is included here, adding "for the purpose of utilization" can help distinguish access to MGR from access for use as commodities. See the comments on articles 1(6) and 8(2).
[2. "Activity under a State's jurisdiction or control" means an activity over which a State	

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has effective control or exercises jurisdiction.]	
3. **Option A:** "Area-based management tool" means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives in accordance with this Agreement.	**Recommendation:** 3. ~~Option A: "Area-based management tool" means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives in accordance with this Agreement.~~
Option B: "Area-based management tool" means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed in order to achieve, in accordance with this Agreement: (a) In the case of marine protected areas, conservation objectives; (b) In the case of other area-based management tools, conservation objectives or conservation and sustainable use objectives.	**Recommendation:** ~~Option B:~~ "Area-based management tool" means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed in order to achieve, in accordance with this Agreement: (a) In the case of marine protected areas, conservation objectives; (b) In the case of other area-based management tools, conservation objectives or conservation and sustainable use objectives. **Comment:** Option B is preferred as it clearly distinguishes between the objectives of an MPA which have conservation as their primary objective, from other types of ABMTs, which may have conservation outcomes and benefits but are driven by other primary objectives, such as OECMs.[1]
4. "Areas beyond national jurisdiction" means the high seas and the Area.	**Recommendation:** ~~4. "Areas beyond national jurisdiction" means the high seas and the Area.~~

[1] "OECM" means other effective area based conservation measures, "A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio–economic, and other locally relevant values. (CBD Decision 14/8)

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	Alternative recommendation: 4. "Areas beyond national jurisdiction" means ~~the high seas and the Area.~~**areas that are not within national jurisdiction**. **Comment:** IUCN's preferred recommendation is to remove the definition entirely. UNCLOS does not define ABNJ. ABNJ is a negative definition: it is everything that isn't defined by UNCLOS as within national jurisdiction. The definition offered in the draft text omits airspace and the air/water interface. UNCLOS does refer to superjacent airspace in the context of EEZs and territorial seas; it would be incorrect to say that UNCLOS only applies to the water column and seabed. Defining ABNJ in a way that is not inclusive of airspace could open a large gap in UNCLOS. Seabirds are an important part of marine biodiversity, as are the physical and biological processes at the air/water interface, and atmospheric inputs (due to incidental pollution or intentional geoengineering) into the superjacent airspace of the high seas may have adverse effects on marine biodiversity. As this Agreement refers to "marine" biodiversity, there is no issue of whether this Agreement might be interpreted as applying to outer space, which constitutes another part of ABNJ.
5. "Biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.	**Comment:** This is the same definition used in the CBD and Nagoya Protocol and should be retained.
6. "Collection *in situ*", in relation to marine genetic resources, means the collection or sampling of marine genetic resources in areas beyond national jurisdiction.	**Recommendation:** 6. "Collection *in situ*", in relation to marine genetic resources, means the collection or sampling of marine genetic resources in areas beyond national jurisdiction **for their utilization**. **Comment:** To clarify the scope of this Agreement, this definition should be narrowed to apply only to marine genetic resources collected **for their utilization**. This would ensure that fishing and collection of commodities is not included, in line with the Nagoya Protocol. Redefining "collection" in this way clarifies and strengthens a number of provisions, while making others unnecessary. See the comment on article 8(2).
7. "Convention" means the United Nations Convention on the Law of the Sea of 10	

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December 1982.	
8. **Option A:** "Cumulative impacts" means the incremental effects of a proposed activity under the jurisdiction and control of a Party when added to the impacts of past, present and reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and possible transboundary impacts, regardless of whether the Party exercises jurisdiction or control over those other activities.	**Recommendation:** 8. ~~**Option A:**~~ "Cumulative impacts" means the ~~incremental~~ **combined** effects of **activities** ~~a proposed activity~~ ~~under the jurisdiction and control of a State Party~~ when added to the impacts of past, present and reasonably foreseeable **future** activities **and natural processes**, ~~or from~~ **including** the repetition of similar activities over time, ~~including climate change, ocean acidification and possible transboundary impacts,~~ regardless of whether the Party exercises jurisdiction or control over those other activities**. Examples of cumulative impacts to be considered include transboundary impacts; climate change impacts such as shifts in temperature, acidification, deoxygenation, and currents; and incremental additions of greenhouse gas emissions or other pollutants**. **Comment:** Considering cumulative impacts recognizes that activities that individually may have relatively minor effects are analyzed to account for multiple occurrences that together have a significant effect, or that are synergistic with other natural and anthropogenic effects. The examples are intended to provide greater clarity as to the kinds of natural and anthropogenic processes should be included. **NB:** "Impacts" and "effects" are both used in the draft text; it would be preferable to choose one term and use it consistently, or if both are used, to have a reasoned basis for the choice.
Option B: "Cumulative impacts" means impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts.	**Recommendation:** ~~**Option B:** "Cumulative impacts" means impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities, or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts.~~
9. "Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.	**Comment:** This is consistent with the Nagoya Protocol definition of derivatives. It should be retained.

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10. **Option A:** "Environmental impact assessment" means a process to evaluate the potential environmental impacts, including cumulative impacts, of an activity with an effect on areas within or beyond national jurisdiction, taking into account, inter alia, interrelated social and economic, cultural and human health impacts, both beneficial and adverse.	**Recommendation:** 10. ~~**Option A:**~~ "Environmental impact assessment" means a process to **identify, predict and** evaluate the potential environmental impacts, including cumulative impacts, of an activity ~~with an effect on~~ **that may affect** areas within or beyond national jurisdiction, taking into account, inter alia, interrelated social and economic, cultural and human health impacts, both beneficial and adverse. **Comment:** EIAs need to have as their primary focus the identification of significant potentially harmful or adverse environmental effects now and cumulatively over the reasonable future, and alternatives that will avoid those impacts. Some projects don't trigger an EIA at all because they are fundamentally environmentally beneficial projects, backed up by sound science. Projects that trigger an EIA have issues that require analysis because they raise potential significant adverse environmental impacts. Option B is not recommended because it omits reference to key elements of the scope of an EIA. These are important to include in the definition to reinforce the high standard for BBNJ Agreement EIAs, which EIAs prepared for another IFB must meet if they are prepared by BBNJ Parties.
Option B: "Environmental impact assessment" means a process to identify, predict and evaluate the potential effects that an activity may cause in the marine environment in the short, medium and long term, in order to take the necessary measures, including mitigation, to address the consequences of such activity, prior to its commencement.	**Recommendation:** ~~**Option B:** "Environmental impact assessment" means a process to identify, predict and evaluate the potential effects that an activity may cause in the marine environment in the short, medium and long term, in order to take the necessary measures, including mitigation, to address the consequences of such activity, prior to its commencement.~~
Option C: "Environmental impact assessment" means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of Parties, that may cause substantial pollution of or significant and harmful changes to the marine environment.	**Recommendation:** ~~**Option C:** "Environmental impact assessment" means a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of Parties, that may cause substantial pollution of or significant and harmful changes to the marine environment.~~
11. **Option A:** "Marine genetic resources" means any genetic material of marine plant, animal, microbial or other origin containing functional units of heredity and noncoding regions of nucleic acids, with actual or potential value of their genetic and biochemical properties, including genetic information.	**Recommendation:** 11. ~~**Option A:** "Marine genetic resources" means any genetic material of marine plant, animal, microbial or other origin containing functional units of heredity and noncoding regions of nucleic acids, with actual or potential value of their genetic~~

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	~~and biochemical properties, including genetic information~~. **Comment:** This definition differs from the definition of genetic resources under the CBD, which would make implementation challenging. "Genetic information" is not defined in the Agreement, so it is not clear if it is intended to refer to DSI. Because tangible samples and intangible elements like DSI and environmental data will require different treatment functionally, it is important to keep them separate in definitions. The addition of "of their genetic and biochemical properties" seems intended to distinguish MGR from commodities. This is better achieved through inclusion of "for their utilization" in the definition of collection and access, in situ.
Option B: "Marine genetic resources" means any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.	
12. "Marine protected area" means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation [and sustainable use] objectives.	**Recommendation:** 12. "Marine protected area" means a geographically defined marine area that is ~~designated~~ **dedicated, regulated** and **effectively** managed to achieve ~~specific [~~long-term biodiversity~~]~~ **and ecosystem** conservation ~~[and sustainable use]~~ objectives. **Alternative recommendation:** 12. "Marine protected area" means a geographically defined marine area that is ~~designated~~ **dedicated, regulated** and **effectively** managed to achieve ~~specific [~~long-term ~~biodiversity]~~ conservation ~~[and sustainable use]~~ objectives. **Comment:** The definition of "MPA" should exclude "sustainable use objectives" to ensure compatible reporting and protection standards within and beyond national jurisdictions. To qualify as an MPA, the most important elements are persistence (long term) and a primary objective of conservation (IUCN WCPA 2019[2]). Such a

[2] IUCN WCPA, 2019. Guidelines for applying the IUCN protected area management categories to marine protected areas https://portals.iucn.org/library/node/48887

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	targeted conservation objective for MPAs will be vital when negotiating proposed conservation and management measures to ensure that in case of conflict, conservation remains the priority (IUCN WCPA 2019). Removing the "sustainable use" objectives also ensures that this MPA definition is consistent with other international definitions of protected areas, including those used by the IUCN, CBD and OSPAR. And as is frequently observed, the level of protection correlates to the delivery of conservation benefits that healthy ecosystems provide including recovery and spillover of exploited species, climate change mitigation, adaptation, and resilience, and water quality improvement (Grorud-Colvert et al., 2021)[3]. IUCN notes the potential for confusion as there are multiple categories of MPAs. "Category VI Protected areas with sustainable use of natural resources" is often referred to as a reason to keep "sustainable use" as part of the MPA objectives. However, it is critical to understand the specific context for Category **VI** Protected areas, as these are areas "**where low-level non-industrial natural resource use compatible with nature conservation is seen as one of the main aims**." The IUCN Guidelines for Applying Protected Area Management Category to MPAs clarify that commercial-scale fishing is not considered a "sustainable use" for the purposes of MPA objectives but ensuring that fishing is sustainable could be an objective for an ABMT that focuses, for example, on reducing bycatch.
[13. "Marine technology" means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment for *in situ* and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]	**Recommendation:** ~~[13. "Marine technology" means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment for *in situ* and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]~~

[3] Grorud-Colvert, et al, 2021. The MPA Guide: A framework to achieve global goals for the ocean, Science DOI: 10.1126/science.abf086.

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	Comment: It will be easier to elaborate the list of what might be considered marine technology in an appendix that can be updated as technology develops. The current definition is also overly narrow as it focuses primarily on marine scientific research and observation. To advance implementation of the Agreement, any definition or appendix on transfer of marine technology should broadly include information, data, equipment and expertise relevant to conservation and sustainable use of BBNJ as a whole, including but not limited to marine scientific research, observation, environmental assessments, monitoring of ocean change, management, compliance and enforcement of ABMTs, as well as utilization and application of MGR for science, management and innovation.
14. "Party" means a State or regional economic integration organization that has consented to be bound by this Agreement and for which this Agreement is in force.	
15. "Regional economic integration organization" means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Agreement and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Agreement.	
16. **Option A:** "Strategic environmental assessment" means a higher-level assessment process that can be used in three main ways: (a) to prepare a strategic development or resource use plan for a defined land and/or ocean area; (b) to examine the potential environmental impacts that may arise from, or impact upon, the implementation of government policies, plans and programmes; and (c) to assess various classes or types of development projects, so as to produce general environmental management policies or design guidelines for the development classes or types.	**Recommendation:** 16. ~~**Option A:**~~ "Strategic environmental assessment" means ~~a higher-level assessment process~~ **analytical and participatory approaches to strategic decision-making** that ~~can be used in three main ways~~: **aim to integrate environmental considerations into policies, plans and programmes, and evaluate the interlinkages with economic and social considerations.** ~~(a) to prepare a strategic development or resource use plan for a defined land and/or ocean area;~~ ~~(b) to examine the potential environmental impacts that may arise from, or impact upon, the implementation of government policies, plans and programmes; and~~ ~~(c) to assess various classes or types of development projects, so as to produce general environmental management policies or design~~

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	~~guidelines for the development classes or types.~~ **Comment:** IUCN's suggested definition is used by the World Bank and OECD. "Originally, SEA was designed as an extension of environmental impact assessment (EIA) of projects to plans, programs, and policies. Over time SEA has become more strategic by bringing different groups of stakeholders into an environmental and social dialogue in an iterative and adaptive way." World Bank 2012. See article 41 ter. The World Bank/OECD definition, while more specific, would also include the examples of SEAs in subparagraphs (a) - (c), and hence suggest deleting those subparagraphs. **Alternative Recommendation** **16. ~~Option A:~~** "Strategic environmental assessment" means a higher-level assessment process that can be used in three main ways: (a) to prepare a strategic development or resource use plan for a defined land and/or ocean area; (b) to examine the potential environmental impacts that may arise from, or impact upon, the implementation of government policies, plans and programmes; and (c) to assess various classes or types of development projects, so as to produce general environmental management policies or design guidelines for the development classes or types. **(c) (bis) to provide a strategic, cross-sectoral, and ecosystem-based review of the status, pressures and trends regarding marine biodiversity of ABNJ to identify priorities for conservation and management action including in response to climate change in an open, inclusive and participatory manner.** **Comment:** It may be helpful to more specifically include this type of regionally - focused SEA though it is implicit in the definition above. Collaborative regionally-

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	focused SEA partnerships could serve to advance science capacity to explore, study and assess pressures on BBNJ, underpin design of coherent and connected MPA networks and ABMT systems, inform future research priorities as well as subsequent EIAs and SEAs in these areas, using modern molecular/genomic tools (e.g., environmental DNA) and other technologies. They could also be designed to consider, upon request, connected areas within national jurisdiction.
Option B: "Strategic environmental assessment" means the evaluation of the likely environmental effects, including health effects, which comprises determining the scope of an environmental report and its preparation, carrying out public participation and consultations, and taking into account the environmental report and the results of the public participation and consultations in a plan or programme.	**Recommendation:** ~~**Option B:** "Strategic environmental assessment" means the evaluation of the likely environmental effects, including health effects, which comprises determining the scope of an environmental report and its preparation, carrying out public participation and consultations, and taking into account the environmental report and the results of the public participation and consultations in a plan or programme.~~ **Comment:** Option B does not reflect how SEA is currently understood.
[17. "Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to a long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.]	**Recommendation:** ~~[17. "Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to a long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.]~~ **Comment:** Sustainable use is already defined in many instruments and practices relevant to the BBNJ Agreement. These definitions are not easily reconciled. Sustainable use in IUCN category VI MPAs is defined as: "where low-level non-industrial natural resource use is compatible with nature conservation." This is quite different from how "sustainable use" is defined in the CBD. See IUCN Guidelines for applying the IUCN protected area management categories to marine protected areas[4].
[18. "Transfer of marine technology" means the transfer of the instruments, equipment, expertise, vessels, processes and methodologies required to produce and use knowledge	**Recommendation:** ~~[18. "Transfer of marine technology" means the transfer of the instruments,~~

[4] Guidelines for applying the IUCN protected area management categories to marine protected areas | IUCN Library System

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to improve the study and understanding of the nature and resources of the ocean.]	~~equipment, expertise, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.]~~ **Comment:** This definition is not consistent with the definition of "marine technology" in article 1(13). It is also limited and does not include technologies to implement other aspects of the treaty. It will be easier to elaborate the list of what might be considered marine technology in an appendix that can be updated as technology develops.
19. **Option A:** "Utilization of marine genetic resources" means to conduct research and development on the genetic and/or biochemical composition of and/or information on marine genetic resources or derivatives thereof, as well as commercialization, including biotechnology as defined in this Agreement.	**Recommendation:** ~~19. **Option A:** "Utilization of marine genetic resources" means to conduct research and development on the genetic and/or biochemical composition of and/or information on marine genetic resources or derivatives thereof, as well as commercialization, including biotechnology as defined in this Agreement.~~ **Comment:** Inclusion of digital sequence information in this definition will be challenging in the context of ongoing CBD negotiations. See comment on article 1(1). It is not necessary to explicitly include commercialization in this definition, though substantive provisions in article 11 should be revised to include commercialization, if desired.
Option B: "Utilization of marine genetic resources" means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources, including through the application of biotechnology.	**Comment:** This option is more consistent with the Nagoya Protocol. Though this and other definitions used in the Nagoya Protocol may have flaws, many countries have already interpreted what they mean at the national level for GRs within national jurisdiction. It will cause greater challenges for implementation if the terms here are substantively different.
Article 2 - General objective	
The objective of this Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the	**Recommendation:** The objective of this Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the **benefit of**

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Convention and further international cooperation and coordination.	present and **future generations of humankind and ocean life** ~~in the long term~~, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination **to promote the study, protection and preservation of the marine environment, the conservation of living resources, the fair, equitable and efficient utilization of resources, and capacity building and transfer of relevant technology for these purposes.** **Comment:** To ensure a wider appreciation of the objectives of this BBNJ Agreement, IUCN suggests it would be helpful to be more specific as to its aspirations as well as the most relevant provisions of UNCLOS that the BBNJ Agreement is seeking to advance implementation of. The text draws on UNCLOS Preamble, paragraph 4.
Article 3 - Application	
1. This Agreement applies to areas beyond national jurisdiction.	
[2. This Agreement does not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement.]	**Recommendation:** ~~[2. This Agreement does not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement.]~~ **Alternative recommendation**: ~~[~~2. This Agreement does not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial**, non-research service** service. However, each Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement.~~]~~ **Such measures shall be reported to the Conference of the Parties annually.**

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	Comment: IUCN recommends deleting the entire paragraph. This article is too general for the purposes of this Agreement on biological diversity conservation and sustainable use. As read, it would exempt government owned research vessels from the provision of the Agreement on marine genetic resources, and potentially EIAs and ABMTs. The original text is based on Article 236 of UNCLOS Part XII on sovereign immunity, which limits its application to just Part XII of UNCLOS, not the entire Convention. Article 236 provides: "The provisions of this Convention regarding the protection and prevention of the marine environment do not apply to any warship…"
Article 4 - Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies	
1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.	
2. The rights and jurisdiction of coastal States in all areas within national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone, shall be respected in accordance with the Convention.	
3. This Agreement shall be interpreted and applied in a manner that [respects the competences of and] does not undermine [the effectiveness of] relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that promotes coherence and coordination with those instruments, frameworks and bodies.	**Recommendation:** 3. This Agreement shall be interpreted and applied in a manner that ~~[respects the competences of and]~~ **promotes coherence and coordination with** ~~does not undermine [the effectiveness of]~~ relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that ~~promotes coherence and coordination with those instruments, frameworks and bodies~~ **does not undermine the effectiveness of their measures**. **Comment:** The suggested revision emphasizes the importance of "coherence and coordination". Cooperation is the preferred way to resolve overlapping jurisdiction, such as when activities under the control of the ISA, IMO, etc., affect biodiversity.

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4. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.	
Article 4 bis - Without prejudice	
Any act or activity undertaken on the basis of this Agreement shall be without prejudice to, and shall not be relied upon as a basis for asserting, supporting, furthering or denying any claims to, sovereignty, sovereign rights or jurisdiction, including in respect of land, insular or maritime sovereignty disputes or disputes concerning the delimitation of maritime areas.	
Article 5 - General principles and approaches	
In order to achieve the objective of this Agreement, Parties shall be guided by the following:	**General comment:** Because principles and approaches provide guidance for the BBNJ agreement's commitments, agreeing on this section will bring coherence to the other parts. Principles, approaches and objectives together support achieving critical goals, like the 30x30 protection of the high seas as effectively managed and equitably governed, including all key biodiversity areas; and sustainability of use.
(a) The polluter-pays principle;	**Comment:** This principle provides incentives for actors in ABNJ to prevent pollution. It is equitable: innocent parties should not bear the burden of losses that they did not cause. The polluter pays principle places the cost of both chronic and accidental environmental harm on the responsible entity. For example, States have the direct obligation to ensure the availability of recourse for compensation in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction, under UNCLOS, article 235(2), Part XI.
[(b) The principle of the common heritage of mankind;]	**Comment:** The Convention defines "the Area and its resources" as the common heritage of mankind, Article 136. The Convention does not define the full scope or nature of the common heritage. Its legal status is contested, with some commentators considering it a principle of international law, and others arguing that it has very limited application. It was originally intended to refer to the entire ocean beyond national jurisdiction and some have recommended a very broad scope. (*See* Pardo, Mann Borgese, Tladi). Modern usage prefers "common heritage of humankind".

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(c) **Option 1:** The principle of equity;	**Recommendation:** The principles of **intergenerational and intragenerational** equity. **Alternative recommendation:** Retain Option 1. **Comment:** Equity is far broader than fair and equitable sharing of benefits referred to in Option B. Equity also encompasses the concepts of intergenerational and intragenerational equity. The principle of intra-generational equity is concerned with equity between people of the same generation and aims to assure justice among human beings that are alive today, as reflected in Rio Principle 6, mandating particular priority for the special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable (Oxford Handbook of International Environmental Law, chapter 1 - Equity, D. Shelton, 2008; UNEP Law and Environment Assistance Platform). The principle of intergenerational equity recognizes the rights of each generation to use and enjoy the natural resources of the planet, and the corresponding duty to preserve these resources for the future. Intergenerational equity has been consistently recognized as an important principle in international law, *inter alia* in the Stockholm Declaration (principles 1, 2), the Rio Declaration (principle 3), the UNECE Water Convention (art. 2.5(c)), the Convention on Biological Diversity (preamble, art. 2), the UNFCCC (art. 3) and the World Heritage Convention (art. 4) (Brown Weiss, In Fairness to Future Generations, 1988).
Option 2: The fair and equitable sharing of benefits;	**Recommendation:** Retain Option 2 as well **Alternative recommendation:** The fair and equitable sharing of benefits **arising out of the utilization of genetic resources.** **Comment:** Option 1 and Option 2 add different things to this Agreement. Where Option 1 describes the broader obligations of intergenerational and intragenerational equity, Option 2 specifies the obligation of fair and equitable sharing of benefits relating to genetic resources. If both options are kept, it may be appropriate to edit

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	this concept to be in line with the language of Article 1 of the CBD. However, if Option 1 is not retained, it is important to keep the language of Option 2 broad to encompass the need for fair and equitable sharing of the benefits of conservation of ABNJ, not just utilization of MGR.
(d) The application of precaution;	**Recommendation:** (d) The application of **the** precaution**ary principle; Parties shall apply precaution widely in order to conserve marine biodiversity and preserve the marine environment, particularly when information is uncertain, unreliable or inadequate; where there is a threat of serious or irreversible damage or significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.** **Comment:** This builds on the UN Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fishing. IUCN RES 3.075 Applying the Precautionary Principle in environmental decision-making and management (2004), *inter alia*, "calls on IUCN to encourage all decision-makers to apply the Precautionary Principle in ways that enhance conservation and sustainable development in all decisions relating to the environment at international and national levels." As noted elsewhere (*inter alia* article 5(d), article 17 bis), IUCN has a long-standing preference for "precautionary principle." Encouraging a precautionary "approach" here would be more consistent with existing legislation and the ecosystem approach section that follows. Additionally, the precautionary principle/approach is widely regarded as a key policy tool to address scientific uncertainty, which is already high in ABNJ and further magnified by anthropogenic impacts.
(e) An ecosystem approach;	**Comment:** In the context of ABNJ, the recognition of the ecosystem approach promotes integrated and adaptive management of ABNJ ecosystems. This helps to overcome artificial distinctions between the water column and the seabed that are unjustified from a natural science perspective; and to take into account the cumulative impacts of different human activities taking place in ABNJ. While UNCLOS (and the legal framework for oceans governance in general) is largely based on a sectoral approach, a basis for a cross-sectoral approach can be found in different parts of the Convention, such as the Preamble which states that 'the problems of ocean space are closely interrelated and need to be considered as a whole'. The ecosystem approach can also be applied in a sectoral context; ecosystem-based governance takes actual

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	ecosystems or spatial areas as the starting point for governance, regardless of the superimposed jurisdictional delineations.
(f) An integrated approach;	**Comment:** One of the most important features of the ecosystem approach is that it is integrated at ecosystem level, so (e) contains (f). It is still useful to include (f), to emphasize the importance of ecological, geographic, and cross-sectoral integration and the concept of connectivity.
(g) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;	**Comment:** IUCN supports.
(h) The use of the best available science and scientific information, as well as relevant traditional knowledge of indigenous peoples and local communities;	**Comment:** IUCN supports the use of the best available science, reflecting our current understanding of the marine environment and allowing for a precautionary approach.
(i) The respect, promotion and consideration of their respective obligations relating to the rights of indigenous peoples and local communities when taking action to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;	**Comment:** IUCN supports.
(j) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another;	**Comment:** IUCN supports.
(k) The stewardship of the areas beyond national jurisdiction on behalf of present and future generations by protecting, caring for and ensuring responsible use of the marine environment, maintaining the integrity of ocean ecosystems and preserving the inherent value of biodiversity of areas beyond national jurisdiction.	**Recommendation:** (k) The stewardship of the areas beyond national jurisdiction on behalf of present and future generations by protecting, caring for and ensuring responsible use of the marine environment, maintaining the integrity of ocean ecosystems and preserving the inherent and **intrinsic** value of biodiversity of areas beyond national jurisdiction **including the right of marine species and ecosystems to thrive**. **Comment:** IUCN supports the definition of stewardship here and further suggests that the term "inherent" could be followed by "and intrinsic". The CBD Convention refers to the "intrinsic value" of biodiversity.

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	IUCN further suggests referring to the right of marine species and ecosystems to thrive, based on the emerging concept of Rights of Nature. Rights of Nature clarifies that States have a duty to respect nature for its intrinsic value as well as for the benefit of present and future generations. In 2012, the IUCN passed Resolution 100 calling for the IUCN to initiate a process that would include the Rights of Nature in IUCN as fundamental and key elements of decision making and within IUCN plans, programs and projects." (https://www.iucncongress2020.org/programme/official-programme/session-43272) Additionally, IPBES includes it as a tool on their website: https://ipbes.net/policy-support/tools-instruments/rights-nature-ron.
	Recommendation: **(k) (bis) Transparency and access to information: Parties shall promote transparency and access to information in decision making processes and other activities carried out under this Agreement.** **Comment:** In the shared ocean, information about planned and ongoing activities, physical and biological conditions is vital. Environmental impact assessment in particular is concerned with information, participation and transparency of decision-making. Thus the Agreement should include the principle of transparency and access to information in addition to the specific provisions for notice, access to information, and consultation in the BBNJ Agreement. Such a principle would further advance the human right to a healthy environment, as expressed in UNGA Res A/76/L.75[5]. "Recognizing that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment".
	Recommendation: **(k) (ter) Common concern: The ocean in areas beyond national jurisdiction is a common concern of humankind and it should be protected as**

[5] A/76/L.75 (undocs.org)

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	one ocean. **Comment:** The principle of common concern recognizes that the international community has shared interests that can only be addressed by collective action. Recognizing that the biodiversity of areas beyond national jurisdiction (ABNJ) can only be protected through cooperation is the keystone of the BBNJ Agreement. The common concern principle is already recognized in the Convention on Biological Diversity, which states that 'conservation of biological diversity is a common concern of humankind', and the preamble of the UNFCCC stating that 'change in the Earth's climate and its adverse effects are a common concern of humankind'; it is also referenced in the Paris Agreement preamble.
	Recommendation: **(k) (quarter) Non-Regression: Parties shall not allow or pursue actions that have the net effect of diminishing the legal protection of the marine environment.** **Comment:** The principle of non-regression creates an obligation not to rescind or downgrade existing levels of environmental protection. It is an important concept in environmental law in order to prevent backsliding and associated potentially catastrophic long-term consequences in favor of short-term interests. It is related to the concept of progression, established under the UNFCCC, which requires Parties to continuously increase their efforts to achieve the purpose of the agreement over time (art. 3), and the established principle of progressive realization of human rights. Adopting the principle of non-regression in the BBNJ agreement would support long term planning and reliance on measures to support sustainable use and conservation of marine biodiversity now and in the future. The suggested text is based on text in the IUCN World Declaration on the Environmental Rule of Law.
	Recommendation: **(k) (quinquies) A commitment to solidarity: States' affirmative obligation of mutual support in conserving and sustainably using marine biological diversity in areas beyond national jurisdiction** **Comment:** The international law principle of solidarity has evolved primarily in the area of international security relations and human rights. However, it has been used in a number of recent environment instruments and can be seen as underpinning

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	many commitments to contribute to capacity building, technology transfer or the financing of international environment funds, like the Green Climate Fund (GCF) or the Global Environment Facility (GEF) finance. It is a principle that will be particularly important in times of disaster or emergency. While a State may not be individually, immediately affected by a harmful impact, solidarity serves as a reminder of our shared present and our common future. It is a principle that connects other principles proposed in Article 5 of the BBNJ further revised draft text, including intergenerational equity, stewardship, co-operation, and common concern.
Article 6 - International cooperation	
1. Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and promoting cooperation among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies [and members thereof] in the achievement of the objective of this Agreement.	**Recommendation:** 1. Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening**,** and enhancing cooperation with and promoting cooperation among**,** relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies **[**and members thereof**]** in the achievement of the objective of this Agreement. **Comment:** It would be helpful to clarify (via the suggested commas), that the duty to cooperate under this Agreement also includes the duty to strengthen relevant legal instruments and frameworks and bodies as necessary to achieve the objective of the Agreement. Alternatively, to specifically reference "members" thereof as the members are the guiding force and active agents for cooperation, even if they may not be parties to this Agreement.
2. A Party that is also a party to a relevant legal instrument, framework, or global, regional or sectoral body, shall endeavour to promote the objective of this Agreement when participating in decision-making under that other instrument, framework or body.	**Recommendation:** 2. A Party that is also a party to a relevant legal instrument, framework, or global, regional or sectoral body, shall ~~**endeavour to**~~ promote the objective of this Agreement when participating in decision-making under that other instrument, framework or body.

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	Comment: "To promote" is already an obligation of due diligence that brings with it an obligation to support or actively encourage**.** To endeavor to support does not entail that type of active cooperation necessary to achieve the objectives of the Agreement.
3. Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objective of this Agreement.	**Recommendation:** 3. Parties shall promote international cooperation **and capacity development** in marine scientific research **including with regard to sustainable use of marine genetic resources, environmental impact assessment techniques, and area-based management tools including Marine Protected Areas,** and in the development and transfer of marine technology consistent with the Convention in support of the objective of this Agreement. **Comment:** The suggested amendment supports international cooperation and capacity development in all four elements of the BBNJ Agreement by clarifying and highlighting important areas for international collaboration and capacity enhancement to achieve the objective of the BBNJ Agreement.
PART II: MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS	
Article 7 - Objectives	
The objectives of this Part are to:	
(a) Promote the fair and equitable sharing of benefits arising from marine genetic resources of areas beyond national jurisdiction;	**Recommendation:** (a) Promote the fair and equitable sharing of benefits arising ~~from~~ **out of the utilization of** marine genetic resources of areas beyond national jurisdiction; **Comment:** The inclusion of "the utilization of" genetic resources makes it clear that benefit sharing is triggered by the utilization of the genetic resources, not by

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	other benefits arising from the marine resources, such as their use as commodities. "Utilization" is defined above in article 1, in accordance with its definition in the Nagoya Protocol. This would also bring this objective in line with the objectives of the Convention on Biological Diversity, which include "the fair and equitable sharing of the benefits arising out of the utilization of [marine] genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding." (CBD art. 1)
(b) Build and develop the capacity of developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to collect *in situ*, access *ex situ*, including as digital sequence information, and utilize marine genetic resources of areas beyond national jurisdiction;	**Comment:** The phrase "including as digital sequence information" indicates that DSI is a form of MGR. This is still under debate. See the comment on article 1(1).
(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;	**Recommendation:** (c) Promote the generation of knowledge and technological innovations, including by promoting and facilitating the development and conduct of marine scientific research in **relation to marine genetic resources of** areas beyond national jurisdiction, in accordance with the Convention; **Comment:** Linking capacity building and technology transfer to marine genetic resources is vital. It is important that this knowledge sharing encompass the broadest possible range of scientific research activities in relation to MGR. As written, the provision may be interpreted as limited to scientific research that takes place in ABNJ, i.e. at the time of collection. This may inadvertently exclude promoting and facilitating the development and conduct of marine scientific research that is carried out in areas *within* national jurisdiction on MGRs from ABNJ. The suggested wording will make sure the focus is on the sharing of all knowledge and innovations within the scope of the ILBI provisions (in situ and ex situ MGRs).

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(d) Promote the development and transfer of marine technology, with due regard to all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology.	**Comment:** The term "due regard" invites interpretation, but can be used as a basis for balance with IP and information controllers. The term "holders" may be interpreted to mean IP holders, but could also mean those who are physically holding the technology. More precision would be useful.
Article 8 - Application	
1. The provisions of this Agreement shall apply to the collection *in situ* of, access *ex situ*, including as digital sequence information, to, and to the utilization of marine genetic resources [or their derivatives] originating from areas beyond national jurisdiction, as defined in this Agreement.	**Recommendation:** 1. The provisions of this ~~Agreement~~ **Part** shall apply to the collection *in situ* of and access *ex situ*, **for their utilization** ~~including as digital sequence information,~~ to, and to the utilization of marine genetic resources ~~[or their derivatives]~~ originating from areas beyond national jurisdiction, **including derivatives and digital sequence information** ~~as defined in this Agreement~~. **Comment:** This paragraph should read "the provisions of **this Part**". If it is intended to refer to the provisions of the entire Agreement, it should be moved to article 3. If "collection *in situ*" and "access *ex situ*" are not defined as limited to collection/access "for their utilization", it is important to include that limit here, to avoid covering collection and access to genetic resources as commodities. See the comment on article 1(6). The phrasing implies that digital sequence information is a form of marine genetic resource. This question is still under discussion in the CBD, and it is important that the concepts and definitions used for genetic resources within and outside national jurisdiction are aligned. See the comment on article 1(1). It is important to include derivatives in the scope of this section. Derivatives such as fish waste can be important sources of biotech development. For example, Arctic shrimp wastes have been used to develop the highly profitable Shrimp Alkaline Phosphatase, which is now generated recombinantly
2. The provisions of this Part shall not apply to [the use of fish and other biological resources as a commodity] [fishing and fishing activities regulated under relevant international law].	**Recommendation:** ~~The provisions of this Part shall not apply to [the use of fish and other biological resources as a commodity] [fishing and fishing activities regulated under relevant~~

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	~~international law].~~ **Alternative Recommendation 1:** The provisions of this Part shall ~~not~~ **only** apply to ~~[the use of fish and other biological resources as a commodity] [fishing and fishing activities regulated under relevant international law]~~ **utilization of genetic resources, access to genetic resources for their utilization and sharing of benefits arising from the utilization of genetic resources**. **Alternative Recommendation 2:** The provisions of this Part shall not apply to ~~[~~ the use of ~~fish and other biological resources as a commodity] [fishing and fishing activities regulated under relevant international law]~~ **biological resources, including derivatives, as a commodity.** **Comment:** If the relevant provisions are restricted to "utilization" of marine genetic resources, and/or the definitions of "collection *in situ*" and "access *ex situ*" are edited to apply only to collection or access for utilization, this provision is unnecessary, as utilization is defined to cover activities related to research and development, and would not include use of fish and other biological resources as commodities. This is the approach taken in the Nagoya Protocol, which creates obligations related to "access to genetic resources **for their utilization**" and "benefits arising **from the utilization** of genetic resources." Together with the definition of "utilization", this excludes commodities. Moreover, the existing regimes for fisheries are already protected under article 4. If this provision is retained, the choice of bracketed text depends on the purpose. If the purpose is to reaffirm that the MGR provisions related to access do not apply to commodities, the first option is appropriate. However, the term "biological resources" is not defined in this draft. The CBD defines "biological resources" to include "genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity." This definition could be included, in which case it should be specified that it includes derivatives, such as fish wastes, which may be used as commodities. The second option seems to not apply to resources that are not gathered through fishing, such as algae, but can be used as commodities. If the intent is to exclude such commodities, this option would need to be revised.

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	If the purpose is to ensure that the existing regimes for harvest fisheries are not affected, the wording of the second option is overly broad. It could be interpreted to exclude all fish harvested as commodities, which can later be used for their genetic material. If this article is retained, we suggest wording that clarifies that the provisions of this Part apply only to **utilization of genetic resources**, as defined in article 1, as well as access to genetic resources **for their utilization** and sharing of benefits **arising from the utilization** of genetic resources. This will exclude living and biological resources that are not used for their genetic material potential in research, development and/or commercialization.
3. **Option A:** The provisions of this Agreement shall apply to marine genetic resources collected *in situ*, and accessed *ex situ*, including as digital sequence information, after the entry into force of the Agreement, as well as to those resources collected in situ before its entry into force but utilized after its entry into force.	**Comment:** Retroactive application of this agreement to MGR will be unworkable for several reasons. The inclusion of new utilization of MGR collected / accessed prior to the entry into force of the agreement poses potentially very large demands on collection-holding organisations, which may not have captured the data necessary to make observance possible. This would lead to samples not being used, or not being used legally. In addition, the provision is in contrast to the provisions of the Nagoya Protocol and may lead to jurisdiction shopping for MGR also found in coastal waters.
Option B: The provisions of this Part shall apply to marine genetic resources collected *in situ* in areas beyond national jurisdiction after the entry into force of this Agreement for the respective Party.	**Comment:** For the reasons above, this option is preferred.
Article 9 - Activities with respect to marine genetic resources of areas beyond national jurisdiction	
1. Activities with respect to marine genetic resources of areas beyond national jurisdiction may be carried out by all Parties and their natural or juridical persons under the conditions laid down in this Agreement.	**Recommendation:** 1. **Parties shall ensure that** ~~A~~activities with respect to marine genetic resources of areas beyond national jurisdiction ~~may be~~ **are** carried out ~~by all Parties and their natural or juridical persons~~ under the conditions laid down in this Agreement. **Comment:** This provision assumes that humans will be involved in decision-making and collecting and does not take into account artificial intelligence and future automated technologies. Marine Autonomous Surface Ships are already

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	undertaking activities in ABNJ and the legal status of fully autonomous (AI) technologies is unclear. It may be argued that AI activities are not carried out by states and their natural or juridical persons so none of the obligations in Part II would apply to autonomous vessels and/or autonomous research. We therefore suggest deleting the phrase "by all Parties and their natural or juridical persons". If the purpose of the provision is to reaffirm the conditions of the agreement it achieves it without this phrase. At the same time, this Part lacks a clear statement that obligates Parties to ensure that activities within their jurisdiction or control are conducted in accordance with these provisions. This can be included in a general implementation clause applying to the entire agreement, or it can be included here using the recommended wording above.
[2. In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State in areas within the national jurisdiction of which such resources are found.]	**Recommendation:** ~~[2. In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State in areas within the national jurisdiction of which such resources are found.]~~ **Alternative recommendation:** ~~[2.~~ In cases where marine genetic resources of areas beyond national jurisdiction are also found ***in situ*** in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights ~~and legitimate interests~~ of any coastal State in areas within the national jurisdiction of which such resources are found.~~]~~ **Comment:** Some species may appear in ABNJ and the EEZ of several coastal states. It would be unworkable to require researchers to reach legal agreement with all states in these situations. In many cases, it is not possible for researchers to identify in advance (or even subsequent to collection) whether resources they access are also found in the national jurisdiction of coastal States. See the comment on article 10(6).

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	Genetic makeup of species may differ between populations, so a specimen collected in coastal waters may differ from one collected in ABNJ. While the same species or population may be found in different jurisdictions, it is not clear how this translates to genetic resources. This provision strikes a legal balance by using the term "due regard". "Due regard" in this context is a well-established term under the Law of the Sea and does not amount to a requirement for legal agreement or prior informed consent or a recognition of any new rights or interests of coastal states. However, it is therefore unclear what "rights and legitimate interests" are being referred to. In order to ensure that "legitimate interests" is not interpreted in a way that would require researchers to identify whether resources are found within the jurisdiction of any specific coastal state, the phrase should be deleted. It is also not clear what is meant by "activities". Finally, it is not clear whether resources in biorepositories and other *ex situ* collections within national jurisdiction would be covered by this provision. Therefore, if this provision is kept, the phrase *in situ* should be inserted.
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.	**Comment:** This provision uses the wording of UNCLOS art 137 and is consistent with art 89. It should not be interpreted to impede assertion of intellectual property rights over products based on MGR, as these will require significant invention and development. Patenting the physical MGR itself from ABNJ is inconsistent with existing international law. It may be necessary to clarify that this provision does not infringe on the sovereign rights of states to MGR found in their territory as well as ABNJ.
[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.]	**Recommendation:** [4. The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of ~~mankind as a whole,~~ **[people and the planet] [human kind as a whole]** taking into consideration the interests and needs of developing States.] **Comment:** The draft Post 2020 Biodiversity framework recognizes the need to use benefits from the use of genetic resources and the conservation and sustainable use of biodiversity "for the benefit of planet and people". This language recognizes the

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	importance of genetic research for the environment and biodiversity, beyond its functional use to humans. Alternatively, the language should be updated to standard 21st Century gender terminology by using "humankind" instead of "mankind".
5. Activities with respect to marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.	
Article 10 - Collection *in situ* of marine genetic resources of areas beyond national jurisdiction	**Comment:** The reference to transfer of marine technology has been removed from this Article. It will be important to ensure that it is maintained elsewhere, as technology transfer will be essential to ensuring inclusive research that generates benefits for all.
1. All States, irrespective of their geographical location, and competent international organizations have the right to collect marine genetic resources of areas beyond national jurisdiction in accordance with the Convention.	**Comment:** This paragraph is partially redundant with provision in article 9(1). If 9(1) is deleted or revised according to the suggestion above, it will help address this redundancy.
2. Collection *in situ* of marine genetic resources within the scope of this Part shall be subject to self-declaratory notification to the clearing-house mechanism.	**Recommendation:** 2. Collection in situ of marine genetic resources within the scope of this Part shall be subject to self-declaratory notification **and transmission of information** to the clearing-house mechanism **prior to and following collection** [**in accordance with the requirements and timelines [provided in Annex [x]][adopted by the Parties within 2 years of entry into force of the Agreement].** **Comment:** The details of this section are highly specific and may need to be flexible to respond to changing technology. For example, it may not be possible to have all of the information described in para. 3 six months prior to collection, though changing use of technology may change this. Different vessels may be used in the future such that "tonnage" may not apply, and special provisions may be necessary for collection involving autonomous technologies. Inclusion of this information in an Annex or subsequent decision will make it easier to adapt to changing technology. Any provision for subsequent decision on these details should be time bound to avoid excessive delay in implementation of these provisions. If there is concern about potential delay, an Annex adopted at the same time as the Agreement is a better choice.

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3. Parties shall ensure that the following information is transmitted to the clearinghouse mechanism at least six months prior to the collection *in situ* of marine genetic resources of areas beyond national jurisdiction: (a) The nature and objectives of the project, including, as appropriate, any programme(s) of which it forms part; (b) The resources to be collected, if known, and the purposes for which the resources will be collected; (c) The geographical areas in which the collection is to be undertaken; (d) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate; (e) A summary of the method and means to be used for collection, including the name, tonnage, type and class of vessels, scientific equipment and/or study methods employed; (f) The name(s) of the sponsoring institution(s), the director(s), and the person in charge of the project; (g) Opportunities for scientists of all States, in particular for scientists from developing States, to be involved in or associated with the project; (h) The extent to which it is considered that States that may need and request technical assistance, in particular developing countries, should be able to participate or to be represented in the project.	**Recommendation:** ~~3. Parties shall ensure that the following information is transmitted to the clearinghouse mechanism at least six months prior to the collection *in situ* of marine genetic resources of areas beyond national jurisdiction:~~ ~~(a) The nature and objectives of the project, including, as appropriate, any programme(s) of which it forms part;~~ ~~(b) The resources to be collected, if known, and the purposes for which the resources will be collected;~~ ~~(c) The geographical areas in which the collection is to be undertaken;~~ ~~(d) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;~~ ~~(e) A summary of the method and means to be used for collection, including the name, tonnage, type and class of vessels, scientific equipment and/or study methods employed;~~ ~~(f) The name(s) of the sponsoring institution(s), the director(s), and the person in charge of the project;~~ ~~(g) Opportunities for scientists of all States, in particular for scientists from developing States, to be involved in or associated with the project;~~ ~~(h) The extent to which it is considered that States that may need and request technical assistance, in particular developing countries, should be able to participate or to be represented in the project.~~ **Comment:** The specific detail and deadlines in this provision may be best moved to an annex or subsequently adopted decision, which could be more easily amended.
4. Parties shall ensure that the following information is transmitted to the clearinghouse mechanism as soon as it becomes available, but no later than six months from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction:	**Recommendation:** ~~4. Parties shall ensure that the following information is transmitted to the clearinghouse mechanism as soon as it becomes available, but no later than six~~

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(a) The repository or database where environmental metadata, taxonomic information and digital sequence information related to marine genetic resources, where available, are or will be deposited; (b) Where the original samples, if available, are or will be held; (c) The results of the project, including a report detailing the geographical area from which marine genetic resources were collected, including information on the latitude, longitude and depth of collection, and, to the extent available, the findings from the activity undertaken.	~~months from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction:~~ ~~(a) The repository or database where environmental metadata, taxonomic information and digital sequence information related to marine genetic resources, where available, are or will be deposited;~~ ~~(b) Where the original samples, if available, are or will be held;~~ ~~(c) The results of the project, including a report detailing the geographical area from which marine genetic resources were collected, including information on the latitude, longitude and depth of collection, and, to the extent available, the findings from the activity undertaken.~~ **Comment:** As above, the details of what information should be transmitted and when could be put in an annex or left for a decision of the Parties. Much of this information will not be available within six months. A requirement for a machine readable scientific unique identifier may be a useful part of a traceability regime, but there are complexities to this that are not easy to spell out in this provision. If the provision is kept, "meta-data" should be replaced with "data and associated metadata" as metadata has a narrow meaning in data science that does not encompass all of the relevant information.
5. Parties shall promote cooperation in the collection *in situ* of marine genetic resources of areas beyond national jurisdiction.	
6. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that activities with respect to marine genetic resources of areas beyond national jurisdiction that may result in the utilization of marine genetic resources found in areas both within and beyond national jurisdiction are subject to the prior notification and consultation of the coastal States and any other relevant Parties concerned with a view to avoiding infringement of the rights and legitimate interests of those Parties.	**Recommendation:** ~~6. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that activities with respect to marine genetic resources of areas beyond national jurisdiction that may result in the utilization of marine genetic resources found in areas both within and beyond national jurisdiction are subject to the prior notification and consultation of the coastal States and any other relevant Parties concerned with a view to avoiding infringement of the rights and legitimate interests of those Parties.~~

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	Comment: This provision is unworkable. The provision proposed as article 9(2) is a more appropriate and feasible way to ensure that the legitimate rights and interests of coastal states are protected, while the notification requirement described above should ensure that coastal States and all others are notified of both the intent to undertake collection and the results, including the location of deposit of resources collected. This provision would require scientists to know in which EEZ each species appears — this information is not comprehensively available, placing an enormous burden on researchers and meaning those states with better biodiversity inventories in their EEZ will benefit more. In many cases, researchers cannot predict what species will be collected, for example when it comes to larval planktonic forms. Even if the provision could be implemented, the need to go through a procedure to comply with the requirements of each State could delay the expedition for years, particularly as some MGR can be found in the jurisdiction of many different States. It is also not clear what rights and legitimate interests are referred to. Under the CBD and its Nagoya Protocol, states have rights and legitimate interests only over genetic resources accessed within their jurisdiction, not over every species found within their jurisdiction. This provision gives greater preference to coastal states over non-coastal states and potentially undercuts the multilateral benefit sharing that would benefit all states. It is also not clear what "any other relevant Parties concerned" means, or what standard a Party must meet to warrant consultation. This provision destroys legal certainty for those accessing MGR in BBNJ, as there will always be the risk of a challenge from one or more coastal states depending on species discovery or reidentification. Additional infrastructure would need to be created to implement the consultation mechanism, as the clearing house is set up as a notification mechanism only.
Article 10 bis - Access to traditional knowledge of indigenous peoples and local communities associated with marine genetic resources of areas beyond national jurisdiction	

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Parties shall take 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 shall only be accessed with the free, prior and informed consent or approval and involvement of these indigenous peoples and local communities. Access to such traditional knowledge may be facilitated by the clearing-house mechanism. Access to and utilization of such traditional knowledge shall be on mutually agreed terms.	**Comment:** This is an important and well-worded provision.
Article 11 - Fair and equitable sharing of benefits	**Comment:** Both options described below place significant burden on the original collector, and less on end commercial users. This could let commercial users off the hook for benefit sharing while potentially dampening research for conservation and taxonomy and other basic research.
OPTION I:	
1. The benefits arising from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction shall be shared in a fair and equitable manner.	**Comment:** This provision seems designed to limit benefit-sharing obligations to the point of collection rather than subsequent utilization. It does not accomplish this purpose, as benefits from subsequent utilization can also be interpreted to "arise from the collection". Instead, it is overbroad and creates confusion, as benefits "arising from the collection" may even be interpreted to mean use of commodities (see comments on article 8(2)). If the objective is to limit benefit sharing obligations to the initial researcher, the provision should be reworded using active voice, making it clear who is responsible for sharing benefits and with whom. Alternatively, the following paragraphs should be rephrased to clarify who is responsible for sharing benefits. However, this would significantly limit the benefit sharing provisions and place the burden almost entirely on the actor in the value chain who is benefiting the least. Moreover, it is not clear what "benefits" are left if benefits from research and utilization are excluded. If the definition of "collection *in situ*" is not defined to include the phrase "for the purpose of utilization", that phrase should be included here to avoid applying to collection of commodities. See comments on articles 1(6) and 8(2).

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2. Benefits shall include various types of contributions to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.	**Recommendation:** 2. **Sharing of** ~~B~~benefits shall include various types of contributions to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. **Alternative recommendation:** Delete, and include "contributions to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction" under paragraph 3 below. **Comment:** This provision casts benefit sharing as an economic tool to support the overall objective of conservation and sustainable use. However, it is important to clarify that contributions to conservation and sustainable use are a form of **sharing** of benefits, not benefits arising from collection/utilization.
3. Benefits shall be shared in the form of:	**Comment:** It will be important to clarify with whom benefits shall be shared and who has an obligation to share. This article does not do this, instead it lists requirements described elsewhere in the text. The use of "shall" means that, for each MGR collection, each of (a) to (f) must be shared. This may not be relevant in all cases. e.g. technology transfer may not be feasible because no tech has arisen.
(a) Access to samples and sample collections;	**Recommendation:** (a) Access to samples**,** ~~and~~ sample collections **and scientific data, including digital sequence information in accordance with Article 11(4);** **Comment:** This overlaps with provision 4 of this article, and is vague as to what "access to samples" requires. This detail can be specified under provision 4.
(b) Pre-collection and post-collection information contained in the notifications provided in accordance with article 10, paragraphs 3 and 4;	
(c) Transfer of technology under mutually agreed terms;	**Recommendation:** (c) Transfer of technology ~~under mutually agreed terms~~ **in accordance with Part V;**

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	Comment: Bringing contractual measures (mutually agreed terms) at this stage adds confusion and complexity to what is essentially a multilateral notification system under article 10. It is unclear who the parties are for the transfer of technology contracts. In this context, it's hard to see why MAT is used as a tool. Instead, reference can be made to the tech transfer provisions under Part V.
(d) Capacity-building, including by financing dedicated initiatives, and partnership opportunities in research projects, particularly for developing countries;	**Recommendation:** (d) Capacity-building, ~~including by financing dedicated initiatives, and partnership opportunities in research projects, particularly for developing countries;~~ **in accordance with Part V;** **Comment:** Referencing the capacity-building provisions in Part V can ensure consistency while reducing potential for overlap. Part V also contains more detail about how capacity building can be carried out.
(e) Findable, accessible, interoperable and reusable scientific data, including digital sequence information in accordance with international practice in these fields;	**Recommendation:** Merge with (a) above. **Comment:** Merging access to samples with access to data and DSI eliminates the need to define whether DSI is a form of MGR or a form of data, leaving room to align with the ongoing DSI discussions under the CBD. Specifics (e.g. FAIR) can be included in provision 4, below.
(f) Other forms as determined by the Conference of the Parties [on the basis of recommendations by the access and benefit-sharing mechanism].	
4. Taking into account current international practice in those fields, Parties shall ensure that samples, when available, and data are deposited in publicly available and open-access databases, biorepositories or gene banks as soon as they become available.	**Recommendation:** 4. Taking into account current international practice in ~~those~~ **these** fields, Parties shall ensure that**:** **(a)** samples **are deposited in publicly available biorepositories as soon as they become available~~, when available,~~; and** **(b) findable, accessible, interoperable and reusable scientific** data are deposited in publicly available and open access databases as soon as they become available.

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	Comment: Different standards of access will be needed for databases and biorepositories. The reference to open access databases is very helpful, and should be retained if possible. However, the reference to 'open access biorepositories' is unhelpful. Although many collections /biorepositories are available for study, the legal framework under which they operate may preclude 'open access'. Given the finite nature of samples, open access may raise logistical problems. In addition, the term "open access" is undefined and may be open to interpretation.
5. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.	**Recommendation:** ~~5. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.~~ **Alternative recommendation:** Parties shall take the necessary legislative, administrative or policy measures, as appropriate~~, with the aim of ensuring that benefits arising from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement~~ **to ensure implementation of this Part**. **Comment:** This provision has many of the same problems as article 11(1). In addition, use of the term "by natural or juridical persons" fails to take into account automation (see comment on article 9(1)). Finally, the provision does not add anything to the text. The provisions of this option are very specific and may be difficult to implement in practice. Including every sample/information in a monetary benefit sharing mechanism would require enormous infrastructure disproportionate for the (monetary) benefit expected from the majority of MGRs.
OPTION II:	
1. The benefits arising from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction, from access to such resources *ex situ*, including as digital	**Recommendation**:

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sequence information, and from the utilization of such resources shall be shared in a fair and equitable manner.	The benefits arising from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction, from access to such resources ex situ, ~~including as digital sequence information,~~ and from the utilization of such resources shall be shared in a fair and equitable manner. **Comment:** See comment on article 11 - Option I – para 1. Benefit sharing in relation to digital sequence information will be very different. It should be separated out and dealt with on its own. See comment on article 1(1).
2. Benefits shall include monetary and non-monetary benefits, including various types of contributions to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.	**Comment:** See comment on article 11 - Option I – para 2. It may be better to list specific monetary and non-monetary benefits in an annex rather than in the text, as is done in the Nagoya Protocol.
3. Non-monetary benefits shall be shared in the form of:	**Comment:** See comments on article 11 - Option I – para 3. Like Option I, this provision does not specify who will share benefits with whom, and as written suggests that all benefits (a)-(f) must be shared for all instances of collection of MGR. In addition, as each of these forms of non-monetary benefit are described in more detail in other provisions, it is worth referencing those provisions rather than adding different and possibly conflicting detail here (see comments on article 11 - Option I – para 3 – subpara (a)-(f)).
(a) Access to samples and sample collections;	
(b) Pre-collection and post-collection information contained in the notifications provided in accordance with article 10, paragraphs 3 and 4;	
(c) Transfer of technology under mutually agreed terms;	
(d) Capacity-building, including by financing dedicated initiatives, and partnership opportunities in research projects, particularly for developing	

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countries;	
(e) Findable, accessible, interoperable and reusable scientific data, including digital sequence information, in accordance with international practice in those fields;	
(f) Other forms as determined by the Conference of the Parties on the basis of recommendations by the access and benefit-sharing mechanism.	
4. Where marine genetic resources of areas beyond national jurisdiction are subject to utilization by natural or juridical persons under the jurisdiction of a Party, that Party shall ensure that:	**Comment:** This provision is attempting to combine obligations related to collection *in situ* with obligations related to access and utilization *ex situ*. These situations warrant different treatment and separate provisions. It is not clear what the phrase "subject to utilization" refers to—in the broadest interpretation, any MGR that is available to a researcher (e.g. through a biorepository) is "subject" to their utilization. If the intent is to create an obligation that goes beyond the initial collector to subsequent users, the word "accessed" may be better. However, even this raises questions. Does a Party need to report every time MGR of ABNJ is accessed by researchers under its jurisdiction? Does this include access to MGR in repositories or DSI in databases? Does it need to be reported at the time of access, or can a regular summary report suffice? Implementation of this provision as written has the potential to be excessively burdensome. The use of the term "by natural or juridical persons" may fail to encompass automated or autonomous research or collection activities.
(a) The following information is provided to the clearing-house mechanism:	**Comment:** It may be worth considering how some of this information can be "provided" automatically, e.g. through unique identifiers or publicly available records of access to resources in biorepositories that track utilization.
(i) Where the results of the utilization can be found, including any digital sequence information;	**Comment:** A machine readable unique identifier may obviate the need for reporting on where DSI can be found. If "results of the utilization" is used here, it should be defined, as it could include a range of very different things. See comment on (c) below.

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(ii) Where available, details of the post-collection notification to the clearinghouse mechanism related to the marine genetic resources that were the subject of utilization;	**Comment:** This is already covered in article 10.
(iii) Where the original sample that was the subject of utilization, if available, is held;	**Comment:** This will be possible with good scientific practice including recording of holding institutions and/or depositing of vouchers (see Rabone et al., 2019; Humphries et al., 2021)
(iv) The modalities envisaged for accessing the samples or results of the utilization referred to in subparagraphs (i) and (iii);	**Comment:** It is not clear what this provision is relevant for.
(b) Original samples of the marine genetic resources subject to the utilization under their jurisdiction, where available, are deposited in publicly accessible biorepositories, gene banks or other collections, taking into account current international practice in these fields;	**Comment:** This provision is narrower and more confusing than article 11 - Option I – para 4, with proposed revisions above.
(c) The results of the utilization, including environmental metadata, taxonomic information and any digital sequence information, are deposited in a publicly accessible repository or database, taking into account current international practice in those fields.	**Comment:** "Results of utilization" could include a report, a paper, a product or a process. Different obligations may be required for each. In addition, whereas article 11 - Option I – para 4 specifies that the database be "open access", this only requires "publicly accessible".
5. The information described in paragraph 4, subparagraph a, shall be transmitted to the clearing-house mechanism, and the samples and results described in paragraph 4, subparagraphs b and c, shall be deposited as soon as they become available and:	**Comment:** This deadline may not be realistic, and the clearinghouse may not be able to cope with this amount of information.
(a) No later than three years from the start of the relevant utilization;	
(b) Upon the subsequent placing on the market of any product developed by utilizing a marine genetic resource of areas beyond national jurisdiction or upon the subsequent generation of further results of that utilization.	**Comment:** Commercial products and further results are very different things and should not be included in the same sentence. It also raises the question: how many modifications or generations from the original MGR or derivative will be included in this obligation?

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6. Access to the original samples, data and information in the databases, biorepositories, gene banks or other collections described in paragraph 4 may be subject to reasonable conditions, including but not limited to those related to:	**Comment:** The term "reasonable conditions" begs interpretation. Could it include IP fees? Who will determine what constitutes reasonable conditions?
(a) The need to preserve the physical integrity of original samples;	**Comment:** This is a good inclusion that recognizes that the material is finite.
(b) The reasonable costs associated with maintaining the relevant database, biorepository or gene bank in which the sample, data or information is held;	**Comment:** It should not necessarily be up to researchers to maintain the costs of databases. These should be maintained by governments and, as relevant, corporations.
(c) The reasonable costs associated with providing access to the sample, data or information.	
7. Monetary benefits shall be shared through the modalities determined by the Conference of the Parties such as:	**Comment:** The list of monetary benefits could be included in an appendix, following the example of the Nagoya Protocol, or left for subsequent negotiation.
(a) Milestone payments;	
(b) Royalties;	
(c) Other forms as are determined by the Conference of the Parties on the basis of recommendations by the access and benefit-sharing mechanism.	
8. The Conference of the Parties shall determine the rate of payments related to monetary benefits on the basis of the recommendations of the access and benefit-sharing mechanism.	
9. The payments shall be made through the financial mechanism established under article 52, which shall distribute them to Parties to this Agreement, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States Parties, [in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries,] in accordance with mechanisms	**Comment:** It may prove very difficult to distribute those funds in a way that feels fair and equitable for all. Will the payments be made directly to Parties or allocated to specific projects? Will payments be set aside to support the goals and implementation of the Convention, such as through funding biodiversity conservation, monitoring and capacity building?

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established by the access and benefit-sharing mechanism.	
10. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction, from access to such resources *ex situ*, including as digital sequence information, and from the utilization of such resources by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.	**Comment:** See comment and suggested text on article 11 - Option I – para 5, above.
Article 11 bis - Access and benefit-sharing mechanism	**Comment:** The CBD/Nagoya Protocol Parties are currently discussing a multilateral benefit sharing mechanism under article 10 of the Nagoya Protocol, as well as a mechanism for benefit sharing in relation to DSI. It will be important for this Agreement to align with those discussions. Therefore, the best option may be a placeholder that provides for future negotiation of a multilateral benefit sharing mechanism, along the lines of art. 10 of the Nagoya Protocol. However, such a provision should be time bound to ensure that it is not indefinitely delayed, and that implementation of benefit sharing can begin. Renaming this a "benefit sharing mechanism" rather than "access and benefit sharing mechanism" could help ensure alignment with Nagoya, reduce overlap with the clearinghouse, and focus the discussion of the mechanism on the trickier aspect of MGR under the Agreement.
1. An access and benefit-sharing mechanism is hereby established. It shall serve, inter alia, as a means for establishing guidelines for benefit-sharing, in accordance with article 11, providing transparency and ensuring a fair and equitable sharing of both monetary and non-monetary benefits.	**Comment:** Given the focus on benefit sharing, it is worth considering changing this to a "benefit sharing mechanism" rather than "access and benefit sharing". It is also unclear what role this ABS mechanism will have for the notification process in article 10.
2. The access and benefit-sharing mechanism shall be composed of members elected by the Conference of the Parties from among the candidates nominated by the Parties and shall include members from developing States. However, if necessary, the Conference of the Parties may decide to increase the size of the mechanism, having due regard to economy and efficiency. In the election of members of the mechanism, due account shall be taken of the need for equitable geographical representation.	
3. Members of the mechanism shall have appropriate qualifications in the area of	

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competence of that mechanism. Parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the mechanism.	
4. The mechanism shall:	
(a) Make recommendations to the Conference of the Parties on matters relating to this Part;	
(b) Propose measures to implement decisions taken in accordance with this Agreement;	
(c) Propose rates or mechanisms for the sharing of monetary benefits in accordance with article 11;	
(d) Review reports from Parties made under article 13;	
(e) Make recommendations on matters relating to the clearing-house mechanism in accordance with article 51 on access and benefit-sharing;	
(f) Make recommendations on matters relating to the financial mechanism established under article 52;	
(g) Make recommendations on other matters relating to this Part.	
5. Each Party shall make available to the access and benefit-sharing mechanism the information required under this Agreement, which shall include:	**Comment:** This may overlap with the function of the clearinghouse. If national focal points are to be used in this agreement, more description of their role may be necessary.
(a) Legislative, administrative and policy measures on access and benefit-sharing;	

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(b) Contact details and other relevant information on national focal points;	
(c) Other information required pursuant to the decisions taken by the Conference of the Parties.	
Article 12 - Intellectual property rights	
Parties shall respect intellectual property rights and confidential information and implement this Agreement in a manner that is supportive of and consistent with the rights and obligations of Parties under the relevant agreements concluded under the auspices of the World Intellectual Property Organization and the World Trade Organization, and ensure that no action is taken in relation to intellectual property rights that would undermine the sharing of benefits arising from [and the traceability of] marine genetic resources of areas beyond national jurisdiction.	**Recommendation:** Parties shall respect intellectual property rights and confidential information and implement this Agreement in a manner that is supportive of and consistent with the rights and obligations of Parties under the relevant **international** agreements ~~concluded under the auspices of the World Intellectual Property Organization and the World Trade Organization~~, and ensure that no action is taken in ~~relation~~ **the context of** ~~to~~ intellectual property rights that would undermine the sharing of benefits arising from ~~[and the traceability of]~~ marine genetic resources of areas beyond national jurisdiction. **Comment:** This provision leaves space for Parties to work through other international regimes to adopt more clear rules related to intellectual property and its intersections with the Agreement. However, the Agreement does not specifically name other global treaties, like the CBD or UNFCCC, so to be consistent and future proof it is better to replace the specific reference to WIPO and WTO with "other relevant international agreements".
Article 13 *(two options)*	
OPTION I: Monitoring and transparency	
1. The access and benefit-sharing mechanism shall make recommendations to the Conference of the Parties, in the adoption of appropriate rules, guidelines or a code of conduct for the collection *in situ* of marine genetic resources of areas beyond national	

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jurisdiction, access to such resources *ex situ*, including as digital sequence information, and the utilization of such resources in accordance with this Part.	
2. Monitoring of the collection *in situ* of marine genetic resources of areas beyond national jurisdiction, access to such resources *ex situ*, including as digital sequence information, and the utilization of such resources shall be carried out through an open and self-declaratory system within the clearing-house mechanism in accordance with rules, regulations and procedures adopted by the Conference of the Parties as recommended by the access and benefit-sharing mechanism.	
3. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that:	**Recommendation:** ~~3. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure that:~~ **Comment:** This provision should be deleted, and the decision on specific monitoring activities left to the Conference of the Parties and/or benefit sharing mechanism, as provided in articles 13(1) and 13(2).
(a) An identifier is assigned to marine genetic resources collected *in situ* or accessed *ex situ*, including as digital sequence information;	**Comment:** This is a very specific requirement. It also raises several questions. What are the properties and requirements for this identifier? Does it refer to existing identifiers as currently used in science, such as INSDC accession numbers for the DSI or unique specimen identifiers? Or a new legal identifier like ABSCH UID (such an identifier is unlikely to be machine readable, persistent, resolvable, etc.)? Will it be locally or globally unique? If a biorepository applies an identifier to an unsorted sample (as is usual in some cases) is this sufficient? DSI held in research institutions and not uploaded to INSDC etc may have an internal number but not an INSDC accession number. DSI has its own UID, called an accession number. Given the ambiguity, this provision should be removed and modalities for tracing MGR placed in an annex or subsequently negotiated.
(b) Databases, repositories and gene banks under their jurisdiction are required to notify the open and self-declaratory notification system within the clearing-house mechanism when marine genetic resources of areas beyond national jurisdiction, including derivatives, are accessed;	**Comment:** This provision will not work. If every time a BBNJ sequence is accessed the database has to notify the clearinghouse, this will result in billions of notifications and be too much for the clearinghouse to deal with. For physical samples it is also unworkable, and at the very least would be extremely difficult and costly to implement. Whether MGR are from ABNJ or coastal waters is

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	not necessarily recorded in collection databases so it would not necessarily be obvious that a notification would be necessary. Even if they are so recorded the challenges in implementing this are likely to be considerable.
4. Parties shall [annually] [biennially] submit reports to the access and benefit-sharing mechanism on the utilization of marine genetic resources of areas beyond national jurisdiction under their national jurisdiction and the sharing of benefits therefrom. Such reports shall be submitted through a national focal point designated by each Party. The access and benefit-sharing mechanism shall review such reports and make recommendations to the Conference of the Parties.	**Comment:** This provision implies a significant reporting burden, particularly on non-commercial scientists. As it is stated in this article, the obligation will be to report only R&D activities, it does not include in situ collection or ex situ access. If the idea is to include everything, it should be stated. The report may raise confidentiality issues. It may include sensitive information of R&D departments in companies.
5. The access and benefit-sharing mechanism shall gather the information received through the clearing-house mechanism, including that submitted by national focal points, and make it available to Parties, which may submit comments.	**Comment:** If the idea is to share information on the utilization, as defined in the definition section, there might be some concerns on confidentiality. See the comment on article 34 - option II - para. 7.
6. The access and benefit-sharing mechanism shall prepare a report that shall include the comments received in accordance with paragraph 5 above, for the consideration of the Conference of the Parties, and the Conference of the Parties may adopt the recommendations of the access and benefit-sharing mechanism to facilitate the implementation of this Part.	
7. The Conference of the Parties shall determine appropriate guidelines for the implementation of this article, which shall consider the national capabilities and circumstances of Parties.	
OPTION II: Transparency system for benefit-sharing	
1. The Scientific and Technical Body shall collect information on current international best practices relating to marine genetic resources of areas beyond national jurisdiction with a view to submitting guidelines to the Conference of the Parties. On the basis of its findings, the Conference of the Parties may recognize these as guidelines or best practices on the collection and sharing of samples and data related to marine genetic resources of areas beyond national jurisdiction.	**Comment:** This is a good provision, because it allows for updating when science advances and refers to best practices.
2. Transparency regarding the sharing of benefits arising from the collection *in situ* of	

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marine genetic resources of areas beyond national jurisdiction shall be achieved through the clearing-house mechanism by publishing and disseminating precollection and post-collection notifications.	
3. Parties shall take the necessary measures, as appropriate, to ensure that benefits have been shared in accordance with the system described under article 11 and that the following is transmitted to the clearing-house mechanism as soon as it becomes available:	**Comment:** This provision repeats information provided in articles 10 and 11 with regards to notification and access to databases and repositories.
(a) Pre-collection information/notification (before the collection *in situ* of marine genetic resources);	
(b) Post-collection notification (after the collection *in situ* of marine genetic resources);	
(c) Modalities envisaged to facilitate access to databases, including digital sequence information, to repositories and to gene banks;	
(d) Information on where scientific data are deposited and information on the transfer of knowledge.	**Comment:** It is not clear what 'information on the transfer of knowledge' means, or how it might be assessed.
4. In case of commercialization of products based on the utilization of marine genetic resources of areas beyond national jurisdiction, Parties shall transmit to the clearing-house mechanism information received from natural or juridical persons under their jurisdiction or control on such commercialization.	**Comment:** This provision raises confidentiality issues and may be overly wide. It does not define what constitutes "based on the utilization".
5. The Conference of the Parties shall assess and review, at regular intervals, the issue of commercialization of products based on the utilization of marine genetic resources of areas beyond national jurisdiction. If tangible and substantial monetary benefits arise therefrom, the Conference of the Parties will explore alternatives to identify the most appropriate processes for relevant financial contributions.	

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PART III: MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS	
Article 14 - Objectives	
The objectives of this Part are to:	
(a) Enhance cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, which will also promote a holistic and cross-sectoral approach to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction;	**Recommendation:** (a) **Enable a holistic, cross-sectoral, ecosystem-based approach to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies through** ~~**E**~~**e**nhance**d** cooperation and coordination in the use of area-based management tools, including marine protected areas and other measures **that take into account ecological connectivity needs of both marine life and ecosystems**.~~, among States, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, which will also promote a holistic and cross-sectoral approach to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction~~; **Comment:** This article provides an opportunity to link ABMTs with ecosystem-based management at a range of scales, and to embrace ecological connectivity and ecological network building as among the core purposes of this Part. Suggested changes specify a goal for cooperation --holistic, cross-sectoral ecosystem-based management that takes into account ecological connectivity needs of both marine life and ecosystems. Cooperation works best when there is a shared vision and purpose. This recommended text simply inverts the order of the original draft text. It should be noted that different stages / phases of "use" of ABMTs" requires cooperation and coordination in the design, establishment, management, monitoring and enforcement of ABMTs.

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(b) Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of area-based management tools, including a network of ecologically representative and connected marine protected areas that are effectively and equitably managed;	**Recommendation:** (b) Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of **climate-smart and adaptive** area-based management tools **to conserve marine biodiversity, maintain and restore ecological integrity and connectivity, enhance the sustainability of uses, and reduce the impacts of human activities on marine biodiversity and ecosystems including ecological corridors**~~, including a network of ecologically representative and connected marine protected areas that are effectively and equitably managed~~; **Comment:** Suggested additions indicate specific ways that ABMTs can contribute to biodiversity conservation and sustainable use. The reference to "climate-smart and adaptive" reflects the need for ABMTs to keep up with changes resulting from climate change as well as other changes in environment, human use and wider external influences. ABMTs will need to include other effective conservation measures as well as ecological corridors to connect ecological networks.
	Recommendation: (b) **bis Establish a** network of ecologically representative and connected marine protected areas that are effectively and equitably managed, **including a substantial portion of which are highly and fully protected**; **Comment:** Suggested changes create a specific more measurable objective of establishing an ecologically represented and connected network of MPAs, and in calling for a significant portion of the MPAs to be fully and highly protected, reflects the voice of IUCN members in WCC Resolution 128 adopted in September 2021[6].
[(c) Rehabilitate and restore biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine	**Recommendation:** ~~[~~(c) **Protect, preserve,** ~~Rehabilitate~~ and restore biodiversity and ecosystems, ~~including with a view~~ to enhanc**e**~~ing~~ their productivity and

[6] Reference: WCC 2020 Res 128 portals.iucn.org/library/node/49800

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pollution;]	health and build~~ing~~ resilience to stressors, including those related to climate change, ocean acidification and marine pollution;~~]~~ **Comment:** Changes underscore the need to prevent further degradation as well as to restore resilience to climate change. This is a core part of advancing Article 192 to protect and preserve the marine environment in the context of a multi-stressed and changing ocean. It is noted that climate change is an umbrella term. It includes temperature change, thermal expansion, declining oxygen and changes in ocean currents, amongst others. The objectives in (d)--(f) below are also essential as cornerstones for protecting individual sites regardless of their contribution to an MPA network or ABMT system.
[(d) Support food security and other socioeconomic objectives, including the protection of cultural values;]	**Recommendation:** ~~[~~(d) Support food security and other socioeconomic objectives, including the protection of cultural values;~~]~~
[(e) Create scientific reference areas for baseline research;]	**Recommendation:** ~~[~~(e) Create scientific reference areas for baseline research;~~]~~
[(f) Safeguard aesthetic, natural or wilderness values;]	**Recommendation:** ~~[~~(f) Safeguard aesthetic, natural or wilderness values;~~]~~
[(g) Promote coherence and complementarity.]	**Recommendation:** ~~[~~(g) Promote coherence and complementarity **between and amongst area-based management measures including marine protected areas adopted by States and sub-regional bodies within national jurisdiction and those adopted beyond national jurisdiction**.~~]~~ **Comment:** Further clarifies the reason for promoting coherence and complementarity and reflects the need to address the biological unity of populations, communities, or ecosystems that may straddle or migrate between or through multiple jurisdictional zones.

FURTHER REVISED DRAFT TEXT	IUCN COMMENTARY
Article 15 *(deleted and to be merged)*	
Deleted to be merged with article 19 or moved to follow article 19 as article 19 bis.	
Article 16 *(deleted and moved)*	
Deleted and moved to follow article 17 as article 17 bis.	
Article 17 - Proposals	
1. Proposals regarding area-based management tools, including marine protected areas, under this Part shall be submitted by Parties, individually or collectively, to the secretariat.	**Recommendation:** Proposals in relation to area-based management tools, including marine protected areas, under this Part shall be **formulated on the basis specified in paragraph 1 of article 17bis**, and submitted by Parties, individually or collectively, to the secretariat. **Comment:** seeking to streamline the present Article 17 by incorporating current subparagraph (f).
[2. Parties may collaborate with relevant stakeholders, including global, regional, subregional and sectoral bodies, as well as civil society, indigenous peoples and local communities, in the development of proposals, as set out in article [19] [19 bis] under this Agreement.]	**Recommendation**: ~~[~~2. Parties may collaborate with relevant stakeholders, including global, regional and sectoral bodies, as well as civil society, **the scientific community,** and indigenous peoples and local communities in the development of proposals, as set out in article [19] [19bis] under this Agreement~~]~~ **Comment:** This paragraph is a useful reminder that collaboration ahead of submission is going to be central to securing stakeholder support and fostering consensus. The scientific community should be recognized here as they would be an important source of information for a proposal. It may also be useful to recognize "economic sectors" or the private sector as they often have essential information and are important to involve in the effort to improve biodiversity conservation in ABNJ, would also help to indicate a reciprocal obligation for all those consulted to share information.
3. Proposals shall be formulated on the basis specified in paragraph 1 of article 17 bis.	**Recommendation:** Merge into subparagraph 1 above to streamline text ~~3. Proposals shall be formulated on the basis specified in paragraph 1 of article 17~~

FURTHER REVISED DRAFT TEXT	IUCN COMMENTARY
	~~bis.~~
4. Proposals shall include the following key elements:	
(a) A geographic or spatial description of the area that is the subject of the proposal;	
(b) Information on any of the indicative criteria specified in annex I, as well as any criteria that may be further developed and revised in accordance with article 17 bis, paragraph 2, applied in identifying the area;	
(c) Specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States;	
(d) A description of the state of the marine environment and biodiversity in the identified area;	
(e) A description of the specific conservation and sustainable use objectives that are to be applied to the area;	**Recommendation:** (e) A description of the specific ~~conservation and sustainable use~~ objectives that are to be applied to the area **and how the proposed measures and priority elements for a management plan are designed to achieve the specific objectives** (replaces see (f) below. **Comment:** avoiding specific mention of "and sustainable use objectives" would enable the same process to be used for both MPAs and other types of ABMT, providing flexibility and without needing to duplicate this section.
(f) A description of the proposed measures and priority elements for a management plan to be adopted to achieve the specified objectives;	**Recommendation:** ~~(f) A description of the proposed measures and priority elements for a management plan to be adopted to achieve the specified objectives;~~ **Comment:** suggest deleting (f) if suggestion for (e) is accepted
[(g) The duration of the proposed area and measures;]	**Recommendation**: ~~[(g) The duration of the proposed area and measures;]~~

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	Comment: Specifying the duration of MPA would be inconsistent with the objectives for MPAs as it would undermine the long-term conservation value of such areas. Duration might be ok for other ABMTs, especially as a way to include spatially/ temporally dynamic measures, but that would be included in the description of the proposed measure, not a separate item.
(h) A monitoring, research and review plan including priority elements;	**Recommendation:** (h) **Priority elements of a** monitoring, research and review plan, ~~including priority elements;~~ **Comment:** reordering to be consistent with the discussion of a management plan above.
(i) Information on any consultations undertaken with adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies.	
5. Further requirements regarding the contents of proposals [shall] [may] be elaborated by the Scientific and Technical Body, as necessary, for consideration and adoption by the Conference of the Parties.	**Recommendation:** 5. Further requirements regarding the contents of proposals ~~[shall]~~ ~~[~~may~~]~~ be elaborated by the Scientific and Technical Body, as necessary, for consideration and adoption by the Conference of the Parties. **Comment:** Suggest deleting "shall" and retaining 'may" as will be important to maintain flexibility and gain experience from working within the present Part III and not make further elaboration of requirements an obligation.
Article 17 bis - Identification of areas	
1. Areas requiring protection through the establishment of area-based management tools, including marine protected areas, shall be identified:	
(a) On the basis of the best available science and scientific information, as well as relevant traditional knowledge of indigenous peoples and local communities, taking into account the application of precaution and an ecosystem approach;	**Recommendation:** (a) On the basis of the best available science and scientific information, as well as relevant traditional knowledge of indigenous peoples and local communities, taking into account the ~~application of~~ precaution**ary approach** and an ecosystem approach**;**

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	Comment: Efforts to identify areas in need of protection, and the establishment of ABMTs including MPAs, need to be based on an ecosystem approach and that all parts of the process from identification to final decisions are based on precaution.
(b) By reference to one or more of the indicative criteria specified in annex I.	
2. Indicative criteria for the identification of such areas under this Part shall include, as relevant, those specified in annex I and as may be further developed and revised as necessary by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties.	
3. **Option A:** The indicative criteria described in this Part and in annex I shall be applied, as relevant, by the proponents of a proposal under this Part and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part.	**Recommendation:** ~~3. Option A: The indicative criteria described in this Part and in annex I shall be applied, as relevant, by the proponents of a proposal under this Part and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part.~~
Option B: The indicative criteria described in this Part and in annex I shall be applied by the proponents of a proposal in the identification of areas for the establishment of the area-based management tools, including marine protected areas, and the criteria used shall be specified in a proposal submitted under this Part and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part.	**Recommendation:** ~~**Option B:**~~ 3. The indicative criteria described in this Part and in annex I shall be applied by the proponents of a proposal ~~in the identification of areas for the establishment of the area-based management tools, including marine protected areas, and the~~ **under this Part. The** criteria used **in the proposal** shall be specified ~~in a proposal submitted under this Part~~ and shall be taken into account by the Scientific and Technical Body, as relevant, in the review of a proposal under this Part. **Such criteria shall also be taken into account by Parties in the establishment of area-based management tools, including marine protected areas, under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.** **Comment:** Changes seek to streamline text as well as to reinsert prior text from Article 14, paragraph 4 in 2019 version regarding the role of the criteria in other bodies. The use of common or at least similar criteria could be an important avenue for consistency, coherency and complementarity between ABMTs including MPAs adopted by States and IFBs, and for their recognition under the BBNJ Agreement.

FURTHER REVISED DRAFT TEXT	IUCN COMMENTARY
Article 18 - Consultations on and assessment of proposals	
1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all relevant stakeholders, including global, regional, subregional and sectoral bodies, as well as civil society, indigenous peoples and local communities.	**Recommendation:** 1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all ~~relevant~~ stakeholders, including global, regional, subregional and sectoral bodies, as well as civil society, **the scientific community,** indigenous peoples and local communities. **Comment:** all stakeholders should be considered as "relevant" as conservation and sustainable use of marine biodiversity should be considered a "common concern of humankind". As above, the "scientific community" should be mentioned here to ensure consistency.
2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of that review shall be conveyed to the proponent by the secretariat. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review by the Scientific and Technical Body. The secretariat shall make that proposal publicly available and facilitate consultations thereon as follows:	**Recommendation:** 2. Upon receipt of a proposal, the secretariat shall ~~transmit it to the Scientific and Technical Body for a preliminary review. The outcome of that review shall be conveyed to the proponent by the secretariat. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review by the Scientific and Technical Body. The secretariat shall~~ make that proposal publicly available ~~and~~ **, invite public comments, and assist the proponent to proactively** facilitate consultations ~~thereon as follows:~~ **and sharing of relevant information and data with and among the following:** **a) The Scientific and Technical Body;** **b) States, in particular adjacent States;** **c) Bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;** **d) Indigenous peoples and local communities with traditional knowledge;** **e) The scientific community;** **f) Civil society; and**

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	g) Other relevant stakeholders **Comment:** This change simply seeks to streamline the text. It also suggests putting the consultation process into the hands of the proponent with the assistance of the secretariat. The intent is to enable the proponent to facilitate meetings to discuss the proposal in an interactive and inclusive manner so that States and other stakeholder views and questions can be heard and responded to more immediately, and to encourage the sharing of data, information and knowledge in a respectful and collaborative manner.
(a) States, in particular adjacent coastal States, shall be invited to submit, inter alia:	**Recommendation:** Delete (a) as merged above.
(i) Views on the merits of the proposal;	
(ii) Any relevant [additional] scientific inputs;	
(iii) Information regarding any existing measures in adjacent areas within national jurisdiction;	
(iv) Views on the potential implications of the proposal for areas within national jurisdiction;	
(v) Any other relevant information;	
(b) Bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be invited to submit, inter alia:	**Recommendation:** Delete (b) as merged above
(i) Views on the merits of the proposal;	
(ii) Any relevant [additional] scientific inputs;	
(iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;	

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(iv) Views regarding any aspects of the measures and priority elements for a management plan identified in the proposal that fall within the competence of that body;	
(v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body;	
(vi) Any other relevant information;	
(c) Indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit, inter alia:	**Recommendation:** Delete (c) as merged above.
(i) Views on the merits of the proposal;	
(ii) Any relevant [additional] scientific inputs;	
(iii) Any relevant traditional knowledge of indigenous peoples and local communities;	
(iv) Any other relevant information.	
	Recommendation: **2 (bis):** Consultations and written submissions shall be designed to elicit the following views and information, as relevant: **a) Views on the merits of the proposal** *(former (a)(i))***;** **b) Any relevant data, information or other scientific inputs** *(former (a)(ii))***;** **c) Any relevant traditional knowledge of indigenous peoples and local communities** *(former (c)(iii))***;** **d) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for**

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	adjacent areas *(former (a)(iii))***;** **e) Views on the potential implications of the proposal for existing measures or protected areas within or beyond national jurisdiction** *(combined (a)((iv) and (b) (iii))***;** **f) Views regarding any aspects of the measures and priority elements for a management plan identified in the proposal that fall within the competence of that body** *(amended (b)(iii))***;** **g) Views regarding any relevant measures that fall within the competence of another instrument, framework or body** *(amended (b)(iv))***; and** **h) Any other relevant information** *((a)(v))***;** **Comment:** This change seeks to streamline the text and put the consultation process into the hands of the proponent with the assistance of the secretariat. The intent is to enable the proponent to facilitate meetings to discuss the proposal in an interactive and inclusive manner so that States and other stakeholder views and questions can be heard and responded to more immediately, and to encourage the sharing of data, information and knowledge in a respectful and collaborative manner.
	Recommendation: **2 (ter) Parties shall cooperate to help identify and facilitate access by the proponent to relevant datasets, information or other knowledge controlled or managed by vessels or nationals under their jurisdiction or control, or by global, regional, subregional and sectoral bodies in which they are members. The Conference of Parties may develop processes or guidelines to help protect confidential or proprietary information through data aggregation or other means.**

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	Comment: This change seeks to encourage the sharing of data, information and knowledge in a respectful and collaborative manner. It would create a responsibility for Parties to facilitate access to relevant data sets, information and knowledge that is often possessed by their nationals and/or delivered by Parties to relevant global, regional, subregional and sectoral bodies. This obligation should be similar to that on Parties under article 34 para 7 on EIAs in terms of allowing access to information related to the process, with limited exceptions for confidential or proprietary information
3. Contributions received pursuant to paragraph 2 shall be made publicly available by the secretariat.	
4. The proponent shall consider the contributions received during the consultation period and shall either revise the proposal accordingly or continue the consultation process.	**Recommendation:** 4. The proponent shall consider **and respond to** the contributions received during the consultation period and ~~shall either~~**may** revise the proposal accordingly ~~or continue the consultation process~~. **Comment:** The proponent should be required to respond to the comments but may not need to incorporate each and every one in a revised proposal.
5. The consultation period shall be time-bound.	**Recommendation:** 5. The consultation period shall be time-bound. **Parties shall cooperate to complete the process as expeditiously as possible, and no later than two years, taking into account** the precaution**ary approach** and an ecosystem approach**;** **Comment:** Nimble and prompt responses to ABMT including MPA proposals will be essential to prevent and slow ocean degradation and to safeguard ocean health in the context of accelerating impacts from pollution, habitat loss and degradation, and the compounding effects of climate related changes.
6. The revised proposal shall be submitted to the Scientific and Technical Body, which	

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shall assess the proposal, and make recommendations to the Conference of the Parties.	
7. The modalities for the consultation and assessment process shall be further elaborated by the Scientific and Technical Body, as necessary, for consideration and adoption by the Conference of the Parties [, taking into account the special circumstances of small island developing States Parties].	
Article 19 - Decision-making	
OPTION I (merging articles 15 and 19):	
1. The Conference of the Parties shall take decisions on matters related to **measures such as area-based management tools**, including marine protected areas, with respect to proposals submitted under this Part, on a case-by-case basis and taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process.	**Recommendation:** 1. The Conference of the Parties shall take decisions on **the establishment of** ~~matters related to measures such as~~ area-based management tools, including marine protected areas **and related measures** ~~with respect to proposals submitted~~ under this Part, on a case-by-case basis ~~and~~ taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process, **taking into account the precautionary approach and an ecosystem approach.** **Comment:** A mixture of Option 1 and Option II is preferred as it provides a clearer mandate to the COP to take decisions, while also taking into account the advice, recommendations and contributions from others. The precautionary principle/approach and an ecosystem approach should be the basis for all stages including decision-making and not just "identification" in article 17 bis.
2. The Conference of the Parties, while respecting relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall also take decisions on measures complementary to those adopted under such instruments, frameworks and bodies, and make recommendations to Parties to this Agreement to promote the adoption of relevant measures through such instruments, frameworks and bodies, in accordance with their respective mandates.	**Recommendation:** 2. The Conference of the Parties, while respecting relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, **may** ~~shall~~ also **(a)** take decisions on measures **additional to and compatible with** ~~complementary~~ to those adopted under such instruments, frameworks and bodies, and **(b)** make recommendations to Parties to this Agreement to promote the adoption of relevant measures through such instruments, frameworks and bodies, in accordance with their respective **geographic, ecosystem and biodiversity** mandates.

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	Comment: An alternative to "complementary" is offered, noting this example: "*A definition of complementary is someone or something that completes or makes someone or something better. An example of complementary is drinking red wine with an Italian meal."*[7] Also, IUCN suggests that additional information on the mandates of different bodies may help to determine the scope of their authority, including geographic, ecosystem and biodiversity.
3. The Conference of the Parties shall make arrangements for consultation to enhance cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination with regard to related measures adopted under such instruments and frameworks and by such bodies.	**Recommendation:** 3. The Conference of the Parties shall make arrangements for **ongoing** consultation**s** to enhance cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination with regard to related measures adopted under such instruments and frameworks and by such bodies. **Comment:** Consultation and coordination need to be ongoing and multidirectional to enable the interaction required for effective cooperation. Such ongoing cooperation is most efficiently facilitated by a secretariat with the support of the COP.
4. Decisions and recommendations made by the Conference of the Parties in accordance with this Part shall not undermine the effectiveness of measures adopted in respect of areas within national jurisdiction and shall be made with due regard for the rights, duties and legitimate interests of all States, including the sovereign rights of coastal States over the seabed and subsoil of submarine areas, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to that end, in accordance with the provisions of this Part.	
5. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls within the national jurisdiction of a coastal State, either wholly or in part, it shall be adapted to cover any remaining area beyond national jurisdiction or otherwise cease to be in force.	**Recommendation:** 5. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls within the national jurisdiction of a coastal State, either wholly or in part, it shall be adapted to cover any remaining area beyond national jurisdiction at the request if the relevant State Party ~~or otherwise cease to be in force~~.

[7] Reference: https://www.yourdictionary.com › complementary

FURTHER REVISED DRAFT TEXT	IUCN COMMENTARY
	Recommendation: **19.5 bis: The Conference of Parties may** ~~are encouraged to cooperate to~~ establish **an interim coordination mechanism** ~~such an instrument, framework~~ or body and may **encourage Parties and invite other organizations** to participate in its work **as necessary** to ~~ensure/~~ **enable** the **coordinated** conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.~~]~~ **Comment:** Modified from article 19 bis (2). An interim coordination mechanism could provide a useful avenue to advance cooperation at an eco-regional scale to advance implementation of the BBNJ Agreement, including ABMT design and management, Principles and Approaches in Article 5, use of MGRs in Part II for the study of marine biodiversity, EIAs and SEAs in Part IV, and capacity building and tech transfer under Part V.
6. A marine protected area established under this Part shall continue in force when a new regional treaty body is established with competence to establish a marine protected area that overlaps, geographically, with the marine protected area established under this Part.	
OPTION II (keeping articles 15 and 19 separate with article 15 appearing as article 19 bis):	**Comment:** Option I above is preferred. If Option II is retained, recommend amending and streamlining.
1. The Conference of the Parties shall take decisions on the establishment of area - based management tools, including marine protected areas, and related measures on the basis of the final proposal and, in particular, the draft management plan, taking into account the contributions and recommendations received during the consultation process established under this Part, recognizing, as appropriate, in accordance with the objectives and criteria laid down in this Part, area-based management tools, including marine protected areas, established under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.	**Recommendation:** 1. The Conference of the Parties shall take decisions on the establishment of area-based management tools, including marine protected areas, and related measures on the basis of the final proposal and in particular the draft management plan, taking into account the contributions and recommendations received **taking into account the precautionary approach and an ecosystem approach"** ~~during the consultation process established under this Part, recognizing, as appropriate, in accordance with the objectives and criteria laid down in this Part, area based management tools, including marine protected areas, established under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.~~ **Comment**: suggesting again reference to the precautionary approach and an ecosystem approach and deleting the second half of the paragraph is addressed under 19.2 below.

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2. The Conference of the Parties, while respecting relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall also take decisions on measures complementary to those adopted under such instruments, frameworks and bodies, and make recommendations to Parties to this Agreement to promote the adoption of relevant measures through such instruments, frameworks and bodies, in accordance with their respective mandates.	**Recommendation** 2. The Conference of the Parties, while respecting relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, **may** ~~shall~~ also take decisions on measures ~~complementary to~~ **additional to and compatible with** those adopted under such instruments, frameworks and bodies, and make recommendations to Parties to this Agreement to promote the adoption of relevant measures through such instruments, frameworks and bodies, in accordance with their respective mandates. **Comment**: See article 19 - Option I - para 2 above.
	Recommendation: **19.2 bis. The Conference of Parties may** ~~are encouraged to cooperate to~~ establish **an interim coordination mechanism** ~~such an instrument, framework~~ or body and may **encourage Parties and invite other organizations** to participate in its work **as necessary** to ~~ensure/~~ **enable** the **coordinated** conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.~~]~~ **Comment:** Modified from article 19 bis (2). An interim coordination mechanism could provide a useful avenue to advance cooperation at an eco-regional scale to advance implementation of the BBNJ Agreement, including ABMT design and management, Principles and Approaches in Article 5, use of MGRs in Part II for the study of marine biodiversity, EIAs and SEAs in Part IV, and capacity building and tech transfer under Part V.
Article 19 bis - International cooperation and coordination	**Comment:** If Option II is retained, suggest amendments to 19 bis (1) and (2).
1. To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, Parties shall promote coherence and complementarity in the [designation] [establishment] and application of measures such as area -based management tools, including marine protected areas.	**Recommendation:** 1. To further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, Parties shall promote coherence and complementarity in the ~~[designation] [~~establishment~~]~~ and application of measures such as area-based management tools, including marine protected areas.

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[2. Where there is no relevant legal instrument or framework, or relevant global, regional, subregional or sectoral body to establish area-based management tools, including marine protected areas, Parties are encouraged to cooperate to establish such an instrument, framework or body and may participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]	**Recommendation:** [2. ~~Whe~~**ther**~~re~~ **~~or not~~** ~~there is no~~ **a** ~~relevant legal instrument or framework, or relevant global, regional, subregional or sectoral body to establish area based management tools, including marine protected areas,~~ **The Conference of Parties may** ~~are encouraged to cooperate to~~ establish **an interim coordination mechanism** ~~such an instrument, framework~~ or body and may **encourage Parties and invite other organizations** to participate in its work **as necessary** to ~~ensure/~~ **enable** the **coordinated** conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.~~]~~ **Comment:** An interim coordination mechanism could provide a useful avenue to advance cooperation at an eco-regional scale to advance implementation of the BBNJ Agreement, including ABMT design and management, Principles and Approaches in article 5, use of MGRs in Part II for the study of marine biodiversity, EIAs and SEAs in Part IV, and capacity building and tech transfer under Part V.
3. Parties shall make arrangements for consultation to enhance cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among related measures adopted under such instruments and frameworks and by such bodies.	**Recommendation:** 3. **The Conference of the** Parties shall make arrangements for **ongoing** consultation to enhance cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among related measures adopted under such instruments and frameworks and by such bodies. **Comment:** Consultation and coordination need to be ongoing and multidirectional to enable the interaction required for effective cooperation. Such ongoing cooperation is most efficiently facilitated by a secretariat with the support of the COP.
4. Decisions and recommendations made by the Conference of the Parties in accordance with this Part shall not undermine the effectiveness of measures adopted in respect of areas within national jurisdiction and shall be made with due regard for the rights, duties and legitimate interests of all States, including the sovereign rights of coastal States over the seabed and subsoil of submarine areas, as reflected in relevant provisions of the Convention. Consultations shall be undertaken to that end, in accordance with the provisions of this Part.	**Comment**: the phrases *"shall not undermine the effectiveness of measures adopted…*" and "*with due regard for"* could provide a useful standard for other articles in this Part III as they promote both cooperation and respect.

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[5. In cases where an area-based management tool, including a marine protected area, [designated] [established] under this Part subsequently falls within the national jurisdiction of a coastal State, either wholly or in part, [or impedes the rights of coastal States provided in the Convention,] it shall be adapted to cover any remaining area beyond national jurisdiction [and to rectify the infringement] or otherwise cease to be in force.]	**Recommendation:** ~~[~~5. In cases where an area-based management tool, including a marine protected area, ~~[designated]~~ [established] under this Part subsequently falls within the national jurisdiction of a coastal State, either wholly or in part, ~~[or impedes the rights of coastal States provided in the Convention,]~~ it shall be adapted to cover any remaining area beyond national jurisdiction **upon the request of the coastal State** ~~[and to rectify the infringement] or otherwise cease to be in force.]~~ **Comment:** If the present article 19bis is retained, this language should be modified to reflect the duty to cooperate to protect and preserve the marine environment including in the extended continental shelf.
Article 20 - Implementation	
1. Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.	**Recommendation:** 1. Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part. **1 (bis) Parties shall cooperate to promote, support and enable the effective management and implementation, including research, monitoring, control, surveillance and enforcement, of area-based management tools including marine protected areas adopted pursuant to this Part.** **1 (ter) Parties shall ensure that capacity and technology needs that may be required to implement measures adopted under this Part are considered and adequately addressed by the Conference of the Parties or any subsidiary body established to consider such issues.** **1 (quarter) The Conference of Parties may establish or designate a management body to manage one or more MPAs. Such body/ies shall report to the Scientific and Technical Body and any other subsidiary bodies established to consider implementation. Each MPA management body shall be responsible for implementing the adopted management plan, facilitating implementation of the research plan, and for promoting cooperation with States, other bodies and**

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	stakeholders in pursuit of the objectives for the marine protected area. **Comment:** It will be important to include more proactive obligations to support management of MPAs if they are to be effectively implemented, compared to area-based management tools including marine protected areas. **References:** Grorud-Colvert, et al, 2021. The MPA Guide: A framework to achieve global goals for the ocean, https://www.science.org/doi/10.1126/science.abf0861 and IUCN WCPA, 2019. Guidelines for applying the IUCN protected area management categories to marine protected areas, https://portals.iucn.org/library/node/48887
2. Nothing in this Agreement shall prevent a Party from adopting more stringent measures with respect to its vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law.	
[3. The implementation of the measures adopted under this Part shall not impose a disproportionate burden on small island developing States Parties, directly or indirectly.]	
[4. Parties shall promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members, to support the implementation of the decisions and recommendations made by the Conference of the Parties under this Part.]	**Recommendation:** [4. Parties shall promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies ~~of~~ in which they **participate** ~~are members~~, to support the implementation of the decisions and recommendations made by the Conference of the Parties under this Part.] **Comment:** The obligation to cooperate as a Party should include an obligation to act to ensure consistency and coherence including the promotion of measures to support implementation of the Agreement in instruments, frameworks and bodies in which they participate, as they may also be there as observers or applicants. Note that this type of requirement is not unusual: States parties are also obligated under the UNFSA to "strengthen" existing organizations
[5. Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the decisions and recommendations by the Conference of the Parties on area-based management tools, including marine protected areas, established under this Part.]	**Recommendation:** [5. Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the decisions and recommendations by the Conference of the Parties on area-based management tools, including marine protected areas, established under this Part.]

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[6. A Party that is not a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the measures established under such instruments, frameworks and bodies, shall not be discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]	**Recommendation:** ~~[~~6. A Party that is not a participant in a relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, and that does not otherwise agree to apply the measures established under such instruments, frameworks and bodies, shall not be discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.~~]~~
Article 21 - Monitoring and review	
1. Parties, individually or collectively, shall report to the Conference of the Parties on the implementation of area-based management tools and related measures, including marine protected areas, established under this Part. Such reports shall be made publicly available by the secretariat.	**Recommendation:** 1. Parties, individually or collectively, shall report **at least once every two years t**o the Conference of the Parties on the implementation of area-based management tools and related measures, including marine protected areas, established under this Part. Such reports shall be made publicly available by the secretariat. **Comment:** Regular reporting is essential to maintain progress and accountability. Every year at least some form of reporting should be required, with a more in-depth review every two to three years.
2. Area-based management tools, including marine protected areas, established under this Part, including related measures, shall be monitored and periodically reviewed by the Scientific and Technical Body.	**Recommendation:** 2. Area-based management tools, including marine protected areas, established under this Part, including related measures, shall be monitored **taking an ecosystem approach** and **regularly** ~~periodically~~ reviewed by the Scientific and Technical Body. **Comment:** To monitor the effectiveness of ABMTs including MPAs will require regular and consistent monitoring of the surrounding ecosystem and changes to the status and dynamics of ecosystem and associated and dependent species and regular reporting thereon to enable adequate time for any precautionary or adaptive responses.
3. The review referred to in paragraph 2 shall assess the effectiveness of measures and the progress made in achieving their objectives and provide advice and recommendations to the Conference of the Parties.	

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4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment, extension or revocation of area-based management tools, including marine protected areas, and any related measures, [as well as on the extension of time-bound area-based management tools, including marine protected areas, that would otherwise automatically expire,] on the basis of the best available science and scientific information, as well as relevant traditional knowledge of indigenous peoples and local communities, taking into account the application of precaution and an ecosystem approach.	**Recommendation:** 4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment~~, extension or revocation~~ of area-based management tools, including marine protected areas, and any related measures, ~~[as well as on the extension of time-bound area-based management tools, including marine protected areas, that would otherwise automatically expire,]~~ on the basis of the best available science and scientific information, as well as ~~relevant~~ traditional knowledge of indigenous peoples and local communities, taking into account the ~~application of~~ precaution**ary approach** and an ecosystem approach. **Comment:** Conservation and management measures for ABMTs including MPAs should be revised and updated as necessary. A presumption that they end would defeat the purpose of the objective of long- term conservation and is not consistent with the precautionary principle/approach. Also suggest striking "relevant" before "traditional knowledge" as it is implicit.
5. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies [shall] [may] be invited to report to the Conference of the Parties on the implementation of measures that they have established.	**Recommendation:** 5. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies ~~[~~shall~~]~~ ~~[may]~~ be invited to report to the Conference of the Parties on the implementation of **area-based management tools, including marine protected areas, and any related** measures that they have established. **Comment:** "Shall" is preferred, to ensure effective implementation, as international organizations can have obligations under a treaty as in UNCLOS Part XIII Article 239 on Marine Scientific Research.
PART IV: ENVIRONMENTAL IMPACT ASSESSMENTS	
Article 21 bis - Objectives	
The objectives of this Part are to:	
[(a) Operationalize the provisions of the Convention on environmental impact assessment by establishing processes, thresholds and guidelines for conducting and reporting assessments by Parties;]	**Recommendation:** ~~[~~(a) Operationalize the provisions of the Convention on environmental impact assessment by establishing processes, thresholds and guidelines for conducting and reporting assessments by Parties;~~]~~

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[(b) Enable the consideration of cumulative [and transboundary] impacts;]	**Recommendation:** ~~[~~(b) Enable the consideration of cumulative [and transboundary] impacts;~~]~~
(c) Provide for strategic environmental assessments;	
[(d) Achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction.]	**Recommendation:** ~~[~~(d) Achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction.~~]~~
Article 22 - Obligation to conduct environmental impact assessments	
1. Parties shall [, as far as practicable,] assess the potential effects [on the marine environment] of [planned] [proposed] activities under their jurisdiction or control [in accordance with their obligations under articles 204 to 206 of the Convention].	**Recommendation:** 1. Parties shall ~~[, as far as practicable,]~~ assess the potential effects ~~[on the marine environment]~~ of ~~[planned]~~ ~~[~~proposed~~]~~ activities under their jurisdiction or control **before irretrievable commitments of resources are made** ~~[~~in accordance with their obligations under articles 204 to 206 of the Convention **and international law**~~]~~. **Comment:** 'As far as practicable' is a loophole that undermines the seriousness of this Part. It is found in UNCLOS, Article 204, but it does not reflect current environmental assessment practice or international law. *Pulp Mills Case*, *ITLOS Advisory Opinion DSM*, *paras 145-148* ("It should be stressed that the obligation to conduct an environmental impact assessment is a direct obligation under the Convention and a general obligation under customary international law.") 'Proposed' is preferred to 'planned' because once planning gets underway there is too much reliance on moving forward. There may be EIA findings that will need to be reflected in changes to how the activity is conducted, for example, to avoid or minimize harm, reduce costs, resolve conflicts with other ocean users, or to take account of scientific information provided during the consultation process. Therefore EIA should take place early in the process.
2. On the basis of articles 204 to 206 of the Convention, Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to implement [the	**Recommendation:** 2. On the basis of articles 204 to 206 of the Convention, Parties shall take the

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provisions of] this Part [and any further measures [on the conduct of environmental impact assessments] adopted by the Conference of the Parties].	necessary legislative, administrative or policy measures, as appropriate, to implement [the provisions of] this Part [and any further measures ~~[on the conduct of environmental impact assessments]~~ adopted by the Conference of the Parties]. **Comment:** This reflects the requirements of UNCLOS, and the obligation of due diligence that States have to implement their international obligations in their national legal systems. It is useful to specify that additional measures that may be adopted later are also to be implemented and operationalized in national legal systems.
3. The requirement under this Part to conduct an environmental impact assessment applies [only to activities conducted in areas beyond national jurisdiction] [to all activities that have an impact in areas beyond national jurisdiction].	**Recommendation:** 3. The requirement under this Part to conduct an environmental impact assessment applies ~~[only to activities conducted in areas beyond national jurisdiction]~~ [to all activities that have an impact in areas beyond national jurisdiction]. **Comment:** Because the Agreement objective is to manage impacts on biodiversity in ABNJ, *all* reasonably foreseeable impacts should be considered in the EIA process. States already have obligations to conduct EIAs for activities with impacts in ABNJ, as well as obligations to protect marine biodiversity, under UNCLOS and customary international law (UNCLOS art. 204-206; 1994 Agreement, Annex, Section 1; *Pulp Mills Case*). It is also consistent with existing laws and practice of many States. Flowing from the due diligence obligation of prevention, the ICJ explained, there is an obligation to conduct environmental impact assessment (EIA) 'where there is a risk that [a] proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource' (*Pulp Mills Case* para 204).

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Article 23 - Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies	**Comment:** The Agreement, to fulfill its unique conservation and sustainable use mandate, should provide a means to review all EIAs prepared for activities that may have significant effects on the marine environment, including those prepared under the jurisdiction of other instruments, in order to confirm that all relevant activities are being reviewed according to the standards set by this Agreement. It is usual, where there are multiple EIA mandates, to: • Prepare a joint EIA that satisfies all the requirements of both; • Allow the more stringent requirements to set the standards for both; or • Use relevant EIA or SEA sections for other EIAs by including the information in full or incorporating it by reference to specific sections of the other EIA or SEA. These approaches limit the problems of duplicative effort, gaps, and inconsistency.
1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with the obligations under the Convention.	**Comment:** IUCN's recommendations for the BBNJ Agreement are consistent with the Convention. This is an implementing agreement, therefore adding guidance to implement the basic EIA obligation in light of 21st century knowledge and practice is appropriate.
2. The Conference of the Parties shall develop procedures for the Scientific and Technical Body to consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment. These procedures shall include the establishment of an ad hoc inter-agency working group or the opportunity for participation by representatives of those organizations in meetings of the Scientific and Technical Body.	**Recommendation:** 2. The Conference of the Parties shall develop procedures for the Scientific and Technical Body to consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to **protect the marine environment or** to regulate activities ~~[~~with impacts~~]~~ in areas beyond national jurisdiction ~~or to protect the marine environment~~. These procedures shall include the establishment of an ad hoc inter-agency working group or the opportunity for participation by representatives of those organizations in meetings of the Scientific and Technical Body. **Comment:** This recommendation is for clarity.
3. Parties shall cooperate in promoting the use of environmental impact assessments and standards and guidelines developed under this Part under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies.	
4. **Option A**: Global minimum standards and guidelines for the conduct of environmental impact assessments shall be developed by the Scientific and Technical	**Comment:** Option A: creates an annex which is binding but harder to amend.

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Body through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, for consideration and adoption by the Conference of the Parties. Such global minimum standards and guidelines shall be set out in an annex to this Agreement and shall be updated periodically. Parties shall ensure that the conduct of environmental impact assessments of [planned] [proposed] activities under their jurisdiction or control in areas beyond national jurisdiction that fall under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate in relation to marine biological diversity of areas beyond national jurisdiction, conform to these global minimum standards and guidelines.	The advantage of Option A is that more detail can be provided than would be appropriate in the main text of the Agreement (see, e.g., the appendices of the Espoo Convention and Annex I to the Madrid Protocol to the Antarctic Treaty). The disadvantage is that agreeing to the terms of an annex is likely to be time consuming. This disadvantage can be mitigated by ensuring that sufficient specific elements of EIA are included in the main text. The final sentence, beginning "Parties shall ensure …" reinforces Parties' obligations to apply the standards established in the BBNJ Agreement, although where higher standards are required by a different IFB the higher standard will apply.
4 bis. While global minimum standards and guidelines are being developed by the Scientific and Technical Body, environmental impact assessments for [planned] [proposed] activities [with impacts/effects] in areas beyond national jurisdiction shall be conducted in accordance with this Part.	**Recommendation:** 4 bis. While global minimum standards and guidelines are being developed by the Scientific and Technical Body, environmental impact assessments for ~~[~~planned~~]~~ ~~[~~proposed~~]~~ activities ~~[~~with ~~impacts/~~effects~~]~~ in areas beyond national jurisdiction shall be conducted in accordance with this Part. **Comment:** There should be no delay in providing EIAs pending STB development of standards and guidelines. The basic elements of an EIA under this Agreement should be set out in it, and should suffice in the interim.
Option B: Guidelines for the conduct of environmental impact assessments shall be developed by the Scientific and Technical Body through collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies as necessary. Such guidelines shall be updated periodically.	**Comment:** In Option B, the STB creates guidelines, which might not be considered mandatory, but which are likely easier to update than the annex proposed in Option A.
5. No environmental impact assessment of a [planned] [proposed] activity under the jurisdiction or control of a Party [with impacts] in areas beyond national jurisdiction shall be required where the Party with jurisdiction or control over the [planned] [proposed] activity [, following consultation with the relevant legal instrument and framework or relevant global, regional, subregional or sectoral body,] determines that:	**Recommendation:** 5. ~~No~~ **An** environmental impact assessment of a ~~[~~planned~~]~~ ~~[~~proposed~~]~~ activity **subject to this Part** ~~under the jurisdiction or control of a Party [with impacts] in areas beyond national jurisdiction shall be required where the Party with jurisdiction or control over the [planned] [proposed] activity [, following consultation with the~~ **that is also subject to an environmental impact assessment requirement of another** relevant legal instrument and framework or relevant global, regional, subregional or sectoral body **may be conducted jointly with that process and must satisfy the procedures for both.**~~,] determines that:~~ **Comment:** Paragraph 5 implies that an EIA might be prepared for another IFB and

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	subsequently determined to satisfy BBNJ Agreement requirements. It would leave to the Party the determination of whether an EIA prepared under another IFB is adequate without BBNJ supervision or review. It would likely result in some EIA elements developed under the BBNJ Agreement not being applied, such as consultations, notice and use of the clearing-house mechanism. A better approach is to state that EIAs subject to this Agreement and also to another IFB may be developed jointly.
Option 1:	**Recommendation:** Delete these subparagraphs and use the recommended text above.
(a) The threshold for the conduct of the environmental impact assessment meets or exceeds the threshold set out in this Part;	**Alternative recommendation:** Retain (a)
(b) The activity has been subject to a recent environmental impact assessment under other environmental impact assessment obligations and agreements;	**Alternative recommendation:** ~~(b) The activity has been subject to a recent environmental impact assessment under other environmental impact assessment obligations and agreements;~~ **Comment:** An EIA that was prepared without full consideration of the BBNJ Agreement will not have included the obligatory notice, consultation, collection of relevant information and other elements that are required under this Agreement. An EIA that satisfies the BBNJ Agreement should be prepared for the BBNJ Agreement.
(c) The environmental impact assessment already undertaken is substantively equivalent to the one required under this Part and is comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts.	**Alternative recommendation:** Retain (c)
Option 2:	**Recommendation:** Delete these subparagraphs and use the recommended text above.
(a) The potential impacts of the [planned] [proposed] activity have been assessed in accordance with the requirements of other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;	~~a) The potential impacts of the [planned] [proposed] activity have been assessed in accordance with the requirements of other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;~~

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(b) The outcome of the assessment is effectively implemented;	~~(b) The outcome of the assessment is effectively implemented;~~
(c) The assessment already undertaken is functionally equivalent to the one required under this Part	~~(c) The assessment already undertaken is functionally equivalent to the one required under this Part~~
Option 3: … the activity is being conducted in accordance with rules and guidelines appropriately established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies that require environmental impact assessments, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.	**Recommendation:** Delete these subparagraphs and use the recommended text above.
[6. Where a [planned] [proposed] activity falling under the jurisdiction of a Party has the potential to have impacts/effects in areas beyond national jurisdiction and meets or exceeds the threshold criteria for the conduct of environmental impact assessments set out in this Part, it shall be subject to an environmental impact assessment that is substantively equivalent to the one required under this Part. The Party shall:	**Recommendation:** Delete this paragraph and use the recommended text above. **Alternative recommendation:** Retain (a)-(b) and amend (c) as detailed below
(a) Submit the impact assessment to the Scientific and Technical Body for its input and recommendations;	
(b) Ensure that approved activities are subject to monitoring, reporting and review in the same manner as provided in this Part;	
(c) Ensure that all reports are made public in the manner provided in this Part.]	**Alternative recommendation:** (c) Ensure that ~~all reports are made public in the manner provided in this Part.]~~ **the environmental impact assessment conforms with notice, publication and consultation requirements under this Agreement.**
7. A Party that has conducted an environmental impact assessment under a relevant legal instrument or framework or a global, regional, subregional or sectoral body, shall publish the environmental impact assessment report through the clearing-house mechanism.	**Comment:** This paragraph is unnecessary if the recommended revision to paragraph 5 is accepted. It should be retained if the recommended revision is not accepted.
8. [Planned] [Proposed] activities that meet the criteria set out in paragraph 5 shall be subject to monitoring, reporting and review in the same manner as provided in this Part	**Recommendation:** Delete this paragraph and use the recommended text above.

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and reports are to be made public in the manner provided in this Part.	**Comment:** Delegating to the EIA process under another regime is not the preferred approach to cooperation. Rather, the preferred approach should be for the BBNJ regime to negotiate MOUs with other institutions with overlapping EIA obligations to carry out joint assessments that meet the requirements under both regimes. This has proven the best way to ensure high quality EIAs while avoiding overlap and duplication in national EIA regimes.
Article 24 - Thresholds and [criteria] [processes] for environmental impact assessments	
1. **Option A:**	**Comment:** The following steps are necessary: 1. A screening process to identify whether a proposed activity has the potential to impact biodiversity at a scale that warrants an assessment. 2. Adequate international oversight to ensure the screening is done in a diligent manner and gives adequate consideration to the concerns of those potentially affected by the proposed activity. 3. Where the screening concludes that there is a realistic risk to biodiversity, the assessment process and the final decision need to be subject to adequate international oversight to ensure the interests of the global community in the resilience of natural systems are protected. 4. Where the screening process demonstrates (with appropriate international oversight) that the proposed activity poses no or only an insignificant risk to biodiversity, the assessment can be carried out under the control of individual state Parties.
Option A.1: When a Party [proposes] [plans] any activity that may have an effect on the marine environment, it shall conduct a screening to determine the likely effects on the marine environment:	**Comment:** This option provides a process - screening - that Parties will follow to make the initial determination of whether to proceed to an EIA. It is thus clearer than Option A.2.
(a) If it is determined, on the basis of the screening, that the [planned] [proposed] activity is likely to have less than a minor or transitory effect on the marine environment, no further assessment under the provisions of this Part shall be required;	**Comment:** Subparagraph (a) clearly states when no further assessment is required.

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(b) (b) If it is determined, on the basis of the screening, that the [planned] [proposed] activity is likely to have a minor or transitory effect or greater on the marine environment or the effects are unknown or poorly understood, an environmental impact assessment in respect of such activity shall be conducted in accordance with the provisions of this Part.	**Recommendation:** (b) If it is determined, on the basis of the screening, that the ~~[planned]~~ ~~[~~proposed~~]~~ activity is likely to have **more than** a minor or transitory effect ~~or greater~~ on the marine environment or the effects are unknown or poorly understood, an environmental impact assessment in respect of such activity shall be conducted in accordance with the provisions of this Part. **Comment:** This incorporates both the next step after (a) and a precautionary measure when effects are unknown or poorly understood. This is an important element to preserve. The proposed revision is merely stylistic.
1 bis. Prior to the [planned] [proposed] activity being authorized to proceed under this Part, data, information and analysis that supports the determinations made in paragraph 1 shall be submitted to the Scientific and Technical Body. The Scientific and Technical Body shall review the data, information and analysis submitted to support the determinations made under paragraph 1, subparagraph a. Parties shall publish and communicate reports detailing the basis of the determinations made in paragraph 1, [which may be made] through the clearing-house mechanism.	**Recommendation:** 1 bis. Prior to the ~~[planned]~~ ~~[~~proposed~~]~~ activity being authorized to proceed under this Part, data, information and analysis that supports the determinations made in paragraph 1 shall be submitted to the Scientific and Technical Body. The Scientific and Technical Body shall review the data, information and analysis submitted to support the determinations made under paragraph 1, subparagraph a. Parties shall publish and communicate reports detailing the basis of the determinations made in paragraph 1~~, [which may be made]~~ through the clearing-house mechanism. **Comment:** This ensures a flow of information that can be accessed by all ocean users. Having this information in the clearing-house mechanism will facilitate EIA of other projects, will inform cumulative effects analysis, and will be valuable for SEAs. It will be important to develop reporting standards that will allow the information (data, information, and analysis) to be accessed and manipulated by other ocean users. For example, data in pdf documents that are images cannot be analyzed. Data should be provided in a format that adheres to the FAIR principles for ease of re-use. Non-editable and non-searchable document formats should be avoided.

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Option A.2: When Parties have reasonable grounds for believing that [planned] [proposed] activities under their jurisdiction or control: (a) Are likely to have more than a minor or transitory effect on the marine environment, they shall, as far as practicable, conduct an initial screening, as referred to in article 30, of the potential effects of such activities on the marine environment in the manner provided in this Part; or (b) (b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, [conduct] [ensure that] an environmental impact assessment [is conducted] on the potential effects of such activities on the marine environment and shall submit the results of such assessment in the manner provided in this Part.	**Recommendation:** ~~*Option A.2*: When Parties have reasonable grounds for believing that [planned] [proposed] activities under their jurisdiction or control:~~ ~~(a) Are likely to have more than a minor or transitory effect on the marine environment, they shall, as far as practicable, conduct an initial screening, as referred to in article 30, of the potential effects of such activities on the marine environment in the manner provided in this Part; or~~ ~~(b) (b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, [conduct] [ensure that] an environmental impact assessment [is conducted] on the potential effects of such activities on the marine environment and shall submit the results of such assessment in the manner provided in this Part.~~
1. **Option B**: In accordance with article 206 of the Convention, when Parties have reasonable grounds for believing that [planned] [proposed] activities under their jurisdiction or control in areas beyond national jurisdiction may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, [individually or collectively,] as far as practicable, assess the potential effects of such activities on the marine environment.	**Recommendation:** ~~1. **Option B**: In accordance with article 206 of the Convention, when Parties have reasonable grounds for believing that [planned] [proposed] activities under their jurisdiction or control in areas beyond national jurisdiction may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, [individually or collectively,] as far as practicable, assess the potential effects of such activities on the marine environment.~~ **Comment:** Option B sacrifices the knowledge gained from modern EIA practice to adherence to the specific language of the Convention. Both national and international legal instruments (see, Protocol on Environmental Protection to the Antarctic Treaty "Madrid Protocol") use a screening procedure.
2. Environmental impact assessments under this Agreement shall be conducted in accordance with the threshold and criteria set out in this Part, including the following non-exhaustive criteria, as well as in accordance with the processes set out in this Part:	**Comment:** The Convention on Environmental Assessment in a Transboundary Context ("Espoo") contains a similar (but shorter) list of criteria in its Appendix III.
(a) The type of activity;	

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(b) The duration of the activity;	
(c) The location of the activity;	
(d) The characteristics and ecosystem of the location (including areas of particular ecological or biological significance or vulnerability);	
(e) The presence of any other activity within or beyond national jurisdiction with potential for cumulative impacts;	
(f) The potential effects of the activity;	
(g) The potential cumulative effects of the activity;	
(h) The impacts in areas within national jurisdiction;	
(i) Other ecological or biological criteria.	
Article 25 - Cumulative impacts and transboundary impacts	**Comment:** In light of climate change and other human impacts on the world's ocean, all impacts are cumulative. In other words, there is no longer such a thing as nature undisturbed by human impacts. The question is whether the impact is sufficient that is important to consider in light of other past, present and future impacts. The assumption should be yes, unless there is evidence that the scale of the project impacts and the health and resilience of affected natural systems indicate that a thorough cumulative effects analysis is not warranted. In other words, the cumulative effects analysis should be the default.
[1. Cumulative and transboundary impacts shall, as far as practicable, be taken into account in the conduct of environmental impact assessments.]	
[2. Where relevant, the environmental impact assessment process shall also take into account possible transboundary impacts in areas within national jurisdiction.]	
[3. The provisions of this Part shall not prejudice any obligation of Parties under other applicable international law with regard to activities having or likely to have a transboundary impact.]	

FURTHER REVISED DRAFT TEXT	IUCN COMMENTARY
Article 26 *(deleted and merged)* *Deleted and merged into revised article 25.*	
Article 27 - Areas identified as ecologically or biologically significant or vulnerable *Deleted - paragraph 1 deleted, and paragraph 2 moved as article 41 bis, paragraph 2, subparagraph c.*	
Article 28 *(moved)* *Moved as article 41 ter.*	
Article 29 *(moved)* *Deleted and moved as 41 bis, paragraph 2, subparagraph a.*	
Article 30 - Process for environmental impact assessments	
1. Parties shall ensure that the process for conducting an environmental impact assessment pursuant to this Part includes the following elements:	
(a) *Screening.* Parties shall undertake screening to determine whether an environmental impact assessment is required in respect of a [planned] [proposed] activity under its jurisdiction or control in accordance with article 24 as follows:	
(i) The initial screening of activities shall consider the characteristics of the area where the [planned] [proposed] activity under the jurisdiction or control of a Party is intended to take place, as well as where the potential effects are going to occur. [Should the [planned] [proposed] activity take place in an area that has been identified for its significance or vulnerability, regardless of whether the impacts are expected to be minimal or not, an environmental impact assessment shall be required [and be subject to the decision-making procedure under article 38].]	
(ii) If a Party determines that an environmental impact assessment is not required for a [planned] [proposed] activity under its jurisdiction or control, it shall [make information to support that conclusion publicly available] [publish/report on that determination] [through the clearing-house mechanism under this Agreement].	

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[(iii) A Party may register its [views] [concerns] on a decision published in accordance with subparagraph ii with the [Scientific and Technical Body] [Implementation and Compliance Committee] within [insert number] days of the publication. Upon consideration of the [views] [concerns] registered by a Party, the [Scientific and Technical Body] [Implementation and Compliance Committee] [may] [shall] review the decision [on the basis of the best available science] and, as appropriate, recommend that the responsible Party undertake an environmental impact assessment in accordance with this Part for the [planned] [proposed] activity under its jurisdiction or control.]	
(b) *Scoping*. Parties shall establish procedures, including public consultation procedures, to define the scope of the environmental impact assessments that shall be conducted under this Part. The following modalities shall be followed in respect of scoping:	
[(i) The scope shall include the identification of key environmental, social, economic, cultural and other relevant impacts [and issues, including identified cumulative and transboundary impacts, alternatives for analysis, including a no-action alternative, and the use of] [, including, among other things, identified cumulative impacts, and the alternatives for analysis, where appropriate, using] the best available science and scientific information, as well as relevant traditional knowledge of indigenous peoples and local communities.]	
(ii) The establishment of prevention, mitigation, management and other response measures to possible adverse effects will be included within the scope of the environmental impact assessment, in accordance with the provisions of paragraph 1, subparagraph d.	
(c) *Impact assessment and evaluation*.	
(i) Parties shall undertake a process for the assessment and evaluation of the impacts of [planned] [proposed] activities.	
(ii) Parties shall ensure that the identification and evaluation of impacts [including cumulative impacts and impacts in areas within national jurisdiction] in such an assessment is conducted in accordance with this Part, using the best available science and scientific information, as well as relevant traditional knowledge of	

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indigenous peoples and local communities, and an examination of alternatives including a no-action alternative.	
(d) *Mitigation, prevention and management of potential adverse effects.*	
(i) Parties shall [identify and implement] [analyze] measures to prevent, mitigate and manage potential adverse effects of the [planned] [proposed] [authorized] activities under their jurisdiction or control [to avoid significant adverse impacts, and submit a written record of such measures to the Scientific and Technical Body] [as part of the environmental impact assessment conducted under the provisions of this Part. Such measures may include the identification of alternatives to the [planned] [proposed] activity under their jurisdiction or control].	
(ii) Where appropriate, these measures are incorporated into an environmental management plan or system and alternative options are found, which include locational or technological options, alternatives to the [planned] [proposed] activity and the no-action alternative; (e) Public notification and consultation in accordance with article 34;	
(f) Preparation, consideration, review and publication of an environmental impact assessment report in accordance with article 35;	
[(g) Decision-making in accordance with article 38.]	
[2. Joint environmental impact assessments may be conducted, in particular for activities under the jurisdiction or control of [small island] developing States.]	**Comment:** Joint assessments involving all potential decision makers are the most efficient, effective and fair way to inform all potential decision makers about the impacts and benefits of proposed activities. (See also comments on article 23)
[3. A Party may designate a third party to conduct an environmental impact assessment required under this Agreement. Such a third party may be drawn from the pool of experts created pursuant to paragraph 4 below. Environmental impact assessments conducted by such a third party must be submitted to the [Party, to be forwarded for review by the Scientific and Technical Body and decision-making by the Conference of the Parties] [Party for review and decision-making].]	

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[4. A pool of experts shall be created under the Scientific and Technical Body. Parties with capacity constraints may commission those experts to conduct and evaluate screenings and environmental impact assessments for [planned] [proposed] activities under their jurisdiction or control.]	
Article 31 *(deleted and merged)*	
Deleted and merged into article 30 as revised.	
Article 32 *(deleted and merged)*	
Deleted and merged into article 30 as revised.	
Article 33 *(deleted and merged)*	
Deleted and merged into article 30 as revised.	
Article 34 - Public notification and consultation	
OPTION I:	
1. Parties shall establish procedures on public notification and consultation, which shall ensure:	**Recommendation:** ~~1. Parties shall establish procedures on public notification and consultation, which shall ensure:~~
(a) Early notification through the secretariat to all relevant stakeholders, including all States, with an emphasis on the States potentially most affected. Such procedures shall be established taking into account the nature and potential effects on the marine environment of the [planned] [proposed] activity and shall include coastal States whose exercise of sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources may reasonably be believed to be affected by the activity, and States that carry out, in the area of the [planned] [proposed] activity, human activities that may reasonably be believed to be affected, including economic activities;	**Recommendation:** ~~(a) Early notification through the secretariat to all relevant stakeholders, including all States, with an emphasis on the States potentially most affected. Such procedures shall be established taking into account the nature and potential effects on the marine environment of the [planned] [proposed] activity and shall include coastal States whose exercise of sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources may reasonably be believed to be affected by the activity, and States that carry out, in the area of the [planned] [proposed] activity, human activities that may reasonably be believed to be affected, including economic activities;~~

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(b) Effective, time-bound opportunities for stakeholder participation throughout the environmental impact assessment process, including through the submission of comments, before a decision is made whether to proceed with the activity.	**Recommendation:** ~~(b) Effective, time-bound opportunities for stakeholder participation throughout the environmental impact assessment process, including through the submission of comments, before a decision is made whether to proceed with the activity.~~
OPTION II:	
1. Parties [and the secretariat], as appropriate, shall ensure [early notification to stakeholders] [timely public notification] of [planned] [proposed] activities under their jurisdiction or control and effective, time-bound opportunities for stakeholder participation throughout the environmental impact assessment process, including through the submission of comments, before a decision is made whether to proceed with the activity.	**Recommendation:** Retain Option II
2. Stakeholders in this process include potentially affected States, where those can be identified, [in particular adjacent coastal States,] [indigenous peoples and local communities with relevant traditional knowledge in coastal States,] relevant global, regional, subregional and sectoral bodies, non-governmental organizations, the general public, academia, [scientific experts,] [affected parties,] [[adjacent] communities and organizations that have special expertise or jurisdiction,] [interested [and relevant] stakeholders,] [and those with existing interests in an area].	
3. Public notification and consultation shall be transparent and inclusive, conducted in a timely manner [, and targeted and proactive when involving adjacent small island developing States].	
4. Substantive comments received during the consultation process, including from adjacent coastal States, shall be considered and addressed by Parties. Parties shall give particular regard to comments concerning potential transboundary impacts. Parties shall make public the comments received and the descriptions of the manner in which they were addressed.	
[5. The Scientific and Technical Body may conduct further public consultation on reports it is required to review under this Agreement.]	
[6. In cases where the [planned] [proposed] activities affect areas of the high seas that	

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are entirely surrounded by the exclusive economic zones of States, Parties shall:	
(a) Maintain targeted and proactive consultations, including prior notification, with such surrounding States;	
(b) Consider the views and comments of those surrounding States on the [planned] [proposed] activities and provide written responses specifically addressing such views and comments, and revise the proposed activities accordingly.]	
7. Parties [undertaking an environmental impact assessment pursuant to this Agreement] shall [establish procedures to] allow for access to information related to the environmental impact assessment process under this Agreement. Notwithstanding this, Parties shall not be required to disclose confidential or proprietary information. [However, such information shall be made available to the Scientific and Technical Body for its review, and the fact that confidential or proprietary information has been redacted shall be indicated in public documents.]	**Recommendation:** 7. Parties ~~[undertaking an environmental impact assessment pursuant to this Agreement]~~ shall ~~[establish procedures to]~~ allow for access to information related to the environmental impact assessment process under this Agreement. Notwithstanding this, Parties shall not be required to disclose confidential or proprietary information. ~~[~~However, such information shall be made available to the Scientific and Technical Body for its review, and the fact that confidential or proprietary information has been redacted shall be indicated in public documents.~~]~~ **Comment:** This links to article 41 bis; see also article 51(6). This is an important provision, to provide conservation and commercial confidentiality, but also to ensure that such confidentiality is not self-judging. Confidentiality provisions that include effective oversight may potentially lead to better compliance. Equally, unsupervised confidentiality provisions could potentially lead to environmental harm. *Carnegie and Carson, Secrets in Global Governance (2020, Cambridge University Press)*
[8. Additional procedures may be developed by the Conference of the Parties to facilitate consultation at the international level.]	
Article 35 - Environmental impact assessment reports	
1. Parties shall ensure the preparation of an environmental impact assessment report for any such assessment undertaken pursuant to this Part.	
2. Where an environmental impact assessment is required in accordance with this Part, the environmental impact assessment report shall include, as a minimum, the following	**Recommendation:** 2. Where an environmental impact assessment is required in accordance with this

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components: a description of the [planned] [proposed] activity, a baseline assessment of the marine environment likely to be affected, a description of potential impacts, a description of prevention and mitigation measures, uncertainties and gaps in knowledge, information on the public consultation process, consideration of alternative options to the [planned] [proposed] activity, and a description of followup actions, including a monitoring and review plan. Additional guidance regarding the content of environmental impact assessments reports to be prepared pursuant to this Part shall be developed by the Scientific and Technical Body for adoption by the Conference of the Parties under article 41 bis.	Part, the environmental impact assessment report shall include, as a minimum, the following components: a description of the ~~[planned] [~~proposed~~]~~ activity, a baseline assessment of the marine environment likely to be affected, a description of potential impacts, a description of **adverse impact** prevention and mitigation measures, uncertainties and gaps in knowledge, information on the public consultation process **including a summary of comments received and explanation of how they were reflected in the conclusions and recommendations**, consideration of alternative options to the ~~[planned] [~~proposed~~]~~ activity, **including the alternative of not undertaking the activity,** and a description of followup actions, including a monitoring and review plan. Additional guidance regarding the content of environmental impact assessments reports to be prepared pursuant to this Part shall be developed by the Scientific and Technical Body for adoption by the Conference of the Parties under article 41 bis. **Comment:** The alternatives analysis is a key part of EIA practice, providing the opportunity to compare the proposed activity with environmental conditions if it did not take place; and to design alternatives that incorporate harm prevention and mitigation measures; and scientific, social, economic and environmental information provided during consultation.
3. **Option A:** Parties shall publish the reports of the results of the assessments in accordance with [articles 204 to 206 of] the Convention [and this Part], including through the clearing-house mechanism. The secretariat shall ensure that all Parties are notified in a timely manner when reports are published in the clearing-house mechanism.	**Recommendation:** 3. ~~**Option A:**~~ Parties shall publish the reports of the results of the assessments in accordance with ~~[articles 204 to 206 of]~~ the Convention ~~[~~and this Part~~]~~, including through the clearing-house mechanism. The secretariat shall ensure that all Parties are notified in a timely manner when reports are published in the clearing-house mechanism. **Comment:** Transparency is the key to successful EIA processes. If a Party publishes notices and documents related to EIAs anywhere but the clearing-house mechanism, the process is not transparent. It is not feasible for other Parties, other ocean users, or civil society to monitor the alternative - every agency website for every government.
Option B: Parties and the Scientific and Technical Body shall publish and communicate the reports required under this Part in accordance with the Convention, including through the clearing-house mechanism.	**Recommendation:** ~~**Option B:** Parties and the Scientific and Technical Body shall publish and communicate the reports required under this Part in accordance with the~~

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	~~Convention, including through the clearing-house mechanism.~~
OPTION I:	
4. Reports prepared pursuant to this Agreement shall be considered and reviewed by the Scientific and Technical Body.	
5. Before proceeding with a recommendation to the Conference of the Parties under article 38, the Scientific and Technical Body may recommend rectifications to the Party. The Party may require the Scientific and Technical Body, at any time, to make a recommendation to the Conference of the Parties.	
OPTION II:	
4. The environmental impact assessment reports prepared pursuant to this Agreement shall be considered and reviewed by the Scientific and Technical Body on the basis of the practices, procedures and knowledge acknowledged under this Agreement.	
5. A selection of the published information used in the screening process to make decisions on whether to conduct an environmental impact assessment, in accordance with articles 24 and 30, will also be reviewed periodically by the Scientific and Technical Body on the basis of the practices, procedures and knowledge acknowledged under this Agreement.	
Article 36 *(deleted and merged)*	
Deleted and merged into article 35 as revised.	
Article 37 *(deleted and merged)*	
Deleted and merged into article 35 as revised.	
Article 38 - Decision-making	
1. **Option A:** A Party under whose jurisdiction or control a [planned] [proposed] activity falls shall be responsible for determining if it may proceed.	**Recommendation:** ~~1. **Option A:** A Party under whose jurisdiction or control a [planned] [proposed] activity falls shall be responsible for determining if it may proceed.~~

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Option B: A Party under whose jurisdiction or control a [planned] [proposed] activity falls shall be responsible for determining if it may proceed when the proposed activity has been determined to likely have equal to or less than a minor or transitory effect on the marine environment under article 24, or require an environmental impact assessment under article 23, paragraph 6.	~~**Option B:** A Party under whose jurisdiction or control a [planned] [proposed] activity falls shall be responsible for determining if it may proceed when the proposed activity has been determined to likely have equal to or less than a minor or transitory effect on the marine environment under article 24, or require an environmental impact assessment under article 23, paragraph 6.~~
1bis. The Conference of the Parties shall be responsible for determining whether a [planned] [proposed] activity under the jurisdiction or control of a Party, which has been determined to likely have greater than a minor or transitory effect on the marine environment under article 24, or require an environmental impact assessment under article 30, may proceed, in accordance with the following procedural requirements:	**Comment:** IUCN WCC Resolution 128 (1)(b)(vi) calls for "ensuring that, if environmental assessments find that an activity poses significant adverse effects to ABNJ, such activity is managed to prevent such impacts or not permitted to proceed". It is expected that the EIA process, especially the requirements to examine relevant information and to consider alternatives that avoid or mitigate potential environmental harm, will influence project design. This provision provides an incentive to undertake those steps in good faith and with due diligence.
(a) The environmental impact assessment report shall be submitted to the Scientific and Technical Body for review, which shall, taking into due account inputs received during public consultation, review the report and make a recommendation to the Conference of the Parties on whether the [planned] [proposed] activity under the jurisdiction or control of a Party should proceed;	
(b) A revised environmental impact assessment report may be submitted to a panel of experts appointed by the Scientific and Technical Body for reconsideration where the Scientific and Technical Body has recommended that the [planned] [proposed] activity under the jurisdiction or control of a Party should not proceed.	
Option C: The Conference of the Parties shall be responsible for determining whether a [planned] [proposed] activity under the jurisdiction or control of a Party may proceed.	*See comment above.*

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2. When determining whether the [planned] [proposed] activity may proceed, Parties shall take full account of the results of an environmental impact assessment conducted in accordance with this Part. [No decision allowing the [planned] [proposed] activity under the jurisdiction or control of a Party to proceed shall be made where the environmental impact assessment indicates that the [planned] [proposed] activity under the jurisdiction or control of a Party would have significant adverse impacts on the environment.]	**Recommendation:** 2. When determining whether the ~~[planned] [~~proposed~~]~~ activity may proceed, Parties shall take full account of the results of an environmental impact assessment conducted in accordance with this Part. ~~[~~No decision allowing the ~~[planned] [~~proposed~~]~~ activity under the jurisdiction or control of a Party to proceed shall be made where the environmental impact assessment indicates that the ~~[planned] [~~proposed~~]~~ activity under the jurisdiction or control of a Party would have significant adverse impacts on the environment.~~]~~ **The precautionary approach shall be applied in decision-making in cases of scientific uncertainty when there is a risk of significant harm to biodiversity.** **Comment:** These suggested changes align with the CBD Guidelines for Consideration of Biodiversity in EIAs in Marine and Coastal Areas, para. 42.
3. Documents related to decision-making shall be made public, including through the clearing-house mechanism.	
4. At the request of a Party, the Conference of the Parties may provide advice and assistance to that Party when determining if a [planned] [proposed] activity under its jurisdiction or control may proceed.	
Article 39 - Monitoring	
OPTION I: Parties shall ensure that the environmental, social, economic, cultural, human health and other related impacts/effects of the authorized activity are continuously monitored in accordance with the conditions set out in the approval of the activity.	**Recommendation:** ~~**OPTION I:**~~ 1. Parties shall ensure that the environmental, social, economic, cultural, human health and other related impacts/effects of the authorized activity are continuously monitored in accordance with the conditions set out in the approval of the activity. 2. **The results of monitoring shall be considered in future assessment of similar projects to improve the accuracy of predictions about the impacts and benefits of proposed activities.** **Comment:** Activities should be monitored to ensure that environmental quality is maintained. Activities in ABNJ with effects on biodiversity should be designed to

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	be sufficiently flexible and responsive to new information obtained from such monitoring.
OPTION II: In accordance with article 204 [to 206] of the Convention, Parties shall, using recognized scientific methods, keep under surveillance the effects of any activities in areas beyond national jurisdiction that they permit or in which they engage in order to determine whether those activities are likely to pollute the marine environment.	
Article 40 - Reporting	
1. **Option A:** Parties shall ensure that the results of the monitoring required under article 39 are reported on at appropriate intervals.	**Recommendation:** ~~**Option A:** Parties shall ensure that the results of the monitoring required under article 39 are reported on at appropriate intervals.~~ **Comment:** Option A is vague and unlikely to result in adequate reporting.
Option B: Parties, whether acting individually or collectively, shall periodically report on the impacts of the authorized activity and the results of the monitoring and review required under articles 39 and 41.	**Recommendation:** Retain Option B. **Comment:** See also articles 35(3), 40(2). Transparency is the key to successful EIA processes. If a Party publishes notices and documents related to EIAs anywhere but the clearing-house mechanism, the process is not transparent. It is not feasible for other Parties, other ocean users, or civil society to monitor the alternative - every agency website for every government.
2. Reports shall be submitted to the clearing-house mechanism [and the Scientific and Technical Body] [and]:	**Comment:** Making all data collected during monitoring publicly available is as important as reporting. Access to the raw data is critical for the credibility of the monitoring reports, and it helps improve predictions in case of future assessments involving similar projects.
[(a) The Scientific and Technical Body may request independent consultants or an expert panel to undertake a further review of the reports submitted to it;]	**Comment:** This would be useful, but it could be included as a more general power of the STB in Part VI, article 49.
[(b) Other States, and the bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, in accordance with their	**Comment:** This would be useful but it may not need to be specified in the text as long as it is clear that the entities referenced here may always engage in the

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respective mandates, may analyse the reports and highlight cases of non-compliance, any lack of information or other shortcomings, and provide recommendations regarding the environmental assessment and review.]	functions described.
Article 41 - Review of authorized activities and their impacts	
1. Parties shall ensure that the [environmental] impacts of the authorized activity are reviewed.	**Comment:** The provisions of Article 41 help to ensure that EIAs meaningfully inform and influence Parties' activities in marine ABNJ.
2. **Option A:** Should the monitoring required under article 39 identify significant adverse impacts not foreseen in the environmental impact assessment, in nature or severity, or if any of the conditions or requirements applicable to the activity are breached, the Party with jurisdiction or control over the activity or Scientific and Technical Body shall:	**Recommendation:** Retain Option A **Comment:** Option A best satisfies the objectives of the BBNJ Agreement. If evidence from any source shows that the activities of a Party in ABNJ are causing significant adverse impacts, both this Agreement and general and customary international law require notice, cessation, and reparation of the harm to globally shared ocean resources.
(a) Notify the Conference of the Parties [, other Parties and the public];	**Comment:** The notification should include posting to the clearing-house mechanism.
(b) Halt the activity;	
(c) Require the proponent to propose and implement measures to mitigate and/or prevent those impacts;	
(d) Evaluate and implement measures proposed under subparagraph c, after which the Scientific and Technical Body shall recommend and decide whether the activity should continue;	
2 bis. On the basis of the recommendation of the Scientific and Technical Body, the Conference of the Parties shall decide whether the activity may resume.	
Option B: If monitoring required under article 39 identifies adverse impacts that were not foreseen when an activity was authorized, the Party with jurisdiction or control over the activity shall review the decision to authorize the activity.	**Recommendation:** ~~**Option B:** If monitoring required under article 39 identifies adverse impacts that were not foreseen when an activity was authorized, the Party with jurisdiction or~~

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	~~control over the activity shall review the decision to authorize the activity.~~
[3. In the case of disagreements in respect of monitoring, Parties concerned shall seek resolution by diplomatic means [, without recourse to judicial or non-judicial bodies].]	**Recommendation:** ~~[3. In the case of disagreements in respect of monitoring, Parties concerned shall seek resolution by diplomatic means [, without recourse to judicial or non-judicial bodies].]~~ **Comment:** No category of harmful activities should be exempted from the provisions of the Convention and this Agreement and no section of this Agreement should include carve-outs for settlement of disagreements. The provisions in Part IX should apply to the entire agreement. This provision would create a huge loophole in the compulsory dispute settlement provisions of both instruments, undermining the obligations that Parties have undertaken in joining them. Note that proposed article 54 ter provides an alternate procedure for resolution of disputes of a technical nature, which is perhaps what this paragraph was intended to address.
4. All relevant stakeholders, including all States, [in particular adjacent coastal States, including small island developing States,] [with an emphasis on the States potentially most affected as determined under article 34, paragraph 1, subparagraph a,] shall be kept informed of and consulted actively, as appropriate, in the monitoring, reporting and review processes in respect of an activity approved under this Agreement.	
5. Parties shall publish, including in the clearing-house mechanism:	
(a) Reports on the review of the environmental impacts of the authorized activity;	
(b) Decision-making documents, when a Party has reviewed its decision authorizing the activity.	
Article 41 bis - Guidance to be developed by Scientific and Technical Body	
1. The Scientific and Technical Body shall develop [standards and guidelines]	

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[guidance] [guidelines] for consideration and adoption by the Conference of the Parties on:	
(a) The non-exhaustive criteria for environmental impact assessments set out in article 24, paragraph 2;	
(b) The assessment of [potential] [possible] transboundary impacts of projected activities;	
(c) The determination of what constitutes confidential or proprietary information under article 34, paragraph 7;	See comment on article 34(7).
(d) The required content of environmental impact assessment reports pursuant to article 35;	
(e) The nature and severity of the impacts that would require a supplemental environmental impact assessment;	
(f) The conduct of strategic environmental assessments.	
2. The Scientific and Technical Body may also develop [voluntary] [standards and guidelines] [guidance] [guidelines] for consideration and adoption by the Conference of the Parties on:	
(a) An indicative non-exhaustive list of activities that [by default demand] [normally] [require] [or] [do not require] an environmental impact assessment that shall be periodically updated through consultation and collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;	
(b) The assessment of cumulative impacts in areas beyond national jurisdiction and how those impacts will be taken into account in the environmental impact process for [planned] [proposed] activities;	
[(c) The conduct of environmental impact assessments in areas identified by other legal instruments and frameworks and relevant global, regional, subregional and sectoral	

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bodies as requiring protection or special attention, in cooperation with those bodies.]	
Article 41 ter - Strategic environmental assessments	
1. **Option A:** Parties, individually or in cooperation with other Parties, acting through the Conference of the Parties, shall ensure that strategic environmental assessments are carried out for areas beyond national jurisdiction.	**Recommendation:** Retain Option A **Comment:** "Strategic environmental assessment" means analytical and participatory approaches to strategic decision-making that aim to integrate environmental considerations into policies, plans and programmes, and evaluate the inter linkages with economic and social considerations. SEAs can also provide a strategic, cross-sectoral, and ecosystem-based review of the status, pressures and trends regarding marine biodiversity of ABNJ to identify priorities for conservation and management action including in response to climate change in an open, inclusive and participatory manner. See Article 1, IUCN proposed definition.
Option B: Parties, individually or in cooperation with other Parties, may undertake a strategic environmental assessment for plans and programmes relating to activities under their jurisdiction or control, [conducted] in areas beyond national jurisdiction, which meet the threshold established under article 24.	**Recommendation** ~~**Option B:** Parties, individually or in cooperation with other Parties, may undertake a strategic environmental assessment for plans and programmes relating to activities under their jurisdiction or control, [conducted] in areas beyond national jurisdiction, which meet the threshold established under article 24.~~ **Comment:** Option B is too narrow, limiting participation to Parties with contemporaneous responsibility for activities already underway. SEA is a forward-looking process that includes activities that have not yet occurred. Also, this formulation would exclude most stakeholders, as only those that host or sponsor the industries carrying out activities - which will generally be extractive or otherwise impactful - will have a role in planning.
2. When undertaking environmental impact assessments pursuant to this Part, Parties shall take into account the results of relevant strategic environmental assessments carried out under paragraph 1, where available.	**Comment:** A benefit of SEA is that it can facilitate and speed the preparation of EIAs.

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PART V: CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY	
Article 42 - Objectives	
The objectives of this Part are to:	
(a) Assist Parties, in particular developing States Parties, in implementing the provisions of this Agreement, to achieve its objectives;	
(b) Enable inclusive, equitable and effective participation in the activities undertaken under this Agreement;	
(c) Develop the marine scientific and technological capacity of Parties, in particular developing States Parties, with regard to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through access to marine technology by, and the transfer of marine technology to, developing States Parties;	
(d) Increase, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;	
(e) More specifically, support developing States Parties through capacity-building and the transfer of marine technology under this Agreement in:	
(i) Participating in activities under the provisions of this Agreement concerning marine genetic resources, including relating to the sharing of benefits;	
(ii) Developing, implementing, monitoring, managing and enforcing area-based management tools, including marine protected areas;	
(iii) Conducting and evaluating environmental impact assessments and strategic environmental assessments.	

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Article 43 - Cooperation in capacity-building and transfer of marine technology	
1. Parties shall cooperate, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, to assist Parties, in particular developing States Parties, in achieving the objectives of this Agreement through capacity-building and the development and transfer of marine technology.	
2. In providing capacity-building and the transfer of marine technology under this Agreement, Parties shall cooperate at all levels and in all forms, including through partnerships with and involving all relevant stakeholders, such as, where appropriate, the private sector, civil society and holders of traditional knowledge, as well as through strengthening cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.	
3. In giving effect to this Part, Parties shall give full recognition to the special requirements of developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, as well as the special circumstances of small island developing States. Parties shall ensure that the provision of capacity-building and the transfer of marine technology is not conditional on onerous reporting requirements.	
Article 44 - Modalities for capacity-building and the transfer of marine technology	
1. Parties, recognizing that capacity-building, access to and the transfer of marine technology, including biotechnology, among Parties are essential elements for the attainment of the objectives of this Agreement, shall ensure access to capacity-building for, and actively promote the transfer of marine technology to, developing States Parties that need and request it.	
2. Parties undertake to provide, within their capabilities, resources to support such capacity-building and the transfer of marine technology, and to facilitate access to other sources of support.	

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3. Capacity-building and the transfer of marine technology should be a country-driven, transparent, effective, and iterative process that is participatory, cross-cutting and gender-responsive. It shall build upon, as appropriate, and not duplicate existing programmes and be guided by lessons learned, including those from capacity-building and the transfer of marine technology activities under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies. Insofar as possible, it will take into account these activities with a view to maximizing efficiency and results.	
4. Capacity-building and the transfer of marine technology shall be based on and be responsive to the needs and priorities of developing States Parties identified through needs assessments on an individual case-by-case, subregional or regional basis. Such needs and priorities may be self-assessed or facilitated through a mechanism, which may be established by the Conference of the Parties.	
5. The Conference of the Parties shall provide guidance on modalities and procedures for capacity-building and the transfer of marine technology within one year of the entry into force of the Agreement or other timeframe as determined by the Conference of the Parties.	
Article 45 - Additional modalities for the transfer of marine technology	
1. Parties shall endeavour to ensure that the transfer of marine technology takes place on fair and most favourable terms, including on concessional and preferential terms, in accordance with mutually agreed terms and conditions.	
[2. Parties shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging the transfer of marine technology to developing States Parties.]	
3. The transfer of marine technology shall be carried out with due regard for all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology.	
4. Marine technology transferred pursuant to this Part shall, to the extent possible, be appropriate, reliable, affordable, up to date, environmentally sound, available in an accessible form for developing States Parties and relevant to conservation and	

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sustainable use of marine biological diversity of areas beyond national jurisdiction.	
Article 46 - Types of capacity-building and transfer of marine technology	
1. In support of the objectives set out in article 42, the types of capacity-building and transfer of marine technology may include, and are not limited to, support for the creation or enhancement of the human, scientific, technological, organizational, institutional and resource capabilities of a country or region, such as:	
(a) The sharing of relevant data, information, knowledge and research;	
(b) Information dissemination and awareness-raising, including, in line with the principle of free, prior and informed consent, with respect to relevant traditional knowledge of indigenous peoples and local communities;	
(c) The development and strengthening of relevant infrastructure, including equipment and capacity for its maintenance;	
(d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms;	
(e) The development and strengthening of human resources and technical expertise through exchanges, research collaboration, technical support, education and training, and the transfer of technology;	
(f) The development and sharing of manuals, guidelines and standards;	
(g) The development of technical, scientific and research and development programmes, including biotechnological research activities;	
(h) The development and strengthening of capacities and technological tools for effective monitoring, control and surveillance of activities within the scope of this Agreement.	
2. The Conference of the Parties, or a subsidiary body established by it, shall develop an indicative and non-exhaustive list of types of capacity-building and transfer of marine technology, which it shall review, assess and amend periodically, as necessary, to reflect	

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technological progress and innovation and to respond and adapt to the evolving needs of States, subregions and regions.	
Article 47 *(two options)*	
OPTION I: Monitoring and review	**Comment:** A streamlined mix of all three options would be preferred as the most effective way to ensure sustained and effective implementation of this Part. The Working Group in article 47 - Option II could be a more active subgroup of the Committee.
1. Capacity-building and the transfer of marine technology undertaken in accordance with this Agreement shall be monitored and reviewed periodically.	
2. The monitoring and review referred to in paragraph 1 shall be aimed at:	
(a) Reviewing the needs and priorities of developing States Parties in terms of capacity-building and the transfer of marine technology in relation to this Agreement;	
(b) Reviewing the support provided and mobilized, and gaps in meeting the requirements of developing States Parties in relation to this Agreement;	
(c) Measuring performance of capacity-building and the transfer of marine technology activities on the basis of agreed indicators and reviewing results-based analyses, including the output, progress and effectiveness of capacity-building and transfer of marine technology activities, as well as their successes and challenges;	
(d) Making recommendations to both recipient Parties and providers for proposed ways forward and follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to support the efforts of Parties, in particular developing States Parties, in fully meeting their obligations and exercising their rights under this Agreement.	
3. Monitoring and review shall be carried out by the Conference of the Parties, which shall decide upon the details and modalities of such review and monitoring.	

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4. The monitoring and review of capacity-building and transfer of marine technology activities under this Agreement should be open to all relevant stakeholders, including at the national, subregional, regional and global levels.	
5. In supporting the monitoring and review of capacity-building and the transfer of marine technology, Parties shall submit reports, including, where applicable, inputs from regional and subregional committees on capacity-building and the transfer of marine technology, which should be made publicly available. Parties shall ensure that reporting requirements for Parties, in particular developing States Parties, are streamlined and not onerous in any way, including in terms of costs and time requirements.	
OPTION II: Working group on capacity-building and transfer of marine technology	
1. The Conference of the Parties shall establish a working group on capacity-building and transfer of marine technology.	
2. Parties shall submit to the working group reports, including, where applicable, inputs from regional and subregional committees on capacity-building and the transfer of marine technology, which should be made publicly available. Parties shall ensure that reporting requirements for Parties, in particular developing States Parties, are streamlined and not onerous in any way, including in terms of costs and time requirements.	
3. The working group shall periodically report and make recommendations to the Conference of the Parties on cooperation in capacity-building and transfer of marine technology, including on monitoring, review and funding of capacity-building and transfer of marine technology.	
4. The working group shall consider, inter alia:	
(a) The assessment of the needs and priorities of developing States Parties in terms of capacity-building and the transfer of marine technology [in accordance	

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with article 44, paragraph 4];	
(b) The opportunities for, availability, and provision of, capacity-building and the transfer of marine technology;	
(c) The development of modalities and procedures for capacity-building and the transfer of marine technology [in accordance with article 44, paragraph 5];	
(d) The review of the types of capacity-building and transfer of marine technology [in accordance with article 46, paragraph 2];	
(e) The development of indicators for monitoring the progress and effectiveness of capacity-building and transfer of marine technology activities;	
(f) The identification and mobilization of funds under the financial mechanism;	
(g) The information and report on funding under other mechanisms than that provided for in article 52 and instruments contributing directly or indirectly to the achievement of the objectives of this Agreement;	
(h) The availability and timely disbursement of funds;	
(i) The transparency of decision-making and management processes concerning fundraising and allocations;	
(j) The accountability of the recipient Parties in the agreed use of funds;	
(k) Reports on capacity-building and the transfer of marine technology from Parties.	
5. The working group shall pay particular attention to the special requirements of developing States Parties and to the special circumstances of small island developing States.	
6. The Conference of the Parties shall consider the reports and recommendations of the working group on capacity-building and the transfer of marine technology and take appropriate action.	

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OPTION III: Capacity-building and transfer of marine technology committee	
1. A capacity-building and transfer of marine technology committee is hereby established.	
2. The committee shall consist of members who serve in their individual capacity and possess relevant expertise, nominated by Parties and elected by the Conference of the Parties, with due consideration given to gender balance and equitable geographic representation.	
3. The committee shall:	
(a) Assess the effectiveness of the implementation of measures and programmes for capacity-building and the transfer of marine technology, including by assessing whether capacity gaps are decreasing;	
(b) Collaborate with regional and subregional committees on capacity-building and the transfer of marine technology or regional needs assessment mechanisms;	
(c) Review the needs and priorities of developing States Parties in terms of capacity-building and the transfer of marine technology, including the support required, provided and mobilized, and gaps in meeting the requirements of developing States Parties;	
(d) Measure performance on the basis of objective indicators and reviewing results-based analyses, including the output, progress and effectiveness of capacity-building and transfer of marine technology activities, successes and challenges;	
(e) Make recommendations for proposed ways forward and follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to allow developing States Parties to fully meet their obligations and exercise their rights under this Agreement;	
(f) Elaborate programmes for capacity-building and the transfer of marine	

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technology;	
(g) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.	
PART VI: INSTITUTIONAL ARRANGEMENTS	
Article 48 - Conference of the Parties	
1. A Conference of the Parties is hereby established.	
2. The first meeting of the Conference of the Parties shall be convened by the Secretary-General of the United Nations no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference shall be held at regular intervals to be determined by the Conference at its first meeting.	
3. The Conference of the Parties shall by consensus adopt at its first meeting rules of procedure for itself and its subsidiary bodies, financial rules governing its funding and the funding of the secretariat and any subsidiary bodies, and thereafter rules of procedure and financial rules for any further subsidiary body that it may establish.	**Comment:** It is unusual and unnecessary to have a different procedure for decisions of the first meeting than others. If consensus cannot be reached at the first meeting it should be clear that the usual agreed rules will apply.
4. **Option A:** As a general rule, the decisions of the Conference of the Parties shall be taken by consensus, unless otherwise provided for in this Agreement. If all efforts to reach consensus have been exhausted, the procedure established in the rules of procedure adopted by the Conference shall apply.	**Comment:** It may be preferable to have the procedure (which may be contentious) settled in the treaty text itself .
Option B: As a general rule, the decisions of the Conference of the Parties shall be taken by consensus, unless otherwise provided for in this Agreement. If all efforts to reach consensus have been exhausted, decisions of the Conference of the Parties on questions of substance shall be taken by a two-thirds majority of the Parties present and voting and decisions on questions of procedure shall be taken by a majority of the Parties present and voting.	**Comment:** Option B is much clearer and more predictable.
5. The Conference of the Parties shall monitor and keep under review the implementation of this Agreement and, for this purpose, shall:	
(a) Adopt decisions and recommendations related to the implementation of this	

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Agreement;	
(b) Review and facilitate the exchange of information among Parties relevant to the implementation of this Agreement;	
(c) Promote, including by establishing appropriate processes, cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts towards, and the harmonization of relevant policies and measures for, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;	
(d) Establish such subsidiary bodies as deemed necessary to support the implementation of this Agreement;	
(e) Adopt a budget, at such frequency and for such a financial period as it may determine;	
(f) Undertake other functions identified in this Agreement or as may be required for its implementation.	
6. The Conference of the Parties shall adopt measures to be applied on an interim or emergency basis, if necessary, where an activity presents a serious threat to marine biological diversity of areas beyond national jurisdiction, or when a natural phenomenon or human-caused disaster has, or is likely to have, a significant adverse impact on marine biological diversity of areas beyond national jurisdiction, to ensure that the activity does not exacerbate that threat or adverse impact.	**Recommendation:** 6. The Conference of the Parties shall adopt measures to be applied on an interim or emergency basis, if necessary, ~~where an activity presents a serious threat to marine biological diversity of areas beyond national jurisdiction, or~~ when **an activity or** a natural phenomenon or human-caused disaster has, or is likely to have, a significant adverse impact on marine biological diversity of areas beyond national jurisdiction, to ensure that the activity does not exacerbate that threat or adverse impact. **Comment:** The threshold for interim or emergency measures is too high and limited in scope - "presents a serious threat". To be consistent with the precautionary principle, text should be similar to that used for natural phenomenon, "is likely to have" a significant adverse impact". Action should be designed to reduce or avoid threat.
(a) Measures under this paragraph shall be considered necessary only if the threat or adverse impact of an activity cannot be managed in a timely manner	**Comment:** Consider including situations where the threat could in theory be managed but has not been.

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through the application of the other provisions of this Agreement or by a relevant legal instrument or framework or global, regional, subregional or sectoral body.	
(b) Measures taken on an interim or emergency basis shall be based on the best available science and scientific information, as well as relevant traditional knowledge of indigenous peoples and local communities. Such measures may be proposed by Parties or recommended by the Scientific and Technical Body, and may be adopted intersessionally by a procedure to be decided by the Conference of the Parties. The measures shall be temporary, must be reconsidered for decision at the next meeting of the Conference of the Parties following their adoption, and shall expire either upon being replaced by area-based management tools established in accordance with the provisions of this Agreement or at a date to be decided by the Conference of the Parties that shall not be later than two years following their adoption.	**Recommendation:** (b) Measures taken on an interim or emergency basis shall be based on the best available science and scientific information, as well as relevant traditional knowledge of indigenous peoples and local communities, **taking into account the precautionary approach and an ecosystem approach…** **Comment:** Adding reference to the precautionary approach and an ecosystem approach to enhance operationalization of these key Principles and approaches in article 5.
7. The Conference of the Parties shall, within five years of the entry into force of this Agreement and thereafter at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.	
Article 48 bis - Transparency	**Comment:** This is an important provision – The Paris Agreement envisages Parties making reports on their activities under that agreement. See recommendation for addition of transparency principle in article 5. It also comes up in article 13; and article 47 - option II – para 4(i).
1. The Conference of the Parties shall promote transparency in decision-making processes and other activities carried out under this Agreement.	
2. All meetings of the Conference of the Parties and its subsidiary bodies shall be open to all participants and observers registered in accordance with paragraph 4 unless otherwise decided by the Conference of the Parties. The Conference of the Parties shall publish and maintain a public record of its decisions.	

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3. The Conference of the Parties shall promote transparency in the implementation of this Agreement, including through the public dissemination of information, and the facilitation of participation of, and consultation with, relevant global, regional, subregional and sectoral bodies, indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders as appropriate, and in accordance with the provisions of this Agreement.	
4. Representatives of States not party to this Agreement, relevant global, regional, subregional and sectoral bodies, indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders with an interest in matters pertaining to the Conference of the Parties may request to participate in the meetings of the Conference of the Parties and of its subsidiary bodies, as observers or otherwise, as appropriate. The rules of procedure of the Conference of the Parties shall provide for modalities for such participation and shall not be unduly restrictive in this respect. The rules of procedure shall also provide for such representatives to have timely access to all relevant information.	
Article 49 - Scientific and Technical Body	
1. A Scientific and Technical Body is hereby established.	
2. The Body shall be composed of experts with suitable scientific qualifications, taking into account the need for multidisciplinary expertise, including expertise in relevant traditional knowledge of indigenous peoples and local communities, gender balance and equitable geographical representation. The terms of reference and modalities for the operation of the Body, including its selection process and the terms of members' mandates, shall be determined by the Conference of the Parties.	**Recommendation:** 2. The Body shall be composed of experts with suitable scientific qualifications, **serving in their personal capacity,** taking into account the need for multidisciplinary expertise, including expertise in relevant traditional knowledge of indigenous peoples and local communities, gender balance and equitable geographical representation. The terms of reference and modalities for the operation of the Body, including its selection process and the terms of members' mandates, shall be determined by the Conference of the Parties. **Comment:** Consider adding "in personal capacity" if "suitable scientific qualifications" is retained and including language related to conflicts of interest.
3. The Body may draw on appropriate advice emanating from relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as well from as other scientists and experts, as may be required.	**Comment:** This would include, for example, ICES and GESAMP.

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4. Under the authority and guidance of the Conference of the Parties, the Body shall provide scientific and technical advice to the Conference and perform the functions assigned to it under this Agreement and such other functions as may be determined by the Conference.	
Article 50 - Secretariat	
1. **Option A:** A secretariat is hereby established. [Until such time as the secretariat commences its functions, the Secretary-General of the United Nations, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat, shall perform the secretariat functions under this Agreement.]	**Comment:** The additional cost of this will need to be factored into the annual assessments of State Parties.
Option B: The secretariat functions for this Agreement shall be performed by the Secretary-General of the United Nations, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat.	**Comment:** DOALOS has been administering the IGCs. This is a treaty implementing UNCLOS, and as such it is both a multilateral environmental agreement and an element of the law of the sea.
2. The secretariat shall:	**Comment:** This list is normal for a multilateral treaty.
(a) Provide administrative and logistical support to the Conference of the Parties and its subsidiary bodies for the purposes of the implementation of this Agreement;	
(b) Arrange and service the meetings of the Conference of the Parties and of any other bodies as may be established under this Agreement or by the Conference;	
(c) Circulate information relating to the implementation of this Agreement in a timely manner, including making publicly available and transmitting to all Parties, in particular to adjacent coastal States, as well as to relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, decisions of the Conference of the Parties;	
(d) Facilitate cooperation and coordination, as appropriate, with the secretariats of other relevant international bodies and, in particular, enter into such administrative and contractual arrangements as may be required for that purpose and for the effective discharge of its functions, subject to approval by	

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the Conference of the Parties;	
(e) Provide assistance with the implementation of this Agreement, as determined by the Conference of the Parties;	
(f) Prepare reports on the execution of its functions under this Agreement and submit them to the Conference of the Parties;	
(g) Perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.	**Comment:** This is an important "catch-all" power
Article 51 - Clearing-house mechanism	
1. A clearing-house mechanism is hereby established.	
2. The clearing-house mechanism shall consist primarily of an open-access platform. The specific modalities for the operation of the clearing-house mechanism shall be determined by the Conference of the Parties.	
3. The clearing-house mechanism shall:	
(a) Serve as a centralized platform to enable Parties to access, provide and disseminate information with respect to activities taking place pursuant to the provisions of this Agreement, including information relating to:	
(i) Marine genetic resources of areas beyond national jurisdiction, including questions on the sharing of benefits, and data and scientific information on, as well as, in line with the principle of free, prior and informed consent, traditional knowledge associated with marine genetic resources of areas beyond national jurisdiction;	
(ii) The establishment and implementation of area-based management tools, including marine protected areas;	
(iii) Environmental impact assessments;	
(iv) Requests for capacity-building and the transfer of marine	

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technology and opportunities with respect thereto, including research collaboration and training opportunities, information on sources and availability of technological information and data for the transfer of marine technology, opportunities for facilitated access to marine technology and the availability of funding;	
(b) Facilitate the matching of capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and facilitate access to related know-how and expertise;	
(c) Provide links to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases, repositories and gene banks, including those pertaining to relevant traditional knowledge of indigenous peoples and local communities and promote, where possible, links with publicly available private and non-governmental platforms for the exchange of information;	**Comment:** Refer to open access as well as publicly available - as in as in article 11(4) - option 1.
(d) Build on global, regional and subregional clearing-house institutions, where applicable, when establishing regional and subregional mechanisms under the global mechanism;	
(e) Foster enhanced transparency, including by facilitating the sharing of baseline data and information relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction between Parties and other relevant stakeholders;	
(f) Facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration;	
(g) Perform such other functions as may be determined by the Conference of the Parties.	
4. The clearing-house mechanism shall be managed by the secretariat, without prejudice to possible cooperation with other relevant organizations as determined by the Conference of the Parties, including the Intergovernmental Oceanographic Commission	

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of the United Nations Educational, Scientific and Cultural Organization, the International Seabed Authority, the International Maritime Organization and the Food and Agriculture Organization of the United Nations.	
5. In the management of the clearing-house mechanism, recognition shall be given to the special circumstances of small island developing States Parties, and their access to the mechanism shall be facilitated to enable those States to utilize it without undue obstacles or administrative burdens. Information shall be included on activities to promote information-sharing, awareness-raising and dissemination in and with those States, as well as to provide specific programmes for those States.	
6. The confidentiality of information provided under this Agreement and rights thereto shall be respected. Nothing under this Agreement shall be interpreted as requiring the sharing of information that is protected from disclosure under the domestic law of a Party or other applicable law.	**Recommendation:** 6. The confidentiality of information provided under this Agreement and rights thereto shall be respected. Nothing under this Agreement shall be interpreted as requiring the sharing of information that is protected from disclosure under the domestic law of a Party or other applicable law. **However, such information shall be made available to the Scientific and Technical Body for its review and the fact of its redaction shall be indicated in public documents.** **Comment:** This links to article 41bis. This is an important provision, to provide conservation and commercial confidentiality, but also to ensure that such confidentiality is not self-judging. Research shows that confidentiality provisions that include effective oversight can lead to better compliance. Experience shows that unsupervised confidentiality provisions can lead to environmental disasters. A provision which avoids the publication of information which is the subject of a patent application is appropriate. This is different from a provision which would support keeping secret information complementary to a patent which a patent owner has chosen not publish to extend the power of a patent. "Other interests" is very vague. See: EIA repository for the Madrid Protocol to the Antarctic Treaty, See also, UNCLOS art. 205; Antarctic Treaty, art. 7(5); Espoo Convention, art. 1-6. See also International Association for Public Participation

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PART VII: FINANCIAL RESOURCES AND MECHANISM	
Article 52 - Funding	
1. Each Party undertakes to provide, within its capabilities, resources in respect of those activities that are intended to achieve the objectives of this Agreement.	
2. A mechanism for the provision of adequate, accessible and predictable financial resources under this Agreement is hereby established. The mechanism shall assist developing States Parties in implementing this Agreement, including through funding in support of capacity-building and the transfer of marine technology.	
3. The mechanism shall include:	
(a) A voluntary trust fund established by the Conference of the Parties to facilitate the participation of representatives of developing States Parties in the meetings of the bodies under this Agreement;	
(b) A special fund established by the Conference of the Parties that shall be funded through assessed contributions from Parties [, payments made by private entities pursuant to the provisions of this Agreement] and that shall be open to additional contributions from Parties and private entities wishing to provide financial resources to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction to:	**Recommendation:** (b) A special fund established by the Conference of the Parties **operated through an appropriate institutional mechanism** that shall be **adequately** funded through assessed contributions from Parties ~~[,~~ ~~payments made by private entities pursuant to the provisions of this Agreement]~~ and that shall be open to additional contributions from Parties and private entities wishing to provide financial resources to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction to: **Comment:** IUCN supports the text with its suggested amendments, notably to reflect the potential expenditures under (i)-(v) which will have significant costs, the institutional mechanisms for the special fund, the fact that money from private entities (e.g. from MGR-ABS) should be considered additional hence the need to delete the bracketed text.

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(i) Fund capacity-building projects under this Agreement, including effective projects on the conservation and sustainable use of marine biological diversity and activities and programmes, including training related to the transfer of marine technology;	**Recommendation:** (i) Fund capacity-building projects under this Agreement, including effective projects on the conservation and sustainable use of marine biological diversity**, environmental impact assessments and monitoring,** and activities and programmes, including training related to the **use and** transfer of marine technology;
(ii) Assist developing States Parties to implement this Agreement;	
(iii) Finance the rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction;	**Recommendation:** (iii) Finance the **conservation,** rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction;
(iv) Support conservation and sustainable use programmes by holders of traditional knowledge of indigenous peoples and local communities;	
(v) Support public consultations at the national, subregional and regional levels; and	
(vi) Fund the undertaking of any other activities as agreed by the Conference of the Parties;	
(c) The Global Environment Facility trust fund.	
4. Financial resources mobilized in support of the implementation of this Agreement may include funding provided through public and private sources, both national and international, including but not limited to contributions from States, international financial institutions, existing funding mechanisms under global and regional instruments, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons, and through public-private partnerships.	**Recommendation:** 4. **Parties agree to mobilise adequate funding to deliver an effective mechanism.** Financial resources ~~mobilized~~ in support of the implementation of this Agreement may include funding provided through public and private sources, both national and international, including but not limited to contributions from States, international financial institutions, existing funding mechanisms under global and regional instruments, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons, and through public-private partnerships. **Comment:** This additional text helps clarify that States Parties will have an

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	obligation to mobilise adequate funding.
5. For the purposes of this Agreement, the mechanism shall function under the authority and guidance of, and be accountable to, the Conference of the Parties. The Conference of the Parties shall provide guidance, inter alia, on overall strategies, policies, programme priorities and eligibility criteria for access to and utilization of financial resources. The mechanism shall operate within a democratic and transparent system of governance.	
6. Access to funding under this Agreement shall be open to developing States Parties on the basis of need, taking into account the needs for assistance of Parties with special requirements, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States and coastal African States, and taking into account the special needs of developing middle-income countries. The funding mechanism established under this Agreement shall be aimed at ensuring efficient access to funding through simplified approval procedures and enhanced readiness of support for such developing States Parties.	
7. In the light of capacity constraints, Parties shall encourage international organizations to grant preferential treatment to, and consider the specific needs and special circumstances of developing States Parties, including the least developed countries and small island developing States, in the allocation of appropriate funds and technical assistance and the utilization of their specialized services for the purposes of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.	
8. **Option A:** The Conference of the Parties shall establish a working group on financial resources to periodically report and make recommendations on the identification and mobilization of funds under the mechanism. It shall also collect information and report on funding under other mechanisms and instruments contributing directly or indirectly to the achievement of the objectives of this Agreement. In addition to the considerations provided in this article, the working group on financial resources shall consider, inter alia:	**Recommendation:** 8. ~~**Option A:**~~ The Conference of the Parties shall establish a ~~working group~~ **Standing Committee** on ~~financial~~**Finance to help mobilize adequate** resources ~~to~~**,** periodically report and make recommendations on the identification and mobilization of funds under the mechanism. It shall also collect information and report on funding under other mechanisms and instruments contributing directly or indirectly to the achievement of the objectives of this Agreement. In addition to the

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	considerations provided in this article, the working group on financial resources shall consider, inter alia: **Comment:** IUCN suggests strengthening option A by turning this working group concept into a "Standing Committee on Finance", with a clear mandate to mobilize financial resources, engage with other entities, etc, as well as combining it with option B as they are complementary.
(a) The assessment of the needs of the Parties, in particular developing States Parties;	
(b) The availability and timely disbursement of funds;	
(c) The transparency of decision-making and management processes concerning fundraising and allocations;	
(d) The accountability of the recipient developing States Parties with respect to the agreed use of funds.	
The Conference of the Parties shall consider the reports and recommendations of the working group on financial resources and take appropriate action.	**Recommendation:** The Conference of the Parties shall consider the reports and recommendations of the **Standing Committee on Finance** ~~working group on financial resources~~ and take appropriate action.
Option B: The Conference of the Parties will undertake a periodic review of the financial mechanism to assess the adequacy, effectiveness and accessibility of financial resources, including for the delivery of capacity-building and the transfer of marine technology, in particular for developing States Parties.	**Recommendation:** ~~**Option B:**~~ The Conference of the Parties will undertake a periodic review of the financial mechanism to assess the adequacy, effectiveness and accessibility of financial resources, including for the delivery of capacity-building and the transfer of marine technology, in particular for developing States Parties.
PART VIII: IMPLEMENTATION AND COMPLIANCE	
Article 53 *(two options)*	
OPTION I:	

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Implementation and compliance	
1. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure the implementation of this Agreement.	**Recommendation:** Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure the implementation of this Agreement **and to ensure that activities under their jurisdiction and control, whether carried out by States Parties or state enterprises or flag vessels or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, are carried out in conformity with this Agreement.** **Comment:** Under international law, Parties have a responsibility to ensure that activities under their jurisdiction or control do not cause harm to areas beyond national jurisdiction. This provision specifies that Parties have such a responsibility with regards to the specific provisions of this Agreement. It clarifies that Parties are obligated to exercise control not just over activities within their own territories, but over activities conducted by flag vessels and nationals in areas beyond national jurisdiction. This is in line with responsibilities in relation to activities in the Area (UNCLOS art. 139) and with respect to conservation of living resources of the high seas (art. 117). It is also in line with responsibilities under the CBD to ensure that activities under a state's jurisdiction or control do not cause damage to areas beyond national jurisdiction (art. 3).
2. Each Party shall monitor the implementation of its obligations under this Agreement.	**Recommendation:** Replace with article 53 bis.
3. The Conference of the Parties may consider and adopt cooperative procedures, reporting requirements and/or institutional mechanisms to promote compliance with the provisions of this Agreement and to address any issues arising therefrom.	
OPTION II:	
Implementation	
Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure the implementation of this Agreement.	

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Article 53 bis - Monitoring of implementation	
Each Party shall monitor the implementation of its obligations under this Agreement and shall, at intervals and in a format to be determined by the Conference of the Parties, report to the Conference on measures that it has taken to implement this Agreement.	**Recommendation:** Each Party shall monitor the implementation of its obligations under this Agreement and shall, at intervals**, publish a report** ~~and in a format to be determined by the Conference of the Parties, report to the Conference~~ on measures that it has taken to implement this Agreement **on the Clearing-house Mechanism platform**. **The Conference of the Parties may prescribe the reporting format.** **Comment:** Early, regular and mandatory reporting on steps taken will be important to increase collective knowledge of successful approaches and to ensure that Parties comply with the obligations they have assumed. This version defers reporting to later decisions of the COP. The effectiveness of the BBNJ Agreement will rely on Parties operationalizing its provisions in their national law. The COP can eventually develop reporting requirements and systems, but regular reports on implementation can be provided for here.
Article 53 ter - Implementation and Compliance Committee	
1. A committee to facilitate and review the implementation of and promote compliance with the provisions of this Agreement is hereby established.	**Comment:** This committee will be very important for monitoring compliance, reporting any non-compliance, fraud, or financial mismanagement, or receiving complaints of non-compliance. Who will have the power to organize investigations and on what grounds, etc.? The high seas is a massive area from the surface to the bottom, making monitoring a challenge that will require satellite and other remote technology and other resources. Just as in national waters, the high seas is a likely candidate for efforts to circumvent the convention from time to time for profit or political motives. Having a strong compliance mechanism, process of monitoring and reporting, and serious consequences when non-compliance evidence is clear, all are essential for effective implementation. The Fish Stocks Agreement provides very explicitly for enforcement by Parties. This is comparatively a weak enforcement mechanism.
2. The committee shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay	**Comment:** ITLOS has identified some obligations under UNCLOS as universal, in the sense that they do not vary according to respective national capabilities and

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particular attention to the respective national capabilities and circumstances of Parties.	circumstances.
3. The members of the committee shall be nominated by Parties and elected by the Conference of the Parties, with due consideration to equitable geographical representation, shall serve in their individual expert capacity, in the best interest of this Agreement. The members shall be persons with experience and recognized expertise in the fields related to this Agreement, including legal, socioeconomic, and/or scientific and technical expertise.	**Comment:** The make up of this committee will be quite important and it will be necessary to have a variety of voices on it. We suggest adding wording in regard to gender balance, indigenous knowledge, and youth voices. The committee appointment could also be time bound to ensure a rotation of members and to allow for new voices to be heard.
4. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties at its first meeting, examine both individual and systemic issues of implementation and compliance, and report annually and make recommendations, as appropriate, to the Conference of the Parties.	
5. In the course of its work, the committee may draw on appropriate advice from relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as well as from other scientists and experts, and bodies established under this Agreement, as may be required.	
PART IX: SETTLEMENT OF DISPUTES AND ADVISORY OPINIONS	
Article 54 - Obligation to settle disputes by peaceful means	
Parties have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.	**Comment:** This provision encourages settlement of differences through the rule of law, on the basis of sovereign equality.
Article 54 bis - Prevention of disputes	
Parties shall cooperate in order to prevent disputes.	

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Article 54 ter - Disputes of a technical nature	**Recommendation**: **1. Nothing in this Article limits the right of a Party at any time to refer a dispute concerning the interpretation or application of this Agreement for [compulsory] binding settlement in accordance with the provisions of this Agreement relating to the settlement of disputes.** **Alternative Recommendation:** **2. In any case where a dispute is not resolved through the means set out in paragraph 1, the provisions relating to the settlement of disputes set out in Article 55 shall apply.** **Comment:** The Draft Text follows Fish Stocks Agreement, Article 29. The recommended additional text is intended to reduce confusion about where the ad hoc expert panel sits in the hierarchy of dispute settlement measures. The "without recourse" language could be taken to preclude the use of binding measures.
Where a dispute concerns a matter of a technical nature, the Parties concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.	
Article 55 - Procedures for the settlement of disputes	
OPTION I:	**Recommendation**: Retain Option I, modified for BBNJ circumstances
1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.	**Comment:** As BBNJ is an implementing agreement, UNCLOS applies, including UNCLOS dispute settlement provisions (Part XV) for States Parties to UNCLOS. This article "levels the playing field" by applying a comparable obligation to BBNJ Agreement Parties that are not UNCLOS Parties.
2. Any procedure accepted by a Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.	**Comment:** For the purposes of the BBNJ Agreement, UNCLOS Parties can make a declaration to change their election of the ICJ, ITLOS, or arbitration (Annex VII or Annex VIII) to another of four options. This is found in UNFSA, Art 30 as well. Under this provision, party A that has accepted ITLOS under the Convention can choose arbitration for BBNJ matters. Another party, B, might bring a dispute to

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	ITLOS based on the Convention, and A muddies the jurisdictional waters by claiming that the ICT doesn't have jurisdiction because it's a BBNJ dispute under its declaration for arbitration, not a Convention dispute under its declaration for ITLOS - which can have very different results.
3. Any declaration made by a Party to this Agreement and the Convention pursuant to article 298 of the Convention shall apply to the settlement of disputes under this Part, unless that Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has made a different declaration pursuant to article 298 of the Convention for the settlement of disputes under this Part.	**Comment:** This paragraph is the complement to paragraph 2.
4. A Party to this Agreement that is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention, for the settlement of disputes under this Part. Article 287 of the Convention shall apply to such a declaration, as well as to any dispute to which such a Party is a party that is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with annexes V, VII and VIII to the Convention, such Party shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in annex V, article 2, annex VII, article 2, and annex VIII, article 2, for the settlement of disputes under this Part.	**Comment:** This tracks UNFSA article 30, paragraph 4. A BBNJ Party that is not a Convention Party may make a declaration selecting the form of dispute settlement. This provision also equalizes the conciliation, arbitration, and expert provisions in the Convention for BBNJ Parties that are not UNCLOS Parties.
5. A Party to this Agreement that is not a Party to the Convention may, when signing, ratifying, or acceding to this Agreement, or at any time thereafter, without prejudice to the obligations arising under section 1 of Part XV of the Convention, declare in writing that it does not accept any or more of the procedures provided for in section 2 of Part XV of the Convention with respect to one or more of the categories of disputes set out in article 298 of the Convention. Article 298 of the Convention shall apply to such a declaration.	**Comment:** This extends the optional exceptions to UNCLOS's Compulsory Procedures Entailing Binding Decisions to BBNJ Parties that are not Party to UNCLOS. Those exceptions are with respect to maritime zones, military activities and law enforcement, and disputes subject to the UN Security Council.
6. The provisions of this article shall be without prejudice to the procedures on the settlement of disputes that Parties have agreed to as participants in a relevant legal instrument or framework, or as member of a relevant global, regional, subregional or sectoral body concerning the interpretation and application of such instruments and frameworks.	**Comment:** This is a new provision. This could undermine compulsory jurisdiction by permitting states to opt out by concluding or having previously concluded a different agreement with anodyne dispute settlement provisions that do not provide for compulsory jurisdiction. The issue of dispute settlement provisions in other agreements is already addressed in Articles 281 and 282 of UNCLOS with far greater clarity; those provisions are

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	incorporated by reference, and they properly distinguish between the effect of agreements that do and do not provide for ultimate settlement by resort to a binding procedure at the request of any party to the dispute.
OPTION II:	**Comment:** Option II attempts to be more streamlined than Option I, however it risks inconsistency with UNCLOS. Option II requires only negotiation or conciliation. Neither of these results in a legally binding decision. They are thus inadequate for BBNJ disputes.
1. In the event of a dispute between Parties concerning the interpretation or application of this Agreement, the parties concerned shall, unless they agree otherwise, seek a solution by negotiation.	**Comment:** Negotiation is mandatory.
2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.	**Comment:** Good offices and mediation are optional.
3. When ratifying, accepting, approving or acceding to this Agreement, or at any time thereafter, a Party may declare in writing to the depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or all of the following means of dispute settlement as compulsory:	**Comment:** This allows parties to choose arbitration or an international court to settle their disputes with other BBNJ Parties, but (unlike Option I) does not require them to do so.
(a) Arbitration, in accordance with the procedure [to be adopted by the Conference of the Parties] [laid down in annex VII to the Convention];	
(b) Submission of the dispute to the International Tribunal for the Law of the Sea; or	
(c) Submission of the dispute to the International Court of Justice.	
[4. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation [in accordance with the procedure to be adopted by the Conference of the Parties] [pursuant to the procedure set out in section 2 of annex V to the Convention] unless the parties otherwise agree.]	**Comment:** Under UNCLOS, arbitration is the default form of compulsory dispute settlement, except for a very limited number of matters. This provision makes conciliation the default. (For an example of conciliation see Timor-Leste v. Australia) Conciliation does not result in a legally binding decision. Also, it is essentially a bilateral process between two states. For both these reasons it is inadequate and inappropriate for the BBNJ Agreement.

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	UNCLOS Parties will have conflicting obligations under this provision and UNCLOS.
5. This article shall not apply to any dispute concerning the land territory, sovereignty, sovereign rights or jurisdiction of a Party to this Agreement.	**Comment:** This is a more limited exception to compulsory binding dispute settlement than provided in article 55 - Option 1 - para 5.
Article 55 bis - Provisional arrangements	
Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.	
Article 55 ter - Advisory opinions	
[The Conference of the Parties may decide, by a two-thirds majority of the representatives present and voting, to request the International Tribunal for the Law of the Sea to give an advisory opinion on any legal question arising within the scope of this Agreement. The text of the decision shall indicate the scope of the legal questions on which the advisory opinion is requested. The Conference of the Parties may request that such opinions be given as a matter of urgency.]	**Comment:** UNCLOS is sometimes referred to as a "framework convention", to be developed through implementing agreements such as this one. Legal questions will inevitably arise. Rather than wait until they become costly and contentious, the BBNJ parties could choose to seek the guidance of a globally-representative expert body. The International Tribunal for the Law of the Sea is an authoritative interpretive body capable, should the States Parties so desire, of providing legal advice to guide implementation. For ITLOS to receive a request for an advisory opinion on legal questions related to the BBNJ Agreement (other than those submitted by the ISA) this treaty must include this provision, which confers advisory opinion jurisdiction on the Tribunal, see Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission ITLOS Reports 2015, paras 37-69. Non-parties to the Convention can be given equal footing by adding a provision for appointing ad hoc judges and allowing Parties to this Agreement to participate fully in Advisory Opinion proceedings.
PART X: NON-PARTIES TO THIS AGREEMENT	
Article 56 - Non-parties to this Agreement	
Parties shall encourage non-parties to this Agreement to become Parties thereto and to adopt laws and regulations consistent with its provisions.	**Comment:** This is the same as FSA Article 33.

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PART XI: GOOD FAITH AND ABUSE OF RIGHTS	
Article 57 - Good faith and abuse of rights	
Parties shall fulfil in good faith the obligations assumed under this Agreement and exercise the rights recognized therein in a manner that would not constitute an abuse of right.	**Comment:** This is the same as FSA Article 34.
	Recommendation: **PART XI bis: RESPONSIBILITY AND LIABILITY**
	Recommendation: Article 57 bis - Responsibility and liability
	Recommendation: **1. Parties are responsible for the fulfillment of their international obligations concerning the protection and preservation of the marine environment and fair and equitable sharing of benefits.** **2. They shall be liable in accordance with international law for damage or loss arising from failure to carry out their responsibilities under this Agreement.** **3. Recognizing that the obligations under this Agreement are established for the protection of humankind's collective interest in marine biodiversity in areas beyond national jurisdiction and are owed to the international community as a whole, any State Party to this agreement [and any competent international organization] is entitled, on behalf of itself or of the international community, to invoke the responsibility of another State that has breached its obligations under this agreement.** **4. Redress of any environmental damage shall prioritize recovery of ecological integrity as determined by use of the best available science.**

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	5. Recognizing that the marine environment is an essential Earth system, all environmental damage, including that which is not economically quantifiable, shall be subject to reparations in consideration of any ecosystem services and integral functions that have been lost. **Comment:** Responsibility, liability and compensation articles make it clear that the obligations in this Agreement are enforceable and that breach has consequences. These obligations already exist in international law. ITLOS Case No. 17. Paragraphs 1 and 2 state the basic international law rule, embodied in UNCLOS Articles 139, 235, 263, and 304. Paragraph 3 clarifies that the obligations in this Agreement may be enforced by any party, without a requirement of "special injury". Paragraph 4 focuses redress on environmental recovery of essential Earth systems. Paragraph 5 states explicitly that environmental damage includes "damage caused to the environment, in and of itself," also called "pure" environmental damage, "non-use values" or "non-market values". See ICJ, *Costa Rica v Nicaragua*.
PART XII: FINAL PROVISIONS	
Article ante 58 - Right to vote	
1. Each Party to this Agreement shall have one vote, except as provided for in paragraph 2.	
2. A regional economic integration organization Party to this Agreement, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.	**Comment:** This is the normal arrangement for bodies like the EU.
Article 58 - Signature	
This Agreement shall be open for signature by all States and regional economic	**Comment:** These are boilerplate multilateral treaty provisions.

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integration organizations from [insert date] and shall remain open for signature at United Nations Headquarters in New York until [insert date].	
Article 59 - Ratification, approval, acceptance, accession and formal confirmation	
This Agreement shall be subject to ratification, approval, acceptance or formal confirmation by States and regional economic integration organizations. It shall be open for accession by States and regional economic integration organizations from the day after the date on which the Agreement is closed for signature. Instruments of ratification, approval, acceptance, accession and formal confirmation shall be deposited with the Secretary-General of the United Nations.	
Article 59 bis - Division of the competence of regional economic integration organizations and their member States in respect of the matters governed by this Agreement	**Comment:** These provisions relate to the scope of competence of bodies such as the EU to accept legal obligations on behalf of its members; slightly more complex because of the variety of issues covered by the draft treaty.
1. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of such organizations, one or more of whose member States is a Party to this Agreement, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.	
2. In its instrument of ratification, approval, acceptance, accession or formal confirmation, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Agreement. Any such organization shall also inform the depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.	
Article 60 *(deleted)*	
Deleted.	

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Article 61 - Entry into force	
1. This Agreement shall enter into force 30 days after the date of deposit of the [thirtieth] [sixtieth] instrument of ratification, approval, acceptance, accession or formal confirmation.	**Comment:** Fewer parties will bring it into force sooner, while a higher number of parties may delay coming into force but will ensure greater support and maybe compliance. The UNFCCC required 50 and the CBD required 30 parties to come into force.
2. For each State or regional economic integration organization that ratifies, approves or accepts this Agreement or accedes thereto after the deposit of the [thirtieth] [sixtieth] instrument of ratification, approval, acceptance, accession or formal confirmation, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification, approval, acceptance or accession or formal confirmation.	
3. For the purposes of paragraphs 1 and 2 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the member States of that organization.	
Article 62 - Provisional application	
1. This Agreement may be applied provisionally by a State or regional economic integration organization that consents to its provisional application by so notifying the depositary in writing at the time of signature or deposit of its instrument of ratification, approval, acceptance, accession or formal confirmation. Such provisional application shall become effective from the date of receipt of the notification by the Secretary-General of the United Nations.	**Comment:** This can be useful to encourage early adoption of measures and practices in this Agreement, including notification of MGR collecting cruises; notification, consultation and publication of EIAs, support for SEAs, preparation of ABMT proposals**,** and establishment of funding mechanisms.
2. Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the depositary in writing of its intention to terminate its provisional application.	
Article 63 - Reservations and exceptions	
No reservations or exceptions may be made to this Agreement.	**Comment:** This is standard for multilateral environmental agreement

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Article 63 bis - Declarations and statements	
Article 63 does not preclude a Party, when signing, ratifying, approving, accepting, acceding to or formally confirming this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that Party.	
Article 64 - Relation to other agreements	**Recommendation:** ~~Article 64 - Relation to other agreements~~ **Comment:** The BBNJ Agreement establishes rights between each Party and the international community as a whole. Obligations in this treaty are not bilateral and therefore, this article has no place in this Agreement.
1. Two or more Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision the derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other Parties of their rights or the performance of their obligations under this Agreement.	**Recommendation:** ~~1. Two or more Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision the derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other Parties of their rights or the performance of their obligations under this Agreement.~~
2. Parties intending to conclude an agreement referred to in paragraph 1 shall notify the other Parties through the secretariat of their intention to conclude the agreement and of the modification or suspension that it provides.	**Recommendation:** ~~2. Parties intending to conclude an agreement referred to in paragraph 1 shall notify the other Parties through the secretariat of their intention to conclude the agreement and of the modification or suspension that it provides.~~
3. This Agreement shall not alter the rights and obligations of Parties that arise from other agreements compatible with this Agreement and that do not affect the enjoyment by other Parties of their rights or performance of their obligations under this Agreement.	**Recommendation:** ~~3. This Agreement shall not alter the rights and obligations of Parties that arise from other agreements compatible with this Agreement and that do not affect the enjoyment by other Parties of their rights or performance of their obligations under this Agreement.~~

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Article 65 - Amendment	
1. A Party may, by written communication addressed to the secretariat, propose amendments to this Agreement. The secretariat shall circulate such a communication to all Parties. If, within six months from the date of the circulation of the communication, not less than one half of the Parties reply favourably to the request, the proposed amendment shall be considered at the following meeting of the Conference of the Parties.	
2. The Conference of the Parties shall make every effort to reach agreement on the adoption of any proposed amendment by way of consensus. If all efforts to reach consensus have been exhausted, the procedures established in the rules of procedure adopted by the Conference of the Parties shall apply.	
3. An amendment adopted in accordance with paragraph 2 of this article shall be communicated by the depositary to all Parties for ratification, approval or acceptance.	
4. Amendments to this Agreement shall enter into force for the Parties ratifying, approving or accepting them on the [thirtieth] [ninetieth] day following the deposit of instruments of ratification, approval or acceptance by two thirds of the number of Parties to this Agreement as at the time of adoption of the amendment. Thereafter, for each Party depositing its instrument of ratification, approval or acceptance of an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the [thirtieth] [ninetieth] day following the deposit of its instrument of ratification, approval or acceptance.	
5. An amendment may provide that a smaller or larger number of ratifications, approvals or acceptances shall be required for its entry into force than required under this article.	
6. For the purposes of paragraphs 4 and 5 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the member States of that organization.	
[7. A State or regional economic integration organization that becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 4 shall, failing an expression of a different intention by that State or regional economic integration organization:	

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(a) Be considered as a Party to this Agreement as so amended;	
(b) Be considered as a Party to the unamended Agreement in relation to any Party not bound by the amendment.]	
Article 66 - Denunciation	
1. A Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.	
2. The denunciation shall not in any way affect the duty of any Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.	
Article 67 *(deleted)*	
Deleted.	
Article 68 - Annexes	
[1. The annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the annexes relating thereto.]	**Recommendation:** ~~[~~1. The annexes form an integral part of this Agreement ~~and, unless expressly provided otherwise, a~~**. Any** reference to this Agreement ~~or to one of its Parts~~ includes ~~a reference to~~ the annexes ~~relating thereto~~.~~]~~ **Comment:** This simpler formulation is sufficient and standard.
[2. The annexes may be revised from time to time by Parties. Notwithstanding the provisions of article 65, if a revision to an annex is adopted by consensus at a meeting of the Conference of the Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. Once adopted, the revised annex shall be submitted to the depositary for its circulation to all Parties. If a revision to an annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 65 shall apply.]	**Comment:** Many multilateral environmental agreements envisage an easier procedure for amending Annexes whose needs may change over time – otherwise there is little point in using an Annex rather than the text. This treaty can be seen as analogous to them.

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Article 69 - Depositary	
The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.	
Article 70 - Authentic texts	
The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.	
ANNEX I: Indicative criteria for identification of areas	
[(a) Uniqueness; [(b) Rarity;] (c) Special importance for the life history stages of species; (d) Special importance of the species found therein; (e) The importance for threatened, endangered or declining species or habitats; (f) Vulnerability, including to climate change and ocean acidification; (g) Fragility; (h) Sensitivity; (i) Biological diversity [and productivity]; [(j) Representativeness;] (k) Dependency; [(l) Exceptional naturalness;]	**Recommendation:** ***1.Ecological criteria*** ~~[~~(a) Uniqueness; ~~[~~(b) Rarity;~~]~~ (c) Special importance for the life history stages of species; (d) Special importance of the species found therein; (e) The importance for threatened, endangered or declining species or habitats; (f) Vulnerability, including to climate change and ocean acidification; (g) Fragility; (h) Sensitivity; (i) Biological diversity [and productivity]; **(ibis)** ~~[and P~~productivity~~];~~

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(m) Ecological connectivity [and/or coherence]; (n) Important ecological processes occurring therein; [(o) Economic and social factors;] [(p) Cultural factors;] [(q) Cumulative and transboundary impacts;] (r) Slow recovery and resilience; (s) Adequacy and viability; (t) Replication; (u) Feasibility.]	(k) Dependency; **~~[~~(l) ~~Exceptional N~~**naturalness**;~~]~~** **(m) Importance for e~~E~~**cological connectivity **~~[~~**and/or coherence**~~]~~;** (n) Important ecological processes occurring therein; **~~[~~(**q) Cumulative and transboundary impacts**;~~]~~** (r) Slow recovery and resilience; ***2. Socio-economic and cultural criteria*** **~~[~~(o)** Economic and social factor**s;~~] [~~** **(p)** Cultural heritage factors**;~~]~~** **3.** ***Scientific criteria*** **(p bis) Baseline for monitoring studies** **(p ter) Long term research studies** ***4 .Criteria related to MPA network design*** (m) Ecological connectivity and/or coherence; (j) Representativeness;

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	(s) Adequacy and viability; (t) Replication; ~~**(u) Feasibility.]**~~ **.** **Comment:** Recommend reorganizing criteria to separate out the different types of criteria for individual sites and those for design of MPA networks, similarly as used in the IMO's PSSA guidelines for identifying "particularly sensitive sea areas".[8] PSSA criteria have three categories: *ecological criteria*; *social, cultural, and economic* criteria; and *scientific and educational* criteria. For Annex I, IUCN suggests adding a fourth set of criteria for the design of representative networks of connected and ecologically coherent MPAs. Regarding criterion for "Productivity": Suggest separating "productivity" from "biodiversity" as areas with high productivity may have lower diversity than other areas. Productivity plays an important role in fueling ecosystems and increasing the growth rates of organisms and their capacity for reproduction including a wide range of straddling or migratory species that may be temporary or periodic visitors.
ANNEX II *(deleted)*	
Deleted.	
It is suggested that the content of annex II to the note by the President on the revised draft text of an agreement (A/CONF.232/2020/3), with any changes agreed by the intergovernmental conference, be reflected in a document of the conference to be adopted together with the text of the agreement. It is further suggested that the conference recommend to the Conference of the Parties that it take into account the document when developing an indicative and non-exhaustive list of types of capacity-building and transfer of marine technology in accordance with article 46, paragraph 2.	

[8] IMO A 24/Res.982, 2006. REVISED GUIDELINES FOR THE IDENTIFICATION AND DESIGNATION OF PARTICULARLY SENSITIVE SEA AREAS https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/A24-Res.982.pdf

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