



## General Assembly

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**Intergovernmental conference on an international  
legally binding instrument under the United  
Nations Convention on the Law of the Sea on the  
conservation and sustainable use of marine  
biological diversity of areas beyond  
national jurisdiction  
Fifth session  
New York, 15-26 August 2022**

**Textual proposals submitted by delegations by 25 July 2022, for  
consideration at the fifth session of the Intergovernmental conference  
on an international legally binding instrument under the United  
Nations Convention on the Law of the Sea on the conservation and  
sustainable use of marine biological diversity of areas beyond national  
jurisdiction (the Conference), in response to the invitation by the  
President of the Conference in her Note of 1 June 2022  
(A/CONF.232/2022/5)**

**Article-by-article compilation**

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## **PREAMBLE**

### **European Union and its Member States**

Proposal for additional text

#### **Recognizing the ecological connectivity of marine ecosystems**

##### **Rationale**

This additional text, which we think would fit well in the preamble, would underscore the biological/ecological connectivity between areas within national jurisdiction and areas beyond national jurisdiction. The term “ecological connectivity” is already being used in the CBD context.

### **Bolivarian Republic of Venezuela**

*The Parties to this Agreement,*

#### **Recalling the relevant provisions of the United Nations Convention on Biological Diversity**

*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,

*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,

*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,

*Desiring* to promote sustainable development, *Aspiring* to achieve universal participation,

*Have agreed as follows:*

##### **Rationale**

None provided

## **Holy See**

### *The Parties to this Agreement,*

*Recalling* the relevant provisions of the United Nations Convention on the Law of the Sea, including the individual and joint obligation to protect and preserve the marine environment in accordance with the principle that oceans are the common heritage of humankind,

*Recognizing* the urgent 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,

Noting the mutual benefit to all States of conserving and sustainably managing natural resources of areas beyond national jurisdiction and ensuring nonregression, thus contributing to sustainable development as stewards for present and future generations.

Acknowledging that in view of their geographic location and isolation from the mainland, small island and archipelagic States are most directly and seriously impacted by a collective failure to conserve and protect, as well as to sustainably manage, living and non-living resources in areas beyond national jurisdiction and in the marine environment as a whole,

*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 by implementing and supplementing as necessary relevant provisions of the Convention to achieve this objective,

~~*Desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations,* [see new PP 4 above]~~

*Respecting* the sovereignty, territorial integrity and political independence of all States, while recognizing the critical importance of bilateral, subregional, regional, sectoral and global cooperation and coordination to protect and conserve marine biodiversity,

~~*Desiring to promote sustainable development,* [see PP 4 above]~~

~~*Aspiring to achieve universal participation,* [see PP 4 above and last PP]~~

## **Rationale**

PP 1: Additions reflect the responsibility of States to work both individually and collectively. The non-binding reference to the CHM further emphasizes this joint

obligation to protect and preserve commonly held areas and resources; this reference does not affect ABS. PP 3: reflects PSIDS comment in High Seas dialogue. PP 4: Just as Paragraph 1 sets out mutual obligation, Paragraph 4 lays a groundwork of mutual benefit not only to all parties, but to present and future generations. This would consolidate ideas made in other paras. PP 5: The existential threat faced by SIDS and archipelagic States as a result of a human failure to protect our earth demands recognition at the outset, and correction when possible, through this IA. PP 6: The additional text is required to clarify the legal basis for the agreement as an implementing agreement to UNCLOS. PP 9. Given the importance of cooperation to this agreement, reference should be made in the Preamble. Include PP2 and PP5 as written.

### **International Union for Conservation of Nature**

P2: 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;

P3: Recognizing the need to address, in an urgent, coherent and cooperative manner, biodiversity loss and degradation of ecosystems of the ocean, due to, in particular, climate change, pollution and overuse;

P7: *Respecting* the sovereignty, sovereign rights, territorial integrity and political independence of all States;

P8: *Desiring to* ~~promote~~ ensure that any future development and use of marine areas beyond national jurisdiction [and their resources] are sustainable and do not cause further biodiversity loss or degradation ~~development~~;

P9: *Aspiring to* achieve universal participation but recognizing the need to also lead by example;

### **Rationale**

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 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.

It is similarly important to recognize the seriousness of threat and need for timely and urgent action to enhance climate resilience and prevent further loss of biodiversity or environmental degradation.

And 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.

Finally, we suggest 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 draft text.

## **Ocean Care**

**Stressing the need to take all measures necessary to ensure that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with the Convention.**

## **Rationale**

The text is already modulated on basis of Art. 194 (2) UNCLOS which requires countries to ensure that activities under their jurisdiction or control do not cause pollution to other States and that pollution does not spread beyond the areas where they have sovereign rights.

**PART I**  
**GENERAL PROVISIONS**

## ARTICLE 1

### Caribbean Community and Pacific Small Island Developing States

**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.

~~**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.~~

10. **Option A:** “Environmental impact assessment” means a process to identify, predict, evaluate and mitigate the potential environmental impacts, including cumulative impacts, of ~~an~~ a proposed 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.

~~**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.~~

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.

~~**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.~~

### **Rationale**

None provided

## **Bolivarian Republic of Venezuela**

For the purposes of this Agreement:

**1. “Access to genetic resources”: means the obtaining or using of genetic resources conserved in situ or ex situ; of its derivative products or its intangible components. “Marine Areas Beyond National Jurisdiction, marine regions that include the water column, seabed, and subsoil beyond the limits of national jurisdiction”**

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 **in relation to marine genetic resources of areas beyond national jurisdiction,**

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

**3.Option A:** “Area-based management tool” means a tool, ~~including a marine protected area,~~ for **directed at** 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, **including marine protected areas.**

~~**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 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.~~

4. “Areas beyond national jurisdiction” means the high seas and the Area **(delimited and geographically defined areas whose administration and regulation allow achieve specific conservation and/or preservation objectives). These areas are outside the 200 nautical mile limit of the Exclusive Economic Zone (EEZ) of a nation.**

**“Marine Areas Beyond National Jurisdiction”, means marine regions that include the water column, seabed, and subsoil beyond the limits of national jurisdiction.**

**4bis. "Biological resources" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.**

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.

6. “Collection *in situ*”, in relation to marine genetic resources, means the collection or sampling of marine genetic resources in areas beyond national jurisdiction.

7. “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.

~~**8. Option A:** “Cumulative impacts” means the incremental effects of a proposed activity under the jurisdiction and control of a State 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.~~

**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.

~~**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.~~

**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 prevention, mitigation and correction, 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.~~

~~**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.~~

**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.

**Option C**

**11 "Marine Genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity.**

**11bis. "Marine Genetic resources" means genetic material of actual or potential value.**

12. "Marine protected area" means a geographically defined marine area that is designated and managed to achieve specific **short, medium and** long-term biodiversity] conservation [and sustainable use] objectives.

[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.]

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 (1) to prepare a strategic development or resource use plan for a defined land and/or ocean area; (2) to examine the potential environmental impacts that may arise from, or impact upon, the implementation of government policies, plans and programmes; and (3) to assess different classes or types of development projects, so as to produce general environmental management policies or design guidelines for the development classes/types.~~

**Option B:** "Strategic environmental assessment" means the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.

[17. "Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.]

[18. "Transfer of marine technology" means the transfer **accessible, free and without exclusions of any country** of the instruments, 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.]

~~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.~~

**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.

### **Rationale**

None provided

### **Holy See**

1. “Access ex situ, including as digital sequence information”, in relation to marine genetic resources of areas beyond national jurisdiction, means **the opportunity and the ability to collect and study** ~~access to~~ samples, data and information, including digital sequence information.

[2. “Activity under a State’s jurisdiction or control” means an activity **conducted by a natural or juridical person** over which a State has effective control or exercises jurisdiction.

**(a) For purposes of this Agreement, a State shall be considered to exercise jurisdiction and control over a natural or juridical person in areas beyond national jurisdiction when the State is:**

- (i) the place of citizenship or where such natural or juridical person is registered;**
- (ii) principal place of business or where management of such person is located;**
- (iii) the place where such person has its principal assets or operations;**  
**or**
- (iv) the place where such person conducts the administration of its interests [with respect to the activity in question] on a regular basis as ascertainable by third parties.**

**(b) In the event that a State having jurisdiction is incapable of performing its duties with respect to [planned activities] or [area-based management measures] under this [Part] [Agreement], then “jurisdiction and control” by a State shall also include the place where financing of the activity is given and/or received.**

**(c) Jurisdiction to implement this [Part] [Agreement] extends only to [matters] [assessments] [and monitoring] related to [planned or proposed activities] [or/and] [implementation of area-based management tools] in areas beyond national jurisdiction by such natural or juridical persons under the jurisdiction and control of that State. However, nothing herein shall affect the jurisdiction and control of a flag State in administrative, technical and social matters over ships**

flying its flag pursuant to Article 92 and Article 94 of the Convention. Any ship or vessel used in implementing this [Part][Agreement] shall continue to be governed by the State whose flag it flies.

16.Option A: “Strategic environmental assessment” means an higher level assessment process ~~that can be used in three main ways~~ (1) to prepare a strategic development or resource use plan for a defined land and/or ocean area; (2) to examine the potential environmental impacts that may arise from, or impact upon, the implementation of government policies, plans and programmes; or and (3) to assess different classes or types of development projects, so as to produce general environmental management policies or design guidelines for the development classes/types.

~~Option B: “Strategic environmental assessment” Delete.~~

[18.“Transfer of marine technology” means the transfer, whether though the movement, sale, lease, licensing or outright gift of the data, software, instruments, 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.]

19. Option A: “Utilization of marine genetic resources” means to conduct research and development, including through biotechnology [as defined in this article], on the genetic and/or biochemical composition of and/or information on marine genetic resources or derivatives thereof, resulting in:

(i) the sale, lease, licensing or other as well as commercialization of a product or products, or, ~~including biotechnology as defined in this Agreement.~~

(i)(ii) rights to biotechnology that serve to restrict access and use of genetic resources by other scientific researchers.

~~Option B: “Utilization of marine genetic resources” DELETE.~~

## **Rationale**

**JURISDICTION:** “Activity under a State’s jurisdiction or control”: Clearly identifying the party responsible for review (EIA) or oversight (ABMT) of an activity is the single most critical obligation set out in this IA, without which it fails. As industry groups point out, with respect to a commercial activity in ABNJ, vessels originating from numerous countries will be involved in the activity and therefore if the present definition is used, it will be unclear which country is responsible. In addition, if this IA anticipates that a flag state will assume responsibility, in fact, many flag states will not have the wherewithal to carry out these functions; moreover, the jurisdiction does not extend to the activity beyond the vessel and a large gap exists. This proposed definition is the internationally accepted definition used by UNCITRAL to determine jurisdiction based on the “center of main interests”. Importantly, it expands jurisdiction over an activity without modifying the jurisdiction of the Flag State. “Strategic Environmental Assessment”: An SEA is not a

“higher level” assessment; it is simply a different kind of assessment used for a specific purpose. “Transfer of marine technology”: if this is meant to define the “transfer of marine technology”, it must define not only what technology is, but what “transfer” means. “Utilization of marine genetic resources”. Without the additional language, the definition impacts MSR as regulated by UNCLOS. The difference in “utilization of MGRs” as intended by this agreement is that they will be used for scientific research resulting in commercial purposes. This distinction must be clarified in this definition. We urge consideration of a definition that addresses utilization of all marine resources in ABNJ, including MGRs, in order to be of use in the sections on EIAs and ABMTs. This is important because it would future-proof the agreement so that it will not have to be revised for every resource.

## **Republic of Türkiye**

### **Article 1.3**

~~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 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 objective.

### **Rationale**

Option B is preferred option as sustainable use is an overall goal, while protected area is a specific region that must be conserved to achieve the overall objective.

Marine protected area (MPA) and area-based management tools (ABMT) are different concepts in terms of their temporal and spatial scales. The definition of the MPA refers to the marine area that is managed and geographically determined to achieve the long-term protection goals. As is known, IUCN's definition of ABMT is “arrangements of human activity in a particular area to achieve conservation or sustainable resource management goals” (IUCN Paper V, Understanding Area-based Management Tools and Marine Protected Areas). The protected area definition of the article 2 of CBD, written in accordance with both terrestrial and marine protected areas, is regulated as “a geographically defined area that is determined, regulated and managed to achieve specific conservation objectives”. MPAs may have strictly protected wilderness areas serving scientific-only purposes, large-scale ecological processes or areas intended to protect certain species or habitats, as well as areas where non-industrial uses of natural resources compatible with nature conservation are regulated. Because of this, option 2 is very close to the definition of MPA.

## Article 1.8

Option A: “Cumulative impacts” means the incremental effects of a proposed activity under the jurisdiction and control of a State 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.

~~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.~~

## Rationale

Türkiye prefers Option A over Option B.

## Article 1.10

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

## Rationale

None provided

## Article 1.11 and 1.19

**1 (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 digital sequencegenetic information.

~~**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~~

**1 (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.

~~**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.~~

### **Rationale**

For ARTICLE 1 (11) (together with 1 (1) and 1 (6) : Although the definitions developed for the terms “access ex situ including as digital sequence information” and “collection in situ” seems to render the difference between these terms distinguishable as a solution of the DSI conflict, where those are contained in the text, there might still remain unresolved issues where the term “Marine genetic resources” is encountered due to the intrinsic properties of the term “genetic material ”and thereby the relevant term “genetic resources”, indicating the physical/tangible features of the genetic material. Therefore, such as the parts of the text including particularly the concepts “utilization” and “benefit-sharing”; “marine genetic resources” should be handled more inclusively and comprehensively, including DSI. It is of high importance bearing in mind that even any artificial application is in question, it is still needed to have a preliminary knowledge on the genetic resource of that DSI, from which it is generated initially. Briefly; without any connection with the genetic resource, DSI itself does not make any sense.

For ARTICLE 1 (19): Türkiye favors Option A since it is considerably more comprehensive and includes the crucial aspect of utilization and benefit sharing, such as commercialization, as well as information on marine genetic resources and derivatives.

## **International Union for the Conservation of Nature**

### **Article 1, para.1**

~~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.~~

### **Rationale**

The Nagoya Protocol and CBD do not define “access”; defining it here risks creating a separate standard. Given that many biorepositories hold genetic resources from both within and beyond national jurisdiction, using different terms will increase both the cost and complexity of implementation and the risk that they cannot be implemented effectively. Leaving it undefined can help future proof the agreement against, e.g., advances in AI and activities that do not involve active use.

### **Article 1, para.3**

~~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: ....

### **Rationale**

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 **(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)**

### **Article 1, para.4**

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

Or

4. “Areas beyond national jurisdiction” means ~~the high seas and the Area.~~areas that are not within national jurisdiction.

### **Rationale**

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. Leaving out airspace could open a large gap in UNCLOS that would require more work later to fix. But it is also important to note that UNCLOS does refer to superjacent airspace in the context of EEZs and territorial seas. Seabirds are an important part of marine biodiversity, as are the physical processes and ecosystem at the air/water interface, and atmospheric inputs into the superjacent airspace of the high seas may have adverse effects on marine biodiversity in the water column. As this Agreement refers to “marine” biodiversity, there is no issue of whether this Agreement might be interpreted as applying to outer space.

### **Article 1, para.6**

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.

### **Rationale**

To clarify the scope of this Agreement, this definition should be narrowed to apply only to marine genetic resources collected for the purpose of “utilization”, as defined under para. 19 Option B as “research and development on the genetic and/or biochemical composition”. This would ensure that fishing and collection of commodities is not covered, in a way that is in line with the Nagoya Protocol.



## Article 1, para.10

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.

~~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.

### Rationale

EIAs need to have as their primary focus identifying significant potentially harmful or adverse environmental effects now and cumulatively over the reasonable future, and the alternatives that will avoid those impacts. Some projects don't trigger 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.

## Article 1, para.11

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.

Option B: “Marine genetic resources” means any material of marine plant, animal including birds, microbial or other origin containing functional units of heredity of actual or potential value.

### Rationale

Option A differs from the definition under the CBD, which will make implementation challenging. “Genetic information” is not defined in the Agreement. Because tangible

samples and intangible elements like DSI and environmental data will require different treatment, 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 is consistent with the Nagoya Protocol but focuses on marine. However, limiting it to “marine” genetic resources may exclude other species in ABNJ, like birds. It serves no purpose in delineating the scope of the MGR provisions, as marine genetic resources can also be found within national jurisdiction. The geographical scope of the agreement is defined elsewhere. Alternatively “marine genetic resources” can be explicitly defined to include birds.

### **Article 1, para.12**

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.

### **Rationale**

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<sup>1</sup>). Such a 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 (Gorud-Colvert et al., 2021)- **IUCN WCPA, 2019. Guidelines for applying the IUCN protected area management categories to marine protected areas <https://portals.iucn.org/library/node/48887>**

**Gorud-Colvert, et al, 2021. [The MPA Guide: A framework to achieve global goals for the ocean](https://doi.org/10.1126/science.abf086), Science DOI: 10.1126/science.abf086.**

### **Article 1, para.16**

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<sup>1</sup> IUCN WCPA, 2019. Guidelines for applying the IUCN protected area management categories to marine protected areas <https://portals.iucn.org/library/node/48887>

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 inter linkages with economic and social considerations.

Alternatively:

16. Option A: “Strategic environmental assessment” means a higher-level assessment process that can be used, ~~in three main ways~~for example, (1) to prepare a strategic development or resource use plan for a defined land and/or ocean area; (2) to examine the potential environmental impacts that may arise from, or impact upon, the implementation of government policies, plans and programmes; ~~and~~(3) to assess different classes or types of development projects, so as to produce general environmental management policies or design guidelines for the development classes/types;~~and~~, and (4) 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.

### **Rationale**

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. Option B does not reflect how SEA is currently understood.

Alternatively, Option A could include another example as in (4) above. Collaborative regionally-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.

### **Article 1, para.17**

~~[17. “Sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.]~~

### **Rationale**

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-[Guidelines for applying the IUCN protected area management categories to marine protected areas | IUCN Library System](#)

### **United Nations Environment Programme**

Option A: “Cumulative impacts” means the incremental effects of a proposed activity under the jurisdiction and control of a ~~State~~ 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.

#### **Rationale**

The Revised draft text of an agreement (as in A/CONF.232/2020/3) had references throughout the text to “States Parties”. However, the Further revised draft text of an agreement no longer refers to “States Parties” in the preamble, but rather to “Parties”. Further, article 1, paragraph 14 of the Further revised draft text of an agreement defines “Party” as “a State or regional economic integration organization...”. For consistency purposes references to “States Parties” should be deleted and instead the text should refer to “Parties” to include in that way regional economic integration organizations and be consistent with the definitions included in article 1.

### **China Biodiversity Conservation and Green Development Foundation**

10. “Environmental impact assessment” means a process to identify, predict and evaluate the potential environmental impacts, including cumulative impacts, of an activity in the short, medium and long term, with an effect on areas within or beyond national jurisdiction, Take~~stake~~ing into account, inter alia, interrelated social and economic, cultural and human health impacts, both beneficial and adverse, in order to take the necessary measures, including mitigation, to address the consequences of such activity, prior to its commencement.

#### **Rationale**

The hereby proposed amendments combine option A and B as a whole functioned article. It emphasizes “EIA” as a process and a tool to anticipate & assist addressing further positive and negative consequences.

## **Environmental Law Institute**

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 other 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.

### **Rationale**

Added for clarity and to emphasize that this includes activities by parties or persons other than and inclusive of the project proponent

## **High Seas Alliance**

[...]

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.

[...]

12. “Marine protected area” means a geographically defined marine area where human activities are regulated, that is designated and managed or prohibited to achieve specific [long-term biodiversity] conservation ~~[and sustainable use]~~ objectives.

### **Rationale**

Article 1.3: HSA sees the value of “Option B” because it helpfully distinguishes between the objectives of an MPA (conservation) and those of other ABMTs (conservation or conservation and sustainable use). However, Option B should not be an alternative to a separate definition of MPAs focusing on conservation, which in our view, is a priority.

Article 1.12: HSA strongly recommends striking the bracketed text ('sustainable use'); one of the key distinguishing factors of MPAs from other ABMTs is that MPAs have a conservation objective. This is consistent with other international definitions of MPA, including the CBD's and the IUCN's, which define an MPA as having conservation objectives (and \*not\* sustainable use objectives). HSA also recommends that the definition be adjusted so that it talks about "human activities" which are "regulated, managed, or prohibited"--this reflects the suggestions made by some delegates during IGC4 and helps to clarify that there is a spectrum of MPAs which range from areas that permit some sustainable use activities (consistent with the conservation objectives) to highly and fully protected areas where human activities are prohibited.

## Ocean Care

**Option A:** "Cumulative ~~effects~~impacts" means the incremental effects of a proposed activity under the jurisdiction and control of a State Party when added to the ~~effects~~ 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.

10. Option A: "Environmental impact assessment" means a process to evaluate the potential environmental ~~effectseffects~~, impacts, including cumulative ~~effects~~; of ~~an proposed-~~ 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~~effects, ~~both beneficial and adverse~~.

Possibly as definition 20

"Transboundary pollution" for the purposes of this Instrument means the introduction, directly or indirectly, of substances or energy, including acoustic energy, into the marine environment (a) that is generated by human activities in, or adjacent to, areas beyond national jurisdiction, (b) that disperses across more than one jurisdiction, including dispersing into areas beyond national jurisdiction from areas within national jurisdiction, and (c) that results in, or is likely to result in, significant harm to marine biological diversity beyond national jurisdiction.

## **Rationale**

The term 'effect' is a term used in UNCLOS whereas 'impact' is not. Similarly, transboundary effect is easily defined and can be readily measured through scientific investigation, whereas transboundary impact is vague, and it may be difficult to establish criteria acceptable to all parties. Moreover, transboundary pollution is referred to in an extensive body of existing international law, whereas transboundary impact is not.

Regarding Art 1, No need to limit the definition of EIA to activities carried out in ABNJ. Our proposal takes a more inclusive approach and helps to streamline the paragraph.

Regarding Art 1, Transboundary pollution is easily defined and can be readily measured through scientific investigation, whereas transboundary impact is vague, and it may be difficult to establish criteria acceptable to all parties.

Transboundary pollution is referred to in an extensive body of existing international law, whereas transboundary impact is not (e.g., Espoo Convention Art. 1(viii)).

Transboundary pollution can be addressed and mitigated through practical concrete measures mandating the reduction of the polluting emissions. Conversely, there is no practical way to mitigate transboundary impacts without also addressing the causes at its source.

Transboundary pollution stands the test of time as it potentially includes a vast assortment of destructive pollutants—from plastics to chemicals to oil to noise and ones that cannot yet be anticipated

### **World Wide Fund for Nature (WWF) International**

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 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.

### **Rationale**

It is important to be clear that MPA are for conservation purposes so that MPAs can be separately identified from other ABMTs as the basis for setting out a process in Part III for establishing MPAs, including designation by the BBNJ COP, that can be separated from how other ABMTs are dealt with in the BBNJ ILBI.

## ARTICLE 2

### **Bolivarian Republic of Venezuela**

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 **short, medium and** long term, through effective implementation of **this agreement and** the relevant provisions of **international instruments, , including the Convention on Biological Diversity,** the Convention and further international cooperation and coordination.

### **Rationale**

None provided

### **Holy See**

The objectives of this Agreement ~~are:~~ is

- (i) to ensure high levels of 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 Convention, including through environmental impact assessments of activities and the imposition of area-based management tools;
- (ii) to strengthen the Parties' joint and individual capacities to protect the environment, to engage in sustainable development, and to fulfill obligations of this Agreement;
- (iii) to promote the research and development of marine genetic resources to better understand ocean biodiversity and ecosystems; to ensure the equal access and utilization of those resources by all Parties; and to further delineate the rights and obligations of Parties with respect to benefits resulting from their utilization; and

to further international cooperation and coordination between Parties as well as with other instruments, frameworks and bodies in pursuit of greater care for biodiversity and ecosystems in areas beyond national jurisdiction.

### **Rationale**

The Objectives should explain what the contents of the agreement are, put them in context, and not simply repeat the title of the IA. That is, this article should mention the 4 focal areas of MGRs, EIAs, ABMTs and CBTMT. In addition, the article should expressly highlight the main challenges of capacity building and cooperation that will ensure those objectives are met since meeting those challenges are objectives in themselves.



## **International Union for the Conservation of Nature**

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 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.

### **Rationale**

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.

## **World Wide Fund for Nature (WWF) International**

The objective of this Agreement is to ensure the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of applicable international law, including but not limited to the relevant provisions of the Convention ~~and further~~ particularly through enhancement of international cooperation and coordination to implement relevant decisions of international bodies.

### **Rationale**

The objective needs to explicitly include implementing the provisions of all relevant international agreements and the relevant decisions of international bodies, not just the provisions of UNCLOS. This creates the mandate for ‘enhanced cooperation’ to deliver holistic, ecosystem-based integrated ocean management, leaving behind the days of isolated bodies acting in their uncoordinated, narrow silos. The ecological connectivity of dynamic ocean systems requires an equally connected and dynamic governance and management culture. Creating and implementing a BBNJ ILBI gives us an historic opportunity to create a new culture of cooperation and collaboration. The somewhat negatively expressed political commitment to ‘not undermining’ existing arrangements can be given positive legal effect through ‘enhanced cooperation’ to accelerate implementation of those arrangements.

## ARTICLE 3

### European Union and its Member States

{2. This Agreement does not apply to any warship, military aircraft or naval auxiliary. Save for Part II, this Agreement does not apply to other vessels or aircraft owned or operated by a PartyState 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 ~~thesuch~~ 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.}

### **Rationale**

The BBNJ Implementing Agreement should not apply to warships, naval auxiliary and other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, in practice, many vessels used for marine scientific research are owned or operated by States. Excluding these vessels as a whole from the scope of application of the BBNJ IA would mean that many research vessels would be excluded from the scope of Part II (MGRs). We consider that to be highly undesirable as this would create a situation in which we no longer have a level playing field. We therefore propose alternative wording with which we distinguish between warships, military aircraft and naval auxiliary, on the one hand, and vessels or aircraft owned or operated by States, on the other. The Agreement would not apply as a whole to military vessels, aircraft and naval auxiliary. The Agreement would also not apply to state owned or operated vessels or aircraft, except for Part II on MGRs. In other words, the part on MGRs, and only that part, would apply to state owned or operated vessels or aircraft. Finally we wish to note that non-application should not be confused with immunity from jurisdiction. In that sense, both categories, that is, warships, naval auxiliary, military aircraft as well as state owned or operated vessels or aircraft enjoy and will continue to enjoy immunity from jurisdiction on the basis of the relevant provisions of UNCLOS, such as Articles 95 and 96. With respect to the issue of immunity from jurisdiction, we would be open to considering including relevant provisions of the UNCLOS also in the BBNJ Agreement if other delegations consider it necessary.

### Bolivarian Republic of Venezuela

This Agreement applies to activities related to the conservation and sustainable use of marine biological diversity on areas beyond national jurisdiction. No State can have temporal or permanent jurisdiction on 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.]~~

## **Rationale**

None provided

## **Holy See**

**This Agreement applies to human activities with respect to utilization of resources in relation to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.**

**2. 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. [NOTE: taken in whole from Art. 4]**

**3. Accordingly, 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. Hence, this Agreement shall not govern activities undertaken or permitted by States to occur within their national jurisdiction [unless those activities pose a risk of substantial negative impacts to biodiversity or significant and harmful changes to the marine environment in areas beyond national jurisdiction.]**

**4. Activities in areas beyond national jurisdiction constituting marine scientific research shall be governed by the Convention, except that activities shall not be considered marine scientific research if:**

**(i) The activity is of direct significance for the commercial exploitation of living or non-living resources of the marine environment; or**

**(ii) The activity results in the sale or licensing of the research findings or modifications, including digital sequence information, to a State, its nationals or natural or juridical persons under a State's jurisdiction seeking to use it for commercial gain.**

**Any activity not considered marine scientific research under this article shall be governed by the provisions of this Agreement.**

**1. This Agreement shall not govern activities in connection with utilization of resources in areas beyond national jurisdiction enumerated in Article 87(1) of the Convention, subject to certain further limitations and requirements set forth herein as may be**

necessary from time to time to fulfill the general duty of Parties stated in Article 192 of the Convention to protect and preserve the marine environment.

[2. As revised by States]

**Rationale**

PARAGRAPH 1. Limiting the meaning to geographic scope is unclear when UNCLOS already contains Parts separately regulating both the High Seas and the Area. This IA is focused on and applies only to human activities in ABNJ and hence the provision should be focused on this. Moreover, this revision limits the application only to human activities as they relate to conservation and sustainable use which is necessary to avoid undermining IFBs. The addition also avoids the confusion regarding the territorial seas and the continental shelf. PARAGRAPH 2: Moved from Art. 4 as it goes to Application and does not impact IFBs. PARAGRAPH 3: Activities in National Jurisdiction. Moved from Art. 4 as it goes to Application rather than the relationship with IFBs i.e., coastal States do not fall under IFBs. Rather than just restate these provisions from UNCLOS, the provision should draw a conclusion from those statements to this IA and set the foundation for EIAs and ABMTs whether or not States decide the impact of activities in national waters on international waters. PARAGRAPH 4: MSR. Carve-out for research activities in accordance with UNCLOS Article 241 to ensure MSR continues unaffected. Paragraph 3(i) supplements IA Art. 22.3. PARAGRAPH 5: Activities already regulated and the basis for further limitations of sustainable use. This additional language identifies the legal authority for limitations of activities under this treaty in relation to activities already regulated by an IFB. This statement is legally necessary to clarify the relationship between this IA and the two other IAs for fishing and mining relating to UNCLOS.

**Republic of Türkiye**

~~[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.]~~

**Rationale**

Türkiye prefers the deletion of Article 3(2) since it is not convinced for its necessity as the sovereign immunity is clearly defined in international law, which is also applicable for BBNJ Agreement. Nonetheless Türkiye is prepared to go along with the general consensus to be arrived on this draft Article 3 (2).

## **International Union for the Conservation of Nature**

~~[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. 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:

[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. 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.

### **Rationale**

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

### European Union and its Member States

...

~~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.~~

### **Rationale**

The EU and its Member States have consistently stated throughout this process, both in the IGC and in earlier stages, their preference not to have this language included in the treaty. We therefore propose deletion of this paragraph. We would like to explain our position in this respect. First, the EU and its Member States aim for universal participation in this Agreement and fully support the possibility for non-parties to the United Nations Convention on the Law of the Sea (UNCLOS) to become party to this Implementing Agreement. This, in our mind, is facilitated elsewhere in this draft agreement. We have listened to the argument that the universality of the instrument can only be guaranteed by including this paragraph. We take a different view. To us, under draft article 58, the Agreement is open to all States, including non-parties to the Convention. Special reference to Parties to the Agreement that are not parties to the Convention is also found in article 55(3) concerning the settlement of disputes. We consider the language in paragraph 4.4 to be a statement of obvious consequences of treaty law, namely *pacta tertiis*; such inclusion is not necessary as participation in the Implementing Agreement cannot affect the legal status of non-parties to the Convention. In the context of the whole article 4, paragraph 4 would risk diverging interpretations that could challenge the uniform interpretation and application as well as the integrity of the future Implementing Agreement and the Convention. This could question the very nature of the new instrument as an Implementing Agreement under UNCLOS. Furthermore, there is no similar provision in the Fish Stocks Agreement. Nevertheless, there are States that are party to the Fish Stocks Agreement but not a party to United Nations Convention on the Law of the Sea and this has not affected their legal status as non-party to UNCLOS. We do not see a need to depart from this precedent. Finally, it has been argued that a similar reference is to be found in the modalities Resolution. However, we would emphasize in this respect that we are currently in a completely different context, meaning that we are now negotiating treaty language. This is different from the guiding language found in the modalities resolution. In our view, the proposed inclusion of paragraph 4 would threaten the integrity of UNCLOS and would constitute a very negative/dangerous precedent.

## **Bolivarian Republic of Venezuela**

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention, **nor shall it prejudice the interests and sovereignty of the States parties and non-parties to the Convention.**

1. 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.
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.

## **Rationale**

None provided

## **Holy See**

**1. The Parties recognize that legal instruments, frameworks and regulatory bodies to which they are party play an important role, globally, regionally and domestically, in protecting the marine environment, and that their implementation of these respective agreements and compliance with environmental covenants and regulation is critical to achieving the objectives of this Agreement. Accordingly, each Party affirms its commitment to implement and comply with the environmental agreements, frameworks and bodies to which it is a party that relate to areas beyond national jurisdiction and that promote the objectives of this Agreement. 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. [move existing paragraph 1 to Art. 3 Application]**

**2. To the extent that they are applicable, where specific obligations pertaining to conservation and sustainable use under competent instruments, frameworks and bodies promote the objectives of, and are not inconsistent with, this Agreement and the Convention now in effect or hereafter adopted, such obligations shall be recognized by Parties to this Agreement as supplementing the provisions contained herein. 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. [Move existing Paragraph 2 to Art. 3 Application]~~

~~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. [move to 4bis]~~

### **Rationale**

This IA is not meant to be in conflict with IFBs that have environmental provisions; rather the intent should be for the IA to fill gaps, to act as a positive reinforcement and to promote cooperation rather than dissonance. Hence new paragraphs 1 and 2 remove gaps with IFBs through legal recognition while retaining review (by the COP) through the qualification that obligations assumed in other agreements must promote the objectives of this agreement. This approach follows that agreed to in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) CH. 20 Environment Art. 20.4. The word “competent” rather than relevant is used to limit the IA to comparison with overlapping regulations concerning conservation and sustainable use rather than regulating business practices generally. Para 3 stays as is. As a matter of content, Paragraph 4 should be moved to 4bis as it relates to the legal status of non-parties associated with rights of use and not to IFBs.

### **Republic of Türkiye**

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.

### **Rationale**

Türkiye favors of preserving the term of respects the competences of and while deleting the effectiveness of. The wording of effectiveness might lead to vagueness while it is hard to determine the effectiveness of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.



## **International Union for the Conservation of Nature**

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.

### **Rationale**

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.

## **High Seas Alliance**

3. This Agreement shall be interpreted and applied in a manner that ~~[respects the competences of and]~~ does not undermine ~~[~~ the effectiveness of the measures 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.

### **Rationale**

The phrase “respects the competences of” is an unnecessary and unhelpful addition to ‘does not undermine’. The relevant and functional test, “does not undermine” is best understood in the sense of does not undermine “the effectiveness of” the bodies etc (IFBs) and particularly the effectiveness of their measures. An additional test of ‘respecting’ the ‘competence’ of the IFB is an unhelpful test examining not the functioning or measures of IFB but of its competence, whether or not the competence is implemented, and ‘respecting’ the competence suggests a deference to any such competence whether or not necessary or warranted. This would not build bridges but rather fences between the BBNJ agreement and the IFBs. Adding the word “the measures of” follows the wording in the Fish Stocks Agreement Articles 7 and 18(1), for instance, and makes it clearer that the test is a functional test.

## **World Wide Fund for Nature (WWF) International**

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under applicable international law, including but not limited to the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with applicable international law, including but not limited to the Convention.

1A. The BBNJ COP shall establish and maintain a list of international agreements, and a list of any deliberative or decision-making bodies established pursuant to those agreements, that the COP deems to be part of applicable international law referred to in subparagraph 1.

3. This Agreement shall be interpreted and applied in a manner that facilitates cooperation between states, including~~[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 enhances~~promotes~~ cooperation, coherence and coordination within and between those instruments, frameworks and bodies and the States involved.

### **Rationale**

It is important to be clear that MPA are for conservation purposes so that MPAs can be separately identified from other ABMTs as the basis for setting out a process in Part III for establishing MPAs, including designation by the BBNJ COP, that can be separated from how other ABMTs are dealt with in the BBNJ ILBI.

It is inappropriate that perfectly justifiable political concerns over ‘not undermining’ should be expressed in legal terms in a legally binding instrument in such a negative way that actually undermines the expressed intention of States to use the BBNJ ILBI to drive enhanced cooperation to deliver ecosystem-based integrated ocean management. Stating ‘not undermining’ as a purpose is strongly perverse in that it drives States deeper into their isolated sectoral silos.

The proposed changes to para. 4.1 are simply consequential changes based on WWF’s suggestions for Article 2.

The proposed new para. 4.1A aims to give effect to the intent of amended Articles 2 and 4.1 by facilitating discussions among States to explicitly identify those ‘instruments, frameworks and bodies’ with provisions and making decisions relevant to BBNJ so that the scope of enhanced cooperation can be appropriately set. An important element of these discussions is expected to involve encouraging States to become party to relevant agreements pursuant to routine admonishments from the UNGA aimed at universalizing applicable international law.

## ARTICLE 4BIS

### Holy See

#### Article 3 bis 4bis Legal status associated with rights of use ~~Without prejudice~~

1. 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.

2. (a). All States shall have the right for their nationals to engage in the utilization of resources, both living and non-living, in areas beyond national jurisdiction subject to:

(a) The provisions of the Convention and this Agreement;

(b) The recognized regulation of particular activities by legal instruments and frameworks and global, regional, sub-regional or sectoral bodies or organizations; and

(c) Their treaty obligations.

(b). All States shall also have the corresponding duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation and sustainable use of both living and non-living resources in areas beyond national jurisdiction.

3. Whereas rights and obligations may attach to Parties to this Agreement or to the Convention, or as members under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies, or as non-party States, or to natural or juridical persons under a State's jurisdiction in respect of any of the foregoing in areas beyond national jurisdiction, these rights and obligations shall not confer on any single State or natural or juridical person, the legal status associated with management, supervision, development or ownership with respect to activities or utilization of resources in areas beyond national jurisdiction.

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. [Taken from Art. 4]

### **Rationale**

This article should appear prior to Art. 4 as it follows from, and relates to, Art. 3 Application. The current TITLE lacks a legal description of the purpose of the article and should correctly indicate the necessary content concerning legal status with respect to activities in ABNJ. The new title also appropriately reflects UNCLOS Art. 2. PARAGRAPH 1: Generally, with respect to ABNJ, this paragraph does not legally go any further than what is already stated in UNCLOS Art. 89 in that it is limited to claims of

sovereign rights, and in particular land or disputes regarding maritime boundaries (which should not be at issue in this particular agreement involving ABNJ, especially with respect to activities and conservation and sustainable use). That said, it doesn't change the outcome so can be included. To supplement UNCLOS and reflect what this agreement is about, the IA needs to clarify rights of use with respect to resources and activities that occur in ABNJ (see paras 2 and 3). More specifically, the words "without prejudice to" are incorrect in Paragraph 1 because we are specifically saying that States cannot exert sovereignty; this phrase connotes that States can always assert that claim. NEW PARAGRAPH 2 is necessary to fill in the gaps left by UNCLOS Art. 116 and Art. 117 and apply the IA to both the high seas and the Area ie, all of ABNJ; to activities beyond fishing, including activities involving living AND non-living resources, so that EIAs and ABMTs will rightfully extend to all resources and actors, including commercial activities such as gathering renewable energy in ABNJ or dealing with carbon in the water or seabed; and lastly to ensure that the IA will be future-proofed with respect to new resources or activities. Given that activities in ABNJ may likely involve multinational enterprises operating out of multiple States, explicitly granting a direct right and corresponding obligation is warranted. Paragraph 2(a)(i), (ii) and (iii) also serve to expressly state the legal status of the activities in relation to these other agreements, which will avoid "undermining" them. New PARAGRAPH 3: The idea of "sustainable use" differs depending on the person or person considering it, meaning that environmental treaties may apply the general wording of this IA quite differently from commercial enterprises engaged in an activity. Given that no licenses will be issued by any particular State, this provision clarifies at the outset the legal rights with respect to sustainable use. This provision is necessary for a Marine Spatial Planning regime to ultimately be implemented. PARAGRAPH 4. The status of non-parties is unrelated to IFBs (Art. 4) and should appear in this separate article.

## ARTICLE 5

### **Bolivarian Republic of Venezuela**

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

(a) The polluter pays principle;

**(a bis). The protector receives principle,**

[(b) The principle of the common heritage of mankind;]

~~(c) **Option 1:** The principle of equity;~~

**Option 2:** Fair and equitable sharing of benefits;

(d) The application of precaution;

(e) An ecosystem approach;  
An integrated approach;

**Venezuela would like further clarifications on the meaning and scope of the “integrate approach**

(f) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores **and rehabilitates** ecosystem integrity;

(g) The use of the best available science and scientific information, as well as relevant traditional knowledge of indigenous peoples and local communities;

(h) 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;

~~(i) 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;~~

**(j) alt. Activities should be oriented towards research, conservation, development and sustainable development; and activities that do not contaminate the areas beyond national jurisdiction should not be generated;**

(j) 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.

**Venezuela would like further clarifications on who would be responsible for the stewardship of areas beyond national jurisdiction on behalf of present and future generations.**

## Rationale

None provided

## Holy See

### Article 5 General Obligations principles and approaches

1. In order to achieve the objective of this Agreement, Parties are obliged to exercise due regard for the conservation and sustainable use of biodiversity in areas beyond national jurisdiction and for the interests of other States. ~~shall be guided by the following:~~

2. For purposes of this agreement, “due regard” shall mean:

(a) The adoption of laws, regulations and administrative measures by a State Party within the framework of its legal system reasonably appropriate for securing compliance with this Agreement by persons under its jurisdiction;

~~The polluter pays principle;~~

~~(b) The sharing of obligations by Parties for assessing and monitoring the state of the marine environment and the utilization of resources, including by providing assistance to those developing States that lack the capacity and technology to fulfill these respective duties;~~ ~~The principle of the common heritage of mankind;~~ [move CHM to Preamble]

~~(c) Option 1: The principle of equity;~~

Option 2: To every reasonable extent possible, depending upon the particular resource involved, the Fair and equitable sharing among all States of benefits resulting from the utilization of such resource sourced in areas beyond national jurisdiction;

(d) The application of an integrated, science-based, ecosystem approach and the exercise of precaution before permitting activities to be conducted with respect to utilization of resources ~~The application of precaution;~~

~~(e) An ecosystem approach; [see (d)]~~

~~(f) An integrated approach; [see (d)]~~

~~(g) The taking of measures to An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification, and to restores ecosystem integrity;~~

(f~~h~~)The exercise of sufficient due diligence, taking all measures necessary given the best available scientific and technological knowledge and information, the relevant traditional knowledge of indigenous peoples and local communities, and the corresponding risks involved in the activity to ensure informed decision-making and planning and promote compliance by States, state enterprises, regional economic integration organizations, and natural or juridical persons;~~The use of the best available science and scientific information, as well as relevant traditional knowledge of indigenous peoples and local communities;~~

(g)The application of adaptive management to the utilization of living and non-living resources in areas beyond national jurisdiction in pursuit of sustainable development for the benefit of humankind;

(h~~i~~)The respect, promotion and consideration of ~~their respective obligations relating to the~~ **needs and** 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, including with respect to 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 that may affect those peoples;

~~(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 [see h above];~~

(i~~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.

(j)The promotion and facilitation of public participation, stakeholder engagement, disclosure of activities and attendant risks, and availability of information for public consumption facilitating transparency.

3.Given the critical importance of the ocean to the existence of people on small islands, their particular vulnerability to the consequences of poor conservation and unsustainable utilization of resources, including dwindling food supplies sourced from the ocean, death of barrier reefs that serve as protection and fish habitat, and rising sea levels, and in view of their geographic isolation from other States, priority shall be given to assessing, determining and implementing conservation and management measures with respect to areas beyond national jurisdiction that may serve to lessen the negative impacts on small islands, archipelagic States and their indigenous peoples in particular.

## **Rationale**

TITLE: Re-titling the article will avoid the debate between principles and approaches while capturing the desired effect. PARAGRAPH 1. Delete “be guided by” as this phrase makes the P&A legally non-binding. Additional language is necessary as the listing has no legal context, meaning or application. PARAGRAPH 2. “Due regard” is a recognized legal principle in UNCLOS applied to the High Seas, in particular in UNCLOS Art. 87; P&A are put in the context of the principle of “due regard”, following elements identified in ITLOS Advisory Opinion 17. SUBPARAGRAPH (a) is deleted here as, given the challenges of applying the polluter pays principle in ABNJ, its operationalization must be clarified in Art. 41 or in Part IX rather than listed in General Provisions. In its stead, new Subparagraph (a) reinforces the individual obligation of States without which there is little national obligation to implement and comply with this agreement. With respect to SUBPARAGRAPH (b), the principle of the CHM is moved to the Preamble where it also reflects obligations. New Subparagraph (b) emphasizes obligations of States with respect to CB&TMT at the outset. This is so important that it really needs to be upfront and included as an important obligation while leaving the detail of mandatory v. voluntary obligation for specific sections of the agreement. New SUBPARAGRAPH (c) puts access and benefit sharing into context while future-proofing the IA for ABS for different kinds of resources. The qualifying language of “to every reasonable extent possible depending on the particular resource involved” is used for this purpose. SUBPARAGRAPH (d): combine d, e and f as all would be used in the same analysis. SUBPARAGRAPH (g)/New subparagraph (e) offers grammatical suggestions. SUBPARAGRAPH (h)/ new Subparagraph (f): including “due diligence” to strengthen d and h and relate them to decision-making. SUBPARAGRAPHS (i) and (j): combine these subparagraphs to make new subparagraph (h) to recognize the existential threat and unfair impact that the failure to act appropriately has on local communities (SIDS). Otherwise, we are just restating the Convention without applying it to the reality of the current situation. SUBPARAGRAPH (k) leave as is. ADDITIONAL SUBPARAGRAPH (j): this is added to recognize the importance of stakeholder and public participation as well as transparency in all aspects of the agreement. NEW PARAGRAPH 3: It is imperative that the uneven impact that this our collective failure has had on certain countries in proximity to ABNJ be recognized and that obligations with respect to these effected States be strengthened.

## **Republic of Türkiye**

{(b) The principle of the common heritage of mankind;}

(c) ~~Option 1: The principle of equity;~~

~~Option 2: Fair and equitable sharing of benefits;~~

Option 3: The principle of equity, fair and equitable sharing of benefits;



## **Rationale**

Areas beyond national jurisdiction are part of common heritage of mankind. Therefore, the guiding principles should comprise both the principle of equity and fair and equitable sharing of benefits.

## **United States of America**

An integrated approach whereby Parties cooperate to promote the conservation and sustainable use of marine genetic resources of areas beyond national jurisdiction

## **Rationale**

We do not understand what this means in this context, and do not believe parties should be guided by an approach that is undefined. It does not appear consistently in other international environmental agreements. We suggest adding our proposed text to clarify to what an “integrated approach” is referring.

## **High Seas Alliance**

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

(...)

(d) ~~The application of precaution~~ The precautionary principle whereby when there are threats of serious or irreversible damage, or significant reduction or loss of biological diversity, lack of full scientific certainty shall not be used as a reason for postponing or failing to take measures to prevent environmental degradation;

(e) ~~An ecosystem approach~~ whereby the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction are considered in the context of the functioning of the wider marine ecosystems in which the marine biodiversity occurs to ensure the long-term conservation and sustainable use of marine biological diversity and in so doing, safeguard those marine ecosystems.

(f) An integrated approach to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction to protect and restore the health and integrity of the ocean’s ecosystem.

(...)

(l) the principle of non-regression

## **Rationale**

(d) The “application of precaution” is unclear. HSA’s proposal reflects Rio Principle 15 & the Fish Stocks Agreement Art 6, and the CBD Preamble. “or significant reduction or loss of biological diversity” stems from the CBD Preamble. “failing to take” stems from the Fish Stocks Agreement, Art 6.2.e) ecosystem approach: definition drawn from the South Pacific Regional Management Organization Convention Art. 3, and refers to the CBD which defines the ecosystem approach as ‘a strategy for integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way’ (COP 5 Decision V/6.) (f) integrated approach: reflects The Future We Want (para 158) CBD COP5 Decision V/6. (l) the principle of non-regression on environmental protections is common in free trade agreements and investment treaties, operationalized in Art 4 of the Paris Agreement and included as a basic principle in the Escazú Agreement.

## **World Wide Fund for Nature (WWF) International**

Add three additional principles:

[\(l\) the principle of due diligence;](#)

[\(m\) the principle of due regard; and](#)

[\(n\) the principle of good faith.](#)

## **Rationale**

It is important to include explicit reference to these three principles of due diligence, due regard and good faith as they are the critical concepts underpinning the ‘enhanced cooperation’ framework needed if the BBNJ ILBI is to deliver the holistic, integrated management States say they want. Without wishing to offer definitions, for the sake of clarity, WWF understands these principles to mean:

(i) the due diligence principle obliges States to control activities under their jurisdiction or control to meet their obligations and responsibilities (including having adequate means, exercising best efforts and doing its utmost to achieve that control);

(ii) the due regard principle obliges States to ensure coexistence between equally legitimate activities in a given maritime area; and

(iii) the principle of good faith, when applied in ABNJ, requires a higher level of cooperation between States, as it requires Parties to treaties to, inter alia: perform in good faith so as to not frustrate the object and purposes of the instrument; to interpret the treaty and to exercise their rights in good faith, preventing abuse of rights; and to negotiate (including in this case COP decisions under the Agreement) in a meaningful way.

Of particular interest to WWF is the importance of ensuring that the scope of any BBNJ capacity building or technology transfer (CB&TmT) arrangement is broad enough to include assisting States to upgrade their capabilities to control their nationals (vessels, companies and people) and their exercise of those capabilities. This is necessary so that all States are able to effectively implement, and do not

undermine, the decisions of the BBNJ COP and other relevant international bodies in seeking to give effect to the wishes of the international community in ABNJ.

## ARTICLE 6

### **Bolivarian Republic of Venezuela**

1. Parties shall cooperate **equitably and jointly** under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing **of mutual and reciprocal** 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.
2. A Party that is 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.
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.

### **Rationale**

None provided

### **Holy See**

**1. The Parties recognize the importance of cooperation between one another as well as with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies as a mechanism to implement this Agreement and to strengthen the Parties' joint and individual capacities to protect the environment. In addition to working through the mechanisms of this agreement, including the Conference of Parties, cooperation may therefore be carried out by Parties on a bilateral or plurilateral basis, or on a regional, subregional or sectoral basis, and may include instruments, frameworks and bodies, non-governmental bodies or organizations, non-Parties to this Agreement, or the private sector.**

~~21.~~ Parties **agree on the need to enhance the mutual supportiveness and coordinated action between this Agreement and** 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 **competent with respect to the conservation and sustainable use of biodiversity in areas beyond national jurisdiction. In furtherance of this goal, Parties shall take all reasonable and legal steps to advance** ~~[and members thereof]~~ in the achievement of the objective of this Agreement **in other**

competent fora through consultation and dialogue, particularly with respect to the negotiation and implementation of decisions made under this Agreement.

32. Each Party shall designate the person, authority or authorities responsible for cooperation related to the implementation of this Agreement to serve as its national contact point on matters that relate to coordination of cooperation activities, including capacity building activities and the transfer of marine technology, and shall notify the other Parties in writing within 90 days of the date of entry into force of this Agreement for that Party of its contact point. In the event of any change to its contact point, each Party shall promptly notify the other Parties.

~~A Party that is 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.~~

43. 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.

## **Rationale**

PARAGRAPH 1. The IA must first recognize various bases for cooperation between the Parties to allow for an anticipated hybrid system of governance between global oversight, regional, sub-regional and sectoral bodies and bilateral agreements. This is modeled after CPTPP Art. 20.12.1. PARAGRAPH 2. The paragraph as written in the draft text promotes interference with other IFBs in contravention of the mandate of this IA as well as with the implied good faith and fair dealing standard with which a Party enters into other IFBs. An example of standard language requiring “Good faith” that is often included is contained in Art. 57. Therefore, we suggest a clarification that any overlap between this IA and IFBs is limited to conservation and sustainable use matters. Second, we offer a rewording of the paragraph to avoid our concern about “undermining” other agreements while at the same time the new language expressly provides for a way in which cooperation could be pursued. PARAGRAPH 3. Suggested wording offers a concrete, well-established solution to ensure “enhanced cooperation” through the designation of an authorized person or authority that has been followed for environmental matters, in CB&TMT provisions, and for matters involving genetic resources (including Traditional Knowledge) in the CPTPP (Comprehensive and Progressive Trade Agreement for Trans-Pacific Partnership, CH. 18 Intellectual Property/genetic resources - 18.12, 18.13, 18.14, 18.16 (traditional knowledge and patents); 20.12.3, 21.3 (CB & TMT), 27.5.2 (main provision re Contact Points).

## **International Union for Conservation of Nature**

6.3. 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.

### **Rationale**

The suggested amendment supports international cooperation and capacity development in all four elements of the BBNJ Agreement by clarify and highlight important areas for international collaboration and capacity enhancement to achieve the objective of the BBNJ Agreement.

## **World Wide Fund for Nature International**

6.1A. In giving effect to subparagraph 6.1, one or more States may propose to the BBNJ COP that some of its roles, powers and responsibilities be delegated to a regional arrangement (either an existing arrangement or one developed by the proponents for that purpose) to facilitate implementation of the BBNJ ILBI.

6.1B. In deciding to exercise its power to delegate any of its roles, powers and responsibilities to a regional arrangement the BBNJ COP must ensure that:

- i. the proposed arrangement has the requisite legal competencies to discharge the delegations sought;
- ii. effective oversight, monitoring and reporting arrangements are included;
- iii. participation in any such arrangement remains open to any State declaring an interest in the conservation and sustainable use of the biodiversity of that region; and
- iv. provisions allowing the BBNJ COP to withdraw any delegations are clearly established.

Add a new paragraph 6.4:

6.4 Each State Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, summary reports on relevant activities of its nationals (vessels, companies and people) in ABNJ and reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention.

(i) The COP may maintain guidelines for the preparation of summary reports, including identification of relevant activities and summarising them for reporting purposes. 16

(ii) The COP may maintain guidelines for reporting on implementation measures and on evaluating the effectiveness of those measures.

(iii) The COP may, from time to time, invite Parties to report in detail on particular categories of activities to assist deliberations of the COP on a matter on its agenda.

(iv) Any Party may identify any matter included in any Party's report or summary report as an issue of compliance and may then [refer the issue to the Compliance Committee][raise the issue through compliance arrangements established by the COP].

## **Rationale**

Regarding 6.1A and 6.1B, WWF is encouraged by conversations among some States in wishing to strengthen existing regional arrangements with which they are familiar to make them 'BBNJ ready'. Para.6.1A is intended to facilitate this ambition while para.6.1B is intended to make sure that any delegations can be effectively delivered. This is what WWF considers necessary to develop effective regional arrangements that can deliver a 'regional implementation of global standards' approach.

WWF is also keen to facilitate deeper engagement by developing coastal and small island States by providing an option for them to organise at a scale that best reflects their adjacency interest in respecting traditional knowledge and in the effective management of elements of biodiversity with wide ranges spread across multiple EEZs and ABNJ. While there is no ideal or right scale at which to organise, providing regional-scale options where ecological connectivity considerations and neighbourly cooperation opportunities can best be addressed should be helpful for ocean resource dependent smaller States.

In relation to new paragraph 6.4, as a major, legally binding MEA, it is important that the BBNJ ILBI has a mandatory reporting obligation – with specific reporting provisions in subsequent Parts as appropriate. In the contest of ABNJ, it is important that this reporting obligation is set out as a matter of international cooperation in Article 6 and in Part 1 General provisions so that it applies to all Parts of the BBNJ ILBI.

WWF is aware that there is much frustration among officials at the proliferation of reporting requirements but Parties reporting to each other is the fundamental bedrock of international cooperation. And failure to report against provisions of the instrument and decisions of the body can undermine the efforts of States to ensure the conservation and sustainable use of biodiversity. Indeed, this is why 'unreported' is included in the concept of 'IUU' fishing.

Furthermore, there are clear opportunities for States to be more efficient in their reporting by collaborating, both internally and externally, to avoid duplication. For this reason, improving the efficiency and effectiveness of States' in meeting their reporting obligations, including by working through cooperative arrangements, should be included within the scope of any BBNJ capacity building and transfer of marine technology (CB&TmT) obligations and commitments.

## ARTICLE 6BIS

### **World Wide Fund for Nature International**

#### “Article 6 bis – Maintaining a Global Biogeographic Classification System

“1. The COP shall maintain a Global Biogeographic Classification System to support both implementation of the BBNJ ILBI and States and international bodies in their work to conserve and sustainably use biodiversity of ABNJ.

“2. The COP shall request the SBSTA to provide advice on the development, adoption and maintenance of a Global Biogeographic Classification System, including its elaboration at the regional and sub-regional scales.

“3. The SBSTA may adopt its own guidelines for providing advice pursuant to para.1 to the COP.”

### **Rationale**

A global biogeographic classification system is an important tool to support and inform the work of both States and other international bodies and the broader global scientific community in helping them to understand, and manage the users of, the world’s ocean and its resources. WWF suggests this be done as a COP decision and not just the work of its SBSTA because the system deserves some formal status as it is intended to guide management decision-making by both States and global, sectoral, regional and sub-regional bodies. Biogeography describes the distribution of physical, chemical and biological attributes as the basis for setting ecological boundaries between areas. This classification can then be used to provide for spatial management for instance, in mapping out bioregions within which representative networks of MPAs can be established in both pelagic and benthic realms. Bioregional classifications provide the fundamental building blocks to inform choice of the most appropriate management tools for any geographic area. WWF’s intention is that the SBSTA would consult widely throughout the global scientific community with a view to ensuring that any Global Biogeographic Classification System that might be adopted by the BBNJ COP on the basis of its advice would get ready acceptance by all States and other international bodies in supporting their own work.



## ARTICLE 6TER

### World Wide Fund for Nature International

#### Article 6 ter – Mandatory Reporting for Enhanced Cooperation

“1. Each State Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, summary reports on relevant activities of its nationals (vessels, companies and people) in ABNJ and reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention.

“2. The COP [shall][may] maintain guidelines for the preparation of summary reports, including identification of relevant activities and summarising them for reporting purposes.

“3. The COP [shall][may] maintain guidelines for reporting on implementation measures and on evaluating the effectiveness of those measures.

“4. The COP may, from time to time, invite Parties to report in detail on particular categories of activities to assist deliberations of the COP on a matter on its agenda.

“5. Any Party may identify any matter included in any Party’s report or summary report as an issue of compliance and may then [refer the issue to the Compliance Committee][raise the issue through compliance arrangements established by the COP].”

#### **Rationale**

As a legally binding international instrument, the BBNJ ILBI should axiomatically have mandatory reporting requirements covering implementation of decisions and progress in implementing objectives. For an agreement covering activities in ABNJ, however, reporting between States Parties needs to be a core part of implementation arrangements given the importance of cooperation obligations in UNCLOS provisions and the reliance on sectoral arrangements to deliver expectations of the international community as a whole. This is particularly important for a BBNJ ILBI seeking to create an ‘enhanced cooperation’ regime to facilitate a holistic approach to ecosystem-based, integrated ocean management that goes beyond status quo arrangements. Hence the importance of having a reporting article in Part I applicable to all subsequent Parts of the BBNJ ILBI.

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

## ARTICLE 7

### **Bolivarian Republic of Venezuela**

The objectives of this Part are to:

Promote the fair and equitable sharing of benefits arising from marine genetic resources of areas beyond national jurisdiction, **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, thereby contributing to the conservation of biological diversity on marine areas beyond national jurisdiction and the sustainable use of its components.**

(a) Build and develop the capacity of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to collect *in situ*, access *ex situ*, including as digital sequence information, and utilize marine genetic resources of areas beyond national jurisdiction;

(b) Promote the generation of knowledge and technological innovations **available to all**, including by promoting and facilitating the development and conduct of marine scientific research in areas beyond national jurisdiction, ~~in accordance with the Convention;~~

(c) Promote the development and transfer of **accessible, free and available to all** marine technology, with due regard to all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology.

### **Rationale**

None provided

### **Holy See**

The objectives of this Part are to:

~~(d)~~ Promote the fair and equitable sharing of benefits **between all States** arising from marine genetic resources of areas beyond national jurisdiction;

**(b) Foster the development of those genetic resources that may offer health and other benefits to humankind by scientists of all States through a clearinghouse mechanism;**

~~(c)~~ Build and **strengthen** ~~develop~~ **the capacity of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries, to collect in situ, access ex situ, including as digital sequence information, and utilize marine genetic resources of areas beyond national jurisdiction;**

~~(ae)Promote the generation of knowledge and technological innovations through scientific research of marine genetic resources [sourced in] [of] areas beyond national jurisdiction, including by promoting and facilitating the development and conduct of marine scientific research in areas beyond national jurisdiction, in accordance with the Convention to improve understanding of biodiversity in the marine environment for the mutual benefit of humankind; [Move this to be the first paragraph]~~

(e~~d~~)[no change]

(f) Anticipate sustainable financing measures to support research and product development along with capacity development and technological assistance for less developed States with respect to marine genetic resources [sourced in] [of] areas beyond national jurisdiction.

## **Rationale**

ORDERING OF SUB PARAS. Benefits to all States should be listed first. As drafted, 3 of the 4 objectives anticipate voluntary action by developed States for the benefit of developing States. To our mind, mutual benefit to ALL states accrue from MGRs and this must be emphasized at the outset of this Part because without it, the IA is unlikely to be effective as it's a one-sided agreement. Therefore, current subparagraph (c) should be moved first to (a) and current (a) should follow other subparagraphs focused on mutual benefits (and become subparagraph (d)). ADDITIONAL SUBPARAGRAPH (b): This new paragraph is added to include the clearinghouse mechanism as part of the objectives as it is key to this Part. SUBPARAGRAPH (b)/new (c): The subparagraph should be simplified because the detail about which States deserve to build capacity is extraneous and weakens the text; the references to the types of access may actually prevent the text from being "future-proofed". In simplifying/revising the text, no legal rights have been diminished. SUBPARAGRAPH (c)/new (a): The paragraph needs to apply directly to MGRs and not just reference MSR in general; otherwise, it should be included in the general objectives and not here. NEW SUBPARAGRAPH (f): reference as an objective should be made to sustainable financing, without which capacity building and benefit sharing cannot go forward. If LDCs wait to receive monetary benefits from profits resulting from the use of MGRs, they will not enjoy other benefits. Consideration should be given to reintroducing the concept from UNCLOS of regional centers for study of MGRs and conservation in general.

## **Republic of Indonesia**

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

(b) Build and develop the capacity of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States ~~and~~, ]-developing middle-income countries [, and archipelagic states], to collect *in situ*, access *ex situ*, including as digital sequence information, ~~and~~-utilize [and conserve] marine genetic resources of areas beyond national jurisdiction;

### **Rationale**

None provided

### **State of Palestine**

(e) Contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries.

### **Rationale**

Although a shortened version is included in an earlier version of the BBNJ draft text supported by the G77, this text has been removed from Article 7, and is not present in any other part of the Further revised draft text. This language has its origin in UNCLOS which states in relevant part “the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked.

### **International Union for Conservation of Nature**

- (a) Promote the fair and equitable sharing of benefits arising ~~from-out of the~~ utilization of -marine genetic resources of areas beyond national jurisdiction;
- c) Promote the generation of knowledge and technological innovations, including by promoting and facilitating the development and conduct of marine scientific research in relation to marine genetic resources of areas beyond national jurisdiction, in accordance with the Convention;

## Rationale

(a) The inclusion of “the utilization of” marine genetic resources makes it clear that benefit sharing is triggered by the utilization of the genetic resources, not by 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, notably article 1- **[Article 1 includes “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) Linking capacity building and technology transfer to marine genetic resources is vital. It is important that this knowledge sharing encompasses 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).

## ARTICLE 8

### Bolivarian Republic of Venezuela

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.

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].

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 its entry into force, as well as to those resources collected *in situ* before its entry into force, but utilized after its entry into force.~~

**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.

### **Rationale**

None provided

### Holy See

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 [~~including or~~ their derivatives] originating from areas beyond national jurisdiction, ~~as defined in this Agreement.~~

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 see comment below and alternative proposal for Art. 5].

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.~~

**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.

## **Rationale**

PARAGRAPH 1: We support mention of “collection in situ” to ensure that States that don’t have the resources and technology to collect MGRs have an ability to do so. As for the reference to “access ex situ”, a business does not distinguish points along an R & D chain in this way and to ensure future proofing the IA in light of remote and new technology that does not require collection of samples, Para 1 should simply refer to “utilization of MGRs” and operationalize the concepts in articles 9 and 11. This definition (Art. 1) should include the sale, lease, license or other transfer of rights of the genetic resource in order to address practical business arrangements. More specifically, the phrase “including as DSI” should be part of the definition and does not require specific mention here. Lastly we are unclear why a reference is made to the definition of “ABNJ” here as the term is used throughout the text. PARAGRAPH 2: As worded, the first bracketed reference may exclude the extraction of MGRs and information related thereto for sale. For example, consider companies that collect ocean data and do data analytics on biological resources as a business; a private individual or enterprise that “collects” genetic resources/biological resources, perhaps through automated technology in all levels and in all places in the ocean, with the intent to sell the information is very possible now or in the near future given the use of remote technology sending information to a computer on shore. In addition, the term “biological resources” could exclude genetic resources taken from the ocean such as that used for cosmetics, that require large quantities of the material and are sold with a shorter R & D period. Was this intended? As for the 2nd bracketed language, we are unsure how “fishing” differs from “fishing activities”; how focus on the activity will distinguish genetic resources taken from fish; whether “relevant international law” includes fishing laws on a regional or subregional basis; and whether this excludes the use of genetics in fish used for purposes of aquaculture/fish farming. We recommend instead a general carve-out in General Provisions Art. 5 Application to avoid “undermining” any activities already subject to regulation through UNCLOS Art. 87 so that this agreement can function to fill a gap and supplement a need for conservation and sustainable use without changing what has already been agreed and is operating on a regional/sectoral basis under UNCLOS. If our language is accepted for Art. 5, this paragraph can be deleted. This language is: “5. This Agreement shall not govern activities in connection with utilization of resources in areas beyond national jurisdiction enumerated in Article 87(1) of the Convention, subject to certain further limitations and requirements set forth herein as may be necessary from time to time to fulfill the general duty of Parties stated in Article 192 of the Convention to protect and preserve the marine environment.”

## **Republic of Indonesia**

Option A: The provisions of this Agreement shall apply to:

- [a]. marine genetic resources collected in situ, and accessed ex situ, including as digital sequence information, after the entry into force of the Agreement, [and]
- [b]. ~~as well as~~ to those resources collected in situ, ~~accessed ex-situ, including as digital sequence information~~ before its entry into force but utilized after its entry into force.



~~**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.~~

Para 2

~~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].~~

### **Rationale**

None provided.

### **Republic of the Philippines**

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]~~.

### **Rationale**

Not provided

### **Republic of Türkiye**

#### **Article 8(1) and (3)**

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.
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 its entry into force, as well as to those resources collected *in situ* before its entry into force, but utilized after its entry into force.

~~**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 Part~~

### **Rationale**

Türkiye favors removing the brackets from the phrase [or their derivatives] in Article 8 (1), since “derivatives” are the main outputs of genetic expression or metabolism of genetic resources and of high importance when the utilization and benefit –sharing is in question.

For Article 8 (3), in Option A all genetic resources *-in situ and ex situ-* are contained comprehensively. Besides it has a retrospective effect regarding marine genetic resources collected *in situ*.

### **Article 8(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 its entry into force, as well as to those resources collected in situ before its entry into force, but utilized after its entry into force.

~~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.~~

### **Rationale**

Türkiye prefers Option A and believes that ex situ access is of great importance.

### **International Union for Conservation of Nature**

1. The provisions of this ~~Part 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 including derivatives and digital sequence information, for their utilization in this Agreement.~~

### **Rationale**

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. 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.

## ARTICLE 9

### Holy See

[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.] [In the event that there is a question concerning the origin of a marine genetic resource because it can be found in both areas beyond national jurisdiction as well as in areas within national jurisdiction of an adjacent coastal State, it is presumed that the resource was found in areas beyond national jurisdiction unless the State or its national or those persons over which a State exercises jurisdiction who is utilizing the resource:

(a) Discloses in an official public filing, statement, or recognized public registry that the geographic origin of the resource is within the territorial jurisdiction of the named State, and

(b) the laws of that coastal State have been followed with respect to the activity and resource in question.

If a State or its nationals or person(s) over which a State exercises jurisdiction fails to follow the laws of the coastal State in relation to the utilization of a resource following claims of origin within that State, the law pertaining to areas beyond national jurisdiction as set forth in herein shall also apply, including any responsibility and liability for such unauthorized action.]

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.~~ [Whereas rights and obligations may attach to Parties to this Agreement or to the Convention, or as members under relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies, or as non-party States, or to natural or juridical persons under a State's jurisdiction in respect of any of the foregoing in areas beyond national jurisdiction, these rights and obligations shall not confer on any single State or natural or juridical person, the legal status associated with management, supervision, development or ownership with respect to activities or utilization of marine genetic resources in areas beyond national jurisdiction.][note; we prefer to include this concept in 4bis]

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

### **Rationale**

PARAGRAPH 2: The concept of “due regard” as used here is too nebulous to be of use legally to strengthen existing rights of coastal States. Therefore, we again offer that if it is the will of States to protect the rights of coastal countries, a negative presumption must be applied here. If it is not, then Para 2 should be deleted. PARAGRAPH 3: We have deleted the bracketed language because in collecting MGRs, “appropriation” is exactly what has happened; if what is meant by this is various business concepts of “use”, this has to be phrased differently. The second sentence is deleted because it does not add to the meaning of the first sentence. If the intention of including all of this in this paragraph is to say that a user cannot exert ownership rights, then the paragraph should be revised in the way our proposed language for 4 bis has suggested that we have also included here as it will allow for sharing of benefits. We understand the concern that because of the nature of MGRs, this resource is more susceptible to appropriation. This concept of misappropriation however should be placed in the General Provisions as it will apply to all activities and resources sourced in ABNJ that are reviewed under the EIA provisions or affected by ABMTs. Hence, UNCLOS needs to be supplemented to clarify legal rights with respect to sustainable use of all resources which it currently does not; our offered language for “Art 4bis Without Prejudice” (we have suggested the art. be renamed “Legal Status associated with rights of use”) does just this (and need not be included here in addition to inclusion in Art. 4bis). PARAGRAPH 5: Given the nature of genetic resources, “peaceful purposes” does not suffice. This is not simply about using these as weapons, it is about using genetic resources to the detriment of humankind. The proposed wording is such that this requirement applies only to activities that would not be OK under national or international laws; it is not a subjective standard.

## Japan

1. ~~When Parties and their natural or juridical persons carry out a~~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~~they shall be conducted under the conditions laid down in this Agreement.

~~[2.— In cases where marine genetic resources of areas beyond national jurisdiction are also found in areas within national jurisdiction, activities with respect to those resources shall be conducted with due regard for the rights and legitimate interests of any coastal State in areas within the national jurisdiction of which such resources are found.]~~

~~3.— No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction [, nor shall any State or natural or juridical person appropriate any part thereof]. No such claim or exercise of sovereignty or sovereign rights [nor such appropriation] shall be recognized.~~

~~[4.— The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the benefit of mankind as a whole, taking into consideration the interests and needs of developing States.]~~

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

## **Rationale**

1. The revision in paragraph 1 is suggested because the current text has an implication that only Parties to the BBNJ Agreement could carry out activities with respect to MGR, which is not the case.
2. Japan requests deletion of Article 9(2). We note that under the Convention, coastal states do not have rights over the MGR collected beyond national jurisdiction just because the same MGR is found in their national jurisdiction.
3. Japan requests deletion of Article 9(3). Article 9(3) is similar to Article 137 of the Convention, which only applies to the Area and mineral resources in the Area. Therefore, we are not supportive of having such a provision in the MGR section.
4. Japan also supports removing Article 9(4) as such condition for the utilization of MGR in ABNJ stipulated in this provision is not required under the Convention.
5. We suggest to put paragraph 5 in brackets. The Convention's peaceful purpose clauses in Articles 88 and 141 cover geographical areas, namely "high seas" and "the Area" respectively. However, paragraph 5 talks about peaceful purpose of "activities with respect to MGR." We are open to consider further but are not sure what we are trying to achieve with this provision.

### **United States of America**

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 their jurisdiction and control under the conditions laid down in this Agreement.

#### **Rationale**

“Their natural or juridical persons” is not clear. We suggest using the phrasing “and natural or juridical persons under their jurisdiction in control” for clarity.

### **International Union for Conservation of Nature**

1. Parties shall ensure that aActivities 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.

#### **Rationale**

This provision assumes that humans will be involved in decision-making and collecting and does not consider artificial intelligence and future automated technologies. Marine Autonomous Surface Ships are already 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. 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 included here using the recommended wording above.

## ARTICLE 10

### Bolivarian Republic of Venezuela

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.

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.

3. Parties shall ensure that the following information is transmitted to the clearing-house mechanism ~~at least six months prior~~ **in real time, before, during and after** ~~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 they form 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) Indication of opportunities, for scientists of all States, in particular for scientists from developing countries to be involved/associated in 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.

4. Parties shall ensure that the following information is transmitted to the clearing-house mechanism ~~as soon as it becomes available but no later than six months from~~ **in real time, before, during and after** the collection *in situ* of marine genetic resources of areas beyond national jurisdiction:

(a) The repository or database where environmental meta-data, 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 of the activity undertaken.

5. Parties shall promote cooperation in 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.

### **Rationale**

None provided

### **Holy See**

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. In particular, Parties agree to make every reasonable effort to assist less developed countries that are parties to this agreement to participate in this primary stage of collecting marine genetic resources in areas beyond national jurisdiction.

2. **Collection in situ of marine genetic resources in areas beyond national jurisdiction ~~within the scope of this Part~~ shall be subject to self-declaratory notification to the clearing-house mechanism- [merge with 3]**

~~3. Parties shall ensure that the of the following information is transmitted to the clearing house mechanism at least six months prior to the activity collection in situ of marine genetic resources of areas beyond national jurisdiction:~~

5. Parties shall cooperate:

(i) to provide mutual scientific opportunities to all States in the collection of marine genetic resources in areas beyond national jurisdiction.

(ii) to ensure that no misappropriation takes place by their respective nationals that results in commercial profit to the users of marine genetic resources without recognition of the common ownership of those resources by all States; and

(iii) to observe the jurisdiction of coastal States in the collection of marine genetic resources that may be found in both areas within jurisdiction of a coastal State and in areas beyond national jurisdiction.



~~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 ~~with~~ the adjacent coastal States and any other relevant Parties concerned with a view to avoiding infringement of the rights and legitimate interests of those Parties.

### **Rationale**

PARAGRAPH 1: This paragraph is redundant as the concept is already stated in Art. 9.1, UNLESS the suggested wording is added which makes this new. PARAGRAPHS 2 and 3: should be merged. As worded presently, the notification referred to in Para 2 appears different than the notification required in Para 3, and yet they are intended to be the same notification. Furthermore, we wonder whether including a 6-month minimum time frame will negate any usefulness of this provision, especially in the future, given the newer remote technology for collection of MGRs that may not be required to submit any travel plan and the destination can be altered as needed. PARAGRAPH 5: This provision should clearly and strongly express what cooperation means and not simply reference it. It should also be moved to the beginning of the article. PARAGRAPH 6: This requires the concept of adjacency because otherwise nationals doing the collection would have no idea which State to consult because it could be any coastal State regardless of whether it is near the point of collection. Lastly, this paragraph is much broader than the article in that it relates to utilization (R & D) rather than collection and if kept as is, it belongs in Art. 9

### **Republic of Indonesia**

#### **Article 10**

**[access and] Collection *in situ* of marine genetic resources of areas beyond national jurisdiction**

1. All States, irrespective of their geographical location, and competent international organizations have the right to [access and] collect [in-situ] marine genetic resources [and their derivatives] of areas beyond national jurisdiction in accordance with the Convention.

5. Parties shall promote cooperation in the [access and] collection *in situ* of marine genetic resources [and/or its derivatives] of areas beyond national jurisdiction.

### **Rationale**

None provided

## **Japan**

3. Parties shall ensure that the following information is transmitted to the clearing-house mechanism, except in case of emergency, at least six months prior to the collection *in situ* of marine genetic resources of areas beyond national jurisdiction:

[....]

~~(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. When an opportunity for onboard training or research collaboration is available, the related information shall be disseminated through the clearing-house mechanism sufficiently in advance to allow adequate time for participants to prepare.~~

[....]

4. Parties shall ensure that the following information is transmitted to the clearing-house mechanism as soon as it becomes available, but no later than six months from the end of the voyage which involved 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.~~

## **Rationale**

1. Unlike marine scientific research in EEZ of a foreign Coastal State, pre-collection notification does not require approval. So, the six months period to consider whether it should approve the collection of MGR in ABNJ is not necessary in case of pre-collection notification. If the information relating to planned MGR collection is made public six months in advance, it may increase the risk of excessive catch especially when that MGR to be collected is from rare species. When an opportunity for onboard training or research collaboration is available, the related information should be disseminated through the clearing-house mechanism well in advance in order to give participants enough time to prepare. In this regard, “at least six months” is deleted in our proposal, and subparagraph (h) is revised.

2. In respect to the obligation of the pre-collection notification, “except in case of emergency,” is added as pre-collection notification may not be feasible in emergency situation such as environmental DNA collection conducted right after natural or manmade disasters to check the impacts to the biological diversity of that area. No change is proposed for the post-collection notification.

3. Scientific research cruise in ABNJ can be is months-long. For this reason, we suggest that time-limit of six months for the post-collection notification should be counted from the date on which the cruise ends, instead of counting from the date of collection.

4. We suggest to delete para.6, as we don’t believe that utilization of MGR of ABNJ requires prior notification and consultation with Coastal States in whose national jurisdiction the same type of MGR can be found. UNCLOS does not provide such an obligation.

## ARTICLE 11

### Bolivarian Republic of Venezuela

#### OPTION I:

1. The benefits arising from the collection *in situ* and the use of marine genetic resources of areas beyond national jurisdiction shall be shared in a fair and equitable manner.
2. Benefits shall include various types of contributions to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.
3. Benefits shall be shared in the form of:
  - (a) Access to samples and sample collections;
  - (b) Pre-collection and post-collection information contained in the notifications provided in accordance with articles 10(3) and 10(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 countries;
  - (e) Findable, accessible, interoperable and reusable scientific data, including digital sequence information according to international practice in these fields;
  - (f) Other forms as determined by the Conference of the Parties [based on recommendations of the access and benefit sharing mechanism].
4. Taking into account current international practice in these 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.
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.

#### OPTION II:

1. The benefits arising from the collection *in situ* of, access *ex situ*, including as digital sequence information, to, and the utilization of marine genetic resources of areas beyond national jurisdiction shall be shared in a fair and equitable manner.
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.
3. Non-monetary benefits shall be shared in the form of:
  - (a) Access to samples and sample collections;
  - (b) Pre-collection and post-collection information contained in the notifications provided in accordance with articles 10(3) and 10(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 countries;
- (e) Findable, accessible, interoperable and reusable scientific data, including digital sequence information according to international practice in these fields;
- (f) Other forms as determined by the Conference of the Parties based on recommendations of 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:

- (a) The following information is provided to the clearing-house mechanism:
  - (i) An indication of where the results of the utilization can be found, including any digital sequence information;
  - (ii) Where available, details of the post-collection notification to the clearing-house mechanism related to the marine genetic resources that were the subject of utilization;
  - (iii) An indication of where the original sample that was the subject of utilization, if available, is held;
  - (iv) An indication of the modalities foreseen for accessing the samples or results of the utilization referred to in subparagraphs (i) and (iii).
- (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;
- (c) The results of the utilization undertaken, including environmental meta-data, taxonomic information and any digital sequence information, are deposited in a publicly accessible repository or database, taking into account current international practice in these fields.

5. The information described in paragraph (4)(a) shall be transmitted to the clearing-house mechanism and the samples and results described in paragraph (4)(b) and (c) shall be deposited as soon as they become available and:

- (a) No later than three years from the start of the relevant utilization;
- (b) On the subsequent placing on the market of any product developed by the utilization of a marine genetic resource of areas beyond national jurisdiction or on the subsequent generation of further results of utilization.

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:

- (a) The need to preserve the physical integrity of original samples;

(b) The reasonable costs associated with maintaining the relevant database, biorepository or gene bank in which the sample, data or information is held;

(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:

(a) Milestone payments;

(b) Royalties;

(c) Other forms as are determined by the Conference of the Parties based on recommendations of the access and benefit sharing mechanism.

8. The Conference of the Parties shall determine the rate of payments related to monetary benefits based on 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 least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries,] according to mechanisms 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, access *ex situ*, including as digital sequence information, to, and the utilization of marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.

## **Rationale**

None provided

## **Republic of Türkiye**

### **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.~~

~~2. Benefits shall include various types of contributions to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.~~

~~3. Benefits shall be shared in the form of:~~

~~(a) Access to samples and sample collections;~~

~~(b)Pre-collection and post-collection information contained in the notifications provided in accordance with articles 10(3) and 10(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 countries;~~

~~(e)Findable, accessible, interoperable and reusable scientific data, including digital sequence information according to international practice in these fields;~~

~~(f)Other forms as determined by the Conference of the Parties [based on recommendations of the access and benefit sharing mechanism].~~

~~4.Taking into account current international practice in these 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.~~

~~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.~~

#### OPTION II:

1.The benefits arising from the collection in situ of, access ex situ, including as digital sequence information, to, and the utilization of marine genetic resources of areas beyond national jurisdiction shall be shared in a fair and equitable manner.

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.

3.Non-monetary benefits shall be shared in the form of:

(a)Access to samples and sample collections;

(b)Pre-collection and post-collection information contained in the notifications provided in accordance with articles 10(3) and 10(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 countries;

(e)Findable, accessible, interoperable and reusable scientific data, including digital sequence information according to international practice in these fields;

(f)Other forms as determined by the Conference of the Parties based on recommendations of 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:

(a)The following information is provided to the clearing-house mechanism:

(i) An indication of where the results of the utilization can be found, including any digital sequence information;

(ii) Where available, details of the post-collection notification to the clearing-house mechanism related to the marine genetic resources that were the subject of utilization;

(iii) An indication of where the original sample that was the subject of utilization, if available, is held;

(iv) An indication of the modalities foreseen for accessing the samples or results of the utilization referred to in subparagraphs (i) and (iii).

(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;

(c) The results of the utilization undertaken, including environmental meta-data, taxonomic information and any digital sequence information, are deposited in a publicly accessible repository or database, taking into account current international practice in these fields.

5. The information described in paragraph (4)(a) shall be transmitted to the clearing-house mechanism and the samples and results described in paragraph (4)(b) and (c) shall be deposited as soon as they become available and:

(a) No later than three years from the start of the relevant utilization;

(b) On the subsequent placing on the market of any product developed by the utilization of a marine genetic resource of areas beyond national jurisdiction or on the subsequent generation of further results of utilization.

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:

(a) The need to preserve the physical integrity of original samples;

(b) The reasonable costs associated with maintaining the relevant database, biorepository or gene bank in which the sample, data or information is held;

(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:

(a) Milestone payments;

(b) Royalties;

(c) Other forms as are determined by the Conference of the Parties based on recommendations of the access and benefit sharing mechanism.

8. The Conference of the Parties shall determine the rate of payments related to monetary benefits based on 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 least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States and developing middle-income countries,] according to mechanisms 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, access *ex situ*, including as digital sequence information, to, and the utilization of marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.

### **Rationale**

Türkiye considers this alternative to be more comprehensive regarding the inclusion of a fair and equitable sharing of benefits arising from the collection *in situ* of, access *ex situ* to, and utilization of marine genetic resources of areas beyond national jurisdiction, including digital sequence information. The non-monetary and monetary benefits are covered separately and in significant detail. Additionally, utilization of marine genetic resources in areas beyond national jurisdiction by natural and juridical person of a Party is also regulated in Option II.

### **United States of America**

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 and control are shared in accordance with this Agreement.

### **Rationale**

This edit is to bring this language in line with our suggested language clarification in Article 9.1.

## ARTICLE 11BIS

### United Nations Environment Programme

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].

2. ALT1 [The Conference of the Parties shall agree on the number of members of the mechanism at its first meeting.] ALT 2 The access and benefit sharing mechanism shall be composed of [number of members] members, [which shall be] 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 and gender balance.

4. The mechanism shall: (c) Propose rates or mechanisms for the sharing of [monetary] benefits according to article 11;

### **Rationale**

For paragraph 1: The Revised draft text of an agreement (as in A/CONF.232/2020/3) in article 11 on fair and equitable sharing of benefits provides for two options. Option 1 does not refer to ‘monetary and non-monetary benefits’ but rather to ‘various types of contributions’, option 2 does refer to monetary and non-monetary benefits in paragraphs 2-3. We proposed to add brackets around ‘monetary and non-monetary’, as the language differences in terms of drafting will be determined based on the option chosen for article 11. For paragraph 2: (i) We propose either adding text from Alt 1 to clarify that the Conference of the Parties shall decide the number of members of the mechanism, or to indicate in the paragraph the number of members immediately. The rationale for this suggested addition is that otherwise the sentence “However, if necessary, the Conference of the Parties may decide to increase the size of the mechanism...” would not be necessary under this paragraph. Preference for Alt2 as we believe fits better with the sentence “However, if necessary, the Conference of the Parties may decide to increase the size of the mechanism...”; (ii) we suggest adding a reference to ‘gender balance’ following the example of the capacity-building and transfer of marine technology committee (Option III, Article 47); For paragraph 4 c): same rationale than for paragraph 1.

## ARTICLE 12

### Holy See

1. 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.

2. In particular, the Parties may endeavor to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with marine genetic resources, and marine genetic resources.

3. The Parties may also endeavor to pursue quality patent examination, which may include:

(a) that in determining prior art, relevant publicly available documented information in the clearinghouse mechanism related to traditional knowledge associated with genetic resources may be taken into account;

(b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with marine genetic resources sourced in areas beyond national jurisdiction; and

(c) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with marine genetic resources

### **Rationale**

PARAGRAPH 1: The intention of this article originally was to ensure that IPRs could not act as a barrier to the sharing of benefits from resources collected in ABNJ, an area commonly held by all States. Therefore, we assume this is the intent of this paragraph. However, it is unclear to us what is meant legally by “ensure that no action is taken in relation to IPR that would undermine the sharing of benefits.” First, it’s unclear whether the “action” referred to would be that taken by the State Party, or the State has to take prevent action by someone applying for an IPR, the patent office, or WIPO or the WTO. Second, by its nature, an intellectual property right is an exclusive right to an idea, design or product for a certain period of time, including any profit obtained from it. So does this mean that the right to recognition of an IPR is blocked entirely if an MGR from ABNJ is involved? If so, this goes against the beginning part of the sentence. For this second part Lastly, Art. 9 purports to address the issue of origin and traceability under “Activities” using the uncertain doctrine of due regard and requiring no determinable action by States;

it is therefore ineffective in achieving this result. The bracketed text in this article regarding traceability is likewise weak and unclear as a result of the negative phrasing. NEW PARAGRAPHS 2 AND 3: As for the additional paragraphs suggested, we submit that this article could be used in a positive way to incorporate capacity building with respect to MGRs: New paragraphs 2 and 3 have been taken directly from the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) CH 18 Intellectual Property, Art. 18.16 Cooperation in the Area of Traditional Knowledge. The only changes made to these paragraphs were to replace the word “shall” with “may” (wording choice is up to States) and to reflect the clearinghouse mechanism of this IA. Without these additional obligations contained in these paragraphs, cooperation and most notably capacity building with respect to MGRs and TK may be very weak if reliance is placed solely on the clearinghouse database.

### **Republic of Türkiye**

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 the context of intellectual property rights that would undermine the sharing of benefits arising from [and the traceability of] marine genetic resources of areas beyond national jurisdiction.

### **Rationale**

Türkiye favors retaining the wording “and the traceability of” .It is considered suitable not to leave to the sovereignty of any individual or state the use of subjects gained from research conducted in areas beyond the national jurisdiction and that may be assessed under intellectual property protection for the benefit of all mankind. As a result, it is thought that broadening the protection will be in everyone's best interests

### **International Union for Conservation of Nature**

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 ~~other~~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 the context of intellectual property rights that would undermine the sharing of benefits arising from [and the traceability of] marine genetic resources of areas beyond national jurisdiction.

**Rationale**

This provision could work and leaves space for Parties to work through other international regimes to adopt more clear rules related to intellectual property. 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

### Republic of Türkiye

#### OPTION I: Monitoring and transparency

#### ~~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 to submit guidelines to the Conference of the Parties. Based on its findings, the Conference of Parties may recognise 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.~~

~~2. Transparency on the sharing of benefits arising from the collection *in situ* of marine genetic resources of areas beyond national jurisdiction shall be carried out through the clearing house mechanism through the publication and dissemination of pre-collection 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 information is transmitted as soon as it becomes available, to the clearing house mechanism:~~

~~—(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 foreseen to facilitate access to databases, including digital sequence information, to repositories and gene banks;~~

~~—(d) Information on where scientific data are deposited and information on the transfer of knowledge.~~

~~4. Parties shall transmit information received from natural or juridical persons under their jurisdiction or control to the clearing house mechanism in case of commercialization of products based on the utilization of marine genetic resources of areas beyond national jurisdiction.~~

~~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.~~

#### **Rationale**

Türkiye believes that “Option I” offers a more comprehensive option, which includes both monitoring and transparency aspects. Additionally, the monitoring system is described in

a more precise, functional, and thorough manner in “Option I”. This alternative also conforms with Article 8 subparagraph (3) and Article 11 option II.

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



## ARTICLE 14

### Holy See

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 in order to, 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;

~~(b) Conserve and sustainably use areas requiring protection, including by~~ Eestablishing 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;

~~[(c) As is]~~

(cbis) Apply environmental protection through area-based management tools in furtherance of the sustainable use of both living and non-living resources measuring such use by the application of risk factors to biodiversity and ecosystems;

(cter) Apply or recognize the use of area-based management tools on a global, regional, subregional or sectoral basis in furtherance of sustainable development in order to protect limited resources or fragile ecosystems and to facilitate the peaceful and fair access to those areas of ocean and ecosystems as well as allocation of marine resources between States;

~~[(d) Support food security and other socioeconomic objectives, including the protection of cultural values;]~~ Aid those countries such as small island developing States, archipelagic States, and coastal developing States that are most vulnerable to conditions in neighboring ocean territories of areas beyond national jurisdiction, including by facing existential threats to their barrier reefs, food supply, socio-economic well-being, and cultural values, through the targeted and tailored use of area-based management tools;

~~[(e) Create scientific reference areas for baseline research~~ in order to assess conditions pertaining to the health of living things, including necessary basics to sustain life such as clean water and biodiversity throughout all levels of the food chain, and to better understand and identify ecosystems that must be targeted

for conservation and sustainable use;] NOTE: this should be moved to the beginning of the list as (b)]

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

[(g) ~~Promote coherence and complementarity.~~] Provide for strategic environmental assessments and cumulative environmental assessments in order to guide the consideration of whether the application of an area-based management tool is appropriate and to apply adaptive management.

## **Rationale**

Paragraphs b and c really address conservation, and to our mind, the IA must similarly and directly address sustainable use because otherwise it won't be clear if action taken "undermines" IFBs that regulate use. We therefore propose the following paragraphs. NEW PARAGRAPH (c)bis: Although UNCLOS speaks of living resources, it does not address non-living resources other than minerals in the seabed, and resources such as ocean water (think geo-engineering), possibly sand (it is questionable whether sand is a mineral in itself), and renewable energy sources, among others, may not be included. Second, sustainable use to investors doing an ESG analysis or a corporation exploiting a resource differs from the meaning of sustainable use as used for the purposes of this agreement; from an investment or corporate perspective, sustainable use is not limited to environmental risks and includes such factors as balancing environmental equity and economy across products, packaging, facilities, energy usage, people, and waste in a way that doesn't contribute to global warming, climate change and biodiversity loss. The application of how to measure sustainability should be further clarified throughout this Part and hence the reference to limited risk factors. NEW PARAGRAPH (c)ter is needed to operationalize cooperation with IFBs and to anticipate MSP. PARAGRAPH (d): needed to put the existing paragraph into proper context and recognize the vulnerable position of these States and have the use of ABMT as an aid to them as an objective! PARAGRAPH (e): in mentioning an objective, the reason for it should be stated. PARAGRAPH (g): These assessments will be key to persuading IFBs that implementation of any ABMT is in their long-term best interest. Therefore Art. 25 regarding cumulative impacts should be included here in part and Art. 41ter on SEAs should be referenced in Part III and tied to ABMTs. Moreover, adaptive management of ABMTs must be an objective to this Part as it will be key to cooperation by many States and IFBs that will be resistant to limitations of use/rights.

## **Republic of the Philippines**

(a) 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; 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;~~

~~(b) 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; 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;~~

~~{(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 pollution;}~~

~~{(d) Support food security and other socioeconomic objectives, including the protection of cultural values;}~~

~~{(e) Create scientific reference areas for baseline research;}~~

~~{(f) Safeguard aesthetic, natural or wilderness values;}~~

~~{(g) Promote coherence and complementarity.}~~

~~2. The objectives specified in paragraph 1 may be further elaborated or revised by the Scientific and Technical Body, when necessary, for consideration by the Conference of the Parties.~~

## **Rationale**

We suggest for subparagraph (b) to move as subparagraph (a); and (a) as subparagraph (b). We believe that subparagraph (b) is the primary objective of this Part.

However, we would like to see some formulation showing some flexibility to revise or include additional objectives when necessary as well as further elaboration of the identified objectives consistent with the general objective of the ILBI subject to the review and decision of the COP.

## **International Union for Conservation of Nature**

a) Enable a holistic, coordinated, 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 Enhanced 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;~~

(b) Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of climate-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;~~

(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;

~~{(c) Protect, preserve, Rehabilitate and restore biodiversity and ecosystems, including with a view to enhanceenhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution;}~~

(d) (e) and (f) remove brackets

~~{(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.}~~

## **Rationale**

(a) Suggested changes specify a goal for cooperation -- coordinated ecosystem-based approaches. Cooperation works best when there is a shared vision and purpose. EBA - with its focus on safeguarding ecological integrity - provides such a purpose.

(b) Changes indicates specific ways that ABMTs contribute to biodiversity conservation and sustainable use. The reference to “climate adaptive” reflects the need for ABMTs to keep up with changes resulting from climate change.

## **High Seas Alliance**

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 support delivery

of capacity building and the transfer of marine technology to Parties, while also promoting a holistic and cross-sectoral approach to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction;

(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;~~

(b)bis Establish a system of ecologically representative marine protected areas that are connected and effectively and equitably managed;

{(c) Maintain, protect, Rehabilitate and restore biodiversity and ecosystems, including with a view to enhancing their productivity and health and building resilience to stressors, including those related to climate change, ocean acidification and marine pollution;}

{(d) Support food security and other socioeconomic objectives, including the protection of cultural values;}

{(e) Create scientific reference areas, including for baseline research;}

[...]

### **Rationale**

We suggest adding language to reflect the importance of supporting capacity building and the transfer of marine technology in order to effectively carry out the ABMT objectives of the Agreement.

The structure of Paragraph (b) could imply that all MPAs should have both conservation and sustainable use objectives, and it could also lead to counting ABMTs that do not have conservation objectives towards meeting global conservation targets. So for these reasons the HSA prefers keeping “establishing a system of ecologically representative MPAs...” as a separate objective, as in the previous version of the text. Paragraphs (c) through (e) are all important to include as objectives under this part, so we would recommend deleting the brackets around those paragraphs.

Under Paragraph (c), we recommend adding “Maintain” and “protect” in addition to “rehabilitate and restore”-- as avoiding harm is the best way to ensure ocean health and build resilience.

### **World Wide Fund for Nature (WWF) International**

(aa) Set out a clear process for establishing MPAs in ABNJ, including proposals by States Parties, designation of MPAs by BBNJ COP, adoption of Management Plans by BBNJ COP, appropriate involvement of relevant competent sectoral bodies in regulating activities to implement Plans, routine monitoring by relevant bodies with reporting to BBNJ COP, and occasional review by BBNJ COP.

Remove brackets from para.s (c) to (g)

{(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 pollution;}

{(d)Support food security and other socioeconomic objectives, including the protection of cultural values;}

{(e)Create scientific reference areas for baseline research;}

{(f)Safeguard aesthetic, natural or wilderness values;}

{(g)Promote coherence and complementarity.}

[\(h\) provide for the BBNJ COP to be able to add additional objectives for the establishment and management of ABMTs, including MPAs.](#)

Remove brackets from para.s (c) to (g)

{(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 pollution;}

{(d)Support food security and other socioeconomic objectives, including the protection of cultural values;}

{(e)Create scientific reference areas for baseline research;}

{(f)Safeguard aesthetic, natural or wilderness values;}

{(g)Promote coherence and complementarity.}

[\(h\) provide for the BBNJ COP to be able to add additional objectives for the establishment and management of ABMTs, including MPAs.](#)

## **Rationale**

The BBNJ ILBI needs to create a clear mandate for the BBNJ COP to designate MPAs in ABNJ and to ensure they are effectively managed to its satisfaction. This is needed to close the principal legal gap identified by the UNGA in adopting its 2011 BBNJ ‘package’

There is no need or justification for narrowing the scope of purposes for which an ABMT might be applied. Whether specific purposes are appropriate is something to be discussed and resolved on a case-by-case basis throughout the process of establishing ABMTs. Giving the COP the mandate to add to any list that might be set out in the text of the ILBI is important to retain this flexibility to tailor specific proposals to their specific situations.

## ARTICLE 14BIS

### World Wide Fund for Nature (WWF) International

#### Article 14 bis – MPAs and Other ABMTs

This Part III consists of two Sections.

(a) Section 1 sets out the process for establishing Marine Protected Areas (MPAs) in ABNJ, including: the designation of MPAs by the BBNJ COP; adoption of Management Plans for those MPAs by the COP; the appropriate involvement of competent sectoral bodies willing and able to regulate activities to implement those Plans; routine monitoring by relevant bodies including reporting to the COP; and occasional review by the COP.

(b) Section 2 identifies other categories of Area-based Management Tools (ABMTs) capable of contributing to an enhanced cooperation framework for implementing the BBNJ ILBI, including: appreciation of the use of ABMTs by other bodies that can contribute to the work of the BBNJ COP in implementing the BBNJ ILBI; establishment of other ABMTs by the BBNJ COP should the need arise; and provision for the BBNJ COP to identify additional categories of ABMTs.

#### **Rationale**

Implementation of the UNGA's 2011 'package' requires, inter alia, that the BBNJ ILBI provide for the BBNJ COP to 'designate' MPAs and adopt management plans for them. The mandate and power for the BBNJ COP to 'designate' MPAs in ABNJ, consistent with IUCN guidance, in particular in being cross-sectoral and indefinite, is needed to fill a legal gap identified by the UNGA. This requires special arrangements be included in the provisions of the ILBI that clearly set out the process for establishing MPAs in ABNJ that includes a 'designation' power for the COP.

Consistent with the proposed use of terms in Article 1, wherein para. 3 Option B clarifies that MPAs are tools to 'achieve ... conservation objectives', a number of consequential amendments throughout Part III are needed to make it clear that MPAs are solely for conservation purposes. Such a separation of MPAs from other ABMTs does not axiomatically exclude uses from MPAs but does require any uses to be consistent with the protection of the values for which the MPA was designated and the provisions of MPA Management Plans.

## ARTICLE 17

### European Union and its Member States

#### Article 17, paragraph 4(i)

Information on any consultation undertaken with other Parties including the most potentially affected States, including any States with a continental shelf subjacent or maritime area adjacent to any proposed MPA and States that carry out human activities including economic activities, in the area, adjacent coastal States States and/or relevant global, regional, subregional and sectoral bodies that have a role and activities in the proposed area.

#### **Rationale**

The EU and its MS believe the proposal should include information on all early consultations undertaken, not only the one with adjacent coastal states or the IFBs.

#### Holy See

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

1bis. Parties recognize that proposals for “other effective area-based conservation measures” may be more suitably submitted to subregional, regional or sectoral bodies as these tools may need to be regionally or sectorally tailored to integrate contextual considerations of purpose, sector and scale in a certain geographic area. In these situations, the choice of the decision-making body will rest with the State or States making the proposal. Consequently, the Parties agree to submit to the Secretariat copies of these proposals for the application of area-based management tools that are submitted to other States, bodies or organizations and any related or updated paperwork, descriptions and decision related thereto.

**[2. Parties may collaborate with relevant stakeholders, including global, regional and sectoral bodies, as well as civil society and indigenous peoples and local communities in the development of proposals, ~~as set out in article [19] [19bis] under this Agreement.~~**

[(g)The anticipated duration of the proposed ~~area and~~ measures or indicators that would allow for adaptive management of the area;]



## **Rationale**

PARAGRAPH 1: submissions must be made in writing because otherwise, it is unclear in Art. 17 how oral views will be made publicly available. PROPOSED NEW PARAGRAPH 1bis: These provisions as drafted give sole and ultimate control to the global body, however, we believe that that the decision of States was to recognize and establish a hybrid system of governance of conservation and sustainable use; otherwise, the IA will not be used and will undermine IFBs. Therefore, the IA should anticipate that proposals for certain types of ABMTs eg, OECMs, may continue to be more appropriately decided in other fora whereas a network of MPAs may be decided at a global level. The proposed language provides for that circumstance. This system does not prevent oversight and improvement (complementary measures) by the global body of those ABMTs. PARAGRAPH 2: The focus is on proposals and yet this paragraph references provisions regarding decision-making so it makes it unclear when the collaboration is supposed to take place. Should this reference be to Art. 18.2.b? PARAGRAPH 4.g.: reference adaptive management plan

## **Republic of the Philippines**

[...]

{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.}

4. Proposals shall include the following key elements:

[...]

{(g) The duration of the proposed area and measures, when applicable;}

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.

## **Rationale**

On paragraph 4, we generally support this item and the enumeration under it, noting however that for subparagraph g, the duration is usually reflected in an adopted management plan where timeframe for implementation, review and updating of the measures are specified. The results of the management assessment and evaluation shall determine if the specified measures are effective and achieving their goal, or not. The same shall become the basis if the measures are to be continued, updated or disestablished.

## **Republic of Türkiye**

Article 17(4)(d)

(d) A description of the state of the marine environment, ~~and~~ biodiversity and stock assessment studies in the identified area.

### **Rationale**

Türkiye believes that, biodiversity alone may not be sufficient to determine the marine environment, thus stock studies of target species could be conducted. Therefore, Türkiye suggests the addition wording of “and stock assessment studies”.

## **High Seas Alliance**

[...]

~~{2. Parties may collaborate with relevant stakeholders, including global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, indigenous peoples and local communities, in the development of proposals, as set out in article [19] [19 bis] under this Agreement.}~~

[...]

4. Proposals shall include the following key elements:

[...]

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

(f) A description of the proposed measures and priority elements for a management plan to be adopted including, when relevant, a description of activities to be managed, restricted or prohibited to achieve the specified objectives;

~~{(g) The duration of the proposed area and measures;}~~

[...]

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.

### **Rationale**

The HSA welcomes the option for relevant stakeholders, including IPLC and civil society, to collaborate in the development of proposals. We would therefore support removing the

brackets around paragraph 2. To be consistent with article 19, the list should also include “scientific community”.

In paragraph 4(e), we would strike “conservation and sustainable use” before “objectives” to both streamline the text and also ensure that it can be applied to either ABMTs generally or MPAs specifically.

We strongly support para (f) including a description of the proposed measures and priority elements for a management plan to be adopted among the key elements of the proposal and we would suggest adding “including, when relevant, a description of activities to be managed, restricted or prohibited” as originally suggested by Australia.

HSA strongly recommends deleting 4(g)--MPAs are long-term tools, and can also be established as scientific reference areas, and it is inappropriate to include an arbitrary duration. Proposals for establishing ABMT should not be conditioned on time, but on the conservation objectives it pursues.

In paragraph 5, the HSA supports the STB being empowered (“may”) but not required (“shall”) to elaborate further requirements regarding the contents of proposals

### **International Cable Protection Committee**

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 17bis, paragraph 2, applied in identifying the area;
- (c) Specific ~~human-existing and planned~~ activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States;
- (d) A description of the state of the marine environment and biodiversity in the identified area;
- (e) A description of the specific conservation and sustainable use objectives that are to be applied to the area;
- (f) A description of the proposed measures and priority elements for a management plan to be adopted to achieve the specified objectives;
- [(g) The duration of the proposed area and measures;]
- (h) A monitoring, research and review plan, including priority elements;
- (i) Information on any consultations undertaken with adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies.

### **Rationale**

The amendment will help ensure that State parties proposing ABMTs identify, when they develop the ABMT proposal, submarine cables that are (i) installed and operating on the seabed or (iii) planned and publicly announced but not yet fully installed or operating in the area. Otherwise, there is a risk that submarine cable operators might not be notified and included in the development of ABMT proposals. As long-term fixed infrastructure on the seafloor that is essentially invisible and which does not require a continuous human presence on the ocean, submarine cables have sometimes been omitted or forgotten in marine planning and coordination activities (such as MPAs within national jurisdiction, and deep seabed mining beyond national jurisdiction). Early consultation will help submarine cables cohabit with MPAs. The proposed

language tracks the language of the Convention (which refers to “activities,” not “human activities”) and includes planned activities in addition to existing ones.

## **Ocean Care**

(f) A description of the proposed measures and priority elements for a management plan to be adopted including, when relevant, a description of activities to be managed, restricted or prohibited to achieve the specified objectives;

(j) Information on transboundary pollution that is known, likely and has the potential to adversely impact the area

## **Rationale**

For the Agreement to be effective the proposal should include a description of the proposed conservation and management measures and the activities to be managed. This is particularly critical for pollutants, such as ocean noise, that are transboundary in nature and whose effects reach, in many cases, into ABNJ.

Point (j) was included in earlier version of the draft Agreement.

## **World Wide Fund for Nature (WWF) International**

### **Article 17 Proposals**

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

~~[2. Parties may collaborate with relevant stakeholders, including global, regional and sectoral bodies, as well as civil society and indigenous peoples and local communities in the development of proposals, as set out in article [19] [19bis] under this Agreement.]~~

~~3. Proposals shall be formulated on the basis specified in paragraph 1 of article 17bis.~~

~~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 paragraph 2 of article 17bis, applied in identifying the area;~~

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

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

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

~~(f) A description of the proposed measures and priority elements for a management plan to be adopted to achieve the specified objectives;~~

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

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

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

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

#### Article 17 – Proposals to Establish MPAs

1. Any one or more States Party may submit proposals to the BBNJ COP for the designation of an area as an MPA. A proposal may include multiple areas, including networks and systems of MPAs. A proposal may also include suggested management arrangements.

2. A proposal should identify one or more of the criteria in Annex 1 relied upon by the proponents in developing the proposal.

3. The BBNJ COP may develop and maintain guidelines to assist States in preparing and submitting such proposals.

#### **Rationale**

It is inappropriate for the text of a binding international instrument to set out how an MPA proposal should be developed. This is a matter best left to the BBNJ COP to consider adoption of guidelines to assist proponents. Additionally, the proposal should be made to the BBNJ COP in the first instance. It is then a matter for the COP to engage its Secretariat and consult its Subsidiary Body on Scientific, Technical and Technological Advice in further progressing any such proposals.

## ARTICLE 17BIS

### **Bolivarian Republic of Venezuela**

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;

(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 the 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.

### **Rationale**

None provided

### **Holy See**

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;

(b) By reference to one or more of the indicative criteria specified in annex I;

(c) Taking note of any environmental criteria utilized by adjacent States, instruments, frameworks, organizations or bodies having oversight of activities in the particular area under review; and

(d) Shall be strategically sited to increase environmental effectiveness.

3. ~~Option A: The indicative criteria described in the 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.~~

**4. Identification of areas constituting a network of marine protected areas shall not only include reference to the criteria in annex I but shall include consideration of the totality of the network and the combined strategic effectiveness of the adjoining areas in achieving the conservation and sustainable use objective of the area-based management tool.**

**5. Areas previously identified for protective measures by agreement between States or by a subregional, regional or sectoral body may be subject to consideration by the [Scientific and Technical Body] [Conference of Parties] of additional or different criteria, in particular to recognize such criteria and perspective as applied by those States or bodies and to determine what makes that criteria different or more pertinent than that applied in annex I.**

**6. Areas identified for protection in areas beyond national jurisdiction by small island developing States or archipelagic States may require consideration of additional indicative criteria including the relationship between the area and biodiversity under consideration and the environmental, social and economic threats and risks to the State presented by the lack of protection or the application of further protection.**

## **Rationale**

PARAGRAPH 1: given that these are area-based tools, and determined on a global basis, recognition should be given that identifying areas must be strategic on a global level. Moreover, in an effort to operationalize cooperation and coordination, we recommend some provision that recognizes that there will be IFBs that regulate activities in an area – this can't be totally ignored at the identification stage. PARAGRAPH 3: Both options reiterate what is already stated in 1b and 2 or is more aptly included in Art. 18 or 19 that deal with review of the proposal. NEW PARAGRAPHS: Additional paragraphs are needed to recognize identification of MPAs for a network, situations involving IFBs, and the effect of an ABMT on SIDS and other States given their special circumstances. Further explanation must be given in these 3 situations given that decisions regarding ABMTS will necessarily take rights away from current use, especially as already regulated by IFBs

and/or groups of States themselves. We also stress that a hybrid system of governance requires some differentiation of MPAs from ABMTs/OECMs since they may not follow this same identification process; in fact, different levels of governance may be involved, including subregional, regional or sectoral governance.

### **Republic of Türkiye**

3. Option A: The indicative criteria described in the 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.~~

### **Rationale**

Türkiye is of the view that Option A is more suitable for the purposes of BBNJ Agreement

### **International Union for Conservation of Nature**

17bis 3. **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~~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.

### **Rationale**

Reinserting prior text from Article 14, paragraph 4 in 2019 version as 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.



## **High Seas Alliance**

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~~ precautionary principle and an ecosystem approach;

(b) By reference to one or more of the indicative criteria specified in annex I.

[...]

~~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, as relevant, 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. Parties to this Agreement shall also take into account such criteria 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.

## **Rationale**

For Paragraph 3, the HSA has a slight preference for Option B because it includes specific reference to using the criteria for the identification of areas for the establishment of ABMTs/MPAs (Option A does not). However, the HSA thought the “as relevant” language included in Option A was helpful, so we would recommend incorporating that in Option B.

The 2019 text included an option for States Parties to take these criteria into account in the establishment of ABMTs under IFBs to which they are also a member. The HSA saw this as useful path to ensure coherence and would suggest it be reinserted.

## ARTICLE 18

### Micronesia, Caribbean Community, Australia, New Zealand, Seychelles and Pacific Small Island Developing States

#### Article 18 (3bis)- additional paragraph

In cases where the proposed measure affects areas that are entirely surrounded by the exclusive economic zones of States, proponents shall (1) maintain targeted and proactive consultations, including prior notification, with such surrounding States, and (2) consider the views and comments of such surrounding States to the proposed measure and provide written responses specifically addressing such views and comments and where appropriate revise the proposed measure accordingly.

#### **Rationale**

Measures proposed in high-seas pockets are of particular interest to those States that completely surround those measures. For one thing, a measure in a high-seas pocket might undermine conservation and sustainable use efforts taken by multiple States in the surrounding EEZs. For another, to the extent that such proposed measure will need to be established and monitored through regular cruises/trips by ships to the high-seas pocket, such cruises/trips will have to traverse the EEZ of at least one such surrounding State. Thus, for the article on consultations, it is important to recognize the particular interest of those surrounding States during the consultation process, although such States will not exercise veto power over the proposed measures. A similar concept is covered under Environmental Impact Assessments in Article 34, Option II, paragraph 6 and would be equally valid under ABMTs, including MPAs.

#### **European Union and its Member States**

2. (a) All States Parties, including the most potentially affected particular adjacent coastal States including any States with a continental shelf subjacent or maritime area adjacent to any proposed marine protected area and States that carry out human activities, including economic activities, in the area shall be invited to submit, *inter alia*:

5. The consultation shall be time bound and should take into account the reasonable time needed for all stakeholders to reply.

#### **Rationale**

In what concerns paragraph 2(a), the EU and its MS believe the consultation is key for a successful ABMT/MPA establishment process. This is why our proposal aims at a more inclusive language that would cover all states and not only adjacent coastal states.

As for paragraph 5, we support in principle but, as a practical consideration, this should respect the procedures of the different stakeholders, notably competent organizations and instruments as to count on the inputs for the management plan. We acknowledge that this

will probably result in prolonging the consultation process substantially. However, we consider this to be necessary.

### **Holy See**

2. Upon receipt of a proposal in writing, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such 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:

8. In view of the isolation of, and existential threats to small island developing States and archipelagic States, priority in assessing proposals shall be given to determining and implementing conservation and management measures as requested to lessen the negative impacts of conditions resulting from climate change, ocean acidification and other human activities [including warming waters, sea level rise, damage to coral reefs, biodiversity loss, and severe weather events among other things,] on such islands.

### **Rationale**

The vulnerability of certain States to ocean conditions and activities – to the very core of their existence - is such that any proposal and process surrounding that proposal should be fast-tracked.

### **International Union for Conservation of Nature**

18.2 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 and sharing of relevant information and data with and amongst 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
- g) other relevant stakeholders

18.3. Consultations and written submissions shall be designed to elicit the following views and information, as follows 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 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));

18.3.bis. 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.

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.~~

5. The consultation period shall be time-bound. All Parties shall cooperate to complete the process as expeditiously as possible, and no later than two years

## **Rationale**

Revised paragraphs 18.2, 18.3 and 18.3bis seek 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.

18.4. The proponent should be required to respond to the comments but may not need to incorporate each and every one in a revised proposal.

18.5 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.

### **High Seas Alliance**

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.

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 share the proposal with the Scientific and Technical Body and shall make that proposal publicly available and facilitate consultations thereon as follows:

- (a) States, in particular adjacent coastal States, shall be invited to submit, inter alia:
  - (i) Views on the merits of the proposal;
  - (ii) Any relevant data, information and other~~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:
  - (i) Views on the merits of the proposal;
  - (ii) Any relevant data, information and other~~additional~~ scientific inputs;
  - (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;
  - (iv) Views regarding any aspects of the 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:

(i) Views on the merits of the proposal;

(ii) Any relevant data, information and other~~[additional]~~ scientific inputs;

(iii) Any relevant traditional knowledge of indigenous peoples and local communities;

(iv) Any other relevant information.

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

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

5. The consultation period shall be time-bound and no longer than two years.

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

7. The modalities for the consultation and assessment process ~~shall~~may 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].

## **Rationale**

The revised text still calls for preliminary review by the STB, which may further delay the process; the HSA therefore strongly recommends deleting it. We believe that this preliminary review is unnecessary and would create additional work for the STB. To speed up the process, we believe that the proposal should be sent to the STB at the same time that it is shared with other stakeholders, so that the scientific review can happen concurrently with the stakeholder consultation process.

Although Para 5 confirms that the consultation period should be time-bound, we strongly support the UK's suggestion to provide a specific time frame of two years. Such a time frame, in our view, must include both the consultation and the STB scientific review.

Similar to our views on Article 17.5, we would suggest that in paragraph 18.7, the STB be empowered, rather than required, to elaborate further modalities of the consultation and assessment process

## World Wide Fund for Nature (WWF) International

### **Article 18** **Consultation on and assessment of proposals**

~~1. Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all relevant stakeholders, including global, regional and sectoral bodies, as well as civil society and indigenous peoples and local communities.~~

~~2. Upon receipt of a proposal, the secretariat shall transmit it to the Scientific and Technical Body for a preliminary review. The outcome of such review shall be conveyed 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:~~

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

~~-(i) Views on the merits of the proposal;~~

~~-(ii) Any relevant [additional] scientific inputs;~~

~~-(iii) Information regarding any existing measures in adjacent areas within national jurisdiction;~~

~~-(iv) Views on the potential implications of the proposal for areas 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:~~

~~-(i) Views on the merits of the proposal;~~

~~-(ii) Any relevant [additional] scientific inputs;~~

~~-(iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas;~~

~~-(iv) Views regarding any aspects of the 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:~~

~~-(i) Views on the merits of the proposal;~~

~~(ii) Any relevant [additional] scientific inputs;~~

~~(iii) Any relevant traditional knowledge of indigenous peoples and local communities;~~

~~(iv) Any other relevant information.~~

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

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

~~5. The consultation period shall be time-bound.~~

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

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

### **Article 18 – Initial Consultation on and Assessment of a Proposal to Establish an MPA in ABNJ**

1. On receipt of an MPA proposal from one or more States Party, the COP shall refer the proposal to the SBSTA with a timebound request for advice on whether the proposal is based on best available science, application of the precautionary principle and implementation of the ecosystem approach (and how the proposal could be improved to be consistent with these considerations).

2. The COP may include any other considerations in its request to the SBSTA which it deems pertinent and appropriate, including any other principles and approaches in Article 5 or criteria in Annex 1, including any additional criteria that might be identified by the COP.

3. The SBSTA may adopt its own guidelines for the assessment of MPA proposals referred to it by the COP.

4. The COP shall extend a timebound invitation to Members and Observers to provide comments and suggestions on the proposal and on the COP's request to SBSTA, including any proposals for management arrangements.

5. The COP may adopt guidelines for Members and Observers on the provision of comments and suggestions pursuant to para 3., including guidance on consultation with their nationals.



6. The COP shall extend a timebound invitation to those international bodies making pertinent decisions and having pertinent expertise to provide comments and suggestions on the proposal and the COP's request to SBSTA, including any proposals for management arrangements.

7. The COP shall make all documentation received through these consultation processes publicly and promptly available through a website to be maintained by the COP.

### **Rationale**

It is important that the COP, not the proponent, exercises the responsibility on behalf of the international community as a whole, to progress an MPA proposal. Likewise, it is appropriate that those States and bodies consulted by the COP, not the proponent, are responsible for ensuring that their nationals and stakeholders are appropriately consulted to their satisfaction. It would be inappropriate and impractical for the proponents to be held to account for any deficiencies in consultation that should be the responsibility of interested States, bodies and stakeholders. Procedural arrangements both for the development of a proposal by one or more States Parties and for the conduct of consultation and assessment of that proposal pursuant to Article 18 are best left to the development of appropriate guidelines by the BBNJ COP. It is inappropriate to seek to specify such procedural arrangements in the text of a legally binding instrument.

## ARTICLE 19

### European Union and its Member States

**This proposal might be placed under article 19 or as an additional article**

1. As a general rule, the Decisions under this part shall be taken by consensus.
2. If no consensus is reached, Decisions under this part shall be taken by a three quarter majority of the representatives present and voting, before which the Conference of the Parties shall decide, by a two third majority, present and voting that every effort to reach agreement by consensus has been exhausted.
3. Decisions shall enter into force ninety days after the meeting of the Conference of the Parties at which it was adopted, and shall be binding on all Parties, except for those Parties which make an objection in accordance with paragraph 4 of this Article.
4. During the period of ninety days provided for in paragraph 3 of this Article, any Party may by notification in writing to the Depositary make an objection with respect to the Decision. An objection to a Decision may be withdrawn at any time by written notification to the Depositary and thereupon the Decision shall enter into force for that Party ninety days after that reservation/objection is withdrawn.
5. An objection to a Decision made in accordance with paragraph 4 shall be renewed every two years by written notification to the Depositary. If no such renewal is received, the objection will be considered automatically withdrawn and thereupon the Decision shall enter into force for that Party ninety days after that objection is automatically withdrawn.
6. Decisions of the Conference of the Parties, and objections to these, shall be made publicly available by the secretariat and shall be transmitted to all States and relevant legal instruments and frameworks, including the relevant global, regional and sectoral bodies.

### **Rationale**

The EU and its Member States believe that in making decisions on ABMTs/MPAs, all efforts should be exhausted to reach consensus. However, we are convinced that a standstill on proposals would not serve the objectives and purposes of this Agreement. Hence, we have proposed a voting mechanism that consists of two steps: a first step, through a 2/3 majority, to confirm that no consensus is reached and a second step, the voting on the actual proposal, through a 3/4 majority.

Additionally, we propose a paragraph on the entry into force of COP decisions on ABMTs/MPAs. We have also listened to proposals of others during IGC4 and think that providing for an “opt-out” possibility would allow the largest number of States to adhere to the Agreement. The opt-out we would like to propose would need to be made publicly available and would be considered as automatically withdrawn after 2 years, unless it is actively renewed. This time period to the opt out would, in our view, apply some dynamics

to the process and will allow State Parties to be constantly engaged on the developments of that MPA, permitting them to regularly consider other approaches.

We believe this proposal is balanced and could integrate the concerns of States Parties.

#### **Article 19, Option1, paragraph 5 [placement in option I or II to be determined]**

5. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls under the sovereignty or within sovereign rights and jurisdiction ~~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. It is recognised that the coastal State may decide to adopt similar measures for the maritime area concerned in its national capacity.

#### **Rationale**

From the two options (article 19 or 19bis) provided for paragraph 5, the EU and its MS prefer the formulation of article 19 (Option I) with the proposed changes.

In line with articles 2 and 56 UNCLOS, we proposed to add “sovereignty or sovereign rights and jurisdiction”. This aimed at covering the States that do not have as yet extended their territorial sea up to 12 nautical miles or have not declared an EEZ.

In addition, we are of the opinion that it should be expressed that even though there is a change in jurisdiction, the conservation value remains and that hence coastal States may choose to continue any measure.

#### **Holy See**

**OPTION II (keeping articles 15 and 19 separate with article 15 appearing as article 19 bis):**

1. The Conference of the Parties shall take decisions on the establishment of a global network of ~~area-based management tools, including~~ marine protected areas, and related measures on the basis of the recommendation received from the Scientific and Technical Body regarding the final proposal and, ~~in particular,~~ the draft management plan, taking into account the contributions ~~and recommendations~~ received as a result of ~~during~~ the consultation process established under this Part, 1bis. The Conference of Parties shall also take decisions on such other area-based management tools, including marine protected areas that are not part of the adjoining global network in areas beyond national jurisdiction, as are appropriately proposed by a State or States for consideration and which are recommended for action by the Scientific and Technical Body after public consultation. ~~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.~~

2bis. In accordance with Article 4, the Parties recognize that States may enter into bilateral or multilateral agreements with one another on a subregional or regional basis or be a party to legal instruments, frameworks and regulatory bodies that make competent decisions or arrangements with respect to area-based management tools. The Parties also agree that the implementation of these area-based management tools applied by those agreements, instruments, frameworks and bodies, including marine protected areas, may be critical to achieving the environmental objectives of this Agreement. Accordingly, each Party affirms its commitment to implement and comply with the area-based management tools under those agreements and bodies to which it is a party that relate to areas beyond national jurisdiction and that promote the objectives of this Agreement.

2quater. Furthermore, where specific area-based management tools, including marine protected areas are located in areas beyond national jurisdiction and established and implemented under competent instruments, frameworks and bodies and promote the objectives of, and are not inconsistent with, this Agreement and the Convention now in effect or hereafter adopted, no decision shall be taken with respect to them and such obligations shall be recognized by Parties to this Agreement as supplementing the provisions contained herein.

INCLUDE paragraphs 4 and 5 from Option I.

## **Rationale**

Our preference is Option II but to include paragraphs 4 and 5 of Option I. PARAGRAPHS 1 and 1bis: In order to recognize the different processes and governance that will likely be required for different types of ABMTs, we suggest that decisions regarding a global network of MPAs be considered separately from decisions related to other ABMTs, including other MPAs. PARAGRAPH 2: This recognition in 1 and 1bis is logically followed by decisions regarding complementary ABMTs to those of IFBs in para 2 which should be kept as drafted. PARAGRAPH 2bis: It is unrealistic to think that the global body can or should micro-manage every ABMT that is determined by a subregion, region or sector of business. 2bis positively supports (as opposed to undermines) the imposition of other ABMTs by IFBs. PARAGRAPH 2QUATER: Grants automatic recognition of ABMTs established by IFBs IF they promote the objectives of, and are not inconsistent with, this Agreement and the Convention.” So not all ABMTs will merit automatic recognition/no decision; only those that are compatible with the IA. But for example, measures taken by States in the “Americas for the Protection of the Ocean Coalition” and “Eastern Tropical Pacific Marine Corridor” should receive automatic recognition without deliberation and vote by a COP. We see this as a waste of time and resources. PARAGRAPHS 4 AND 5: include from Option I as they address different issues with respect to decisions regarding ABMTs.

## Japan

### **OPTION I (merging articles 15 and 19):**

Ante1 As a general rule, the Decisions and recommendations under this part shall be taken by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such decisions and recommendations shall as a last resort be taken by three-fourths majority vote of the representatives present and voting, based on a special quorum of two-thirds of the representatives.

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 and/or recommendations including the preliminary review by the Scientific and Technical Body and the contributions received during the consultation on and assessment of proposals stipulated in Article 18.~~process.~~

1 bis When there are relevant legal instruments and frameworks and relevant global, regional, or sectoral bodies, the decision made by the Conference of the Parties pursuant to the paragraph 1 constitutes a recommendation based on which those frameworks and bodies are requested to make their final decision in accordance with Articles 4 and 6.

2. The Conference of the Parties, while respecting relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, may 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 to make their final decision on those measures, in accordance with their respective mandates.

2 bis Where there are no relevant legal instruments or frameworks or relevant global, Regional or sectoral bodies, the Conference of the Parties may take decisions referred to in paragraph 1, and make amendment or revocation of such decisions upon establishment of a new relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.

[...]

~~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.~~

nt.

## **Rationale**

1. The new paragraph ante1 describes Japan's position to the decision-making by the COP. The suggested text incorporates the elements of Article 15(6) of the Minamata

Convention. We believe this change will make the condition for the special majority more stringent.

2. The revision for paragraph 1 is suggested in order to make it clear that upon making decisions on matters relating to ABMT, what the COP must take into account are the preliminary review and recommendations by the Scientific and Technical Body and the contributions received during the consultation.
3. The new paragraph 1bis is inserted to clarify the demarcations between the BBNJ COP and IFBs in establishing ABMT.
4. The changes in paragraph 2 are to make it clear that the COP may decide on complementary measures if it is needed, and that those measures must to be adopted by the relevant IFBs to be effective.
5. The new paragraph 2bis provides what the BBNJ COP can do when there is no relevant IFB and what would happen when a new relevant IFB is established subsequently.
6. Paragraph 6 is deleted as it overlaps with paragraph 2bis.

## **Republic of the Philippines**

### Option 1

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.~~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.~~

2. The COP shall also take decisions on matters related to ABMT including MPAs with respect to: objectives, additional modalities and requirements, as provided for under articles in this Part, as well as on the decision on amendments and or revocation of established ABMTs.

### **Rationale**

We would like to see a streamlined version where international cooperation and coordination is incorporated in the process of decision making, hence we can support

Option I, however with some modifications on the formulation of the paragraphs. For instance, we suggest adopting paragraph 1 from Option 2, instead of the paragraph 1 reflected in Option 1. It is our interpretation that the text under paragraph 1 of Option 1 limits the decision-making of COP to ABMT concerns with respect to proposals only. Aside from taking decisions with respect to the proposals and draft management plan, we also suggest to reflect some of the elements reflected in the previous draft ILBI, to wit: The COP shall also take decisions on matters related to ABMT including MPAs with respect to: objectives, additional modalities and requirements, as provided for under articles in this Part, as well as on the decision on amendments and or revocation of established ABMTs

### **Republic of Türkiye**

#### OPTION II:

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 or sectoral bodies.

2. The Conference of the Parties, while respecting relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, ~~shall also take decisions on measures complementary to those~~ **shall consider the measures** 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.

#### **Rationale**

Türkiye prefers Option B with the modifications outlined above.

### **United States of America**

*Below are U.S. suggested changes to the EU submission text at IGC4 for an additional paragraph under article 19, or additional article 19bis.*

1. As a general rule, the Decisions **and recommendations** under this part shall be taken by consensus.

2. If no consensus is reached, Decisions **and recommendations** under this part shall be taken by a three quarter majority of the representatives present and voting, before which the Conference of the Parties shall decide, by a two third majority, present and voting that every effort to reach agreement by consensus has been exhausted.



3. Decisions adopted under this part shall enter into force ~~ninety~~ 200 days after the meeting of the Conference of the Parties at which it was adopted, and shall be binding on all Parties, except for those Parties which make an objection in accordance with paragraph 4 of this Article.

4. During the period of ~~ninety~~ 200 days provided for in paragraph 3 of this Article, any Party may by notification in writing to the Depositary make an objection with respect to ~~the a~~ Decision adopted under this part and that decision shall not enter into force for that Party. An objection to a Decision may be withdrawn at any time by written notification to the Depositary and thereupon the Decision shall enter into force for that Party ninety days ~~after~~ following the date of the notification stating that the reservation/objection is withdrawn.

5. An objection to a Decision made in accordance with paragraph 4 shall be renewed every ~~two~~ five years by written notification to the Depositary. If no such notification of renewal is received, the objection ~~will~~ shall be considered automatically withdrawn and thereupon the Decision shall enter into force for that Party ~~ninety~~ 200 days after that objection is automatically withdrawn. The Depositary shall notify the Party two months prior to the date the objection will be automatically withdrawn.

6. Decisions of the Conference of the Parties adopted under this part, and objections to these, shall be made publicly available by the ~~secretariat~~ Depositary and shall be transmitted to all States and relevant legal instruments and frameworks, including the relevant global, regional, subregional and sectoral bodies

## **Rationale**

We support a non-consensus decision-making process for establishing ABMTs and MPAs to prevent the scenario where one State can block new ABMTs and MPAs. When the BBNJ COP adopts measures where IFBs do not exist, we support those measures being binding on States Parties that can agree to them, but want to ensure that there is a process for a State Party who cannot agree to a measure to opt-out. This would allow a State Party that is unable to implement a particular measure to still support or not block the establishment of the ABMT or MPA. We think such an arrangement will attract as broad a membership as possible to the agreement and provide a path for the greatest number of ABMTs and MPAs.

## **International Union for Conservation of Nature**

19.1 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 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, as well as the application of precaution and an ecosystem approach.

19.2 The Conference of Parties, while respecting relevant legal instruments and frameworks and relevant global, regional, or sectoral bodies, shall also take decisions on measures additional to and compatible with ~~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 geographic, ecosystem and biodiversity mandates.

19.3. 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.

## **Rationale**

19. Option 1. Para 1. Option 1 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. Precaution and an ecosystem approach should be the basis for decision-making and not just “identification” in 17bis.

19.2 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.*” (Reference: <https://www.yourdictionary.com/complementary>)

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.

19.3. 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.

## **High Seas Alliance**

### **OPTION I (merging articles 15 and 19):**

1. The Conference of the Parties shall take decisions on ~~matters related to measures such as the establishment of~~ area-based management tools, including marine protected areas, and related measures on the basis of ~~with respect to the final~~ proposal and in

particular the draft management plans 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.

[...]

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, at the request of the coastal State, ~~otherwise~~ cease to be in force.

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):**~~ **(Strike all of Option II)**

## **Rationale**

In the HSA's view, the two options do not reflect diametrically opposed approaches, but rather a more nuanced, generally structural difference. While we could see a path forward to work off of either option, the HSA prefers to work off of Option I as it is the most streamlined and generally clearer, with one critical amendment: we would replace the language in Para 1 Option 1 with the language in the first half of Para 1 of Option II. This language more clearly empowers the COP to take decisions on ABMTs/MPAs as well as associated management measures, which is critical.

The HSA also supports retaining para 2, where the COP, while respecting relevant IFBs, shall also make decisions on measures complementary to those adopted under such IFBs, and recommend BBNJ Parties to promote the adoption of measures through relevant IFBs, which helpfully presents a pathway for a more coordinated, cohesive approach to managing high seas activities.

Similarly, HSA supports para 3 on BBNJ COP's role in making arrangements for enhancing cooperation and coordination with and among relevant IFBs (although this may be a more appropriate role for the Secretariat).

The HSA also supports para 6, which we think helpfully clarifies that an MPA established under the BBNJ Treaty continues to be in force after a new body is established

## ARTICLE 19BIS

### Republic of Türkiye

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.

[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 by considering scientific data [and to rectify the infringement] or otherwise cease to be in force.]

### **Rationale**

Türkiye believes that while making decisions about marine protected areas, it is crucial that the decision is supported by scientific data

### World Wide Fund for Nature (WWF) International

#### ~~Article 19bis~~

#### ~~International cooperation and coordination~~

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

~~[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.]~~

~~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.~~

~~4. Decisions and recommendations by the Conference of the Parties in accordance with this Part shall not undermine the effectiveness of measures adopted in areas within national jurisdiction and shall have 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 this end, in accordance with the provisions of this Part.~~

~~[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.]~~

#### **Article 19 bis – Regulation of Activities in MPAs in ABNJ**

1. The BBNJ COP shall write annually to all competent sectoral bodies inviting them to identify those activities for which they have the competence to adopt legally binding conservation or management measures and for which they are willing and able to adopt and enforce a suite of adequate and effective measures, especially those relating to reporting and to monitoring, control and surveillance (MCS), to ensure that an MPA Management Plan adopted by the BBNJ COP can be effectively implemented with respect to those identified activities.

(i) That invitation shall include a request that each competent sectoral body include in its response, copies of those measures deemed sufficient to ensure effective implementation of the Management Plan.

2. For all activities other than those identified by competent sectoral bodies in response to the invitation sent pursuant to Article 19 bis 1., the measures set out in the MPA Management Plan adopted by the BBNJ COP pursuant to Article 19.4 are in force and States Parties shall exercise due diligence and due regard in ensuring their prompt and effective implementation. 3. The BBNJ COP shall send a copy of the MPA Management Plan, adopted pursuant to Article 19.4, to all those competent sectoral bodies that have identified activities for which they have competency in response to the invitation sent pursuant to Article 19 bis 1. requesting them to adopt or amend their conservation and/or management measures consistent with provision of the Management Plan within [two] years.

4. The invitation issued pursuant to Article 19 bis 1. shall include a request that the competent sectoral body report annually to the BBNJ COP on steps taken to adopt or amend measures as requested by the BBNJ COP pursuant to Article 19 bis 3. and on the effectiveness of implementation of those measures.

5. The BBNJ COP may send any additional material to, and make any additional requests of, competent sectoral bodies at any time.

[6. The BBNJ COP may include a review of the effectiveness of measures taken by both States Parties and competent sectoral bodies in any review of an MPA pursuant to \[Article 21\].](#)

### **Rationale**

The purpose of WWF's proposed Article 19 bis is to set and clarify the relationship between the BBNJ COP in designating an MPA and adopting a Management Plan for it pursuant to Article 19, and relevant competent sectoral bodies consistent with the UNGA's wish not to undermine existing arrangements. In para.1, in proposing that competent sectoral bodies be invited to identify themselves, it is important to appreciate that, while bodies may have relevant competencies they may have yet to decide to exercise them regarding some activities. Likewise, those with limited experience in effective spatial management regulation may need time to develop appropriate reporting and MCS arrangements. Para.2 is to make it clear that the BBNJ COP has a default regulatory power and responsibility in respect of all those activities not covered by competencies identified by relevant bodies. Paras. 3 & 4 set out the time bound process for competent sectoral bodies, willing and able to do so, to adopt requisite measures and report on their implementation. Para.6 is to clarify that the effectiveness and performance of sectoral bodies in implementing MPA Management Plans is a matter that may be included in the scope of a BBNJ COP review.

## ARTICLE 20

### Holy See

1. Parties shall ensure that activities conducted by natural or juridical persons under their jurisdiction or control as defined in this Agreement that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.

1bis. Parties that are also Port States agree to take all reasonable efforts to ensure compliance with area-based management tools created or recognized under this Agreement by vessels arriving in their ports.

2. Nothing in this Agreement shall prevent a Party from adopting more stringent measures with respect to its vessels or with regard to its nationals, vessels or activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law.

### **Rationale**

PARAGRAPH 1: jurisdictional issues must be fixed for this IA to work and the parties responsible to be easily identified and to act as agreed; Activities that take place in ABNJ may have vessels from numerous countries involved. Moreover, flag States may not have the capacity to ensure that these provisions are implemented. NEW PARAGRAPH 1bis. Even though activities may not be under their jurisdiction and control, port States have a role to play with respect to implementation. PARAGRAPH 3: We strongly support the inclusion of this paragraph!

### Japan

Parties shall ensure that the decisions adopted by the Conference of the Parties pursuant to Article 19 paragraph 1 are implemented in the following manner.~~activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part.~~

(a) Decisions adopted under this part shall enter into force 200 days after the meeting of the Conference of the Parties at which it was adopted, and shall be binding on all Parties, except for those Parties which make an objection in accordance with subparagraph (b).

(b) During the period of 200 days provided for in subparagraph (a), any Party may, by notification in writing to the Depository, make an objection with respect to a decision adopted under this part and that decision shall not enter into force for that Party. An objection to a decision may be withdrawn at any time by written notification to the

Depositary and thereupon the decision shall enter into force for that Party ninety days following the date of the notification stating that the reservation/objection is withdrawn.

(c) An objection to a Decision made in accordance with subparagraph (b) shall be renewed every five years by written notification to the Depositary. If no such notification of renewal is received, the objection shall be considered automatically withdrawn and thereupon the Decision shall enter into force for that Party 200 days after that objection is automatically withdrawn. The Depositary shall notify the Party two months prior to the date the objection will be automatically withdrawn.

(d) Decisions of the Conference of the Parties adopted under this part, and objections to these, shall be made publicly available by the Depositary and shall be transmitted to all States and relevant legal instruments and frameworks, including the relevant global, regional, subregional and sectoral bodies.

[...]

~~[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.]~~

~~[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.]~~

[...]

## **Rationale**

1. Inserted a proposal for an opt-out option in paragraph 1 as it is essential to make the BBNJ Agreement universal. Our initial opt-out proposal is revised based on the EU and the US proposals
2. We suggest paragraph 4 be deleted as it duplicates Article 19 (1)bis of Japan's proposal and 19(2). Our understanding is that the Parties are required to promote the adoption of measures within relevant IFB when the COP decides on a recommendation in this effect in accordance with Article 19(1)bis of Japan's proposal and 19(2).
3. Also the deletion of Paragraph 5 is suggested as it is unclear what the Parties are required to do in order to fulfil this obligation, namely to encourage non-parties to adopt certain measures.

## **Republic of Türkiye**

~~[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 or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]~~

### **Rationale**

Obligation to cooperate for activities in areas beyond national jurisdiction is related with the principle of the common heritage of mankind. Therefore, Türkiye believes that paragraph 6 is redundant.

Türkiye supports that, this paragraph should be eliminated so that all parties to this agreement may pursue an uniform approach.

## **International Union for Conservation of Nature**

20.1.bis. Parties shall cooperate to promote, support and enable the effective management and implementation, including the monitoring, control, surveillance and enforcement, of area-based management tools including marine protected areas adopted pursuant to this Part.

20.1. 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.

20.1. quater. 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 stakeholders in pursuit of the objectives for the marine protected area.

### **Rationale**

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



## **High Seas Alliance**

1. Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted and its nationals and vessels act consistently with the decisions adopted under this Part.

2. Nothing in this Agreement shall prevent a Party from adopting more stringent measures with respect to its vessels, nationals 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.}~~

3bis. Parties shall ensure that capacity and technology needs for the implementation of decisions taken under this Part are considered by the Conference of the Parties or a relevant subsidiary body, and that measures can be taken to meet those needs.

~~{4. Parties shall work in a manner that delivers~~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.}~~

~~{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.}~~

~~{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, consistently in accordance with the Convention and in accordance with this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.}~~

## **Rationale**

The HSA suggests adding language to paragraph 1 to clarify that a party's "nationals and vessels" should act consistently with the decisions adopted under this part. Likewise, in paragraph 2, the HSA suggests adding "nationals" so that is clear that a Party can adopt stricter measures to apply to its vessels, nationals, or activities under its jurisdiction. The HSA supports retaining all of the paragraphs under this Article, so would recommend deleting the brackets around paragraphs 3-6. As in Article 14, the HSA thinks it is important to consider the capacity and technology

requirements needed to successfully implement this chapter of the Agreement, so have suggested a new paragraph to address that concern.

In paragraph 4, the HSA thinks it is clearer to oblige Parties to “work in a manner that delivers” the adoption of measures within relevant competent IFBs, rather than simply “promote” them. In paragraph 6, rather than saying “in accordance with the Convention and this Agreement”, the HSA would support the language that says “consistently with the Convention and in accordance with this Agreement” in order to mitigate concerns of non-parties to UNCLOS.

## ARTICLE 21

### Holy See

1. Parties, individually or collectively, that have originated the proposal for the implementation of an area-based management tool shall report to the Conference of the Parties on the implementation of such area-based management tools and related measures, including marine protected areas, established under this Part. A copy of sSuch reports shall be made in writing so that it can be made publicly available by the secretariat.

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 to-

~~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. [States Parties shall agree to facilitate the monitoring of area-based management tools, including marine protected areas through the dedication of necessary technology, including cooperative technologies such as vessel monitoring systems, as well as non-cooperative technologies including dedicated satellite monitoring, aerial flights, gliders, drones and buoy-based sound monitoring technologies.] [States will use reasonable efforts to support the need for manpower for monitoring and enforcement of the adopted area-based management tools, including marine protected areas.] [A State Party or [natural or juridical persons under its jurisdiction][its nationals] applying or that have applied to conduct activities for utilization of a resource in areas beyond national jurisdiction shall submit a periodic written statement that it is in compliance with all laws and regulations, including restrictions under applicable area-based management measures.]

### **Rationale**

PARAGRAPH 1: The provision needs to identify which State Party or Parties is responsible for reporting, or at least make the connection with ABNJ that would require them to report, whether individually or collectively. Also, if reports are to be made publicly available, they cannot be simply oral reports. PARAGRAPHS 2 AND 3: These can be merged. It's unclear to us how the STB will be enabled to do this independent review. We offer 3 text options to clarify this. PARAGRAPH 4: Since there are no details with respect to the review, it is difficult to understand how the COP will make a decision. Moreover, in the event that the review identifies non-compliant States, it's unclear how the situation will be rectified. The concept of adaptive management should also be further clarified.

## **Republic of Türkiye**

2. Area-based management tools, including marine protected areas, established under this Part, including related measures and biodiversity, shall be monitored and periodically reviewed by the Scientific and Technical Body.

### **Rationale**

Türkiye argues that management-based monitoring alone cannot be deemed sufficient for decision-making

## **International Union for Conservation of Nature**

1. Parties, individually or collectively, shall report annually 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.

2. Area-based management tools, including marine protected areas, established under this Part, including related measures, shall be monitored taking an ecosystem approach and periodically reviewed by the Scientific and Technical Body.

[...]

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.

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

### **Rationale**

21.1 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.

21.2 To monitor the effectiveness of ABMTs including MPAs will require monitoring of the surrounding ecosystem and changes to the status and dynamics of ecosystem and associated and dependent species.

21.4. 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.

21.5: “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.

### **High Seas Alliance**

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, ~~and related measures~~ established under this Part. Such reports shall be made publicly available by the secretariat.

2. Area-based management tools, including marine protected areas, established under this Part, including related measures, shall be monitored by State Parties according to the monitoring and research plan, reported to the secretariat and periodically reviewed by the Scientific and Technical Body.

[...]

4. Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment of area-based management tools, including marine protected areas, and 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~~ precautionary principle and an ecosystem approach.

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

### **Rationale**

Under paragraph 1, the HSA suggests editing for clarity and consistency with other parts of this chapter so that it reads “ABMTs, including MPAs, and related measures” Under paragraph 2, we worry that we might be asking the STB to be taking on too much if we place the primary responsibility of monitoring with them. We therefore suggest adding language that puts the primary responsibility of monitoring on States Parties, who should report to the Secretariat. We would propose that those monitoring reports be periodically reviewed by the STB.

Because ABMTs and MPAs are inherently long-term tools, the HSA would suggest edits under paragraph 4 to clarify that the COP could take a decision to amend ABMTs and MPAs, as appropriate, and that it could decide to amend, extend, or revoke measures associated with the ABMT or MPA. We would also strike the bracketed text in paragraph 4 that refers to time-bound ABMTs. And finally under paragraph 4, we would replace “application of precaution” with “precautionary principle”. In paragraph 5, the HSA supports retaining “shall” rather than “may” with reference to IFBs being invited to report to the COP on the implementation of measures they have established.

**PART IV**  
**ENVIRONMENTAL IMPACT ASSESSMENTS**

## ARTICLE 21BIS

### Caribbean Community and Pacific Small Island Developing States

The objectives of this Part are to:

~~{(a)Operationalize the provisions of the Convention on environmental impact assessment by establishing processes, thresholds and requirements guidelines for conducting and reporting assessments by Parties;}~~

~~{(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.}~~

(e) Ensure that activities that affect areas beyond national jurisdiction are assessed and managed to prevent significant adverse impacts or are not permitted to proceed;

(f) Build and strengthen the capacity of developing States Parties to prepare, conduct and evaluate environmental impact assessments and strategic environmental assessments in support of the objectives of this agreement.

#### **Rationale**

None provided

### Republic of Indonesia

[(a) Operationalize the provisions of the Convention on environmental impact assessment by establishing processes, thresholds and guidelines for conducting and reporting assessments by States, **including with respect to the consideration of cumulative impact**]

~~{(b) Enable the consideration of cumulative impacts;}~~

~~{(e) (b) Provide for strategic environmental assessments;}~~

~~{(d) (c) Achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction.}~~

#### **Rationale**

None provided



## **High Seas Alliance**

{(a) Operationalize the provisions of the Convention on environmental impact assessment by establishing processes, thresholds and guidelines-requirements for conducting and reporting assessments by States;}

[(b) Enable~~sure~~ the consideration of cumulative [and transboundary] impacts;]

b.(bis) Ensure that activities that affect areas beyond national jurisdiction are assessed and managed to prevent significant adverse effects or are not permitted to proceed;

c) Provide for strategic environmental assessments;}

[(d) Achieve a consistent, comprehensive and coherent environmental impact assessment framework for all activities with potential effects on ~~in~~ areas beyond national jurisdiction.]

## **Rationale**

b) Consideration of cumulative effects should be required, not “enabled.”

b)(bis): At IGC IV, PSIDS/CARICOM proposed an additional objective to Part IV: to ensure that activities are assessed and managed to prevent significant adverse effects, or not permitted to proceed. This would support States’ broader obligations to protect and preserve the marine environment under Section XII and Articles 192, 194 and 197 of UNCLOS, as well as Articles 204-206. This language is consistent with SDG14.2 and already applies to one high seas activity – bottom trawling (UN Resolutions 61-105 et seq.). For the sake of consistency and prevention of environmental degradation or loss of biodiversity, all other activities that can have significant adverse effects, such as seabed mining and other types of fishing, should be subject to a similar standard.

c) Effects-based and not location-based assessments are important to ensure that activities situated within an EEZ with effects in ABNJ are subject to the same public notification, consultation, and assessment requirements as those for proposed activities located within ABNJ. UNGA Resolution 72/249 clearly mandates the conservation and sustainable use of biodiversity beyond national jurisdiction, regardless of where the risk to BBNJ physically originates. Effects-based assessment is also the best way to ensure consistency with the obligation to prevent transboundary harm contained in numerous international declarations, instruments, agreements and jurisprudence, including UNCLOS Art 192(2), the UN Fish Stocks Agreement, the Espoo Convention, the Rio Declaration, and international jurisprudence (Pulp Mills, Certain Activities, Gabcikovo-Nagymaros, ITLOS Case 17)

## ARTICLE 21TER

### **Republic of Indonesia**

1. States Parties, individually or collectively shall report to the Conference of the Parties
  - a. give due publicity to such charts or lists of geographical coordinates indicating Area Based Management Tools, including Marine Protected Areas, in Areas Beyond National Jurisdiction;
  - b. cooperate with relevant hydrographic bodies of adjacent Coastal States, with the aim of providing publicity; and
  - c. deposit a copy of each such chart or list with the Secretariat
  
2. the Secretariat should forward the chart and list of geographical coordinates to the secretariat of relevant IFRBs

### **Rationale**

Not provided

## ARTICLE 22

### Caribbean Community and Pacific Small Island Developing States

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 Article 24 hereof, the Convention and international law. ~~[in accordance with their obligations under articles 204 to 206 of the Convention].~~

2. On the basis of the Convention and international law articles 204 to 206 of the Convention, Parties shall take the 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.

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].~~

#### **Rationale**

None provided

### European Union and its Member States

(i) Amended paragraph 3:

3. The requirements in this Part for the to conduct of an environmental impact assessment ~~applies~~ apply ~~[only to activities conducted in areas beyond national jurisdiction]~~ ~~[to all activities that have an impact in areas beyond national jurisdiction].~~

(ii) New paragraphs 4 and 5:

4. A Party may extend the application of this Agreement to planned activities under its jurisdiction or control, which take place in areas within national jurisdiction and are likely to have impacts in areas beyond national jurisdiction. In that case, it shall notify the [Secretary-General/depositary] accordingly, at the time of expressing its consent to be bound by this Agreement or at any time thereafter.

5. When an activity conducted in areas within national jurisdiction is likely to have impacts in areas beyond national jurisdiction, Parties shall publish the reports of the results of any assessments conducted at the national level, including through the clearing-house mechanism.

(iii) New preambles:

Recognizing the obligation to assess the potential effects on the marine environment of activities that may cause substantial pollution of or significant and harmful changes to the marine environment regardless of whether these activities are conducted in or beyond the areas where sovereign rights are exercised in accordance with the Convention.

Mindful of the obligation to ensure that pollution arising from incidents or activities does not spread beyond the areas where sovereign rights are exercised in accordance with the Convention.

### **Rationale**

These proposals relate to the scope of application of the EIA part and build on the IGC4 submission of the EU and its Member States on this issue. First, we propose to amend the existing paragraph 3 of Article 22. The objective of this proposal is to describe more accurately the scope of application of the EIA requirements of Part IV of the Implementing Agreement. Second, we are re-submitting our IGC4 proposal for a new paragraph 4 in Article 22 (opt-in clause) and we are submitting an updated version of our IGC4 proposal for a new paragraph 5 in Article 22 (increased transparency in relation to activities conducted in areas within national jurisdiction with impacts in areas beyond national jurisdiction). Third, we propose to add two new preambles.

### **Bolivarian Republic of Venezuela**

1. Parties shall [, as far as practicable,] assess the potential effects of [planned] [proposed] activities under their jurisdiction or control [on the marine environment] ~~{in accordance with their obligations under articles 204 to 206 of the Convention}~~.
2. ~~On the basis of articles 204 to 206 of the Convention,~~ Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement [the provisions of] this Part [and any further measures [on the conduct of environmental impact assessments] adopted by the Conference of the Parties].
3. The requirement in this Part to conduct an environmental impact assessment applies [only to activities conducted in areas beyond national jurisdiction] [to all activities that have an impact in areas beyond national jurisdiction].

### **Rationale**

None provided

## **Holy See**

1. All States have the duty to take, or to cooperate with other States in taking such measures for their respective nationals and natural or juridical persons under their jurisdiction and control as may be necessary for the conservation of living resources in areas beyond national jurisdiction as well as with respect to the sustainable utilization of resources. Therefore, 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]~~.

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]. [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 Article 24, it shall be subject to an environmental impact assessment that is substantively equivalent to the one required under this Part. The Party shall:

(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.] [TAKEN FROM ART. 23.6]

## **Rationale**

PARAGRAPH 1: Added to directly extend the general obligation to the activities of nationals, as is done with fishing. PARAGRAPH 3. The additional language from Art. 23.6 does not belong in the article focusing on IFBs as it deals with States and not IFBs, and instead, if accepted, belongs here with general obligations to do an EIA.

## **Republic of Türkiye**

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

2. ~~On the basis of articles 204 to 206 of the Convention,~~ Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement ~~[the provisions of]~~

this Part ~~[and any further measures [on the conduct of environmental impact assessments] adopted by the Conference of the Parties].~~

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

### **Rationale**

None provided

### **International Union for Conservation of Nature**

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 ir retrievable commitments of resources are made ~~[in accordance with their obligations under articles 204 to 206 of the Convention and international law].~~

### **Rationale**

‘As far as practicable’ is a loophole that undermines the seriousness of this Part. ‘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.

### **Environmental Law Institute**

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

2. On the basis of articles 204 to 206 of the Convention, Parties shall take the 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].

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].~~

## **Rationale**

ELI supports the use of “proposed” activities. Impact assessment is pre-decisional by definition. A project already “planned” suggests decisions that have already been made. Use of “proposed” provides greater clarity to the purpose of this provision.

The very nature of a meaningful environmental impact assessment demands that all activities impacting ABNJs be taken into consideration, not only those conducted in the ABNJs.

## **High Seas Alliance**

1. Parties shall ~~{, as far as practicable,}~~ assess the potential effects ~~{on the marine environment}~~ of ~~{planned}~~ ~~{proposed}~~ activities under their jurisdiction or control which may have minor or transitory effects or greater on marine biological diversity of areas beyond national jurisdiction taking into account cumulative effects. ~~{in accordance with their obligations under articles 204 to 206 of the Convention}~~

2. On the basis of articles ~~192-212~~ ~~204-206~~ of the Convention, States Parties shall take the 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}.

3. The requirement in this Part to conduct an environmental impact assessment applies ~~{only to activities conducted in areas beyond national jurisdiction}~~ ~~{to all activities that have an~~ effect impacts in-on areas beyond national jurisdiction}.

## **Rationale**

“As far as practicable” opens loop that permits States to evade EIA obligations as “practicable” is not defined.

The EIA process needs to commence, hence “proposed” is preferred.

A threshold triggering the obligation to prepare an EIA of “a minor or transitory effect or greater” adds a necessary temporal element (“transitory”), and updates and strengthens the 40-year-old UNCLOS threshold and has been used successfully in the Antarctic for decades and enables tiering of the EIA process. See [HSA’s note on de minimus thresholds](#).

Regarding 22.2-- the objectives, process, and scope of EIAs and SEAs should be informed by the wider obligations of UNCLOS from Part XII, including articles 192-212, not just articles 204-206, to be consistent with, and more accurately reflect, the obligations under UNCLOS.

Article 22, which provides for the obligation to conduct EIAs, uses the phrase “activities under their jurisdiction or control”. It may be helpful to define this term.

The Madrid Protocol in its Article 8 applies its provisions to “activities undertaken in the Antarctic Treaty area pursuant to scientific research programs, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities.”

## **Ocean Care**

1. Parties shall ~~[, as far as practicable,]~~ assess the potential effects [on the marine environment] of ~~[planned]~~ ~~[proposed]~~ activities under their jurisdiction or control which may have minor or transitory effects or greater on marine biological diversity of areas beyond national jurisdiction~~[on the marine environment]~~ ~~[in accordance with their obligations under articles 204 to 206 of the Convention]~~.

2. On the basis of articles ~~192-212~~ ~~204-206~~ of the Convention, States Parties shall take the necessary legal, administrative or policy measures, as appropriate, to implement the provisions ~~{of this Part }~~ ~~and any further measures~~ ~~{on the conduct of environmental impact assessments}~~ adopted by the Conference of the Parties~~}~~.

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

4. States Parties shall, on the basis of the Convention, take the necessary legal, administrative or policy measures, as appropriate, to implement provisions on the duty to perform environmental impact assessments for activities in areas within national jurisdiction with possible effects on areas beyond national jurisdiction. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.

## **Rationale**

Effects-based rather than location-based assessment is important to ensure that potentially serious effects stemming from activities within an EEZ on the environment outside that EEZ are assessed, and to ensure consistency with the obligation to prevent transboundary harm contained in numerous international instruments and agreements.

An effects-based approach is also consistent with existing international commitments, [including UNCLOS Art. 194\(2\) and the Espoo Convention Art. 2 \(1\) for example](#).

New para. 4 (or Art. 22bis) is basically already contained in Art. 194 in conjunction with Art. 204-206 and Art. 207 ff. UNCLOS but reinforced and made explicit in the context of transboundary pollution originating from activities within national jurisdiction and affecting ABNJ (and would also state clear binding of Non-Members to UNCLOS, apart from the likely legal binding to the respective UNCLOS provisions by customary law).



IGC 3 showed strong support to make general reference to the Convention instead of citing specific Articles of the Convention.

## ARTICLE 23

### Caribbean Community and Pacific Small Island Developing States

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

2. The Conference of the Parties shall develop procedures for the [Scientific and Technical Body] [~~Scientific, Technical and Technological 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 ~~may 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] [~~Scientific, Technical and Technological Body~~].

3. Parties shall cooperate in promoting the ~~adoption and implementation 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 Body] [~~Scientific, Technical and Technological 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.

4 bis. While global minimum standards and guidelines are being developed by the [Scientific and Technical Body] [~~Scientific, Technical and Technological Body~~], environmental impact assessments for [planned] [proposed] activities {with impacts/effects} in areas beyond national jurisdiction shall be conducted in accordance with this Part.

~~**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.~~

~~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: It is not necessary to conduct an environmental impact assessment of [planned] [proposed] activity with impacts in areas beyond national jurisdiction provided that the body set forth in Part [...], following consultation with the relevant legal instrument and framework or relevant global, regional, subregional or sectoral body, determines that:~~

**Option 1:**

(a)The threshold for the conduct of the environmental impact assessment meets or exceeds the threshold set out in this Part;

(b)The activity has been subject to a recent environmental impact assessment under other environmental impact assessment obligations and agreements;

(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.

**Option 2:**

~~(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;~~

~~(b)The outcome of the assessment is effectively implemented;~~

~~(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.~~

[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:

(a)Submit the impact assessment to the [Scientific and Technical Body] [Scientific, Technical and Technological 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.]

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.

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 and reports are to be made public in the manner provided in this Part.

## **Rationale**

None provided

## **Holy See**

### **Article 23**

**The effect of** ~~Relationship between this Agreement and~~ environmental impact assessment processes under ~~other relevant legal instruments and frameworks and~~ relevant global, regional, subregional and sectoral bodies

3. Parties shall **encourage** ~~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 B: Guidelines for the conduct of environmental impact assessments shall be developed by the Scientific and Technical Body. **In developing such guidelines, the Scientific and Technical Body shall consider the requirements imposed by** ~~through collaboration with relevant legal instruments and frameworks and~~ **relevant global, regional, subregional and sectoral bodies with respect to environmental impact assessments** ~~as necessary, and whenever possible, engage in direct consultation and collaboration with such instruments, frameworks and bodies in order to coordinate and cooperate regarding environmental impact assessments.~~ **Such guidelines shall be updated periodically.**

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:

**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.

[6. — [Move to Art. 22.4](#)]

8. [move this to Paragraph 5](#)].

## **Rationale**

TITLE: To our mind, EIAs are not conducted or required by legal instruments and frameworks but are only required by a regulating body; Therefore, if this is so, the introductory words regarding instruments and frameworks may be deleted throughout. PARAGRAPH 3: We've suggested different wording as the draft is phrased in such a way that in other agreements could be viewed as an antitrust violation i.e., Parties cooperating to affect an outcome in another agreement or situation. PARAGRAPH 4: We believe this needs to be phrased a bit differently since this agreement cannot force collaboration by other IFBs. PARAGRAPH 5: Our preference is for Option 3 because it is the only option that is relatively clear. Both Options 1 and 2 are unclear as written as to whether the provision retroactively covers all activities that have ever been approved by any IFB. They do not seem to address EIAs for future activities unless we can assume that a Party will follow the sectoral rules first and then revert to this agreement. PARAGRAPH 6: This provision involves the sovereignty of a State and is not appropriately placed in a provision on IFBs. PARAGRAPH 8: this should be moved to paragraph 5 itself and the reference to paragraph 5 dropped.

## **Republic of Indonesia**

5. It is not necessary to conduct an environmental impact assessment of a [planned] ~~[proposed]~~ activity under the jurisdiction or control of a Party ~~[with impacts]~~ in areas beyond national jurisdiction provided that 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, **and, if necessary, the Scientific and Technical Body**] determines that:

- (a) The threshold for the conduct of the environmental impact assessment meets or exceeds the threshold set out in this Part **and the Global Minimum Standards or other guidelines further developed by the Scientific and Technical Body**
- (b) The activity has been subject to a recent environmental impact assessment under other environmental impact assessment obligations and agreements;
- (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~~

**6. Propose to delete.**

**7. Propose to delete.**

**8. Propose to delete.**

## Rationale

### Article 23 para. 5:

- The term “planned” is preferred compared to “proposed” since the term has been used in UNCLOS. It is also to limit the applicability of the EIA provisions under this Agreement to only include those activities that already have the plan, not all activities that are proposed.
- The reference to Scientific and Technical Body (STB) is necessary under the following reasons:
  1. STB has their own coordination mechanism with IFRBs, thus it can be acknowledged under this Article, especially in measuring the effectivity of existing EIA
  2. To ensure that the Global Minimum Standard that will be further developed by the STB is also considered while determining whether or not an EIA under ILBI BBNJ is required.

### Article 23 para. 7:

- Relevant IFRBs already have their transparency mechanism, whether it is with Clearing-House Mechanism (CHM) or other ways as decided by the Parties. It will be redundant to disseminate the EIA result through CHM under ILBI BBNJ.

### Article 23 para. 8:

- Similar to the rationale to Art. 23 para 7, relevant IFRBs may already have their own monitoring, reporting and review mechanism. In line with the principle of “not undermining IFRBs”, it is necessary to utilize existing monitoring and evaluation mechanism.

## Japan

[...]

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.~~

[...]

~~4.Option A: Global minimum standards and guidelines for the conduct of environmental impact assessments shall be developed by the Scientific and Technical Body through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, 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.~~

~~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.~~

**4. 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, and shall be adopted by the Conference of the Parties. Such guidelines shall be updated periodically.

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 activity is being conducted in accordance with requirements established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies, provided that the State with jurisdiction or control over the planned activity determines that:

(a) The potential impacts have been already assessed under those requirements, or

(b) Those requirements sufficiently prevent, mitigate or manage potential impacts below the threshold for environmental impact assessment under this Part.

~~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:~~

**Option 1:** ~~(a) The threshold for the conduct of the environmental impact assessment meets or exceeds the threshold set out in this Part;~~

~~(b) The activity has been subject to a recent environmental impact assessment under other environmental impact assessment obligations and agreements;~~

~~(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.~~

**Option 2:** ~~(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;~~

~~(b) The outcome of the assessment is effectively implemented;~~

~~(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.~~

[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 may shall :

- ~~(a) request the Conference of the Parties to provide advice and assistance for conducting environmental impact assessment, as well as in determining if a planned activity under its jurisdiction may proceed as provided in Article 38 paragraph 4, and 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 of the authorized activities in the same manner as provided in this Part;~~
- ~~(c) Ensure that all reports are made public in the manner provided in this Part.]~~

~~7. The Secretariat shall endeavour to make an arrangement with A Party that has conducted an environmental impact assessment under a relevant legal instrument or framework or a global, regional, subregional or sectoral body, to mutually make available the reports of shall publish the environmental impact assessment conducted under the framework and body and this Agreement, report through the clearing house mechanism.~~

~~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 and reports are to be made public in the manner provided in this Part.~~

## **Rationale**

1. We suggest deletion of the second sentence of paragraph 2, as we believe that the Conference of the Parties can discuss such details as establishing an ad hoc interagency working group and allowing IFBs representatives to participate in the meetings of STB. So, they do not have to be provided in the text of the Agreement.

2. We are not supportive of the notion that Global minimum standards developed under the BBNJ Agreement must apply to other IFBs. So, we suggest that Option A of paragraph 4 be deleted.

3. We support that the STB should develop guidelines for conducting EIA. However, we believe that the COP should adopt the guidelines as STB is advisory body for the COP and it is not supposed to adopt the documents. A phrase is added to paragraph 4 in order to reflect this aspect.



4. Regarding the paragraph 5, we believe that there are two scenarios in which the activities conducted under the rules established by IFBs should not be subject to EIA obligation under the BBNJ Agreement. One is when impact assessment is undertaken already as a requirement under the rule of relevant IFB. For example, the exploitation regulations under negotiation in ISA will have mandatory EIA as a requirement for an exploitation plan to be approved. As EIA is already conducted in this case, duplication should be avoided. Another scenario is when relevant IFBs require precautionary preventive measures. The regulations on ballast water discharge under the Ballast Water Management Convention are a good example. Ballast water is seawater used for stabilizing vessels in the water, but it may contain invasive species, so it cannot be discharged into a different part of the ocean. But if a ship is equipped with the water treatment system required by the Convention, discharge is permitted. The required measure is not EIA itself, but the measure is designed to reduce the risk of impact to the marine environment well below the EIA threshold. Therefore, the EIA obligation under the BBNJ Agreement should be exempted for such activities conducted following the rules under IFBs. With the proposal's wording, we tried to reflect these aspects. However, we are flexible for different languages if they better accommodate those situations.

5. Regarding paragraph 6, it is our position that where a planned activity falling under the jurisdiction of a Party has the potential impacts/effects in AWNJ or ABNJ, that Party is responsible for conducting EIA when the threshold provided in Article 206 of the Convention is met or exceeded and that a planned activity conducted in the areas within the national jurisdiction is out of scope of this agreement. Thus, we are not supportive of this original paragraph. However, regardless of the potential impacts expected in AWNJ or ABNJ, we believe that the BBNJ COP should be available to provide advice and assistance to any Party lacking capacity to implement EIA at the request of such Party. As we see in Article 38, paragraph 4, the COP assisting a Party that needs and requests assistance in decision-making if a planned activity may proceed is a good example.

6. As for paragraph 7, we think the Secretariat should make arrangements with other IFBs to mutually exchange the EIA reports published under their bodies, rather than requiring the individual Parties to this Agreement to publish their EIA conducted under other IFBs through the clearing house mechanism. We revised the text from that aspect.

7. We suggest deleting paragraph 8, as those activities provided in paragraph 5 proceed following the rules/requirements of other IFBs. Therefore, monitoring, reporting and reviews for those activities should be left to those IFBs.

### **Republic of Türkiye**

1. The conduct of environmental impact assessments pursuant to this Agreement shall be consistent with the obligations under the Convention.
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 of representatives of those organizations in meetings of the Scientific and Technical Body.

3. Parties shall cooperate in promoting the use of environmental impact assessments and standards and guidelines developed under this Part in relevant legal instruments and frameworks and 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 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. These 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.

4bis. Environmental impact assessments for [planned] [proposed] activities [with the impacts/effects] in areas beyond national jurisdiction shall be conducted in accordance with this Part while global minimum standards and guidelines are being developed by the Scientific and Technical Body.

~~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 and sectoral bodies as necessary. These guidelines shall be updated periodically.~~

5. It is not necessary to conduct an environmental impact assessment of a [planned] [proposed] activity under the jurisdiction or control of a Party ~~[with impacts]~~ in areas beyond national jurisdiction provided that 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: Option 1: (a) The threshold for the conduct of the environmental impact assessment meets or exceeds the threshold set out in this Part;

(b) The activity has been subject to a recent environmental impact assessment under other environmental impact assessment obligations and agreements;

(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.

~~Option 2: (a) The potential impacts of the [planned] [proposed] activity have been assessed in accordance with the requirements of other relevant legal instruments and frameworks or by relevant global, regional and sectoral bodies;~~

~~(b) The outcome of the assessment is effectively implemented;~~

~~(e) The assessment already undertaken is functionally equivalent to the one required under this Part.~~

~~Option 3: ... the activity is being conducted in accordance with the rules and guidelines appropriately established under relevant legal instruments and frameworks and/or by relevant global, regional, subregional and/or sectoral bodies that require environmental impact assessments, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.~~

~~[6. Where a [planned] [proposed] activity falling within 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:~~

~~(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 by this Part;~~

~~(c) Ensure that all reports are made public in the manner provided by this Part.]~~

7. A State Party that has conducted an environmental impact assessment under a relevant legal instrument, framework, global, regional, subregional or sectoral body, shall publish the environmental impact assessment report through the clearing-house mechanism.

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 by this Part and reports are to be made public in the manner provided by this Part.

### **Rationale**

“Global minimum standards” are ambiguous and needs further explanation and clarification. What authority would determine and update those standards? explained explicitly; for who? And what? Is it minimum? In the text, it is mentioned that the standards and guidelines will be included in the Annex. However, there is no such an Annex in the draft document. They should be in the Annex but they are not in the Annex.

Turkey also requests further clarification on difference between “proposed” and “planned” as indicated in 4bis.

### **United Nations Environment Programme**

7.A ~~State~~ Party that has conducted an environmental impact assessment under a relevant legal instrument, framework, global, regional, subregional or sectoral body, shall publish the environmental impact assessment report through the clearing-house mechanism.

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 by this Part and reports are to be made public in the manner provided by this Part.

### **Rationale**

The Revised draft text of an agreement (as in A/CONF.232/2020/3) had references throughout the text to “States Parties”. However, the Further revised draft text of an agreement no longer refers to “States Parties” in the preamble, but rather to “Parties”. Further, article 1, paragraph 14 of the Further revised draft text of an agreement defines “Party” as “a State or regional economic integration organization...”. For consistency purposes references to “States Parties” should be deleted and instead the text should refer to “Parties” to include in that way regional economic integration organizations and be consistent with the definitions included in article 1.

### **Environmental Law Institute**

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 as well as civil society in meetings of the Scientific and Technical Body.

### **Rationale**

It is vital to include the significant expertise of civil society in the development of procedures for the S&T Body

5 4.—Option A: Global minimum standards and guidelines for the conduct of environmental impact assessments shall be developed by the Scientific and Technical Body through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, including civil society, 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]~~ 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.

4 bis. While global minimum standards and guidelines are being developed by the Scientific and Technical Body, environmental impact assessments for ~~{planned}~~ ~~{proposed}~~ ~~{proposed}~~ activities ~~{with potential impacts/effects}~~ in areas beyond national jurisdiction shall be conducted in accordance with this Part. ~~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.~~

## **Rationale**

Often Civil Society has the experience and expertise in the practice of environmental impact assessment ; this expertise will be vital to the development of informed guidelines for the conduct of EIA.

## **High Seas Alliance**

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~~ may 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.

3. Parties shall cooperate in promoting the adoption use of environmental impact assessments and the EIA procedures and requirements in this Part, as well as any additional 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 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 within three years. 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.

4bis. While global minimum standards and guidelines are being developed by the Scientific and Technical Body, environmental impact assessments for ~~planned~~ proposed activities ~~with the impacts/effects~~ in areas beyond national jurisdiction shall be conducted in accordance with this Part while global minimum standards and guidelines are being developed by the Scientific and Technical Body.

1. 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~~ Scientific and Technical Body, following consultation with the relevant legal instrument and framework or relevant global, regional, subregional or sectoral body, determines that:
2. 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 shall be prepared in accordance with that is substantively equivalent to the one required under this Part. The Party shall:

### **Rationale**

Para 3 & Para 4(bis): The obligation to cooperate to promote the adoption by regional and sectoral bodies of the modern process and content requirements should not await the future development of guidelines and standards.

Para 4: Added 3 years to make adoption of guidelines timebound.

Para 5: It should be the STB, not the sponsoring State, that determines equivalency to avoid a conflict of interest. In addition, there should be a call-in mechanism like that proposed for screening decisions by the EU, Canada, and others under which one State may ask the STB to review a determination that an EIA prepared under an existing body is equivalent to one prepared under the Agreement.

Para 6: subparagraphs a, b and c represent only some of the requirements in the EIA part, (e.g., they do not address notification and consultation). It is cleaner to simply require that an EIA needs to be conducted in accordance with this Part.

### **World Wide Fund for Nature (WWF) International**

~~4. Option A: Global minimum standards and guidelines for the conduct of environmental impact assessments shall be developed by the Scientific and Technical~~

~~Body through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, for consideration and adoption by the Conference of the Parties. These 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.~~  
~~—4bis.— Environmental impact assessments for [planned] [proposed] activities [with the impacts/effects] in areas beyond national jurisdiction shall be conducted in accordance with this Part while global minimum standards and guidelines are being developed by the Scientific and Technical Body.~~

Option B: Best practice gGuidelines for the conduct of environmental impact assessments shall be developed by the Scientific and Technical Body for adoption by the COP through consultation with States and collaboration with relevant legal instruments and frameworks and relevant global, regional and sectoral bodies as necessary. These guidelines shall be kept under review and updated periodically.

## **Rationale**

It is more appropriate that the BBNJ ILBI should adopt non-binding voluntary guidelines for EIA that States Parties can work towards, especially by cooperating through competent sectoral bodies and by prioritizing capacity building and transfer of marine technology efforts. It would be a wasted opportunity to attempt to set legally binding global minimum standards where negotiating such minimum standards would inevitably fall below customary norms for those States already willing and able to subject activities for which they are responsible to EIA. As guidance for a regulatory action, it is appropriate that the COP not its advisory body, should do the adopting. In consulting to develop such guidelines it is important to engage States directly as well as through existing frameworks and bodies as, while the guidelines might be applicable to activities in ABNJ, most of the expertise and experience with regulatory regimes is actually held by those familiar with the application of States' domestic regimes. It is also inappropriate to seek to adopt guidelines or standards as an annex to a legally binding instrument – it is more appropriate to maintain flexibility as a COP decision so that improvements in knowledge and information and growth in community expectations for the health of the marine environment can be readily reflected in subsequent COP decisions. WWF's ambition for the implementation of the BBNJ ILBI is that BBNJ COP best practice EIA guidelines would become globally accepted by both responsible States and competent sectoral bodies as operational norms for guiding them in conducting their own assessments as well as for guiding the BBNJ COP in conducting any assessments of its own.





## ARTICLE 24

### Caribbean Community and Pacific Small Island Developing States

#### 1. Option A:

*Option A.1:* When a Party [proposes] [plans] any activity that may have an effect on the marine environment, unless it has been determined that an activity will have less than a minor or transitory impact, it shall conduct a screening to determine the likely effects on the marine environment:

(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;

(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.

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] [Scientific, Technical and Technological Body]. The [Scientific and Technical Body] [Scientific, Technical and Technological 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.

~~*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) 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.~~

~~**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.~~

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:

- (a) The type of activity;
- (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.

### **Rationale**

None provided

### **Holy See**

#### **1. Option B: include.**

**1bis. In considering whether there are reasonable grounds for belief that a planned activity may cause pollution or harm to the environment, a State shall exercise the same duty and standard of care that it would exercise if the same or similar activity was proposed to take place within its national jurisdiction.**

1quater. [replaces Paragraph 1.optionA.1(b) and 1bis.]

**If the harm anticipated is less than substantial or significant but the activity may result in some measure of harm that is more than minor or transitory, the responsible Party agrees to notify the Secretariat with a copy to the Scientific and Technical Body as well as the authorized contact points of States in the region where the activity is proposed to take place. The notification will be in writing and include all data, information and analysis, as necessary, regarding the proposed activity as well as the decision not to conduct an environmental impact assessment. If a responsible Party has not received a response regarding its notification within a reasonable period of time, it may authorize the activity to move forward. In the event other States or the Conference of Parties disagree**

with the decision of the responsible State, the matter shall be further reviewed by the Scientific and Technical Body with a final decision on the necessity for an environmental impact assessment for that activity to be made by the Conference of Parties.

1ter. For purposes of this [Part] [Agreement],

(a) a State shall be considered to exercise jurisdiction and control over a natural or juridical person in areas beyond national jurisdiction when the State is:

- (i) the place of citizenship or where such natural or juridical person is registered;
- (ii) principal place of business or where management of such person is located;
- (iii) the place where such person has its principal assets or operations; or
- (iv) the place where such person conducts the administration of its interests [with respect to the activity in question] on a regular basis as ascertainable by third parties.

(b) In the event that a State having jurisdiction is incapable of performing its duties with respect to [planned activities] or [area-based management measures] under this [Part] [Agreement], then “jurisdiction and control” by a State shall also include the place where financing of the activity is given and/or received.

(c) Jurisdiction to implement this [Part] [Agreement] extends only to [matters] [assessments] [and monitoring] related to [planned or proposed activities] [or/and] [implementation of area-based management tools] in areas beyond national jurisdiction by such natural or juridical persons under the jurisdiction and control of that State. However, nothing herein shall affect the jurisdiction and control of a flag State in administrative, technical and social matters over ships flying its flag pursuant to Article 92 and Article 94 of the Convention. Any ship or vessel used in implementing this [Part][Agreement] shall continue to be governed by the State whose flag it flies.

3. As a matter of due diligence, a Party shall endeavour to apply the same standard of care and rigor in evaluating the potential effects of planned activities under its jurisdiction and control in areas beyond national jurisdiction as that which the respective State would apply with respect to an environmental impact assessment performed in relation to the potential effects of planned activities in its own national jurisdiction.

## **Rationale**

PARAGRAPH 1: We prefer Option B however we recognize that this does little to clarify UNCLOS Art. 206. Therefore, we believe that the suggested additional paragraphs are not only necessary but critical. Art. 206 establishes 4 criteria that trigger an EIA: 1. reasonable grounds for belief, 2. planned activities, 3. jurisdiction and control, and 4. substantial pollution/significant and harmful changes. Although “planned activities” are obvious, criteria 1, 3 and 4 of Art. 206 must be further clarified in this IA. Without addressing these, the EIA Part will be ineffective. NEW PARAGRAPH 1Bis.: In the event a State exercising jurisdiction fails to do an EIA claiming it “lacked reasonable grounds”, it will be difficult to measure whether the State has allowed the activity to go forward without review based on self-interest (whether that be cost, difficulty, or something else) or a conflict of interest. Giving the STB/COP oversight may not solve this issue. NEW PARAGRAPH 1QUATER. [replaces paragraph 1.optionA.1(b) and 1bis.]. Suggested language and process attempts to avoid the bifurcated approach to the levels of harm by proposing a different process for dealing with the harm. This has the value of not changing recognized provisions in UNCLOS while also recognizing that harm of less than catastrophic proportions will have a negative effect on biodiversity. We also recognize the awkward situation that countries may propose to engage in activities in areas of the ocean and in regions where States in that region will not enjoy the benefits of those activities but may suffer the consequences of them. Therefore, any governance of activities from the starting point should include a system of checks and balances. Lastly, this addition may preclude the need for Art. 30.1(a)(ii) and (iii) or could alternatively be placed there. NEW PARAGRAPH 1TER. Jurisdictional issues – As we have stated in the definitions section, clearly identifying the party responsible for review and oversight of an activity is the single most critical obligation set out in this IA, without which it fails. As industry groups point out, with respect to a commercial activity in ABNJ, vessels originating from numerous countries will be involved in the activity and therefore if the present wording/definition is used (“jurisdiction and control over an activity”), it will be unclear which country is responsible. In addition, if this IA anticipates that a flag state will assume responsibility, in fact, many flag states will not have the wherewithal to carry out these functions; moreover, flag State jurisdiction does not extend to the activity beyond the vessel and a large gap exists. This proposed definition is the internationally accepted definition used by UNCITRAL to determine jurisdiction based on the “center of main interests”. Importantly, it expands jurisdiction over an activity without modifying the jurisdiction of the Flag State and is limited to this IA. NEW PARAGRAPH 3: The legal obligation of due diligence is referenced, requiring States to apply a consistent standard of care for activities within

and beyond national jurisdiction. Otherwise it is unlikely that a State will apply the same level of effort and go to the same expense with respect to EIAs for activities in ABNJ as they would if the activity could cause harm to their own interests. It is not as consequential that every State apply the same exact standard of review, but rather, that they act consistently with respect to areas within national jurisdiction and ABNJ. This will allow for diverse approaches to EIAs among States.

### **Republic of Indonesia**

2. (d) The characteristics and ecosystem of the location ~~(including areas of particular ecological or biological significance or vulnerability)~~ , taking into account existing ecologically or biologically significant marine areas (EBSAs) and other areas subject to conservation or other environmental protection measures;

### **Rationale**

In line with existing guideline established by the COP to the CBD in 2012

### **Republic of the Philippines**

Option B [...]

[...]

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:

- (a) The type of proposed activity;
- (b) The duration of the proposed activity;
- (c) The location of the proposed activity;

[...]

- (f) The potential effects of the proposed activity;
- (g) The potential cumulative effects of the proposed activity;
- (h) The potential transboundary impact of the proposed activity
- ~~(i)~~ The impacts in areas within national jurisdiction;
- ~~(j)~~ Other ecological or biological criteria.

## **Rationale**

None provided

## **Republic of Türkiye**

### **1. Option A:**

*Option A.1:* When a Party [proposes] [plans] any activity that may have an effect on the marine environment it shall conduct screening to determine the likely effects on the marine environment:

(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;

(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.

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 processes set out in this Part:

- (a) The type [and the technology](#) of activity;
- (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.

*i) Impact area*

*j) Mitigation measures to be taken*

## **Rationale**

Only the “impacts” are mentioned in the text which should also contain “measures”. A potential impact area should be clearly determined as well.

## **China Biodiversity Conservation and Green Development Foundation**

### **Article 24**

#### **Thresholds and [criteria] [processes] for environmental impact assessments**

#### **1. Option A:**

**Option A.1: When a Party [proposes] [plans] any activity that may have an effect on the marine environment it shall conduct screening to determine the likely effects on the marine environment:**

**(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;**  
**(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. The screening shall be done before the planned activity is conducted and will include all areas subject to pollution resulting from the planned activity outside the immediate area of the activity. The screening will be done by an independent scientific body of people to the group planning the activity. The results will be delivered to the Scientific and Technical Body (see Article 41) who will publish the results with their commentary and make it publicly available. This will determine whether the activity will be authorized to proceed.**

**1bis. 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(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.

**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 referred to in article 30 of the potential effects of such activities on the marine environment in the manner provided in this Part;

(b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall, 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.

**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.

**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 processes set out in this Part:**

- (a) The type of activity;
- (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.

**Rationale**



The suggested addition is to cover activities in the deep sea, under 200m, where serious damage to species known and unknown, both at the site and well beyond it, could result to biodiversity as a result of proposed activities.

## **Environmental Law Institute**

### **1. Option A:**

Option A.1: When a Party ~~proposes~~ ~~plans~~ proposes 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:

(a) If it is determined, on the basis of the screening, that the ~~planned~~ ~~proposed~~ 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;

(b) If it is determined, on the basis of the screening, that the ~~planned~~ ~~proposed~~ 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.

1 bis. Prior to the ~~planned~~ ~~proposed~~ 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.

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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) 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.~~

~~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.~~

~~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:~~

- ~~(a) The type of activity;~~
- ~~(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.~~

## **Rationale**

ELI supports Option A1. We believe it is important that the S&T Committee have an opportunity to review and publicly comment on threshold decisions. We also suggest that the criteria listed under Option B might be included in future Guidelines to be prepared by the S&T Committee.

~~5. No environmental impact assessment of a [planned] [proposed] activity with potential environmental impacts in areas beyond national jurisdiction 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 proposed [planned] [proposed] activity, ~~[,~~ following consultation with the Science and Technical Committee and other relevant legal instrument and framework or relevant global, regional, subregional or sectoral body.]~~

determines

that:

Option 1:

(a) The threshold for the conduct of the environmental impact assessment meets or exceeds the threshold set out in this Part;

(b) The activity has been subject to a recent environmental impact assessment under other environmental impact assessment obligations and agreements;

(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.

(d) The parties have made publicly available a written rationale for why the activity has received appropriate environmental review consistent with elements set out in this Part and allowed for public comment on that rationale.

~~Option 2: (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;~~

~~(b) The outcome of the assessment is effectively implemented;~~

~~(c) The assessment already undertaken is functionally equivalent to the one required under this Part.~~

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~~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.~~

## **Rationale**

Changes in first paragraph are for clarity. ELI also supports Option 1, provided there is a meaningful opportunity for public review of the decision not to proceed with additional environmental review.

## ARTICLE 25

### Caribbean Community and Pacific Small Island Developing States

{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, including the continental shelf beyond 200 nautical miles.}

{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.}

#### **Rationale**

None provided

#### **Holy See**

[2. Where relevant, the environmental impact assessment process shall also take into account possible transboundary impacts in areas within national jurisdiction.] Given the disproportionate impact that activities may have environmentally, socially, economically and culturally on small island developing States, the Parties agree that the environmental impact assessment process evaluating proposed activities to take place in proximity to those States will always take into account possible transboundary impacts on areas within national jurisdiction of those States.

#### **Rationale**

PARAGRAPH 2: Instead of mentioning the “polluter pays principle” within Art. 5, it should be operationalized throughout the text. This is of particular importance with respect to SIDS that often lack the means to protect themselves.

### **Environmental Law Institute**

1. Cumulative and transboundary impacts shall, as far as practicable, be ~~taken into account in the conduct of~~ evaluated in environmental impact assessments in accordance with operational Guidelines as developed by the Science and Technical Committee.}

{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.}

### **Rationale**

ELI strongly encourages operational Guidelines for the conduct of cumulative impacts analyses.

### **High Seas Alliance**

1. {Cumulative and transboundary effects 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.}

### **Rationale**

Both cumulative and transboundary effects should be considered in an EIA. “As far as practicable” opens a significant loophole that could be used by States to evade the obligation to evaluate transboundary and cumulative effects.

The term ‘effects’ is a term used in UNCLOS whereas ‘impact’ is not.

### **Ocean Care**

1. {Cumulative and transboundary effects 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.}

## **Rationale**

If the phrasing “as far as possible” remains included, a significant loophole in addressing cumulative impacts and transboundary effects will remain.

As above - The term ‘effect’ is a term used in UNCLOS whereas ‘impact’ is not.

Similarly, transboundary pollution is easily defined and can be readily measured through scientific investigation, whereas transboundary impact is vague, and it may be difficult to establish criteria acceptable to all parties. Moreover, transboundary pollution is referred to in an extensive body of existing international law, whereas transboundary impact is not.

## ARTICLE 30

### Caribbean Community and Pacific Small Island Developing States

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) ~~A Party shall make information to support the conclusion made in the screening process publicly available including through the clearing-house mechanism under this Agreement. 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].~~

~~{(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 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] [Scientific, Technical and Technological 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) These measures will be incorporated into an environmental management plan or system or alternative options will be found, which include locational or technological options, alternatives to the [planned] [proposed] activity and the no-action alternative; 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.}~~

~~3. A pool of experts shall be created under the [Scientific and Technical Body] [Scientific, Technical and Technological 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. Environmental impact assessments conducted by the pool of experts must be submitted to the Party to be forwarded for review by the [Scientific and Technical Body] [Scientific, Technical and Technological Body] and decision-making by the Conference of the Parties.~~



4. A Party may register its concerns with the [Scientific and Technical Body] [Scientific, Technical and Technological Body] [Implementation and Compliance Committee] in the case of any of the following matters:

(i) a State determines that no assessment is required for a [planned][proposed] activity under Article 24, paragraph 1(a) [Option A];

(ii) a State determines that a [planned][proposed] activity is likely to have equal to a minor or transitory effect on the marine environment and that such State is responsible for determining whether such activity may proceed under Article 38, paragraph 1 [Option A];

(iii) a State's decisions relating to an environmental impact assessment conducted by it under the provisions of this Part, including with respect to taking into full account the results of such environmental impact assessment; and/or

(iv) any other concerns after a [planned][proposed] activity has been authorized to proceed, including with respect to monitoring, review, and reporting in accordance with the provisions of this Part.

Upon consideration of the concerns registered by a Party, the [Scientific and Technical Body] [Scientific, Technical and Technological Body] [Implementation and Compliance Committee] shall review the matter [based on the best available science and scientific information, as well as relevant traditional knowledge of Indigenous Peoples and local communities] and, as appropriate, make recommendations to the responsible Party. The registration of concern and the recommendations of the [Scientific and Technical Body] [Scientific, Technical and Technological Body] [Implementation and Compliance Committee] shall be made publicly available, including through the clearing-house mechanism.

~~{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].}~~

~~{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.}~~

## **Rationale**

None provided

## Holy See

### 1.(a)

(ii) The outcome of any decision by the responsible Party regarding the necessity for an environmental impact assessment, including all non-confidential data, information and analysis as determined by national law, shall be made publicly available through immediate publication on the clearinghouse mechanism. ~~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].~~

~~[(iii)]~~ A Party or any stakeholder may register its [views] [concerns] and provide any additional information pertinent to 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, if necessary 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.

### **(d) Mitigation, prevention and management of potential adverse effects.**

~~(iii)~~ Measures to prevent, mitigate and manage potential adverse effects of the authorized activity shall include a determination of the financial strength of the natural or juridical person or enterprise engaged in the activity to ensure that it has the financial wherewithal to do the activity in the prescribed manner for the anticipated time.

~~(iv)~~ A Party responsible for an activity should ensure that the natural or juridical person engaged in the activity provides insurance that is tied to asset depletion and resource loss, and disaster risk reduction. Parties exercising jurisdiction and control may also require those engaged in the activity to provide guarantees, surety bonds and/or other indemnities in an appropriate amount in relation to the activity and the relevant potential for harm.

## **Rationale**

PARAGRAPH 1(a): merge (ii) and (iii) and apply to stakeholders as well as Parties. We note that it is more likely that a stakeholder will respond to a no-action decision rather than another State question the decision and may be more likely to provide additional information. This paragraph will follow naturally from suggested text for Art. 24.1 quater. PARAGRAPH 1(D) NEW (iii) and (iv): these are general – but necessary financial provisions. We note that a surety bond could represent agreed liquidated damages since

harm to any particular State will be difficult to prove and assess in ABNJ. The bond could be subject to periodic adjustment depending on the changing nature of the activity. If States are in favor of really instituting the polluter pays principle, then there must be some mention of measures that would allow this!

## **Republic of Indonesia**

1. (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 such [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 ~~[publish/report on that determination] [through the clearing-house mechanism under this Agreement.]~~

(iii) The Scientific and Technical Body may verify that the information provided by the State Party satisfies the requirements in this Part.

(b) Scoping: Parties shall establish procedures, including ~~stakeholders participation procedures~~ ~~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) Such scope shall include ~~the consideration of economic, cultural, and environmental factors of the biological diversity and ecosystem services that are likely impacted by the planned activities. This also includes the assessment of 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 others, identified cumulative impacts, and the alternatives for analysis, where appropriate, using]~~ best available scientific information and relevant traditional knowledge of indigenous peoples and local communities.]

(ii) The ~~assessment of potential 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(d).~~

(d)(i) Mitigation, prevention and management of potential adverse effects: 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, **minimize, or compensate** 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].

2. Joint environmental impact assessments may be conducted **based on the needs and request of the Parties, including/in particular the small island developing states. ~~in particular for activities under the jurisdiction or control of [small island] developing States.~~**

### **Rationale**

-On **Para. (1) (a) (i)**: The clause “should such planned activity...” shows the consideration for areas -with its significance or vulnerability. This has been included as one of the criteria in Article 24 (2), so that it is not necessary to make it redundant by reiterating it in this para.

-On **(b)(i)**: The formulation of the President Draft, which is “identification of key environmental, social, economic, cultural, and other relevant impacts” à EIA is not meant to measure the socioeconomic and cultural impacts, but to consider social, economic, cultural values of biodiversity in the potentially-affected areas in ABNJ.

-On **(d)(i)**: The term “avoid, minimize, compensate” is adopted from the 2012 Voluntary Guideline of the COP CBD.

-On **para. 2**: The difficulty in conducting EIA is not only experienced by SIDS

### **Republic of the Philippines**

1. [...]

[...]

(b) *Scoping*. The Scientific and Technical Body 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:

### **Rationale**

Scoping defines the scope of the environmental impact assessment to be conducted. The EIAs will be submitted to the STB for review, hence scope shall be established by STB and not Parties.

## **Republic of Türkiye**

(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:

(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].

(d) (i) Mitigation, prevention and management of potential adverse effects: 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].

## **Rationale**

None provided

## **Environmental Law Institute**

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]~~ 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]~~ 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]~~ 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]~~ proposed activity under its jurisdiction or control, it shall ~~make a written rational information~~ to support that conclusion publicly available ~~and~~ publish/report on that determination ~~{through the clearing-house mechanism under this Agreement}~~.

(iii) A Party may register its ~~[views]~~ ~~[concerns]~~ concerns and views on a decision published in accordance with subparagraph ii with the ~~the~~ ~~Scientific and Technical Body~~ ~~and/or~~ the ~~Implementation and Compliance Committee~~ ~~]~~ within 15 working ~~[insert number]~~ days of the publication. Upon consideration of the ~~[views]~~ ~~[concerns]~~ concerns or views registered by a Party, the ~~Scientific and Technical Body~~ ~~and/or~~ ~~Implementation and Compliance~~ ~~Committee~~ Committee ~~e]~~ ~~[shall]~~ ~~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] ~~proposed]~~ activity under its jurisdiction or control.]  
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(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, meaningful 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]~~ proposed activities and any reasonable alternatives.

(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 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] [analyse] 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.]~~

~~....~~

[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

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forwarded for review by the Scientific and Technical Body and decision-making by the Conference of the Parties]. ~~[Party for review and decision-making].]~~

[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]~~ proposed activities under their jurisdiction or control.]

## **Rationale**

Consideration of alternatives, including the no-action alternative, is a seminal step in the EIA process. In the current context of the development of a global ocean economy, consideration of alternatives is becoming even more relevant.

## **High Seas Alliance**

(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}~~.

NEW (ii. bis) The Scientific and Technical Body shall verify that the information provided by the Party satisfies the requirements in this Part. ~~{and publish/report on that determination and supporting information to the STB and }~~ ~~{through the clearing house mechanism under this Agreement}~~.

~~{(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 available science] and, as appropriate, recommend that the {responsible Party}{Scientific and Technical Body} undertakes an environmental impact assessment in accordance with this Part for the {planned}{proposed} activity under its jurisdiction or control.}~~

Scoping:

~~{(i) The scope shall include the identification of key environmental, social, economic, cultural and other relevant impacts effects and issues, including identified cumulative and transboundary effects 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.}~~

(c) (i) Impact assessment and evaluation: Parties shall undertake a process for the assessment and evaluation of the impacts of ~~{planned}~~{proposed} activities.

(d) (i) *Mitigation, prevention and management of potential adverse effects:* 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 (development of alternatives), which include locational or technological options, alternatives to the ~~{planned}~~{proposed} activity and the no-action alternative;

~~{(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.}

{3. A Party may designate a third party to conduct an environmental impact assessment required under this Agreement. Such a third party ~~may~~ shall 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}.}

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.}

## **Rationale**

Para 1(a)(i): Rigorous EIA and COP decision making should apply to all proposed activities affecting ABNJ, not just those in areas identified as vulnerable or special. There should not be a “second-tier” process for areas outside those identified as vulnerable. This is particularly important in ABNJ, where only a small percentage of the ocean has been explored. Because we lack knowledge of most of the ocean beyond national jurisdiction, subjecting areas outside known vulnerable/special areas to a less rigorous examination risks damaging ecosystems which have yet to be discovered but which may be extremely vulnerable or important.

Para 1(a)(iii) is the Australian call-in proposal and is strongly supported

## **International Cable Protection Committee**

(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].] [In case of emergency, Parties shall expedite the initial screening and approve necessary planned activities under their jurisdiction or control without requiring an environmental impact assessment notwithstanding the provisions of this paragraph \(i\).](#)

(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].

[(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.]

### **Rationale**

Emergency circumstances may arise that justify approving an activity without requiring an EIA. For example, when a fault occurs on a submarine cable that provides a state with critical connectivity to global communication networks, the local population risks losing connectivity for an extended period of time—and suffering impairment of economic, social and governance activities—until the cable is repaired. Therefore, no prior EIA should be required in such circumstances, even for cables pre-dating the BBNJ instrument for which no screening (or EIA) was conducted prior to installation, and even for cables installed in environmentally significant or vulnerable areas. The ICPC believes, based on the best available science, that submarine cable repair (as with submarine cable installation) falls below the Article 206 and Antarctic Treaty thresholds for impact, but even screening to reach that conclusion could take time and have material adverse impacts on affected states—especially small islands states.

## ARTICLE 34

### Caribbean Community and Pacific Small Island Developing States

~~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;~~

~~(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 public notification ~~[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.

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 parties,] [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] [Scientific, Technical and Technological 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 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 data and 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] [Scientific, Technical and Technological Body] for its review, and the fact that confidential or proprietary information has been redacted shall be indicated in public documents.~~

8. Additional procedures may be developed by the Conference of the Parties to facilitate consultation at the international level.

## **Rationale**

None provided

## **Republic of Türkiye**

### **OPTION I:**

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

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 most potentially affected States. Those 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 in the area of the [planned] [proposed] activity carry out human activities that may reasonably be believed to be affected, including economic activities;

(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 as to whether to proceed with the activity.

## **Rationale**

Türkiye favors Option 1

## **International Union for Conservation of Nature**

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.}~~

## **Rationale**

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.

## **High Seas Alliance**

**Support Option II with elements from Option I (see below)**

### **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 as to whether to proceed with the activity.

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

3. Public notification and consultation shall be transparent and inclusive [, and targeted and proactive including 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 effects~~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 are entirely surrounded by the exclusive economic zones of States, Parties shall:

(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, s}~~ 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.}

{8. The COP shall develop procedures to determine whether information is to be considered confidential, including review procedures. Information necessary for the conservation of marine biodiversity in areas beyond national jurisdiction shall not be considered confidential or proprietary. Additional procedures may be developed by the Conference of the Parties to facilitate consultation at the international level.}

## **Rationale**

None provided

## ARTICLE 35

### Caribbean Community and Pacific Small Island Developing States

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 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 follow-up 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] [Scientific, Technical and Technological Body] for adoption by the Conference of the Parties under article 41 bis.

~~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.~~

**Option B:** Parties and the [Scientific and Technical Body] [Scientific, Technical and Technological Body] shall publish and communicate the reports required under this Part in accordance with the Convention, including through the clearing-house mechanism. The secretariat shall ensure that all Parties and the public are notified in a timely manner when reports are published in the clearing-house mechanism.

#### **OPTION I:**

~~4. Environmental impact assessment reports for activities deemed through screening as likely to have more than minor or transitory impact shall be considered and reviewed by the [Scientific and Technical Body] [Scientific, Technical and Technological Body]. 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] [Scientific, Technical and Technological Body] may recommend rectifications to the Party. The Party may require the [Scientific and Technical Body] [Scientific, Technical and Technological 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.~~

## **Rationale**

None provided

## **Bolivarian Republic of Venezuela**

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 components:

**an accurate mapping of the areas beyond national jurisdiction with its different profiles in terms of surface, volume and ocean floor,** a description of the [planned] [proposed] project, a baseline assessment of 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 follow-up 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 41bis.

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.

**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.

### **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, paragraph 2, the Scientific and Technical Body may recommend rectifications to the Party. The Party may require at any time to the Scientific and Technical Body 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.

### **Holy See**

2bis. In the event the activity is of a commercial nature, the report should also include non-confidential information regarding the financial strength of the national, whether individual or juridical person or enterprise, engaged in the activity, the financial status of the activity itself, and the status of any related measures tied to the activity, including insurance, guarantees, surety bonds and/or other indemnities provided.

### **Rationale**

Brief mention is made of social, economic, cultural and other impacts to be included in the scope of the EIA (see Art. 30.1.b(i)) but the details are left TBD by a COP at some future date (this is unclear because it is not in the expertise of the STB). However, like EIAs, in a business context many of these items are standard and expected as well as vital to the success of any “activity”, particularly if it is commercial. At a minimum, this IA should guarantee that an activity will not be abandoned because of bankruptcy as the environmental impacts of a project dropped in midstream could be extensive and long-term. Authorizing an activity to go forward on the basis of environmental authorization without financial due diligence will handicap the validity and efficacy of the IA, and reference to expected measures is advisable.

### **Republic of Indonesia**

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 components: a description of the [planned] ~~[proposed]~~ project, a baseline assessment of 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 follow-up actions, including a management,~~

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 41bis.

3. 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. **The Secretariat shall notify in timely manner the most affected and relevant stakeholders, in particular adjacent coastal States.**

### **Rationale**

None provided

## **International Union for Conservation of Nature**

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 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 follow-up 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.

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.~~

### **Rationale**

35.2 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.

35.3 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.

### **United Nations Environment Programme**

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 components: a description of the [planned] [proposed] activity~~project~~, a baseline assessment of 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 follow-up 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 41bis.

### **Rationale**

For consistency purposes we suggest referring to ‘activity’ instead of ‘project’, as in all other articles under this Part of the draft.

### **High Seas Alliance**

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 components: a description of the ~~[planned]~~ [proposed] activity, a baseline assessment of the marine environment likely to be affected, a description of potential effects including transboundary pollution, 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 follow-up 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~~may be developed by the Scientific and Technical Body for adoption by the Conference of the Parties under article 41 bis.

### **3. COMBINE Options A and B, below**

3. 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. The Secretariat shall ensure that all Parties and the public are notified in a timely manner when reports are published in the clearing-house mechanism.

## **Rationale**

None provided

## **Ocean Care**

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 components: a description of the ~~{planned}~~ {proposed} activity, a baseline assessment of the marine environment likely to be affected, a description of potential effects including transboundary pollution and socio-economic and other related 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 follow-up actions, including a monitoring and review plan. Additional guidance regarding the content of environmental impact assessments reports to be prepared pursuant to this Part ~~may shall~~ be developed by the Scientific and Technical Body for adoption by the Conference of the Parties under article 41 bis.

## **Rationale**

Note that UNGA Resolution 74/19: 2019, Para. 281. “Calls upon States to consider appropriate cost-effective measures and approaches to assess and address the potential socioeconomic and environmental impacts of anthropogenic underwater noise, taking into account the precautionary approach and ecosystem approaches and the best available scientific information, as appropriate.”

## ARTICLE 38

### Caribbean Community and Pacific Small Island Developing States

1. ~~Option A: A Party under whose jurisdiction or control a [planned] [proposed] activity falls shall be responsible for determining if it may proceed.~~

**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:

(a) The environmental impact assessment report shall be submitted to the [Scientific and Technical Body] [Scientific, Technical and Technological 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] [Scientific, Technical and Technological Body] for reconsideration where the [Scientific and Technical Body] [Scientific, Technical and Technological 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.~~

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.}~~

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.

## **Rationale**

None provided

## **Republic of Indonesia**

**1. Option B:** The Conference of the Parties shall be responsible for determining whether a [planned] ~~[proposed]~~ activity under the jurisdiction or control of a Party **conducted in areas beyond national jurisdiction**, which has been determined to likely have greater than a minor or transitory effect **or have significant harmful 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:

(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 **conducted in areas beyond national jurisdiction** should proceed;

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

~~2. When determining whether the [planned] [proposed] activity in areas beyond national jurisdiction 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 **in areas beyond national jurisdiction** would **evidently** have significant adverse impacts on the environment.]

## **4. Propose to delete**

## **Rationale**

None provided

## **International Union for Conservation of Nature**

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.

### **Rationale**

These suggested changes align with the CBD Guidelines for Consideration of Biodiversity in EIAs in Marine and Coastal Areas, para. 42.

### **High Seas Alliance**

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.~~

### **Rationale**

None provided

### **Ocean Care**

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.~~

### **Rationale**

It is important to have a safeguard that prevents proponents for an activity to move forward when the EIA assessment indicates that it will significant adverse impact on the environment

## **World Ocean Council**

A Party under whose jurisdiction or control a- [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 [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:

(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 [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 [proposed] activity under the jurisdiction or control of a Party should not proceed.

### **Rationale**

In the context of Art. 38.1 above, the World Ocean Council (WOC) recommends the adoption of Option B as it presents a measured and science-based approach to the sustainable use and stewardship of ocean resources via the proposed Science and Technical Body (STB). Further, this approach has utility for the other focus areas within the Agreement namely MGR (Marine Genetic Resources), ABM (Area Based management tools) and Capacity Building and Marine Technology.

As regards Option A, a compromise may be possible where the STB “accredits” a state party EIAs provided they encompass robust international standards when conducting EIAs and report results to the CoP and STB accordingly.

The World Ocean Council (WOC) is a global, cross-sectoral ocean industry leadership alliance committed to Corporate Ocean Responsibility.



## ARTICLE 39

### Caribbean Community and Pacific Small Island Developing States

#### **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.

#### **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.~~

#### **Rationale**

None provided

### Bolivarian Republic of Venezuela

#### **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.

#### **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 which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.~~

#### **Rationale**

None provided

### Holy See

#### **OPTION I:**

**2. 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.

#### **OPTION II:**

**1. 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.**

**3. In the event the activity is of a commercial nature, the Party exercising jurisdiction and control over the activity should provide a written report to the Implementation and Compliance Committee, including non-confidential information regarding the financial strength of the national, whether individual or juridical person or enterprise, engaged in the activity, the financial status of the activity itself, and the status of any related financial measures tied to the activity, including insurance, guarantees, surety bonds and/or other indemnities thus provided.**

**4. In the event of a change of control of the party doing the activity, either the State having jurisdiction and control over the activity or the State of the acquiring entity will explicitly assume jurisdiction and control over the activity.**

**5. In the event that a flag State exercises jurisdiction and control over the activity and the natural or juridical person doing the activity changes its flag, the activity should cease until a new State agrees to assume all obligations with respect to the activity as set forth by this agreement.**

#### **Rationale**

Options A and B are not exclusive of one another and both are relevant and should appear in the text. NEW PARAGRAPH 3: This additional language is necessary to operationalize the polluter pays principle. The process has to continually assess the financial strength of the enterprise engaged in the activity to ensure that it has the financial wherewithal to do the activity in the prescribed manner for the anticipated time; it also ensures that sufficient money is available in the event the potential harm becomes a reality. NEW PARAGRAPHS 4 and 5: monitors a change of control by a State, of the person doing the activity, or a change of flag.

#### **Republic of Türkiye**

#### **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**

### **Rationale**

Türkiye believes that Option 1 is more clear and straightforward.

### **International Union for Conservation of Nature**

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.

### **Rationale**

Activities should be monitored to ensure that environmental quality is maintained. Activities in ABNJ with effects on biodiversity should be designed to be sufficiently flexible and responsive to new information obtained from such monitoring.

## ARTICLE 40

### Caribbean Community and Pacific Small Island Developing States

1. ~~Option A: Parties shall ensure that the results of the monitoring required under article 39 are reported on at appropriate intervals.~~

**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.

2. Reports shall be made public, and be submitted to the clearing-house mechanism ~~{and the [Scientific and Technical Body] [Scientific, Technical and Technological Body]}~~ {and}:

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

~~{(b)Other States, and the bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, in accordance with their 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.}~~

#### **Rationale**

None provided

### Bolivarian Republic of Venezuela

1. ~~Option A: Parties shall ensure that the results of the monitoring required under article 39 are reported on at appropriate intervals.~~

**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.

2. Reports shall be submitted to the clearing-house mechanism [and the Scientific and Technical Body] [and]:

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

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

## **Rationale**

None provided

## **High Seas Alliance**

2. Reports shall be submitted to the clearing-house mechanism ~~{and the Scientific and Technical Body}~~ ~~{and}~~:

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

~~{(b) Other States, and the bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies in accordance with their respective mandates, ~~and~~ other States and the public 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.}~~

## **Rationale**

None provided

## ARTICLE 41

### Caribbean Community and Pacific Small Island Developing States

Parties shall ensure that the ~~{environmental}~~ impacts of the authorized activity are reviewed.

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] ~~[Scientific, Technical and Technological Body]~~ shall:

(a) Notify the Conference of the Parties ~~{, other Parties and the public}~~;

(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] ~~[Scientific, Technical and Technological Body]~~ shall recommend and decide whether the activity should continue;

2 bis. On the basis of the recommendation of the [Scientific and Technical Body] ~~[Scientific, Technical and Technological 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.~~

~~{3. In the case of disagreements in respect of monitoring, Parties concerned shall seek resolution by non-adversarial means, including referring the matter to the Implementation and Compliance Committee to facilitate resolution ~~diplomatic means~~ ~~{, without affecting recourse to judicial or non-judicial bodies}~~ .}~~

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.

### **Rationale**

None provided

## Holy See

1. A Party exercising jurisdiction and control over an activity Parties shall ensure that the ~~[environmental, economic, social and cultural]~~ impacts of the authorized activity are reviewed and provide oversight of the activity for its duration.

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 the coastal State(s) or small island developing State(s) adjacent to the activity, or the Implementation and Compliance Committee in consultation with the Scientific and Technical Body shall:

- (a) Notify the Conference of the Parties [, other Parties and the public];
- (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 Implementation and Compliance Committee in consultation with 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 Implementation and Compliance Committee of the Conference of the Parties shall decide whether the activity may resume.

### Option B:

~~[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].]~~

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.

4bis. In the event a management directive by a State exercising jurisdiction and control over [an activity] [a national engaged in an activity] in areas beyond national jurisdiction disproportionately affects an adjacent island State or coastal State, that State may be entitled to [injunctive relief to suspend or stop

the activity until such time as acceptable measures can be taken,] [to seek relief in the form of compensatory damages,] [and/or punitive damages if done with malice].

5. The Party exercising jurisdiction and control over an activity ~~Parties~~ shall publish, including in the clearing-house mechanism:

(a) Reports on the review of the environmental impacts of the authorized activity;

(b) Reports, when available, regarding financial, social, cultural and other impacts stemming from the activity;

(b) Decision-making documents, when a Party has reviewed its decision authorizing the activity.

### **Rationale**

PARAGRAPH 1: additions reflect Art. 30.1(b)(i). As drafted, the SPs will monitor the effects of authorized activities but not the activities themselves. To our mind this leaves a gap for the creation of another regional or sectoral body that will assume this role for a new activity. We recognize that some delegations would like to limit this Part to operationalizing EIAs and not address use. However, we do believe that some minimum obligation with respect to oversight should be placed on States approving activities in ABNJ, in particular because these types of obligations may ease the need for international intervention, especially with respect to reporting on a global basis. PARAGRAPH 2: Option A is our preference. The chapeau provides that if unforeseen adverse impacts are identified as a result of monitoring, the State with jurisdiction and control over the approved activity, or alternatively the STB can take steps to halt the activity or take mitigation and prevention measures. We observe that it is difficult to see that an STB will ultimately be given decision-making powers since the STB doesn't appear to have this power in the rest of the draft text; it is a scientific body and not a governing body. That leaves just the State who gave the initial approval to go ahead with an activity – However, we note that when considering the economic incentives of allowing an activity to continue, especially in ABNJ, the approving State is faced with a conflict of interest and should not have sole discretion. Therefore, we look to UNCLOS Art. 221 which grants specific jurisdiction to coastal States in cases of maritime casualties which result, or may be expected to result, in major harmful consequences, even if it involves actions in ABNJ. So we believe that in accordance with the main convention, the IA should clarify that coastal States and SIDS will have the right to halt or prevent an activity etc, and that the COP should provide assistance in these negotiations between those States (see para 3). Option B is not an option at all because it presents an obvious conflict of interest: that is, that a single State has a conflict given its economic interest or relationship with the party conducting an activity (most likely commercial) where that activity is conducted in a geographic area in which the responsible State has only a fractional interest. PARAGRAPH 5: "Parties" is not descriptive enough to identify which State has this obligation.



## **Republic of Indonesia**

2. **Option A:** Should the results of 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 **conducted in areas beyond national jurisdiction** or Scientific and Technical Body shall:

(a) Notify the Conference of the Parties **and stakeholder most likely to be affected** ~~[-other Parties and the public];~~

### **Rationale**

None provided

## **Republic of the Philippines**

1. The Scientific and Technical Body shall develop ~~[standards and guidelines]~~ ~~[guidance]~~ ~~[guidelines]~~ for consideration and adoption by the Conference of the Parties on:

xxxx...

(d) The required scope and content of environmental impact assessment reports pursuant to article 35;

### **Rationale**

None provided

## ARTICLE 41BIS

### Caribbean Community and Pacific Small Island Developing States

#### Article 41bis

Guidance to be developed by [Scientific and Technical Body] [Scientific, Technical and Technological Body]

1. The [Scientific and Technical Body] [Scientific, Technical and Technological Body] shall develop ~~{standards and guidelines}~~ ~~{guidance}~~ ~~{guidelines}~~ for consideration and adoption by the Conference of the Parties on:

(a) Determining whether the threshold for conduct of environmental impact assessment has been reached or exceeded for proposed activities; 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;

(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;:-

(g) 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.

2. The [Scientific and Technical Body] [Scientific, Technical and Technological Body] may also develop ~~{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 bodies as requiring protection or special attention, in cooperation with those bodies.}~~

#### Rationale

None provided

### **Republic of Indonesia**

1. The Scientific and Technical Body shall develop [standards and guidelines] ~~[guidance]~~ ~~[guidelines]~~ for consideration and adoption by the Conference of Parties on:

(b) The assessment of [potential] [~~possible~~] transboundary impacts for projected activities;

~~(e) The nature and severity of the impacts that would require a supplemental environmental impact assessment;~~

2. The Scientific and Technical Body may also develop ~~[voluntary]~~ [standards and guidelines] ~~[guidance]~~ ~~[guidelines]~~ for consideration and adoption by the Conference of 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 ~~in accordance with best available science~~;

(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;

### **Rationale**

None provided

## ARTICLE 41TER

### Caribbean Community and Pacific Small Island Developing States

**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.

~~**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.~~

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.

#### **Rationale**

None provided

### Bolivarian Republic of Venezuela

1. **Option A:** Parties, individually or in cooperation with other Parties, and acting through the Conference of the Parties, shall ensure that strategic environmental assessments are carried out for areas beyond national jurisdiction.

~~**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.~~

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.

#### **Rationale**

None provided

### Republic of Türkiye

Option A: Parties, individually or in cooperation with other Parties, and acting through the Conference of the Parties, shall ensure that strategic environmental assessments are carried out for areas beyond national jurisdiction.

## **Rationale**

Türkiye prefers Option A.

### **World Wide Fund for Nature (WWF) International**

1. Option A: Parties, individually or in cooperation with other Parties, and acting through the Conference of the Parties, shall ensure that strategic environmental assessments are carried out for matters relating to the biodiversity of areas beyond national jurisdiction.

~~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.~~

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.

3. The SBSTTA, either at the request of the COP or on its own initiative, may conduct Strategic Environmental Assessments on any matters relating to the biodiversity of ABNJ deemed relevant to assisting Parties to implement the BBNJ ILBI, including meeting their obligations under applicable international law and in implementing the decisions of relevant international bodies.

## **Rationale**

In favouring Option A, WWF is keen to see SEA established as a tool that can assist Parties in implementing any and all Parts of the BBNJ ILBI, not just Part IV. In proposing to add ‘... matters relating to biodiversity of ... ABNJ’, WWF wishes to clarify that SEA is not an ‘activity’ to be confined to ABNJ by Article 3. It is a study to marshal knowledge and understanding to support decision-making of all kinds. Given the hyper-connectivity of oceanic systems, it is highly likely that any SEA pertinent to the biodiversity of ABNJ will need to include information about adjacent areas. WWF’s proposed para.3 is aimed at normalizing the conduct of SEAs as a routine element of the international community’s efforts to improve their knowledge and understanding of biodiversity of ABNJ and thus the cost-effective quality of their decision-making worthy of being identified as a priority for relevant capacity building and transfer of marine technology arrangements. This issue of cost-effectiveness is very important for EIA – the greater the prior investment in knowledge and understanding, the less onerous will be any EIA required to adequately identify and manage a particular level of risk.

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

## ARTICLE 42

### **Republic of Indonesia**

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, **taking into account specific needs of developing States**;
- (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 **and conducting** 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.

#### **Rationale**

None provided

### **Republic of the Philippines**

[...]

- (e) More specifically, support **and enable** 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 **and their derivatives**, including **access to the resources, data, and information, and relating to** the sharing of benefits;

#### **Rationale**

None provided

### **Institute for Sustainable Development and Research**

(e) More specifically, support developing States Parties and [NGOs in Developing States](#) through capacity building and the transfer of marine technology under this Agreement in:

**Rationale**

The NGOs in Developing States plays an important role in transfer of Marine technology to the local population. The resources are limited for such activities in developing States. Hence there is an urgent need to support the NGOs in developing States through capacity building and the transfer of marine technology.



## ARTICLE 43

### **Republic of Indonesia**

3. In giving effect to this Part, Parties shall give full recognition to the special requirements of developing States Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged States, **archipelagic 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.

### **Rationale**

None provided

## ARTICLE 44

### Pacific Small Island Developing States

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, unless otherwise determined by the Conference of the Parties.~~

### **Rationale**

None provided

### Republic of Indonesia

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,~~As essential elements for the attainment of the objectives of this Agreement, Parties shall ensure access to capacity building and marine technology, including transfer of marine technology and biotechnology, to developing States Parties that need and request it.

2. Parties shall undertake to provide, within their capabilities, resources to support such capacity-building and the transfer of marine technology, including biotechnology, and to facilitate access to other sources of support.

3. Capacity-building and the transfer of marine technology ~~should be a country-driven,~~ shall be 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, including biotechnology, 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 [or] 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 Agreement's entry into force or other timeframe as determined by the Conference of the Parties.

**Rationale**

None provided

## ARTICLE 46

### Pacific Small Island Developing States

#### NEW

i. The provision of funding for the development of human resources and technical expertise, including through:

ii a. The provision of scholarships or other grants for representatives of small island developing States Parties in workshops, programmes or other relevant training programmes to develop their specific capacities;

b. The provision of financial and technical expertise and resources, in particular for small island developing States, concerning environmental impact assessments;”

#### **Article 46 para 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, inclusive of the items listed in para 1, which it shall review, assess and amend periodically, as necessary, to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, subregions and regions.

#### **Rationale**

Given the fundamental importance PSIDS accords to ensuring needs-based and country-driven capacity building requirements that lends support for meaningful implementation of the BBNJ instrument by SIDS, PSIDS would like to therefore stress the importance of the retention of these provisions from Annex II contained in the President's revised draft text of an agreement (A/CONF.232/2020/3), in particular the provision regarding scholarships/grants for representatives of SIDS.

If Annex II is to be deleted, we prefer not having to rely on a "*recommendation by the Conference that the Conference of the Parties take into account the document when developing an indicative and non-exhaustive list of types of capacity-building and transfer of marine technology*" and therefore suggest that these SIDS-friendly provisions, in particular, the provision regarding scholarships/grants, be included in the text of Article 46, paragraph 1 as a new subparagraph.

## **Republic of the Philippines**

1. [...]

[...]

(d) The development and strengthening of institutional capacity and national policy and regulatory frameworks or mechanisms;

[...]

(g) The development of (individual and institutional) technical, scientific and research and development programmes, including biotechnological research activities, and the national and regional centers of excellence;

### **Rationale**

None provided

## ARTICLE 47

### **Republic of Türkiye**

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

### **Rationale**

Since the monitoring and capacity building are one of the core objectives of the BBNJ Agreement, Türkiye believes that it will be better to establish a capacity-building and transfer of marine technology committee composed of experts from relevant fields. Especially this committee should be focused on ensuring fairness and equity in terms of transfer of marine technology and capacity building. In this manner, Türkiye encourages adopting option III.

**PART VI**  
**INSTITUTIONAL ARRANGEMENTS**

## ARTICLE 48

### **Republic of Türkiye**

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.

~~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.~~

### **Rationale**

Turkey is of the view that decisions of the Conference of the Parties including adoption of rules of procedure for itself and for any subsidiary body should be taken by consensus. Turkey reaffirms its statement on this issue during IGC III and believes that, if decisions are taken by consensus, it would enable more effective and consistent implementation of the Agreement.

### **United Nations Environment Programme**

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.

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.

**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. For the purposes of this Article, “Parties present and voting” means Parties present and casting an affirmative or negative vote”.

### **Rationale**



Although there is a general understanding about what “present and voting” in the intergovernmental setting means, to cast away any doubt we proposed to add that it means Parties present and casting an affirmative or negative vote. Multilateral environmental agreements usually include this specification.

### **High Seas Alliance**

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.

~~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. 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.~~

(...)

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 ~~may 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 ~~the that~~ threat or adverse impact or that the effects or potential effects of the phenomenon or disaster are addressed.

~~(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 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.~~

(a) 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.~~

## **Rationale**

HSA strongly supports including an option that empowers Parties to take decisions by a vote when consensus cannot be reached, in the agreement. This extends to the adoption of the rules of procedure.

Given the process of establishing MPAs can take long, HSA supports empowering the BBNJ CoP to adopt interim & emergency measures, but believes that “serious threat” is too high a threshold and that rather than creating two different thresholds, one single threshold “has, or may have significant adverse impact” should be used.

We understand the intent with sub-paragraph (a), but ‘undermining’ concerns are addressed elsewhere in the text and we believe measures should be able to be taken if they are not otherwise taken, for whatever reason. Finally, we believe a 2-year expiration is arbitrary and propose that language be struck so that the COP, upon the advice of the STB, can take the decision.

Finally, we believe a 2-year expiration is arbitrary and propose that language be struck so that the COP, upon the advice of the STB, can take the decision

## ARTICLE 49

### **Pacific Small Island Developing States**

2. The Body shall be composed of experts with suitable [scientific - delete] qualifications, taking into account the need for multidisciplinary expertise, including [scientific expertise and - insert] expertise in relevant traditional knowledge of Indigenous Peoples and local communities, gender balance and equitable geographical representation

#### **Rationale**

None provided

### **Japan**

[...]

2. The Body shall be composed of members elected by the Conference of the Parties from Candidates nominated by Parties. Those members shall be 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.

[...]

5. The meetings of the Scientific and Technical Body shall be open to participation by all Parties,

#### **Rationale**

1. We agree that the details of selection process will be determined by the Conference of the Parties. However, the basics such as that the members will be elected by the COP from candidates nominated by Parties should be provided in the text.
2. Following the example of Article 25 of CBD, we suggest that the meetings of the STB should be open to all Parties.

### **High Seas Alliance**

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.

### **Rationale**

We think it is critical that the scientific body make recommendations based on scientific evidence and not political considerations. It is important that scientists and the advice they provide are viewed as trustworthy and free from bias. To that end, we recommend that members of the STB serve in their personal, rather than national, capacity.

### **International Cable Protection Committee**

1. A Scientific and Technical Body is hereby established.
2. The Body shall be composed of experts with suitable scientific [and technical](#) 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.
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 scientific and [technical](#) experts, as may be required.
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.

### **Rationale**

The Scientific and Technical Body needs to be composed of both scientific and technical experts in order fulfil its mission of "provid[ing] scientific and technical advice to the Conferences of Parties." Technical expertise is critical, in particular to advise on activities like submarine cables, which requires an understanding of how submarine cable systems operate. Marine scientific expertise is of course also necessary, but not sufficient, to provide optimal advice on the interactions between the environment and certain specialized activities, such as submarine cable laying and repair activities. We note that OSPAR's Coordination Group and Environmental Impacts of Human Activities Committee include "technical experts," and not "scientific experts"

## ARTICLE 50

### **Republic of Türkiye**

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, shall perform the secretariat functions under this Agreement.‡

~~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.~~

### **Rationale**

Türkiye advocates that effective implementation of this global Agreement requires establishing a specialized and dedicated Secretariat for the BBNJ Agreement.

## ARTICLE 51

### **Republic of Indonesia**

2. The clearing-house mechanism shall consist primarily of an open-access platform ~~complemented by~~. The specific modalities ~~such as committee or working group for which~~ for the operation ~~of the clearing-house mechanism~~ shall be determined by the Conference of the Parties.

### **Rationale**

None provided

**PART VII**  
**FINANCIAL RESOURCES AND MECHANISM**

## ARTICLE 52

### **Republic of Indonesia**

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 **archipelagic states and**, 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, **and archipelagic 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

### **Rationale**

None provided

### **Republic of Türkiye**

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 this Agreement's objectives.

In addition to the considerations provided in this article, the working group on financial resources shall consider, inter alia:

- (a) The assessment of the needs of the Parties, in particular developing States Parties;
- (b) The availability and timely disbursement of funds;
- (c) Transparency of decision-making and management processes concerning fundraising and allocations;
- (d) Accountability of the recipient developing States Parties in 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.



~~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.~~

## **Rationale**

Turkey favors establishing a working group for financial resources that will provide analysis and information for decision making process during Conference of Parties

## **International Union for Conservation of Nature**

3. The mechanism shall include:

(...)

(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:

(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 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;

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.

5. States Parties agree to mobilise adequate funding to deliver an effective mechanism. 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.

(...)

8. ~~Option A:~~ The Conference of the Parties shall establish a ~~working group~~Standing Committee on 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 considerations provided in this article, the working group on financial resources shall consider, inter alia:

- (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 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.

## **Rationale**

On 3.: 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.

On 5: This additional text helps clarify that States Parties will have an obligation to mobilise adequate funding.

On 8: Art. 52, 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.

### **High Seas Alliance**

3. The mechanism shall include:

(...)

(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:226

(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 innovation, use and the sharing transfer of marine technology;

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

(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;

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.

5. States Parties agree to mobilise adequate funding to deliver an effective mechanism. 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.

(...)

8. ~~Option A:~~ The Conference of the Parties shall establish a Standing Committee working group on financial resources to help mobilize adequate resources, 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:

- (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.

~~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.

## **Rationale**

On 3.: HSA supports the text, with the following suggestions:

- add “adequate” before “assessed contributions” since potential expenditures under (i)-(v) will have significant costs
- add language to clarify institutional mechanisms for the special fund
- remove bracketed language regarding private entities, since any such money (e.g. from MGR-ABS) should be considered additional.
- add “conservation” in (iii);

On 4.: The provision did not have an “actor” and was reformulated to be consistent with other parts of the text

On 5: This additional text helps clarify that States Parties will have an obligation to mobilise adequate funding.

On 8: Art. 52, 8) Option A needs strengthening, for instance 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.

Both Option A and Option B should be retained in the Agreement, as they are complementary.

**PART IX**  
**SETTLEMENT OF DISPUTES AND ADVISORY OPINIONS**

## ARTICLE 55

### Republic of Türkiye

#### OPTION I:

~~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.~~

~~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.~~

~~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.~~

~~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 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, 48/55 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.~~

~~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.~~

~~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, sub-regional or sectoral body concerning the interpretation and application of such instruments and frameworks~~

#### OPTION II:

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.
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.
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:
  - (a) Arbitration, in accordance with the procedure ~~{to be adopted by the Conference of the Parties} ~~[haid down in annex VII of 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 of the Convention] unless the parties otherwise agree.~~~~~~
5. This article shall not apply to any dispute concerning the land territory, sovereignty, sovereign rights or jurisdiction of a Party to this Agreement.

## **Rationale**

Türkiye is not a party to the UN Convention on the Law of the Sea (UNCLOS). Hence, as mentioned in Option I of Article 55, it is not acceptable to apply the provisions relating to the settlement of disputes set out in Part XV of UNCLOS mutadis mutandis under the agreement. Türkiye advocates that the dispute settlement procedures under the agreement should take into account the legal status of Non-Parties to UNCLOS. In this regard, Türkiye favors the proposal put forward in Option II, which stipulates that the Article 287 of UNCLOS should only apply on a voluntary basis. Moreover, the procedures for the dispute settlement mechanisms mentioned in paragraphs 3(a) and 4, namely arbitration and conciliation, should be decided and adopted by the Conference of the Parties.

## **United States of America**

[OPT 1]55.2 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, approving 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.

[OPT 1]55.3 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, approving 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.

[OPT 1]55.4 A Party to this Agreement that is not a Party to the Convention, when signing, ratifying, approving 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.

[OPT 1]55.5: A Party to this Agreement that is not a Party to the Convention may, when signing, ratifying, approving 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~~ Article 55.1, declare in writing that it does not accept any one 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 for the settlement of disputes under this Part. Article 298 of the Convention shall apply to such a declaration.

## **Rationale**

Throughout: Article 59 includes “approval” as a means to join the Agreement, thus it should be included in the list here as well. This is a legal/technical edit.

Article 55.5: As not all Parties to BBNJ will necessarily be parties to LOSC, there cannot be LOSC obligations arising from the Convention under BBNJ. Instead, it makes sense to reference obligations that arise under Article 55.1 (which mirror Part XV, section 1 of LOSC). We would also add “for the settlement of disputes under this Part” in the penultimate sentence for clarity.

## ARTICLE 55TER

### Republic of Türkiye

#### ~~Article 55ter~~

#### ~~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.]~~

### **Rationale**

Türkiye is not a party to the UN Convention on the Law of the Sea (UNCLOS). The International Tribunal for the Law of the Sea (ITLOS) is established under the provisions of UNCLOS. Hence any provision that will be made for the Conference of the Parties to request advisory opinions from the ITLOS would not accommodate Non-Parties to UNCLOS. For this reason, Türkiye proposes to delete Article 55ter.

**PART XI BIS**

## **International Union for Conservation of Nature**

### Responsibility and liability

1. Parties are responsible for the fulfilment 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.
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.

### **Rationale**

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 environment 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 ANTE55

### United States of America

Article ante58.1: When decisions of the Conference of the Parties require a vote, Each Party to this Agreement shall have one vote, except as provided for in paragraph 2.

Article ante58.2: 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 and present and voting. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

### **Rationale**

Article ante58.1: To clarify the circumstances in which this provision is relevant

Article ante58.2: For matters where a REIO has competence, we agree that the REIO can exercise the number of votes equal to the number of its member States that are Parties to the Agreement, but only if those member States are also present for the vote. It is unfair for an REIO to exercise votes of members who did not travel to attend an in-person meeting when many States travel from far to exercise their single vote.

## ARTICLE 59

### United States of America

#### **Article 59: Ratification, approval, acceptance, ~~and~~ accession ~~and formal confirmation~~**

This Agreement shall be subject to ratification, approval, ~~or~~ 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, ~~and~~ accession ~~and formal confirmation~~ shall be deposited with the Secretary-General of the United Nations.

#### **Rationale**

There is no need to include formal confirmation as REIOs can join by approval, so it should be deleted in the title as well as in the Article text. This tracks the drafting in Minamata as well.

The “final confirmation” text also appears in Articles 59bis, 61, 62, and 63bis and should be removed for the same reason.

## ARTICLE 63

### **Bolivarian Republic of Venezuela**

~~No~~ reservations or exceptions may be made to this Agreement.

#### **Rationale**

None provided

### **Japan**

No reservations or exceptions may be made to this Agreement unless expressly permitted by other articles of this Agreement.

#### **Rationale**

“unless expressly...this Agreement” is added to make it consistent with Article 309 of the Convention, which reads “No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention”.



## ANNEX I

### Indicative criteria for identification of areas

#### Bolivarian Republic of Venezuela

##### ANNEX I Indicative criteria for identification of areas

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

## **Rationale**

None provided

## **International Union for the Conservation of Nature**

### 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;
- (ibis) ~~and P~~productivity;
- {(j) Representativeness;} [move to network criteria]
- (k) Dependency;
- {(l) ~~Exceptional N~~naturalness;}
- (m) Importance for eEcological connectivity ~~{and/or coherence}~~;
- (n) Important ecological processes occurring therein;
- (r) Slow recovery and resilience;
- {(q) Cumulative and transboundary impacts;}

### Social, cultural and economic criteria

- {(o) Economic and social factors;} {
- (p) Cultural heritage ~~factors;~~}
- (p bis) Baseline for monitoring studies
- (p ter) Long term research studies

### Criteria related to MPA network design

- (m) Ecological connectivity and/or coherence;
- (j) Representativeness;
- (s) Adequacy and viability;
- (t) Replication;

~~(u) Feasibility.~~

## **Rationale**

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". (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>)

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.

## **World Wide Fund for Nature (WWF) International**

### **ANNEX I**

#### **Open-ended list of indicative criteria for identification of areas for establishment as MPAs in ABNJ**

- (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;**
- (hh) Biological productivity**
- (i) Biological diversity ~~and productivity~~;**
- (j) Representativeness;**
- (k) Dependency;**
- (l) Exceptional naturalness;**
- (m) Ecological connectivity ~~and/or coherence~~;**
- (n) Important ecological processes occurring therein;**
- (o) Economic and social factors;**

- {(p) Cultural factors;}**
- [(q) Cumulative and transboundary impacts;]**
- (r) Slow recovery;**
- (rr) R-and-resilience;**
- (s) Adequacy and viability;**
- (t) Replication;**
- (u) Feasibility.}**

## **Rationale**

Annex I is only needed for MPA establishment if applied consistent with IUCN guidance. I.e., existing or potential uses need not be axiomatically excluded if they are controlled consistent with the need to protect the values for which the MPA was designated. Having such a list is important such that WWF is proposing that the brackets at the beginning and end of the list of criteria be removed. WWF is proposing that the Annex be named, ‘open-ended list ...’ for the sake of clarity that the COP can decide to add to the list (see WWF proposal for Article 17 bis). Again, consistent with IUCN guidance, there is no need to unreasonably restrict inclusion of criteria on the list for fear of impact on existing uses. WWF therefore proposes that brackets be removed from: (b) rarity; (j) representativeness; (l) exceptional naturalness; ‘coherence’ in (m); and (p) cultural factors. WWF is also proposing that ‘biological productivity’ be retained as a criterion as the inevitable concentration of both ecological and economic considerations in such areas makes application of the MPA tool, consistent with IUCN guidance, a very attractive option. Inclusion of ‘biological productivity’ is also an effective substitute for ‘economic and social factors’. WWF is also suggesting separation of ‘slow recovery’ and ‘resilience’ as, while both are important, they are somewhat different in their character, likely location and expectations of effective management. Finally, WWF is proposing retention of (p) cultural factors as the appropriate criterion for addressing traditional knowledge and other interests of seafaring and coastal communities.