

AGREEMENT UNDER THE UNITED NATIONS CONVEN-
TION ON THE LAW OF THE SEA ON THE CON-
SERVATION AND SUSTAINABLE USE OF MARINE
BIOLOGICAL DIVERSITY OF AREAS BEYOND NA-
TIONAL JURISDICTION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AGREEMENT UNDER THE UNITED NATIONS CONVENTION ON THE
LAW OF THE SEA ON THE CONSERVATION AND SUSTAINABLE
USE OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NA-
TIONAL JURISDICTION



DECEMBER 18, 2024.—Treaty was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *December 18, 2024.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the “Agreement”). I also transmit, for the information of the Senate, the report of the Department of State with respect to the Agreement.

The purpose of the Agreement is to ensure the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (ABNJ), often referred to as the high seas, which are under threat from a multitude of stressors. The high seas includes ocean areas beyond countries’ 200-mile exclusive economic zones and covers about two-thirds of the global ocean.

The Agreement will create a mechanism to establish marine protected areas in ABNJ, a vital step in the global effort to conserve or protect at least 30 percent of the global ocean by 2030. It will create a system for the fair and equitable sharing of benefits from the use of marine genetic resources from ABNJ. The Agreement also includes provisions ensuring that Parties conduct rigorous environmental impact assessments for their activities in ABNJ and provisions on capacity-building and the transfer of marine technology related to the Agreement. The Agreement is key to supporting the sustainable use of marine resources, maintaining the integrity of ocean ecosystems, and conserving marine biological diversity. Implementation of the Agreement will respect the competences of and not undermine other international bodies and will require consultations with those organizations to enhance cooperation and coordination on the conservation and sustainable use of the marine resources of the high seas.

I believe joining the Agreement to be fully in the interest of the United States. I recommend that the Senate give early and favorable consideration to the Agreement and give its advice and consent to ratification.

JOSEPH R. BIDEN, Jr.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, September 9, 2024.

The PRESIDENT,
The White House.

I have the honor to submit to you, with a view to the transmittal to the Senate for its advice and consent to ratification, the Agreement Under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction done at New York on June 19, 2023, which is referred to as the “BBNJ” Agreement, or the “High Seas Treaty.” The United States signed the Agreement on September 20, 2023. Also enclosed is an Article by Article analysis of the Agreement.

The Agreement’s objective is to ensure the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (ABNJ), which are under threat from a multitude of stressors. ABNJ, often referred to as the “high seas,” includes ocean areas beyond countries’ 200-mile exclusive economic zones and covers about two-thirds of the global ocean. The Agreement is key to supporting the sustainable use of marine resources, maintaining the integrity of ocean ecosystems, and conserving marine biological diversity.

The Agreement creates for the first time, a global and cross-sectoral mechanism to establish area-based management tools (ABMTs), including marine protected areas (MPAs), in ABNJ. This is a vital step in the global effort to conserve or protect at least 30 percent of the global ocean by 2030. As defined by the Agreement, ABMTs are tools that apply to a geographic area through which one sector or activity (e.g., fisheries) or several sectors or activities (e.g., fishing, shipping, and/or mining) are managed to achieve conservation and sustainable use objectives. The Agreement provides a process for proposing ABMTs, robust and inclusive consultation on the proposals, and a thorough scientific and technical review to inform decisions by the Conference of the Parties to establish ABMTs based on the proposals.

The Agreement also creates a system for the fair and equitable sharing of benefits arising from activities with respect to marine genetic resources (MGR) of ABNJ and digital sequence information on MGR of ABNJ, and establishes a notification system, which requires that certain information related to such activities be notified to a BBNJ Clearing-House Mechanism. The Agreement specifies two types of benefits to be shared—non-monetary and monetary. The benefits are to be used for the conservation and sustainable use of marine biological diversity.

The Agreement also establishes a process for Parties to conduct environmental impact assessments (EIAs) for their activities in ABNJ. These provisions ensure that States are conducting comprehensive and rigorous assessments, effectively bringing the world in line with the robust process the United States already has in place. EIAs and decisions on whether an activity proceeds after an EIA is conducted are done by the State with jurisdiction or control over the activity.

The Agreement also includes provisions on capacity-building and the transfer of marine technology related to the conservation and sustainable use of marine biological diversity of ABNJ. Regarding capacity-building, Parties must, within their capabilities, ensure capacity-building for developing States Parties that need and request it for conservation and sustainable use related to the Agreement. To provide this capacity-building, Parties can choose from a suite of options, many of which the United States is already undertaking. The Agreement does not mandate the transfer of marine technology but rather Parties are required to “cooperate to achieve” transfer of marine technology. Such transfer, if it occurs, is to be done on fair and most favorable terms and on mutually agreed terms and conditions, and it must also be done with due regard for all rights and legitimate interests of technology holders.

The United States achieved its primary objectives in these complex negotiations, including protection of high seas biodiversity; leveling the playing field for U.S. stakeholders by bringing other countries up to the standards of the United States for conducting environmental impact assessments; protection of intellectual property rights; not undermining existing international bodies; and ensuring that the treaty does not define MGR of ABNJ as the common heritage of humankind. The Agreement is an “implementing agreement” under the United Nations Convention on the Law of the Sea (Convention), although it is not a requirement to be a party to Convention to become party to the BBNJ Agreement. This follows the approach of the UN Fish Stocks Agreement (“United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks” done at New York on December 4, 1995), to which the United States is party.

Most obligations under the Agreement would be implemented on the basis of existing statutory authorities. As described in more detail below, the Administration would plan to seek additional legislation to support implementation of Part II obligations as to private actors and non-federal government actors. The Administration would also plan to seek appropriations as part of the annual budget request to meet financial obligations under the Agreement, including for the payment of assessed contributions. In addition, regulations and other executive action would need to be promulgated under these new and existing authorities for the United States to be able to carry out its treaty obligations. With the exception of the Article 51.6 obligation to keep certain information confidential, which is self-executing, the Agreement is not self-executing.

All interested agencies and departments support the United States joining the Agreement. I recommend, therefore, that the

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treaty be transmitted to the Senate for its advice and consent to ratification.

Sincerely,

ANTONY J. BLINKEN.

Enclosures: As stated.

Agreement under the United Nations Convention on the Law of the Sea on
the conservation and sustainable use of marine biological diversity of areas
beyond national jurisdiction (BBNJ Agreement)
Article-by-article Analysis

Preamble

The preamble of the Agreement contains seventeen paragraphs. The preambular paragraphs do not place obligations on individual parties and do not require authority to implement beyond those required for the substantive obligations of the Agreement.

Part I - General Provisions

Article 1 - Use of terms

Article 1 includes 14 defined terms, several of which are self-explanatory. The following terms are described to aid in understanding key parts of the Agreement elaborated in this Report.

The term “area-based management tool” is defined in Article 1.1. It includes marine protected areas and other geographic areas in which “one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives.”

The term “areas beyond national jurisdiction” is defined in Article 1.2 as “the high seas and the Area,” both of which are defined in the United Nations Convention on the Law of the Sea (Convention).

The term “biotechnology” is defined in Article 1.3, as “any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.” However, there are no obligations tied directly to biotechnology; rather it is listed in the definition of “marine technology” as one of the many marine technologies that could be provided under Parts II and V of the Agreement. There are also no obligations in the Agreement that are tied to “derivatives”

of MGR, such as proteins, or their use, nor is there reference to “derivatives” outside of the reference in this definition.

The term “collection in situ” in relation to marine genetic resources (MGR) is defined in Article 1.4 to mean the collection or sampling of MGR in areas beyond national jurisdiction (ABNJ). Inclusion of MGR in the Agreement is based on the perceived benefits derived from the genetic properties of the MGR, and as such the definition of “collection in situ” must be limited in scope on this basis. United Nations General Assembly Resolution 72/249, which established the BBNJ Intergovernmental Conference, included in the scope of the Agreement the issue of MGR of ABNJ and related “questions on the sharing of benefits” because of the view of developing States that use of MGR of ABNJ – to make pharmaceuticals, for example – requires equitable sharing of benefits. The Agreement applies only to MGR, not to all marine living resources.

The understood scope of “collection in situ” must align with the intended scope of Part II as a whole to avoid the scenario where all marine living resources would inadvertently be covered by BBNJ, which would also be impractical to implement. We therefore interpret the Agreement as only covering the collection of MGR of ABNJ insofar as the MGR are collected for the purpose of conducting research into their genetic properties. This is an interpretation the United States advanced throughout negotiations of the Agreement, and which was stated in the U.S. explanation of position at the Agreement’s adoption in June 2023.

The term “cumulative impacts” is defined in Article 1.6. It refers to “combined and incremental impacts” of different activities, and its scope extends from past and present actions to “reasonably foreseeable activities.” The definition expressly names the “consequences of climate change, ocean acidification and related impacts,” though the Agreement does not specify the scope of those terms or what qualifies as “related.” This definition is consistent with the treatment of cumulative impacts in environmental impact statements prepared by U.S. agencies in relation to activities in areas beyond national jurisdiction, consistent with E.O. 12114.

The term “environmental impact assessment” is defined in Article 1.7. The definition outlines the process to identify and evaluate the potential impacts of an activity, and the purpose for which such an assessment is used, i.e., to inform decision-making. Parties are obligated to prepare environmental impact assessments for certain activities under Article 28. United States agencies prepare environmental impact statements in relation to activities in areas beyond national jurisdiction, consistent with E.O. 12114, that meet this definition.

The term “marine genetic resources” is defined in Article 1.8, and means any material of marine, plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.

The term “marine protected area” is defined in Article 1.9. The area must be geographically defined and “designated and managed to achieve specific long-term biological diversity conservation objectives.” This definition allows for sustainable use within these areas so long as that use is consistent with the “conservation objectives.”

The term “utilization of marine genetic resources” is defined in Article 1.14, and means to conduct research and development on the genetic and/or biochemical composition of MGR. This mirrors the definition of “utilization of genetic resources” in the Convention on Biological Diversity. Consistent with the U.S. understanding of how utilization is viewed in that forum, the United States interprets “utilization of marine genetic resources” to include instances where both research *and* development are conducted on the genetic and/or biochemical composition of MGR of ABNJ. This would not include, for example, any research conducted on MGR of ABNJ that never entered the development phase. Nor would this include research and development on derivatives of MGR, such as proteins.

Article 2 - General objective

Article 2 states the general objective of the Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas

beyond national jurisdiction through effective implementation of relevant provisions of the Convention and further international cooperation and coordination.

Article 3 - Scope of application

The Agreement applies to areas beyond national jurisdiction. Areas beyond national jurisdiction (ABNJ) is defined in Article 1.2.

Article 4 - Exceptions

Under Article 4, warships, military aircraft and naval auxiliary are exempt from application of the Agreement. Other vessels or aircraft owned or operated by a Party and used, for the time being, only on government non-commercial service are also exempted from application of the Agreement except for Part II (on MGR). However, a broad carve out in Article 10.3 of Part II exempts military activities, including military activities by government vessels and aircraft engaged in non-commercial service, from application of Part II. Similar to Article 236 of the Convention, the Agreement requires that Parties ensure, by adoption of appropriate measures, that all vessels and aircraft exempted under Article 4 act in a manner consistent, so far as is reasonable and practicable, with the Agreement.

Article 5 - Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

Under Article 5.2, the Agreement shall be interpreted and applied in a manner that does not undermine 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.

This includes existing intellectual property rights and obligations under international law. The United States views the plain language of the treaty, namely found in Articles 5.2, 43.4, and 51.6, as providing robust intellectual property rights protections, and otherwise reaffirming that nothing in the Agreement requires mandatory disclosure of protected or confidential

information. It is therefore recommended that the United States include the following understanding in its instrument of ratification.

The United States does not interpret anything in this Agreement as requiring any waiver or undermining of existing intellectual property rights and obligations under international or national law; requiring mandatory disclosure of trade secrets or of protected undisclosed or confidential information; requiring mandatory disclosure in patent applications of the origin or source of marine genetic resources; or requiring compulsory licenses.

Article 6 - Without prejudice

The Agreement states that its provisions, along with decisions and actions of the Conference of the Parties and any of its subsidiary entities, do not prejudice the sovereignty, sovereign rights, or jurisdiction of any states.

Article 7 - General principles and approaches

The Agreement states that Parties shall be guided by 14 principles and approaches. These principles and approaches are not themselves a source of any rights or obligations under the Agreement, and States Parties are not required by the Agreement to take any specific steps to apply or give effect to them. The phrase “shall be guided” is best understood as meaning that States Parties are to take these concepts into consideration, as appropriate, in their implementation of the Agreement. These principles and approaches include both “the principle of the common heritage of humankind which is set out in the Convention” and “the freedom of marine scientific research, together with other freedoms of the high seas.”

The phrase “common heritage of humankind which is set out in the Convention” is a gender-neutral reference to Article 136 of the Convention, which states that the Area and its resources are the common heritage of mankind. The definition of resources in Article 133 of the Convention clarifies that resources in Article 136 means only mineral resources. The United States considers that the phrase “common heritage of humankind” in the BBNJ Agreement has the same meaning and application as the

corresponding phrase in the Convention, and thus does not extend beyond mineral resources of the Area.

The United States believes it is clear as an interpretive matter that MGR are not considered the common heritage of humankind under the Convention or the BBNJ Agreement. The use of MGR of ABNJ for scientific research is a freedom of the high seas and it is fundamentally important to promote and facilitate marine scientific research with respect to all Parts of this Agreement, including as related to MGR, consistent with Article 239 of the Convention.

Article 8 - International cooperation

Under Article 8, Parties shall cooperate 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, other relevant legal instruments, frameworks, and global, regional, sub-regional, and sectoral bodies. This obligation requires engagement by Parties but does not mandate any particular forms of cooperation or any particular results to be produced by the cooperation. Parties shall also promote the objectives of this Agreement when making decisions under other legal instruments or international bodies, and shall cooperate on marine scientific research and in the development and transfer of marine technology.

Part II – Marine Genetic Resources, Including the Fair and Equitable Sharing of Benefits

Part II of the Agreement creates a system for the fair and equitable sharing of non-monetary and monetary benefits arising from activities with respect to marine genetic resources (MGR) of areas beyond national jurisdiction (ABNJ) and digital sequence information on MGR of ABNJ, and also establishes a notification system, which requires certain information related to such activities be notified to a BBNJ Clearing-House Mechanism.

As described in more detail in the following paragraphs, Part II benefit-sharing obligations do not apply to any fishing activities, including commercial, subsistence, or recreational fishing activities. The benefit-sharing obligations do not apply to derivatives of MGR, such as proteins. Utilization is defined in the Agreement as conducting research and development on the genetic and/or biochemical composition of MGR. The United States interprets utilization to include instances where both research *and* development are conducted on the *genetic and/or biochemical composition* of MGR of ABNJ. This would not include, for example, any research conducted on MGR of ABNJ that never entered the development phase. Nor would this include research and development on derivatives from MGR, such as proteins.

Part II Additional Terms

There are some terms used in Part II that are not defined in the Agreement, including “activities” and “digital sequence information.”

The meaning of “activities” with respect to MGR and digital sequence information (DSI) can be determined through the substantive provisions of the Agreement. As related to benefit-sharing obligations, “activities” includes collection of MGR of ABNJ, access to MGR of ABNJ, and utilization of such MGR and DSI on such MGR; it does not include access to DSI.

“Digital sequence information” is not defined in the Agreement or internationally, either legally or by scientific practice. The term is also the subject of discussion in other fora, including the Convention on Biological Diversity (CBD) and the International Treaty for Plant Genetic Resources for Food and Agriculture (ITPGRFA). The term, when undefined, is vague and unclear as to the scope. The United States has long been a proponent of the use of the term “genetic sequence data” (GSD) instead, which is a term commonly used in the scientific community and which has a clear scope and definition. It is therefore recommended that the United States include the following understanding in its instrument of ratification.

The United States understands the term “digital sequence information” as used in the Agreement to refer to genetic sequence data that describe the order of nucleotides in DNA or RNA.

“Derivatives” is not included in the operative paragraphs of the Agreement, and there are no obligations in the Agreement related to derivatives. The definition of “biotechnology” in Article 1.3, which comes from the Convention on Biological Diversity, does include a reference to “biological systems, living organisms, or derivatives thereof,” however there are no obligations in the Agreement that are tied to such derivatives or their use. Furthermore, “biotechnology” - aside from the definition - is only included in the Agreement as one of the many marine technologies that could be provided under Parts II and V.

Article 9 - Objectives

Article 9 lays out four objectives of this Part of the Agreement: (a) the fair and equitable sharing of benefits arising from activities with respect to MGR of ABNJ and DSI on such MGR; (b) capacity development of Parties to carry out activities with respect to MGR of ABNJ and DSI on such MGR; (c) the generation of knowledge, scientific understanding and technological innovation, including through the development and conduct of marine scientific research, as fundamental contributions to the implementation of this Agreement; and (d) the development and transfer of marine technology in accordance with this Agreement.

Article 10 - Application

Under Article 10, the Agreement applies to activities with respect to MGR of ABNJ and DSI on such MGR collected and generated after entry into force of the Agreement for the respective Party. Application also extends to the utilization of MGR of ABNJ collected and DSI on such MGR generated before entry into force, unless a Party makes an exception when joining the Agreement. It is therefore recommended that the United States include the following exception in its instrument of ratification.

Under Article 70 of the Agreement, the United States makes an exception to Article 10.1 regarding application. For the United States, application of the provisions of the Agreement does not extend to utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction collected or generated before entry into force of the Agreement.

Even if a Party chooses not to make an exception and thus to extend the application of the Agreement to the utilization of MGR collected before entry into force and DSI generated before entry into force, the Agreement would not apply to any utilization of such MGR or DSI that occurs before the Agreement's entry into force.

Article 10.2 expressly provides that Part II does not apply to fishing regulated under relevant international law and fishing-related activities, or to fish or other living marine resources known to have been taken in fishing and fishing-related activities from areas beyond national jurisdiction, except where such fish or other living marine resources are regulated as utilization under Part II. The United States interprets this as broadly carving out from this Part of the Agreement all commercial, subsistence, and recreational fishing activities in areas beyond national jurisdiction and any fish or other living marine resources taken in such activities. The United States further interprets "fishing related activities" to include research in support of the management of fisheries and their associated ecosystems, which includes eDNA as related to fisheries management research. It is therefore recommended that the United States include the following understanding in its instrument of ratification.

The United States interprets the term fishing related activities under 10.2 to include research in support of fisheries and their associated ecosystems.

As described above in Article 4, Article 10.3 exempts military activities, including military activities by government vessels and aircraft engaged in

non-commercial service, from application of Part II. It also reaffirms that Part II applies to non-military activities.

Article 11 - Activities with respect to marine genetic resources of areas beyond national jurisdiction

Article 11 states that all Parties may carry out activities with respect to MGR of ABNJ and DSI on such MGR; no State shall claim or exercise sovereignty or sovereign rights over MGR of ABNJ; such activities are for the benefit of all humanity; Parties shall promote cooperation in such activities; and such activities shall be carried out exclusively for peaceful purposes. The Article states that collection *in situ* of MGR of ABNJ, i.e., collection of MGR of ABNJ, shall not constitute the legal basis for any claim to any part of the marine environment or its resources, and that such collection shall be carried out with due regard for the rights and legitimate interests of coastal States in areas within their national jurisdiction and with due regard for the interests of other States in ABNJ in accordance with the United Nations Convention on the Law of the Sea (Convention).

Article 12 - Notification on activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction

The Agreement establishes a notification system, largely captured in Article 12, in which certain information on activities with respect to MGR of ABNJ and DSI on such MGR must be notified to a BBNJ Clearing-House Mechanism. This notification system includes pre-collection notification, post-collection notification, issuance by the BBNJ Clearing-House Mechanism of standardized BBNJ batch identifiers, and notification on information related to utilization. The Agreement created this unique notification approach, rather than a more burdensome system, such as a permitting system or a pay-for-collection system, that would restrict collection of MGR.

The notification system is largely aligned with current U.S. practice and policy for research conducted in areas beyond national jurisdiction, which mirrors international best practice. For example, standard scientific practice

is that U.S. government, academic, and private sector scientists already know in advance basic information regarding the location of the MGR they are planning to collect, where they will collect it, and where it will be stored after collection. While there is currently no international obligation to share this information before collection of MGR of ABNJ, the information that would be notified to the Clearing-House Mechanism under the BBNJ Agreement is already available as part of standard scientific practice. Additionally, scientists currently share information regarding collection of MGR of ABNJ after such collection occurs, either through international publications or on publicly available websites, as part of standard scientific practice. They also place any genetic sequence data derived from MGR collected of ABNJ in a public database, such as GenBank, which is hosted by the National Institutes of Health.

Pre-collection notification: Article 12 requires notification to the Clearing-House Mechanism of information before collection *in situ* of MGR of ABNJ, including the nature and objectives of the collection, the MGR to be collected (if known), the geographical areas in which the collection is carried out, the methods and means of collection, the dates of collection, the name and sponsoring institutions, opportunities for collaboration by other States, and a data management plan. However, Article 51.6 provides that nothing under this Agreement shall be interpreted as requiring the sharing of information that is protected from disclosure under the domestic law of a Party or other applicable law. Therefore, this pre-collection information is not required to be provided to the Clearing-House Mechanism if it is protected as trade secrets or confidential information under domestic law or other applicable law.

Post-collection notification: Article 12 requires that no later than one year after collection, a report on the collection that occurred must be notified to the Clearing-House Mechanism, along with information on where MGR samples and digital sequence information on such MGR will be held. This is similar to a “post-cruise report,” which many scientists already provide as part of their normal research practices.

Standardized batch identifiers: Upon notification of pre-collection information, the Clearing-House Mechanism automatically generates a BBNJ standardized identifier. The BBNJ identifier is only required to be included in post-collection information notified to the Clearing-House Mechanism. Any time other information is notified to the Clearing-House Mechanism, such as when there is utilization of MGR, the identifier only has to be included if it is available.

The Agreement does not require Parties to identify all samples of MGR of ABNJ, or DSI on such MGR, that are in repositories or databases under their jurisdiction as originating from ABNJ. Article 12.6 requires only that this identification shall be done in accordance with current international practice and to the extent practicable.

Article 12.7 requires Parties to ensure that repositories for MGR samples, to the extent practicable, and databases under their jurisdiction biennially prepare an aggregate report on access to MGR and DSI linked to their BBNJ standardized batch identifier. The Agreement therefore does not require that access to all MGR of ABNJ or DSI on such MGR be included in any aggregate reports provided by the Party; only access to those MGR and DSI that have a BBNJ standardized batch identifier must be included. Additionally, because this is an “aggregate” report on access, it would only include the number of times a given MGR sample or DSI record is accessed, not who accessed it or from where. There is no requirement that a Party then follow, or report on, the movements or subsequent uses or developments associated with the MGR or DSI.

Notification of information on utilization: Article 12.8 requires certain information related to the utilization, including commercialization, of MGR of ABNJ, and, where practicable, the DSI on such MGR to be notified to the BBNJ Clearing-House Mechanism if available. This information includes where results of utilization can be found, details of the post-collection notification to the Clearing-House Mechanism, where the original sample is held, modalities for access to MGR and DSI on MGR, and information if available on sales of relevant products once marketed. However, the

Agreement does not require mandatory disclosure of information that is protected from disclosure under the domestic law of a Party or other applicable law per Article 51.6.

Article 13 - Traditional knowledge of Indigenous Peoples and local communities associated with marine genetic resources in areas beyond national jurisdiction

Article 13 requires Parties to take measures, where relevant and as appropriate, with the aim of ensuring that traditional knowledge associated with MGR of ABNJ held by Indigenous Peoples and local communities is accessed with free, prior, and informed consent or approval. Additionally, access to and use of such traditional knowledge shall be on mutually agreed terms. This provision does not set precedent for other fora.

Article 14 - Fair and equitable sharing of benefits

The Agreement creates a system for the fair and equitable sharing of benefits arising from activities with respect to MGR of ABNJ and DSI on such MGR. As related to benefit-sharing obligations, “activities” includes collection of MGR of ABNJ, access to MGR of ABNJ, and utilization of such MGR and DSI on such MGR; it does not include access to DSI. Regarding collection, the United States interprets the Agreement as only covering the collection of MGR of ABNJ insofar as the MGR are collected for the purpose of conducting research into their genetic properties. Regarding utilization, the United States interprets the benefit-sharing provisions to only apply to instances where both research *and* development are conducted on the *genetic and/or biochemical composition* of MGR of ABNJ. This would not include any research conducted on MGR of ABNJ that never entered the development phase. Nor would this include research and development on derivatives of MGR, such as proteins.

Article 14.1 lays out the basic obligation that benefits arising from activities with respect to MGR and DSI on MGR shall be shared in a fair and equitable manner. Such benefits must contribute to the conservation and sustainable use of biodiversity of ABNJ. The United States supports this Agreement creating a system for the fair and equitable sharing of benefits related to

MGR of ABNJ, even though these resources are not the common heritage of humankind. This Agreement is consistent with the Convention, which uses the term common heritage of humankind only in reference to the mineral resources of the Area.

Under Article 14.11, Parties must take the necessary legislative, administrative, or policy measures, as appropriate, with the aim of ensuring benefits are shared. The United States interprets Article 14.11 as, *inter alia*, requiring that adequate notice of the obligation to share benefits is provided to users prior to the activities that trigger the benefit-sharing obligation.

Article 14.2 provides an illustrative list of the kinds of non-monetary benefits arising from the collection and utilization of MGR that could be provided to satisfy the obligations in Articles 14.1 and 14.11, along the lines of what generally already occurs as standard practice in the scientific community. Such non-monetary benefits include, *inter alia*: access to samples, sample collections, and DSI, in accordance with current international practice; open access to findable scientific data in accordance with current international practice; information contained in notifications to the BBNJ Clearing-House Mechanism; transfer of marine technology in line with Part V of the Agreement; capacity-building; increased scientific and technical cooperation; and other forms of benefits. Since this list is non-exhaustive, this means a Party may choose which of the non-monetary benefits it provides and does not require a Party to ensure that each listed non-monetary benefit is shared for each activity with respect to MGR. The Agreement also does not require a collector to derive DSI on MGR of ABNJ. The United States already engages in many of the non-monetary benefits listed, so it would not require a change in policy or practice to select from this list to meet the non-monetary benefits obligations.

Article 14.5 states that monetary benefits from the utilization of MGR and DSI on MGR of ABNJ, including commercialization, shall be shared through the financial mechanism established under Article 52, for the conservation and sustainable use of marine biological diversity of ABNJ. These monetary benefits are paid to the special fund established under Article 52. Eligibility

for access to funding under this Agreement shall be open to developing States Parties on the basis of need, and funding under the special fund shall be distributed according to equitable sharing criteria. Initial monetary benefits are paid by developed States Parties as established by Article 14.6, at a rate of 50 percent of a developed Party's assessed contribution to the BBNJ budget. The Agreement does not include a definition of developed Party, nor is there any precedent for the application of the term under the Convention that would apply in this context. The BBNJ Conference of the Parties will have to determine which countries are developed and required to pay monetary benefits and which countries are developing and may receive monetary benefits. The United States strongly believes that countries who have the ability to collect MGR of ABNJ, such as the People's Republic of China, should be considered developed Parties under the Agreement. It is expected that the United States would be categorized as a developed country for these purposes and that, accordingly, it would be obligated to pay monetary benefits in accordance with Article 14.6.

Such payments will continue until such time as the BBNJ Conference of the Parties (COP) takes a decision on alternate modalities as detailed in Article 14.7. These alternate modalities will be decided by the COP by consensus unless efforts to reach consensus are exhausted, in which case the decision will be taken by three-fourths majority. The Agreement includes the following examples of possible modalities: milestone payments; payments or contributions related to the commercialization of products, including payment of a percentage of the revenue from sales of products; a tiered fee, paid on a periodic basis, based on a diversified set of indicators measuring the aggregate level of activities by a Party; or other forms as decided by the Conference of the Parties, taking into account recommendations of the access and benefit-sharing committee.

In practice, the United States would be actively engaged in the negotiations around an alternate monetary benefit-sharing mechanism. Because the United States is one of the primary actors in the kinds of high seas collection covered by Part II, the United States would be an important player in negotiations about the alternate modality and could express an intention to

withdraw from the Agreement if the alternate modality selected were not acceptable to the United States. If the COP ultimately chose an alternate modality to which the United States objected, the United States would have the option of withdrawing from the Agreement. This approach is consistent with the United States position that it would never agree to be bound by a future COP decision not taken by consensus that would purport to significantly alter U.S. legal obligations. This approach will safeguard interests of all U.S. stakeholders.

Under Article 14.8, a Party may make a declaration at the time the COP adopts modalities under Article 14.7 stating that those modalities shall not take effect for that Party for a period of up to four years in order to allow time for implementation. The United States would make use of such a declaration, as needed, either to provide time to implement such modalities or to withdraw from the Agreement if the United States were not supportive of the new modalities.

Under Article 14.9, alternate modalities should be mutually supportive of and adaptable to other access and benefit-sharing mechanisms. This could include, for example, those which may be developed for the sharing of benefits from the use of DSI under the Convention on Biological Diversity, the International Treaty for Plant Genetic Resources on Food and Agriculture, or the World Intellectual Property Organization.

Article 15 - Access and benefit-sharing committee

Article 15 establishes an access and benefit-sharing committee composed of 15 members. The COP will elect the members based on nominations by BBNJ Parties and will determine the committee's terms of reference and modalities.

Under this Article, the committee may make recommendations to the COP on matters relating to Part II, including: (a) guidelines or a code of conduct for activities with respect to MGR of ABNJ and DSI on such MGR; (b) measures to implement decisions taken; (c) rates or mechanisms for monetary benefit sharing in accordance with article 14; (d) matters relating

to Part II in relation to the Clearing-House Mechanism; (e) matters relating to Part II in relation to the financial mechanism established under article 52; and (f) any other matters relating to Part II that the COP may request the committee address.

Each Party is required to make available to the committee, through the Clearing-House Mechanism, any information required under the Agreement, including legislative, administrative, and policy measures on access and benefit-sharing; contact details on national focal points; and other information required by COP decisions.

Article 16 - Monitoring and transparency

Article 16 states that monitoring and transparency of activities with respect to MGR of ABNJ and DSI on such MGR shall be achieved through notification to the Clearing-House Mechanism, use of the batch identifiers, and in accordance with any procedures that might be adopted by the COP. Additionally, Parties are required to periodically submit reports to the access and benefit-sharing committee on their implementation of Part II. However, there is nothing in the Agreement that creates an obligation for Parties to share information beyond what is already submitted into the Clearing-House Mechanism as part of the notification provisions.

Part II Domestic Implementation

Part II of the Agreement would be implemented by the Department of the Interior's (DOI) Fish and Wildlife Service (FWS), the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), the Department of Homeland Security's Customs and Border Protection (CBP), the National Science Foundation (NSF), the United States Coast Guard (consistent with Articles 4 and 10.3 of the Agreement), the Department of Health and Human Services' National Institutes of Health, and other agencies as appropriate.

Authorities as to Federal Government Actors

The majority of activities conducted by U.S. actors that would fall under Part II BBNJ obligations are carried out by federal government agencies or are

funded by federal government agencies. These agencies already have authority to implement Part II BBNJ obligations as to their own activities and, in large part, as to their grantees. U.S. federal government agencies that may conduct high seas research covered by Part II, such as NOAA and the U.S. Coast Guard (consistent with Articles 4 and 10.3 of the Agreement), would also contribute to U.S. fulfillment of the obligations of Part II related to high seas research under existing authorities, such as the Ocean Exploration Act (33 U.S.C. §3401, et seq.), U.S. Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431, et seq.), and Title 14 of the U.S. Code. For example, in the case of certain authorities that authorize an agency to conduct or fund research on the high seas, as part of that authority, the agency can condition the research in certain ways in furtherance of certain Part II obligations. Many of the obligations in Part II comport with scientific best practices that are already part of the standard practice of U.S. federal government scientists.

With respect to collectors or utilizers of MGR of ABNJ who are conducting such activities pursuant to federal government-funded research grants, federal government agencies that provide funding, like NSF under its general grant-making authority, would use their general grant-making authority to include provisions in their funding agreements requiring that research on MGR of ABNJ by grantees of those agencies comply with the applicable obligations of Part II of the Agreement. Should the United States become party to the Agreement they would include such requirements to the extent possible under their authorities. The funding agreement can require that obligations that arise from activities during the term of the grant are met. For any long-term continuing obligations that run beyond the term of the funding agreement, such grantees would be regulated as private actors and non-Federal government actors pursuant to new legislation described below.

Part II obligations would be implemented as to federal government actors and federal government-funded actors through existing authorities and related regulations, including the Ocean Exploration Act (33 U.S.C. §3401, et seq.), the U.S. Antarctic Marine Living Resources Convention Act of 1984 (16

U.S.C. 2431, et seq.), Title 14 of the United States Code (Title 14; 14 U.S.C. 102, 522, 702, 715), and the National Science Foundation Act of 1950 (NSF Act; 42 U.S.C. 1870).

Authorities as to Private Actors and Non-Federal Government Actors

For the small number of private actors and non-federal government actors engaging in activities that would fall under Part II BBNJ obligations, existing legislation provides a framework for implementing some Part II obligations. However, because new legislation would be needed to fill some gaps, it would be prudent to seek new authority for federal government agencies, including FWS, NOAA, CBP, and any other relevant agencies, to implement and enforce BBNJ Part II obligations as to private actors and non-federal government actors. This new legislation would also need to authorize the relevant agency or agencies to promulgate additional regulations, as necessary, to implement and enforce BBNJ Part II obligations as to private actors and non-federal government actors.

Relevant existing authorities include the Endangered Species Act (ESA; 16 U.S.C. §§ 1531-1544), the Lacey Act (16 U.S.C. §§ 3371-3378), the Public Health Service Act (42 U.S.C. 241, 282, 286, 286c), and the Port and Waterways Safety Act (PWSA; 46 U.S.C. §§ 70001-70036).

Other Authorities

Any funding or related authorities to meet obligations related to contributions will be addressed in annual budget requests to Congress. Part II obligations related to traditional knowledge of Indigenous Peoples and local communities would be implemented through existing authority under various national and state laws, regulations and orders, including, as appropriate, contract laws, unfair competition laws, intellectual property laws when the legal requirements for such protection are met, and E.O. 13175 (November 6, 2000) "Consultation and Coordination with Indian Tribal Governments", in conjunction with the new legislation described above.

Part III – Measures Such as Area Based Management Tools, Including Marine Protected Areas (and Annex I)

Part III of the Agreement creates, for the first time, a global and cross-sectoral mechanism to establish area-based management tools (ABMTs), including marine protected areas (MPAs), in areas beyond national jurisdiction (ABNJ). As defined by the Agreement, ABMTs, which can include MPAs, are tools through which one or several sectors or activities (e.g., fishing, shipping, mining) in a particular geographic area are managed to achieve conservation and sustainable use objectives. The Agreement sets up a process for establishing ABMTs, including MPAs. The process starts with a Party or Parties preparing and submitting a proposal for an ABMT to the BBNJ secretariat. The secretariat will then transmit the proposal to the Scientific and Technical Body for review as well as coordinate inclusive and transparent consultations that are open to all relevant stakeholders, including States and global, regional, subregional, and sectoral bodies, as well as civil society, the scientific community, Indigenous Peoples and local communities. Taking into account the input received during the consultations, the BBNJ COP would then take a decision on establishment of an ABMT or MPA. If the ABMT is established, the COP can adopt management measures for the ABMT where there are no existing international bodies, such as a Regional Fishery Management Organization, with the competence to adopt such measures in that region. Where such an international body does exist, the COP would make recommendations for that body to consider in the course of its work.

This Part also provides for the ability of a Party to opt out of a management measure adopted by the COP: (1) where the decision by the COP is inconsistent with the Agreement or the rights and duties of the Party in accordance with the United Nations Convention on the Law of the Sea; (2) where the decision unjustifiably discriminates against a Party; or (3) where the Party cannot implement the obligations. This provision ensures that a Party is not forced to withdraw from the entire Agreement if it cannot implement a specific management measure adopted by the COP. A Party can opt out of a management measure for three years, with the ability to

renew. If a Party opts out of a management measure, it must also, to the extent practicable, adopt alternative measures or approaches that are equivalent in effect to the decision and must not take actions that undermine the effectiveness of the decision.

Article 17 - Objectives

Article 17 lays out the five objectives of Part III of the Agreement: (a) to conserve and sustainably use areas requiring protection, including through the establishment of ABMTs; (b) to strengthen cooperation and coordination in the use of ABMTs among States and relevant instruments, frameworks, and bodies; (c) to protect, preserve, restore, and maintain biological diversity and ecosystems, and strengthen resilience to stressors including climate change; (d) to support food security and other socioeconomic objectives, including the protection of cultural values; and (e) to support developing States Parties through capacity-building and the transfer of marine technology in developing, implementing, monitoring, managing, and enforcing ABMTs.

Article 18 - Area of application

Under Article 18, the establishment of ABMTs under this Agreement shall not include any areas within national jurisdiction and shall not be relied upon as a basis for asserting or denying claims to sovereignty, sovereign rights, or jurisdiction. The COP shall not consider for decision proposals for the establishment of ABMTs in areas within national jurisdiction. This is consistent with the view set out in the June 20, 2023, report of the fifth session of the BBNJ intergovernmental conference, which states in paragraph 27 that “the phrase ‘the Conference of the Parties shall not consider for decision’ means that the Conference of the Parties can look at a proposal but shall not decide on such proposals.” A/Conf.232/2023/5.

Article 19 - Proposals

Under Article 19, proposals for ABMTs, including MPAs, shall be submitted by BBNJ Parties, individually or collectively, to the BBNJ secretariat. Proposals shall include: a geographic or spatial description of the area; information on any of the indicative criteria in Annex I of the Agreement

that were applied in identifying the area; activities taking place in the area and their possible impact, if any; and a draft management plan, including any proposed management measures for activities in the area and proposed monitoring, research, and review activities.

Parties shall collaborate and consult, as appropriate, with relevant global, regional, subregional, and sectoral bodies and other stakeholders in the development of proposals.

Article 20 - Publicity and preliminary review of proposals

Under Article 20, the BBNJ Scientific and Technical Body (STB) will provide a preliminary review of proposals for ABMTs, including MPAs, to ascertain that each proposal contains the information required under Article 19, and provide the outcome of that review to the proponent. The proponent shall retransmit the proposal to the BBNJ secretariat, having taken into account the preliminary review by the STB.

Article 21 - Consultation on and assessment of proposals

Under Article 21, the secretariat shall facilitate consultations on proposals with all relevant stakeholders, including interested States; relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies; Indigenous Peoples and local communities with relevant traditional knowledge; the scientific community; the private sector; and civil society. Consultations shall be inclusive, transparent, and time bound. The proponent shall consider the contributions received during the consultation period and, as appropriate, revise the proposal accordingly or respond to substantive contributions not reflected in the proposal. The STB established under Article 49 shall assess the proposal and make recommendations to the Conference of the Parties.

Article 22 - Establishment of area-based management tools, including marine protected areas

Under Article 22, the COP shall take decisions on the establishment of ABMTs, including MPAs, and related measures based on advice from the STB and on consultations with all relevant stakeholders. Where proposed

measures are within the competence of other instruments, frameworks, and bodies, Article 22.1(b) states that the COP may make recommendations to those instruments, frameworks, and bodies to promote the adoption of such measures. Under Article 25, BBNJ Parties shall promote, as appropriate, the adoption of these recommendations in those instruments, frameworks, and bodies to which they are also a party. The United States views this text, in conjunction with Articles 5.2 and 22.2 (described below), as clearly indicating that the COP cannot take decisions to adopt measures within the competence of other instruments, frameworks, and bodies, for example, fishing, shipping, or mining measures that are within the scope and geographic area of competence of Regional Fisheries Management Organizations, the International Maritime Organization, and the International Seabed Authority, respectively. It is therefore recommended that the United States include the following understanding in its instrument of ratification.

The United States does not interpret Article 22 to provide the BBNJ Conference of the Parties with the authority to take decisions to adopt measures within the competence of relevant legal instruments or frameworks, or relevant global, regional, subregional, or sectoral bodies.

Pursuant to Article 22.2, the COP shall respect the competences of, and not undermine, relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies. The COP shall make arrangements for regular consultations to enhance cooperation and coordination with and among relevant global, regional, subregional, and sectoral bodies. The COP may consider and decide, as appropriate, to develop a mechanism regarding existing ABMTs, including MPAs, adopted by other instruments, frameworks, and bodies.

In the cases where the COP establishes an ABMT, including an MPA, that subsequently falls partly or wholly within a newly established or amended competence of a relevant legal instrument or framework or relevant global, regional, subregional or sectoral body, the ABMT, would remain in force

until the COP reviews the ABMT , in close cooperation and coordination with such instrument, framework, or body, and decides to either maintain, amend, or revoke the ABMT.

Article 23 - Decision-making

Under Article 23, as a general rule, COP decisions and recommendations under Part III shall be taken by consensus. If two-thirds of the Parties present and voting agree that all efforts to reach consensus have been exhausted, the COP can take decisions by a three-fourths majority of the Parties present and voting. Such decisions enter into force 120 days after the meeting of the COP at which they were taken and shall be binding on all Parties.

A Party can make an objection with respect to a decision of the COP regarding an ABMT, including an MPA, or a related measure on bases described in Article 23(5), including that a Party cannot practicably comply with the decision, and that decision shall not be binding on that Party. Such an objection is automatically withdrawn unless renewed every three years. This procedure adequately protects the rights of all Parties as Parties would have opportunities to vote on measures as members of the COP and to again object to their entry into force.

Parties that object to a decision shall, to the extent practicable, adopt alternative measures or approaches that are equivalent in effect to the decision and shall not adopt measures nor take actions that undermine the effectiveness of the decision unless such measures or actions are essential for the exercise of rights and duties of the objecting Party in accordance with the United Nations Convention on the Law of the Sea . Parties shall periodically report to the COP on these alternative measures or approaches. Decisions by the COP and objections shall be made publicly available.

Article 24 - Emergency measures

Under Article 24, when a natural phenomenon or human-caused disaster causes or is likely to cause serious or irreversible harm to marine biodiversity in ABNJ, and a relevant legal instrument or framework or

relevant global, regional, subregional or sectoral body with competence cannot take timely action to manage the harm, the COP shall adopt temporary emergency measures if necessary to ensure that the harm is not exacerbated. Such measures shall terminate two years following their entry into force or shall be terminated earlier by the COP. "Serious or irreversible harm" is not defined in the Agreement.

We understand "serious or irreversible harm" to be a high bar and not a threshold that could be used to obviate the process to establish ABMTs, including MPAs, that is laid out in the preceding articles of Part III. The United States interprets "serious or irreversible harm" to reflect the circumstances arising from catastrophic and unforeseen disasters. We support the use of these measures when necessary and when the relevant legal instrument or framework or global, regional, subregional, or sectoral body cannot take timely action. It is therefore recommended that the United States include the following understanding in its instrument of ratification.

The United States interprets Article 24 to apply only in circumstances arising from catastrophic and unforeseen disasters.

Article 25 - Implementation

Under Article 25, Parties shall ensure that activities under their jurisdiction or control in ABNJ are conducted consistently with decisions adopted under this part of the Agreement.

Article 26 - Monitoring and review

Under Article 26, Parties shall, individually or collectively, report to the COP on implementation of ABMTs established by the COP. The STB shall periodically monitor and review ABMTs and MPAs established under the Agreement, including related management measures, to assess their effectiveness and provide advice and recommendations to the COP.

Following the review, the COP shall, as necessary, take decisions or make recommendations on the amendment, extension, or revocation of ABMTs and MPAs and any related measures established.

Relevant legal instruments and frameworks and relevant global, regional, subregional, or sectoral bodies remain responsible for monitoring and reviewing any management measures adopted by those bodies in relation to ABMTs and MPAs established by the COP. These bodies shall be invited to report on such matters to the COP under Article 26.

Part III Domestic implementation

Under Part III, the COP may take future decisions on management measures related to ABMTs, including MPAs, and on emergency measures, that would become binding on the United States upon adoption by the COP unless the United States registers an objection under Article 23.

Throughout any future proposal and decision-making process, the United States would intend to negotiate, to the extent possible, for outcomes that the United States could implement within existing authorities. If implementation of a future COP decision under Part III were to require the enactment of new legislative authority, the United States would exercise its ability to make an objection under Article 23 until the requisite new authority is obtained. Regardless of whether new legislation might need to be sought to implement a measure under Part III, given that the nature and scope of the potential measures is defined and limited by the Agreement, it is not anticipated that the Senate's advice and consent would be required for measures adopted by the COP prior to them entering into force for the United States.

Given the scope of potential future decisions, any new obligations arising from these decisions would most likely be implemented by NOAA, DOI, Environmental Protection Agency (EPA), and/or U.S. Coast Guard under the following existing authorities and related regulations: The High Seas Fishing Compliance Act, 16 U.S.C. § 5501 et seq.; the Marine Mammal Protection Act (16 U.S.C. §§ 1361-1423); the Endangered Species Act (16 U.S.C. §§

1531-1544); the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. § 1419); and Title 14 of the United States Code (14 U.S.C. 522). We expect very few measures to be adopted by the COP because most activities in the high seas are within the competence of a relevant legal instruments and frameworks, and relevant global, regional, subregional, and sectoral bodies.

Part IV – Environmental Impact Assessments

The provisions in this Part are based upon and operationalize Article 206 of the United Nations Convention on the Law of the Sea (Convention), which reads: “When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment....”

Specifically, this Part establishes a process for Environmental Impact Assessments (EIAs) for activities in ABNJ, implementing the obligation in the Convention to conduct such assessments. These provisions ensure that States are conducting comprehensive and rigorous assessments of their activities in the high seas. This effectively brings the world in line with the robust process the United States already has in place, another priority for the United States. This Part also contains provisions that harmonize this EIA process with assessments conducted under other international organizations. EIAs and decisions on whether an activity proceeds after an EIA is conducted are done by the State with jurisdiction or control over the activity.

Article 27 - Objectives

The obligations in this Part apply to planned activities under the jurisdiction or control of a Party that take place in areas beyond national jurisdiction (ABNJ). The term “planned activities” is not defined. The United States interprets the scope of “planned activities under [a Party’s] jurisdiction or control” to be solely within the discretion of such Party to determine, on a case-by-case basis and consistent with its domestic law. Planned activities

would generally exclude routine operations carried out by U.S. flagged vessels in the normal course of navigation. Planned activities would generally include activities that are planned and that have a nexus to a U.S. government process, such as activities pursuant U.S. government contracts, subject to U.S.-issued licenses, pursuant to U.S.-issued grants or funding, or carried out by U.S. government actors directly.

When Parties produce documents related to EIAs, this Part often includes a requirement to submit those documents to the Clearing-House Mechanism. The Clearing-House Mechanism is responsible for making such documentation available to other Parties.

This Part also contains provisions that require a Party to give consideration to input from other Parties or the Scientific and Technical Body (STB) established under Article 49. Parties are not obligated to halt their EIA process, or their approval of an activity, while awaiting receipt of such input. The requirement to give consideration applies at whatever phase of the process the input is received.

Article 28 - Obligation to conduct EIAs

Article 28.1 requires that Parties conduct EIAs as set out in this Part for planned activities under their jurisdiction or control that take place in ABNJ.

When a Party with jurisdiction or control over a planned activity in marine areas within national jurisdiction determines that the activity may cause substantial pollution of or significant and harmful changes to the marine environment in ABNJ, Article 28.2 requires the Party to conduct an EIA. The EIA may be conducted in accordance with BBNJ requirements or under national processes. If using a national process, a Party has discretion to determine the scope and requirements of the EIA and is not required to conduct screening or abide by other requirements applicable to EIAs conducted in accordance with BBNJ requirements. A Party's obligations when using a national process are limited to those described in Articles 28.2 and 28.3, including making relevant documents available through the

Clearing-House Mechanism and ensuring any nationally-required monitoring takes place. The STB may provide comments during the national process.

Article 29 - Relationship between this Agreement and environmental impact assessment processes under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

Article 29.1 requires Parties to promote the use of EIAs and the adoption and implementation of the standards and/or guidelines adopted by the Conference of the Parties in relevant legal instruments or frameworks and relevant global, regional, subregional or sectoral bodies (IFBs) of which they are members. The Conference is instructed to develop mechanisms for collaboration with such IFBs in Article 29.2.

Article 29.4 contains an exemption from the requirement to conduct an EIA, which may be used when the potential impacts of the planned activity or category of activity have been assessed in accordance with the requirements of an IFB, and either (i) the IFB assessment is equivalent to the one required under this Part, and the results of the assessment are taken into account; or (ii) the regulations or standards of the relevant IFB arising from the assessment were designed to prevent, mitigate, or manage potential impacts below the threshold for EIAs under this Part, and they have been complied with.

Article 30 - Thresholds and factors for conducting EIAs

Article 30 establishes a tiered threshold system for determining what level of environmental review a Party must undertake for a planned activity: no review, screening, or EIA.

For a planned activity with minor or transitory effects (or less) on the marine environment, no review is required.

When a planned activity may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood, the Party with jurisdiction or control of the activity shall conduct a screening. A screening is less onerous than a full EIA but must be

sufficient to assess whether the threshold for an EIA is met. The screening must include a description of the planned activity and an initial analysis of potential impacts.

If a Party determines – based on the screening or otherwise – that it has reasonable grounds for believing that the activity may cause substantial pollution of or significant and harmful changes to the marine environment, an EIA must be undertaken. This threshold is the same as the standard in Article 206 of the Convention.

Article 31 - Process for EIAs

Article 31.1(a) requires a Party to conduct a screening to determine if an EIA for a planned activity under its jurisdiction or control is required. When it determines that an EIA is not required, the Party must make relevant information available through the Clearing-House Mechanism. Other Parties may then register their views on the potential impacts of the planned activity. The STB may make recommendations to the Party conducting the screening after consideration of registered views. The Party conducting the screening must give consideration to any concerns in the registered views and any STB recommendations. As discussed above, Parties are not obligated to halt their EIA process, or their approval of an activity, while awaiting receipt of such input.

Article 31.1(b)-(f) contains requirements for the EIA process relating to scoping; assessment and evaluation; prevention, mitigation, and management of potential adverse effects (including an obligation to identify and analyze measures to avoid significant adverse impacts); public notification and consultation; and publication of EIAs.

Article 32 - Public notification and consultation

Under Article 32, the public consultation process must include planned and effective time-bound opportunities, as far as practicable, for participation by all States and stakeholders. Substantive comments received during consultation must be considered by the Party undertaking the activity. Targeted and proactive consultation is required where a planned activity

affects areas beyond national jurisdiction that are entirely surrounded by the exclusive economic zones of States.

Article 33 - EIA reports

Article 33 contains requirements for the content of EIA reports. It also requires that draft reports be made available through the Clearing-House Mechanism in order to provide an opportunity for the STB to make comments during the public consultation process. A Party shall give consideration to such STB comments.

Article 34 - Decision-making

Article 34.1 confirms that a Party under whose jurisdiction or control a planned activity falls is responsible for determining if the activity may proceed. BBNJ bodies, such as the COP or STB, do not have any authorizing role nor any ability to prohibit or impede such activities.

Article 34.2 contains an obligation for Parties to authorize a planned activity only when, taking into account mitigation or management measures, the Party has determined that it has made all reasonable efforts to ensure that the activity can be conducted in a manner consistent with the prevention of significant adverse impacts on the marine environment. This is not an obligation to avoid significant adverse impacts from a planned activity. It is a process obligation to determine that the Party has made all reasonable efforts to ensure that the activity, taking into account mitigation and management measures, can be conducted consistent with the prevention of significant adverse impacts.

Article 34.3 requires Parties to produce decision documents that clearly outline any conditions of approval related to mitigation measures and follow-up requirements. Decision documents shall be made public through the Clearing-House Mechanism.

Article 35 - Monitoring of impacts of authorized activities

Article 35 requires Parties to keep under surveillance the impacts of activities in ABNJ they permit or in which they engage in order to determine

whether these activities are likely to pollute or have adverse impacts on the marine environment, which is consistent with Article 204 of the Convention. In particular, Parties must monitor environmental and associated impacts in accordance with the conditions set out in the approval of the activity.

Article 36 - Reporting on impacts of authorized activities

Article 36 requires parties to periodically report on the impacts of authorized activities and the results of monitoring required under Article 35.

Article 37 - Review of authorized activities and their impacts

Article 37.1 requires that the Parties ensure the impacts of authorized activities monitored under Article 35 are reviewed. Article 37.2 then requires Parties to take appropriate action when the Party identifies significant adverse impacts that are unforeseen or that arise from a breach of any of the conditions set out in the approval of the activity. In such cases, the Party shall also send a public notification through the Clearing-House Mechanism.

Other Parties may register concerns with the Party that authorized the activity and with the STB regarding potential significant adverse impacts that are unforeseen or that arise from a breach of any of the conditions set out in the approval of the activity. The STB may, in response to such concerns or upon review of documentation submitted to the Clearing-House Mechanism, issue recommendations regarding such potential significant adverse impacts. A Party shall give consideration to another Party's concerns and any STB recommendations. The United States interprets the obligations to "give consideration" to concerns, comments, notifications, and recommendations in Articles 31, 33, and 37 to apply whether or not a planned activity has commenced, and as not requiring a specific outcome with respect to implementation of a planned activity. This is consistent with the view set out in the June 20, 2023, report of the fifth session of the BBNJ intergovernmental conference, which states in paragraph 27 that "environmental impact assessments shall be State-led," and that while "there are provisions in part IV that allow for another party to register its views on the impacts of a planned activity and for the Scientific and

Technical Body to make non-binding recommendations,” the understanding of the delegations to the conference was that “it was the State that decided whether an activity under its jurisdiction or control should proceed.”
A/Conf.232/2023/5.

Article 38 - Standards and/or guidelines to be developed by the Scientific and Technical Body related to EIAs

Article 38 sets out areas in which the COP may consider and adopt standards and guidelines on the EIA process, including screening, assessment, public consultation, and EIA content. Guidelines adopted by the COP are not legally binding. Any binding standards adopted by the COP must be set out in an Annex. If a standard is part of a new annex, the United States must affirmatively consent to be bound by such an annex in accordance with Article 72 of the Agreement. If an amendment to an Annex adds a new binding standard, then the United States would have the opportunity to object to its entry into force in accordance with Article 74, and therefore not become bound by the new standard. Given the non-substantive and technical nature of these standards, which are meant to further define the EIA process itself, it is anticipated that such amendments would not require the Senate’s advice and consent and could be concluded as executive agreements.

Article 39 - Strategic environmental assessments

Article 39 requires Parties to consider conducting strategic environmental assessments for plans and programs relating to activities under their jurisdiction or control conducted in ABNJ. The COP may also conduct a strategic environmental assessment of an area or region.

Part IV Domestic Implementation

Part IV would be implemented under existing authority, with additional targeted executive action required. Part IV obligations would be implemented by agencies engaging in major Federal actions significantly affecting the environment of the ocean outside of the jurisdiction of any nation. Such agencies may include, but are not limited to: NOAA, NSF (consistent with Article 4 of the Agreement), EPA, U.S. Coast Guard

(consistent with Article 4 of the Agreement), and Department of Defense (consistent with Article 4 of the Agreement).

Agency authorities to carry out planned activities generally allow for such assessments. The Executive branch would issue guidance and directives to all agencies regarding the conduct of such assessments, including obligations related to screening and public notification and consultation, public provision of information, EIA reporting, and monitoring impacts, to ensure consistent practices in implementing BBNJ obligations. This guidance and directives would take into account the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. §§ 4321 et seq.) and E.O. 12114 (which furthers the purpose of NEPA with respect to the environment outside the United States), as well as the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. § 1412)(prior consideration in permitting of effects and alternatives for disposition of materials transported to the ocean).

The substantive requirements of Part IV of the BBNJ Agreement are consistent with those in Article 206 of the Convention and include additional obligations regarding notification to BBNJ treaty bodies and the conduct of screenings for planned activities in advance of or instead of an EIA. While the United States is not a party to the Convention, as a policy matter, Federal agencies currently carry out activities in areas beyond national jurisdiction in a manner consistent with the requirements of Article 206 of the Convention under processes described in E.O. 12114. The framework and mandate of E.O. 12114 would be sufficient for United States agencies to abide by the additional BBNJ Agreement obligations with amendments or appropriate guidance to provide for consistency in implementation of obligations under the Agreement not currently addressed by E.O. 12114.

Part V - Capacity-building and the Transfer of Marine Technology (and Annex II)

This Part of the Agreement includes provisions on capacity-building and the transfer of marine technology to support the implementation of the Agreement. Importantly, it does not require the United States to provide

any particular form or amount of capacity-building assistance to any particular country, nor does it mandate any kind of transfer of marine technology. Therefore, the United States would be able to meet the obligations of Part V through relevant capacity-building and transfer of marine technology that already occurs under existing authorities.

Regarding capacity-building, this Part requires that Parties, within their capabilities, ensure capacity-building for developing States Parties. This Part provides a non-exhaustive list of the types of capacity-building that might be provided, ranging from research opportunities to technical training. Parties can choose which types of capacity-building to provide, and the United States would rely on relevant capacity-building that it already routinely provides to satisfy its capacity-building obligations under the Agreement.

Regarding the transfer of marine technology, this Part requires Parties to “cooperate to achieve” transfer of marine technology related to the Agreement, in particular to developing States Parties that need and request it. Such transfer, if it occurs, is to be done on fair and most favorable terms, including on concessional and preferential treatment, and on mutually agreed terms and conditions. Such transfer must also be done with due regard for all rights and legitimate interests of technology holders. The United States interprets the clause “mutually agreed terms and conditions” to mean that all parties to the transfer have agreed to all terms and conditions voluntarily, without being forced or coerced into such agreement.

Importantly, this Part carefully balances the needs of developing countries for capacity-building and transfer of marine technology in order to implement the Agreement, with the interests of donor countries to protect the intellectual property rights of their stakeholders.

Article 40 - Objectives

Article 40 lists five objectives of Part V, including assisting Parties, especially developing States Parties, in implementing the Agreement; enabling inclusive, equitable, and effective cooperation under the Agreement;

developing marine scientific and technological capacity through access to and transfer of marine technology; increasing and disseminating knowledge about the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; and supporting developing States Parties in achieving the objectives of the Agreement through capacity-building and the development and transfer of marine technology.

Article 41 - Cooperation in capacity-building and the transfer of marine technology

Under Article 41, Parties shall cooperate to assist other Parties, in particular developing States Parties, in achieving the objectives of the Agreement through capacity-building and the transfer of marine science and technology. Article 41.2 expands upon modes for such cooperation, including, as appropriate, through partnerships with the private sector, civil society, and indigenous and local communities, and through cooperation with other relevant legal instruments and international bodies. This obligation requires engagement by Parties but does not mandate any particular forms of cooperation or assistance nor any particular results to be produced by the cooperation. In implementing this Part, Parties shall give full recognition to the special requirements of developing States and are obliged to ensure that capacity-building and the transfer of marine technology are not conditional on onerous reporting requirements.

Article 42 - Modalities for capacity-building and for the transfer of marine technology

Article 42.1 states that Parties, within their capabilities, shall ensure capacity-building for developing States Parties and shall cooperate to achieve the transfer of marine technology, in particular to developing States Parties that need and request it. As described below in Part V Domestic Authorities, the United States would satisfy this obligation through relevant capacity-building it already provides routinely under existing authorities.

The Party providing the capacity-building can choose what it provides and is therefore not bound to provide specific types of capacity-building. Article

44 and Annex II provide indicative and non-exhaustive lists of types of capacity-building (and transfer of marine technology) that may be provided.

The provisions regarding the transfer of marine technology set up a process that does not require the transfer of marine technology and that protects intellectual property rights. Under Article 42.1, Parties, within their capabilities, must only “cooperate to achieve” the transfer of marine technology, in particular to developing States Parties that need and request it.

Parties are directed under Article 42.2 to provide resources, within their capabilities, to support capacity-building and the transfer of marine technology, but the provision of such resources is circumscribed by the need to take “into account [each Party’s] national policies, priorities, plans and programmes.” The United States would satisfy this obligation through provision of resources it already provides routinely, consistent with U.S. national policies, priorities, plans, and programs. Article 42.3 further declares that capacity-building and the transfer of marine technology should be country-driven, transparent, effective, and iterative, and should build upon past programs and lessons learned, with a view to maximizing efficiency and results.

Article 42.4 requires that capacity-building and the transfer of marine technology under the Agreement be responsive to the needs of developing States Parties by utilizing needs assessments.

Article 43 - Additional modalities for the transfer of marine technology

Article 43.1 declares a shared vision of the Parties for long-term technology development and transfer. Under Article 43.2, the transfer of marine technology under the Agreement shall take place on fair and most favorable terms, including on concessional and preferential terms, and in accordance with mutually agreed terms and conditions as well as the objectives of this Agreement. The clause “mutually agreed terms and conditions” means that all parties to the transfer must agree voluntarily, without being forced or coerced into such agreement.

Article 43.3 requires Parties to promote economic and legal conditions for the transfer of marine technology to developing States Parties, including potentially through incentives.

Additionally, Article 43.4 explicitly protects intellectual property rights by requiring that the transfer of marine technology take into account all rights over such technologies and be carried out with due regard for all legitimate interests. The United States views the plain language of the treaty, namely found in Articles 5.2, 43.4, and 51.6, as providing robust intellectual property rights protections, and otherwise reaffirming that nothing in the Agreement requires mandatory disclosure of protected or confidential information. The understanding noted under Article 5 above also relates to this article. Article 43.5 concerns the quality of marine technology, providing that technology that is transferred should be appropriate, relevant, and to the extent possible, reliable, affordable, up to date, environmentally sound, and available in an accessible form for developing States Parties.

Article 44 - Types of capacity-building and of the transfer of marine technology

Article 44 and Annex II provide indicative and non-exhaustive lists of types of capacity-building and transfer of marine technology that may be provided. Because biotechnology is included in the definition of marine technology in Article 1.10, transfers of marine technology could include biotechnology, should a Party choose to transfer biotechnology.

The list in Article 44 includes, among others, the sharing and use of relevant data and research; information dissemination and awareness-raising; infrastructure development; the development and strengthening of financial management resources and technical expertise; the sharing of manuals, guidelines, and standards; and the development of technological tools for monitoring, control, and surveillance of activities under the Agreement. Annex II elaborates upon this list.

Article 44.3 also provides that the COP should periodically review and update the non-exhaustive list “to reflect technological progress and innovation” and to respond to States’ needs.

Article 45 - Monitoring and review

Article 45 provides that capacity-building and the transfer of marine technology under this Agreement shall be monitored and reviewed periodically by the capacity-building and transfer of marine technology committee, which is created under Article 46. Article 45.2 specifies five goals of this monitoring and review, including assessing the needs and priorities of developing States Parties, reviewing the support required by these States, identifying and mobilizing funds under the financial mechanism established under Article 52, measuring performance and reviewing outcomes, and recommending follow-up activities and improvements.

Parties are required under Article 45.3 to submit reports to the capacity-building and transfer of marine technology committee, which are to be made publicly available.

Article 46 - Capacity-building and transfer of marine technology committee

Article 46 establishes a capacity-building and transfer of marine technology committee, which shall submit reports and recommendations for consideration by the COP. The committee is to be comprised of members nominated by the Parties and elected by the COP, which shall decide the modalities of the committee’s operation at its first meeting.

The committee shall also carry out monitoring and review, pursuant to Article 45.

Part V Domestic Implementation

No new authorities are needed to implement Part V. NOAA currently provides capacity-building and transfers marine technology for various purposes through its authorities under a number of statutes, including in relevant part, the Marine Mammal Protection Act of 1972 (16 U.S.C. §§ 1361-1423h), the National Marine Sanctuaries Act (16 U.S.C.

§§ 1431-1445c-1), the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801-1891d), and the Coral Reef Conservation Act of 2000 (16 U.S.C. §§ 6401-6409). USAID also provides capacity-building and transfers marine technology through its authorities under the Foreign Assistance Act of 1961 (22 U.S.C. §§ 2151-2431k) and the Federal Technology Transfer Act of 1986 (15 U.S.C. §§ 3701-3714). As of the date of transmittal, activities that NOAA and USAID are authorized to undertake under these authorities are ongoing. Importantly, the Agreement is not prescriptive as to the frequency, amount, or extent of capacity-building that is required. The activities undertaken under the authorities identified above by NOAA and USAID in the regular course of business would satisfy the obligations in Part V.

Additionally, other agencies may engage in or fund activities that also would constitute capacity-building that would contribute to the United States' fulfillment of its Part V obligations. For example, under the NSF Act, NSF grants may contain capacity-building provisions related to the underlying research being funded. To the extent a given project's capacity-building activities relate to conservation and sustainable use of the high seas, those capacity-building efforts would contribute to the United States' fulfillment of its Part V obligations. Under various statutes, including the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1419) and the National Environmental Protection Act (42 U.S.C. 4331(2)(I)), EPA may engage in capacity-building efforts, such as information exchanges, workshops, and trainings related to Environmental Impact Assessments, which would contribute to the United States' fulfillment of its Part V obligations. The U.S. Coast Guard may engage in a limited set of capacity-building activities under 14 U.S.C. 710 that would contribute to the United States' fulfillment of its Part V obligations. These activities include coordination with foreign partners under bilateral maritime law enforcement agreements and environmental response agreements. More broadly, when the U.S. Coast Guard engages in traditional capacity-building with foreign governments, it is pursuant to its authority to assist other U.S. government agencies where the U.S. Coast Guard is especially qualified for those activities (14 U.S.C. 701) that are authorized under the other agency's statutes. The State

Department may engage in capacity-building in its foreign assistance activities, which may be relevant to the implementation of Part V obligations. Such activities would also contribute to the United States' fulfillment of its Part V obligations.

Part VI - Institutional Arrangements

In addition to establishing a COP and secretariat, the Agreement creates five subsidiary bodies: a Scientific and Technical Body (Article 47), an access and benefit-sharing committee (Article 15), a capacity-building and transfer of marine technology committee (Article 46), a finance committee (Article 52), and an Implementation and Compliance Committee (Article 55). Part VI also establishes the Clearing-House Mechanism to access, provide, and disseminate information with respect to activities taking place pursuant to the Agreement.

Article 47 - Conference of the Parties

Article 47 establishes a COP that will convene within one year of the entry into force of the Agreement and at regular intervals thereafter. The COP shall by consensus adopt, at its first meeting, rules of procedure for itself and any subsidiary bodies and financial rules governing its funding and the funding of the secretariat and any subsidiary bodies. Until the rules of procedure are adopted, the rules of the intergovernmental conference 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 apply.

Article 47.5 requires the COP to make every effort to adopt decisions and recommendations by consensus but provides that the COP may adopt decisions and recommendations on matters of substance by a two-thirds majority vote and on matters of procedure by a simple majority vote if efforts to reach consensus have been exhausted. The budget of the COP can be established by a three-fourths majority vote if all efforts to reach consensus have been exhausted.

The COP is directed to take various measures to implement the Agreement, including adopting decisions and recommendations, facilitating the exchange of information among the Parties, promoting cooperation among legal instruments and frameworks, establishing subsidiary bodies necessary to implement the Agreement, and taking other steps necessary to implement the Agreement. The COP is also given a narrow remit to request advisory opinions from the International Tribunal for the Law of the Sea on legal questions on the conformity with this Agreement of a proposal before the COP on any matter within its competence. Advisory opinion jurisdiction does not extend to the application of general international law or treaties other than the Agreement. Such advisory opinions may not be sought on matters within the competences of other global, regional, subregional, or sectoral bodies, or on a matter that necessarily involves the concurrent consideration of any dispute concerning sovereignty or other rights over continental or insular land territory or a claim thereto, or the legal status of an area as within national jurisdiction. Advisory opinions are not legally binding, and Parties may give them varying weight when interpreting provisions of the Agreement.

Article 47.8 requires the COP to assess and review the adequacy and effectiveness of the Agreement within five years of its entry into force and at regular intervals thereafter, and it authorizes the COP to propose means of strengthening the Agreement's implementation in order to better address the conservation and sustainable use of marine biodiversity of ABNJ.

Article 48 - Transparency

Under Article 48, all Parties are required to promote transparency in decision-making processes and other activities carried out under the Agreement and in implementation of the Agreement. This includes making meetings of the COP and its subsidiary bodies open to observers, unless the COP decides otherwise, and maintaining a public record of COP decisions. The COP is also directed to publicly disseminate information and facilitate the participation of a variety of stakeholders, including international organizations, indigenous peoples, scientists, and civil society. These stakeholders, along with representatives of States that are not Parties to this

Agreement, may request to participate as observers in meetings of the COP, and the COP must provide for modalities for such participation in its rules of procedure that are not unduly restrictive.

Article 49 - Scientific and Technical Body

Article 49 establishes a Scientific and Technical Body (STB) composed of members serving in their expert capacity and in the best interest of the Agreement, nominated by the Parties and elected by the COP. The COP shall, at its first meeting, determine the method of selecting such members and the operating modalities of the STB. The STB may draw upon advice from relevant legal instruments, frameworks, and bodies, as well as from other scientists and experts. The STB shall provide scientific and technical advice to the COP and perform other functions as the COP may determine.

Article 50 - Secretariat

Article 50 establishes a secretariat, with its seat and arrangements for its functioning to be determined by the COP at its first meeting. Until then, the Secretary-General of the United Nations, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat, will perform the secretariat functions under this Agreement. The secretariat is authorized to enter into a headquarters agreement with the host State and shall enjoy legal capacity and be granted privileges and immunities as are necessary for the exercise of its functions.

Article 50.4 requires that the secretariat shall: provide administrative and logistical support to the COP; arrange and service meetings of the COP and any subsidiary bodies; circulate information relating to the implementation of the Agreement; facilitate cooperation and coordination with the secretariats of other relevant international bodies; prepare and submit reports to the COP on the execution of its functions; and provide assistance with the implementation of the Agreement and perform such other functions as the COP may determine.

Article 51 - Clearing-House Mechanism

Article 51 establishes a Clearing-House Mechanism, which consists primarily of an open-access platform, with specific modalities to be determined by the COP. The Clearing-House Mechanism shall, among other things: serve as a centralized platform to enable Parties to access, provide and disseminate information with respect to activities taking place pursuant to this Agreement; facilitate the matching of capacity-building needs with the support available and with providers for the transfer of marine technology; and provide links to other relevant clearing-house mechanisms and other gene banks, repositories and databases, and platforms.

The Clearing-House Mechanism shall be managed by the secretariat, without prejudice to possible cooperation with other relevant legal instruments, frameworks and bodies.

Under Article 51.6, the confidentiality of information provided under this Agreement and rights thereto shall be respected. The United States views the plain language of the treaty in Articles 5.2, 43.4, and 51.6 as providing robust intellectual property rights protections, and reaffirming that nothing in the Agreement requires mandatory disclosure of protected or confidential information. The understanding noted under Article 5 above is also relevant to this article.

Part VI Domestic Implementation

Part VI does not require any new implementing authority. Most of the obligations in Part VI do not place obligations on individual parties and thus do not require implementing authority. For obligations that require authority to implement, those would be implemented through existing authority under the Freedom of Information Act (5 U.S.C. § 552) and E.O. 13526 (Article 51.6). The Executive branch would regard an obligation to keep certain information confidential to be self-executing (Article 51.6).

Part VII - Financial Resources and Mechanism

Article 52 - Funding

Article 52.1 requires that each Party provide, within its capabilities, resources in respect of those activities that are intended to achieve the objectives of this Agreement, taking into account its national policies, priorities, plans, and programs.

Article 52.2 requires that institutions established under the Agreement (i.e., Conference of the Parties, Secretariat, Scientific and Technical Body, Clearing-House Mechanism, access and benefit-sharing committee, capacity-building and transfer of marine technology committee, finance committee, Implementation and Compliance Committee, and any subsidiary bodies established by the COP pursuant to Article 47(6)(d)) be funded through assessed contributions of the Parties. These assessed contributions will be based on the budget, which will be determined by a three-fourths majority vote, if efforts at consensus fail.

Additionally, the financial rules, which will likely include additional details like the rate of each Party's assessed contribution, must be adopted by consensus, which affords additional control over the process for Parties. Taken together, the United States would not interpret Article 52.1 to require anything more than is required by Article 52.2. Given the qualifying language in Article 52.1 that limits contributions to "within its capabilities" and "taking into account its national policies, plans, and programs", it is not envisioned that the United States would make additional contributions pursuant to Article 52.1 beyond what is required under Article 52.2.

Article 52.3 establishes a financial mechanism, to be managed by the COP, that will assist developing States Parties in implementing the Agreement, including through funding capacity-building and the transfer of marine technology, and will perform other functions for the conservation and sustainable use of marine biological diversity, including programs by Indigenous Peoples and local communities.

The financial mechanism includes: (1) a voluntary trust fund to support participation of developing States Parties in meetings of bodies under the Agreement; (2) a special fund funded by monetary benefits sharing as set

out in Article 14 and by voluntary contributions; and (3) the Global Environment Facility (GEF) trust fund. The COP is authorized to consider creating additional funds as a part of this financial mechanism.

Article 52.6 articulates the uses of the special fund and the GEF trust fund, which include funding capacity-building projects, assisting States Parties in implementing the Agreement, supporting conservation and sustainable use programs by indigenous peoples and local communities, supporting public consultations, and funding other activities determined by the COP. Regarding the GEF trust fund, the COP and the GEF shall agree upon arrangements.

Funding under this Agreement can come from a variety of public and private sources, including but not limited to the contributions of the Parties. The COP is directed to set an initial resource mobilization goal through 2030 for the special fund from all sources.

Article 52.12 provides that eligibility for access to the funding established in this Agreement by developing States Parties will be determined on the basis of need and funding under the special fund shall be distributed according to equitable sharing criteria. Under 52.9, the financial mechanism will operate under the authority of the COP (subject to the arrangement with the GEF described above), including on eligibility for access to and utilization of financial resources. The finance committee, access and benefit-sharing committee, and capacity-building and transfer of marine technology committee, the Terms of Reference for which will be decided by the COP, will make recommendations to the COP related to such matters. Under Article 52.13, Parties shall encourage international organizations to grant preferential treatment to developing States Parties in the allocation of funds and technical assistance.

Article 52.14 directs the COP to establish a finance committee on financial resources, which will report and make recommendations on the assessment of the needs of the Parties, identification and mobilization of funds under the financial mechanism, and collect information on other related

mechanisms. Article 52.15 then provides that the COP shall consider the committee's recommendations and take appropriate action. The COP shall periodically review the financial mechanism for its adequacy, effectiveness and accessibility. While the details on how the COP will determine who gets access to funding based on the submitted needs still has to be determined by the COP, we interpret the references to access and accessibility in Article 52 to mean eligibility for access to resources in compliance with applicable programming strategies, standards, policies, and procedures.

Part VII Domestic Implementation

Under Part VII, the United States would be obligated to pay an assessed contribution to fund the institutions established under the Agreement. In addition, until such time as the Agreement's Conference of the Parties adopts alternate modalities for the sharing of monetary benefits from the utilization of marine genetic resources and digital sequence information on marine genetic resources under Article 14.7, the United States would be obligated under Article 14.6 to pay a separate contribution of 50 percent of and in addition to the amount of its assessed contribution to a special fund to assist developing States Parties in implementing the Agreement. Funding to meet these obligations will require appropriations and will be addressed in annual budget requests to Congress.

Part VIII - Implementation and Compliance

Article 53 - Implementation

Article 53 requires Parties to take the necessary legislative, administrative or policy measures, as appropriate, to ensure the implementation of this Agreement.

Article 54 - Monitoring of implementation

Article 54 requires each Party to monitor and report to the COP on its implementation of the Agreement at intervals to be determined by the COP.

Article 55 - Implementation and Compliance Committee

Article 55 establishes an Implementation and Compliance Committee, which shall be facilitative in nature and function in a manner that is transparent, non-adversarial, and non-punitive. The Committee shall consist of members possessing appropriate qualifications and experience, nominated by Parties and elected by the COP. It shall consider issues of implementation and compliance and operate under the modalities and rules of procedure adopted by the COP at its first meeting. The Committee reports and makes recommendations to the COP and may draw upon information from other legal instruments, frameworks, and bodies.

Part IX - Settlement of Disputes

The dispute settlement provisions largely track the compulsory binding dispute settlement mechanism in the United Nations Convention on the Law of the Sea (Convention). These provisions are similar to the dispute settlement provisions in the UN Fish Stocks Agreement, to which the United States is a party. As described in more detail below, the United States would submit declarations pursuant to Article 60 to select the modes of dispute resolution it would apply in the event a dispute regarding the interpretation or application of the Agreement arose, and relevant exclusions.

Article 56 - Prevention of disputes

Article 56 provides that Parties shall cooperate in order to prevent disputes.

Article 57 - Obligation to settle disputes by peaceful means

Article 57 obligates Parties to settle any disputes involving interpretation or application of this Agreement by peaceful means, including through negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 58 - Settlement of disputes by peaceful means chosen by the Parties

Article 58 provides that Parties may agree to settle any dispute regarding the interpretation or application of this Agreement by a peaceful means of their own choosing.

Article 59 - Disputes of a technical nature

Article 59 allows Parties to refer disputes of a technical nature to an ad hoc panel of experts established by the Parties concerned rather than utilize the dispute settlement process established in Article 60.

Article 60 - Procedures for the settlement of disputes

Article 60 provides that disputes regarding the interpretation or application of the Agreement will be settled according to the procedures set forth in the Convention, unless a Party to this Agreement and to the Convention adopted an alternate procedure or made a declaration modifying these procedures under the Convention.

Parties to this Agreement that are not Parties to the Convention are dealt with in the same way as under the Convention (pursuant to Part XV and Annexes V, VI, VII and VIII of the Convention). These Parties may choose by declaration to resolve disputes at the International Tribunal for the Law of the Sea, the International Court of Justice, an arbitral tribunal constituted in accordance with Annex VII of the Convention, or a special arbitral tribunal constituted in accordance with Annex VIII of the Convention for specified categories of disputes. Absent any declaration, the Party is deemed to agree to an Annex VII arbitral tribunal.

The categories of disputes for which Annex VIII special arbitration may be chosen include fisheries, protection and preservation of the marine environment, marine scientific research, and navigation (including pollution from vessels and by dumping). Unlike Annex VII tribunals, Annex VIII provides for the selection of subject matter experts in these areas to constitute the tribunal. It is therefore recommended that the United States choose special arbitration under Annex VIII for all the categories of disputes to which it may be applied and Annex VII arbitration for all other disputes, and thus that the United States make the following declaration in its instrument of ratification:

The Government of the United States of America declares, in accordance with paragraph 5 of Article 60, that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Agreement:

- (A) a special arbitral tribunal constituted in accordance with Annex VIII of the Convention for the settlement of disputes concerning the interpretation or application of the articles of the Agreement relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping, and*
- (B) an arbitral tribunal constituted in accordance with Annex VII of the Convention for the settlement of disputes not covered by the declaration in (A) above.*

Parties to this Agreement that are not Parties to the Convention may, by declaration, opt out of dispute settlement procedures for certain categories of dispute set forth in Article 298 of the Convention, namely disputes regarding maritime boundaries between neighboring States, disputes concerning military activities and certain law enforcement activities, and disputes in respect of which the United Nations Security Council is exercising the functions assigned to it by the Charter of the United Nations. Given the scope of the Agreement, it is unlikely that disputes concerning the interpretation or application of the Agreement would be related to disputes of this nature. However, it is still recommended that the United States elect to exclude all three of these categories of disputes from binding dispute settlement, and thus that the United States make the following declaration in its instrument of ratification:

The Government of the United States of America declares, in accordance with paragraph 7 of Article 60, that it does not accept the procedures provided for in section 2 of Part XV of the Convention with respect to the categories of disputes set forth in subparagraphs (a), (b) and (c) of paragraph 1 of Article 298 of the Convention.

Article 60.8 clarifies that these dispute settlement procedures are without prejudice to dispute settlement procedures that Parties have agreed to in other legal instruments or international bodies. Article 60.9 provides that the Agreement does not confer jurisdiction on any court or tribunal with respect to disputes involving the legal status of any area within national jurisdiction, sovereignty, or rights over continental or insular land territory. Finally, Article 60.10 precludes reliance on the Agreement to assert or deny claims to sovereignty.

Article 61 – Provisional arrangements

Article 61 directs the Parties to make every effort to enter into practical provisional arrangements pending the resolution of dispute settlement procedures.

Part IX Domestic Implementation

In the event that an arbitral proceeding under the Agreement resulted in an award against the United States, the Executive branch would assess what was required to comply with the award and the extent to which the necessary steps could be taken under existing legal authorities. If compliance required steps for which existing authority did not exist, it is possible the United States would need to seek the enactment of legislation to allow the United States to comply with an award.

Part X - Non-Parties to this Agreement

Article 62 - Non-parties to this Agreement

Part X includes a provision for BBNJ Parties to encourage non-Parties to join BBNJ and adopt laws and regulations consistent with the Agreement.

Part XI - Good Faith and Abuse of Rights

Article 63 - Good faith and abuse of rights

Part XI states that Parties shall fulfill obligations under the Agreement in good faith and exercise rights in a manner that would not constitute an abuse of right.

Part XII – Final Provisions

Article 64 - Right to vote

Article 64 gives each Party one vote under the Agreement. However, a regional economic integration organization (REIO) that is a Party may exercise the number of votes equaling the number of States that are members of the REIO, except that the REIO cannot vote if any individual member State chooses to vote. The United States further understands that a REIO, when voting on a matter within its competence, should only exercise a number of votes equal to the number of its members that are present and duly accredited at the time of the vote. The operationalization of this provision will be determined in the Rules of Procedure or through another arrangement.

Articles 65-76 – Signature; Ratification, approval, acceptance and accession; Division of the competence of regional economic integration organizations and their member States in respect of the matters governed by this Agreement; Entry into force; Provisional application; Reservations and exceptions; Declarations and statements; Amendment; Denunciation; Annexes; Depositary; Authentic texts

Part XII includes standard treaty provisions related to ratification, entry into force, amendments, reservations, and denunciation.

Article 68 provides that the Agreement will enter into force 120 days after 60 Parties have joined it.

Article 69 provides that a party may provisionally apply the Agreement by notification to the Depositary.

Article 70 provides that no reservations or exceptions may be made to the Agreement.

**AGREEMENT UNDER THE UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA ON THE CONSERVATION AND
SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY
OF AREAS BEYOND NATIONAL JURISDICTION**

PREAMBLE

The Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, 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, biological diversity loss and degradation of ecosystems of the ocean, due, in particular, to climate change impacts on marine ecosystems, such as warming and ocean deoxygenation, as well as ocean acidification, pollution, including plastic pollution, and unsustainable use,

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

Recognizing the importance of contributing to the realization of a just and equitable international economic order which takes into account the interests and needs of humankind as a whole and, in particular, the special interests and needs of developing States, whether coastal or landlocked,

Recognizing also that support for developing States Parties through capacity-building and the development and transfer of marine technology are essential elements for the attainment of the objectives of 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,

Affirming that nothing in this Agreement shall be construed as diminishing or extinguishing the existing rights of Indigenous Peoples, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples, or of, as appropriate, local communities,

Recognizing the obligation set out in the Convention to assess, as far as practicable, the potential effects on the marine environment of activities under a State's jurisdiction or

control when the State has reasonable grounds for believing that such activities may cause substantial pollution of or significant and harmful changes to the marine environment,

Mindful of the obligation set out in the Convention to take all measures necessary 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,

Desiring to act as stewards of the ocean in 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 conserving the inherent value of biological diversity of areas beyond national jurisdiction,

Acknowledging that the generation of, access to and utilization of digital sequence information on marine genetic resources of areas beyond national jurisdiction, together with the fair and equitable sharing of benefits arising from its utilization, contribute to research and innovation and to the general objective of this Agreement,

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

Recalling that the legal status of non-parties to the Convention or any other related agreements is governed by the rules of the law of treaties,

Recalling also that, as set out in the Convention, States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment and may be liable in accordance with international law,

Committed to achieving sustainable development,

Aspiring to achieve universal participation,

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1 Use of terms

For the purposes of this Agreement:

1. “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.
2. “Areas beyond national jurisdiction” means the high seas and the Area.

3. “Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.
4. “Collection in situ”, in relation to marine genetic resources, means the collection or sampling of marine genetic resources in areas beyond national jurisdiction.
5. “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.
6. “Cumulative impacts” means the combined and incremental impacts resulting from different activities, including known past and present and reasonably foreseeable activities, or from the repetition of similar activities over time, and the consequences of climate change, ocean acidification and related impacts.
7. “Environmental impact assessment” means a process to identify and evaluate the potential impacts of an activity to inform decision-making.
8. “Marine genetic resources” means any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.
9. “Marine protected area” means a geographically defined marine area that is designated and managed to achieve specific long-term biological diversity conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives.
10. “Marine technology” includes, inter alia, information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards and 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; related biotechnology; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to the conservation and sustainable use of marine biological diversity.
11. “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.
12. “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, approve, accept or accede to this Agreement.
13. “Sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to a long-term decline of biological diversity, thereby

maintaining its potential to meet the needs and aspirations of present and future generations.

14. "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, as defined in paragraph 3 above.

Article 2 **General objective**

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

Article 3 **Scope of application**

This Agreement applies to areas beyond national jurisdiction.

Article 4 **Exceptions**

This Agreement does not apply to any warship, military aircraft or naval auxiliary. Except for Part II, this Agreement does not apply to other vessels or aircraft owned or operated by a Party 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.

Article 5 **Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies**

1. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention, including in respect of the exclusive economic zone and the continental shelf within and beyond 200 nautical miles.
2. This Agreement shall be interpreted and applied in a manner that does not undermine 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.

3. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.

Article 6 **Without prejudice**

This Agreement, including any decision or recommendation of the Conference of the Parties or any of its subsidiary bodies, and any acts, measures or activities undertaken on the basis thereof, shall be without prejudice to, and shall not be relied upon as a basis for asserting or denying any claims to, sovereignty, sovereign rights or jurisdiction, including in respect of any disputes relating thereto.

Article 7 **General principles and approaches**

In order to achieve the objectives of this Agreement, Parties shall be guided by the following principles and approaches:

- (a) The polluter-pays principle;
- (b) The principle of the common heritage of humankind which is set out in the Convention;
- (c) The freedom of marine scientific research, together with other freedoms of the high seas;
- (d) The principle of equity and the fair and equitable sharing of benefits;
- (e) The precautionary principle or precautionary approach, as appropriate;
- (f) An ecosystem approach;
- (g) An integrated approach to ocean management;
- (h) An approach that builds ecosystem resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity, including the carbon cycling services that underpin the role of the ocean in climate;
- (i) The use of the best available science and scientific information;
- (j) The use of relevant traditional knowledge of Indigenous Peoples and local communities, where available;

(k) The respect, promotion and consideration of their respective obligations, as applicable, relating to the rights of Indigenous Peoples or of, as appropriate, local communities when taking action to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

(l) 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 in taking measures to prevent, reduce and control pollution of the marine environment;

(m) Full recognition of the special circumstances of small island developing States and of least developed countries;

(n) Acknowledgement of the special interests and needs of landlocked developing countries.

Article 8 **International cooperation**

1. Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and promoting cooperation among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies in the achievement of the objectives of this Agreement.

2. Parties shall endeavour to promote, as appropriate, the objectives of this Agreement when participating in decision-making under other relevant legal instruments, frameworks, or global, regional, subregional or sectoral bodies.

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 objectives of this Agreement.

PART II **MARINE GENETIC RESOURCES, INCLUDING THE** **FAIR AND EQUITABLE SHARING OF BENEFITS**

Article 9 **Objectives**

The objectives of this Part are:

(a) The fair and equitable sharing of benefits arising from activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

(b) The building and development of the capacity of Parties, particularly developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, to carry out activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction;

(c) The generation of knowledge, scientific understanding and technological innovation, including through the development and conduct of marine scientific research, as fundamental contributions to the implementation of this Agreement;

(d) The development and transfer of marine technology in accordance with this Agreement.

Article 10 Application

1. The provisions of this Agreement shall apply to activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction collected and generated after the entry into force of this Agreement for the respective Party. The application of the provisions of this Agreement shall extend to the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction collected or generated before entry into force, unless a Party makes an exception in writing under article 70 when signing, ratifying, approving, accepting or acceding to this Agreement.

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

(a) Fishing regulated under relevant international law and fishing-related activities; or

(b) Fish or other living marine resources known to have been taken in fishing and fishing-related activities from areas beyond national jurisdiction, except where such fish or other living marine resources are regulated as utilization under this Part.

3. The obligations in this Part shall not apply to a Party's military activities, including military activities by government vessels and aircraft engaged in non-commercial service. The obligations in this Part with respect to the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall apply to a Party's non-military activities.

Article 11

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

1. Activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction may be carried out by all Parties, irrespective of their geographical location, and by natural or juridical persons under the jurisdiction of the Parties. Such activities shall be carried out in accordance with this Agreement.
2. Parties shall promote cooperation in all activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction.
3. Collection in situ of marine genetic resources of areas beyond national jurisdiction shall be carried out with due regard for the rights and legitimate interests of coastal States in areas within their national jurisdiction and with due regard for the interests of other States in areas beyond national jurisdiction, in accordance with the Convention. To this end, Parties shall endeavour to cooperate, as appropriate, including through specific modalities for the operation of the Clearing-House Mechanism determined under article 51, with a view to implementing this Agreement.
4. No State shall claim or exercise sovereignty or sovereign rights over marine genetic resources of areas beyond national jurisdiction. No such claim or exercise of sovereignty or sovereign rights shall be recognized.
5. Collection in situ of marine genetic resources of areas beyond national jurisdiction shall not constitute the legal basis for any claim to any part of the marine environment or its resources.
6. Activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction are in the interests of all States and for the benefit of all humanity, particularly for the benefit of advancing the scientific knowledge of humanity and promoting the conservation and sustainable use of marine biological diversity, taking into particular consideration the interests and needs of developing States.
7. Activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.

Article 12

**Notification on activities with respect to marine genetic resources
and digital sequence information on marine genetic resources of
areas beyond national jurisdiction**

1. Parties shall take the necessary legislative, administrative or policy measures to ensure that information is notified to the Clearing-House Mechanism in accordance with this Part.
2. The following information shall be notified to the Clearing-House Mechanism six months or as early as possible prior to the collection in situ of marine genetic resources of areas beyond national jurisdiction:
 - (a) The nature and objectives under which the collection is carried out, including, as appropriate, any programme(s) of which it forms part;
 - (b) The subject matter of the research or, if known, the marine genetic resources to be targeted or collected, and the purposes for which such resources will be collected;
 - (c) The geographical areas in which the collection is to be undertaken;
 - (d) 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;
 - (e) Information concerning any other contributions to proposed major programmes;
 - (f) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
 - (g) The name(s) of the sponsoring institution(s) and the person in charge of the project;
 - (h) Opportunities for scientists of all States, in particular scientists from developing States, to be involved in or associated with the project;
 - (i) The extent to which it is considered that States that may need and request technical assistance, in particular developing States, should be able to participate or to be represented in the project;
 - (j) A data management plan prepared according to open and responsible data governance, taking into account current international practice.
3. Upon notification referred to in paragraph 2 above, the Clearing-House Mechanism shall automatically generate a “BBNJ” standardized batch identifier.

4. Where there is a material change to the information provided to the Clearing-House Mechanism prior to the planned collection, updated information shall be notified to the Clearing-House Mechanism within a reasonable period of time and no later than the start of collection in situ, when practicable.

5. Parties shall ensure that the following information, along with the “BBNJ” standardized batch identifier, is notified to the Clearing-House Mechanism as soon as it becomes available, but no later than one year from the collection in situ of marine genetic resources of areas beyond national jurisdiction:

(a) The repository or database where digital sequence information on marine genetic resources is or will be deposited;

(b) Where all marine genetic resources collected in situ are or will be deposited or held;

(c) A report detailing the geographical area from which marine genetic resources were collected, including information on the latitude, longitude and depth of collection, and, to the extent available, the findings from the activity undertaken;

(d) Any necessary updates to the data management plan provided under paragraph (2) (j) above.

6. Parties shall ensure that samples of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction that are in repositories or databases under their jurisdiction can be identified as originating from areas beyond national jurisdiction, in accordance with current international practice and to the extent practicable.

7. Parties shall ensure that repositories, to the extent practicable, and databases under their jurisdiction prepare, on a biennial basis, an aggregate report on access to marine genetic resources and digital sequence information linked to their “BBNJ” standardized batch identifier, and make the report available to the access and benefit-sharing committee established under article 15.

8. Where marine genetic resources of areas beyond national jurisdiction, and where practicable, the digital sequence information on such resources are subject to utilization, including commercialization, by natural or juridical persons under their jurisdiction, Parties shall ensure that the following information, including the “BBNJ” standardized batch identifier, if available, be notified to the Clearing-House Mechanism as soon as such information becomes available:

(a) Where the results of the utilization, such as publications, patents granted, if available and to the extent possible, and products developed, can be found;

(b) 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;

(c) Where the original sample that is the subject of utilization is held;

(d) The modalities envisaged for access to marine genetic resources and digital sequence information on marine genetic resources being utilized, and a data management plan for the same;

(e) Once marketed, information, if available, on sales of relevant products and any further development.

Article 13

Traditional knowledge of Indigenous Peoples and local communities associated with marine genetic resources in areas beyond national jurisdiction

Parties shall take legislative, administrative or policy measures, where relevant and as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources in areas beyond national jurisdiction that is held by Indigenous Peoples and local communities shall only be accessed with the free, prior and informed consent or approval and involvement of these Indigenous Peoples and local communities. Access to such traditional knowledge may be facilitated by the Clearing-House Mechanism. Access to and use of such traditional knowledge shall be on mutually agreed terms.

Article 14

Fair and equitable sharing of benefits

1. The benefits arising from activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall be shared in a fair and equitable manner in accordance with this Part and contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

2. Non-monetary benefits shall be shared in accordance with this Agreement in the form of, inter alia:

(a) Access to samples and sample collections in accordance with current international practice;

(b) Access to digital sequence information in accordance with current international practice;

(c) Open access to findable, accessible, interoperable and reusable (FAIR) scientific data in accordance with current international practice and open and responsible data governance;

(d) Information contained in the notifications, along with “BBNJ” standardized batch identifiers, provided in accordance with article 12, in publicly searchable and accessible forms;

(e) Transfer of marine technology in line with relevant modalities provided under Part V of this Agreement;

(f) Capacity-building, including by financing research programmes, and partnership opportunities, particularly directly relevant and substantial ones, for scientists and researchers in research projects, as well as dedicated initiatives, in particular for developing States, taking into account the special circumstances of small island developing States and of least developed countries;

(g) Increased technical and scientific cooperation, in particular with scientists from and scientific institutions in developing States;

(h) Other forms of benefits as determined by the Conference of the Parties, taking into account recommendations of the access and benefit-sharing committee established under article 15.

3. Parties shall take the necessary legislative, administrative or policy measures to ensure that marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction, together with their “BBNJ” standardized batch identifiers, subject to utilization by natural or juridical persons under their jurisdiction are deposited in publicly accessible repositories and databases, maintained either nationally or internationally, no later than three years from the start of such utilization, or as soon as they become available, taking into account current international practice.

4. Access to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction in the repositories and databases under a Party’s jurisdiction may be subject to reasonable conditions, as follows:

(a) The need to preserve the physical integrity of marine genetic resources;

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

(c) The reasonable costs associated with providing access to the marine genetic resource, data or information;

(d) Other reasonable conditions in line with the objectives of this Agreement;

and opportunities for such access on fair and most favourable terms, including on concessional and preferential terms, may be provided to researchers and research institutions from developing States.

5. Monetary benefits from the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction, including commercialization, shall be shared fairly and equitably, through the financial mechanism established under article 52, for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

6. After the entry into force of this Agreement, developed Parties shall make annual contributions to the special fund referred to in article 52. A Party's rate of contribution shall be 50 per cent of that Party's assessed contribution to the budget adopted by the Conference of the Parties under article 47, paragraph 6 (e). Such payment shall continue until a decision is taken by the Conference of the Parties under paragraph 7 below.

7. The Conference of the Parties shall decide on the modalities for the sharing of monetary benefits from the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction, taking into account the recommendations of the access and benefit-sharing committee established under article 15. If all efforts to reach consensus have been exhausted, a decision shall be adopted by a three-fourths majority of the Parties present and voting. The payments shall be made through the special fund established under article 52. The modalities may include the following:

- (a) Milestone payments;
- (b) Payments or contributions related to the commercialization of products, including payment of a percentage of the revenue from sales of products;
- (c) A tiered fee, paid on a periodic basis, based on a diversified set of indicators measuring the aggregate level of activities by a Party;
- (d) Other forms as decided by the Conference of the Parties, taking into account recommendations of the access and benefit-sharing committee.

8. A Party may make a declaration at the time the Conference of the Parties adopts the modalities stating that those modalities shall not take effect for that Party for a period of up to four years, in order to allow time for necessary implementation. A Party that makes such a declaration shall continue to make the payment set out in paragraph 6 above until the new modalities take effect.

9. In deciding on the modalities for the sharing of monetary benefits from the use of digital sequence information on marine genetic resources of areas beyond national jurisdiction under paragraph 7 above, the Conference of the Parties shall take into account the recommendations of the access and benefit-sharing committee, recognizing that such

modalities should be mutually supportive of and adaptable to other access and benefit-sharing instruments.

10. The Conference of the Parties, taking into account recommendations of the access and benefit-sharing committee established under article 15, shall review and assess, on a biennial basis, the monetary benefits from the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction. The first review shall take place no later than five years after the entry into force of this Agreement. The review shall include consideration of the annual contributions referred to in paragraph 6 above.

11. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with this Agreement.

Article 15 **Access and benefit-sharing committee**

1. An access and benefit-sharing committee is hereby established. It shall serve, inter alia, as a means for establishing guidelines for benefit-sharing, in accordance with article 14, providing transparency and ensuring a fair and equitable sharing of both monetary and non-monetary benefits.

2. The access and benefit-sharing committee shall be composed of 15 members possessing appropriate qualifications in related fields, so as to ensure the effective exercise of the functions of the committee. The members shall be nominated by Parties and elected by the Conference of the Parties, taking into account gender balance and equitable geographical distribution and providing for representation on the committee from developing States, including from the least developed countries, from small island developing States and from landlocked developing countries. The terms of reference and modalities for the operation of the committee shall be determined by the Conference of the Parties.

3. The committee may make recommendations to the Conference of the Parties on matters relating to this Part, including on the following matters:

- (a) Guidelines or a code of conduct for activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction in accordance with this Part;
- (b) Measures to implement decisions taken in accordance with this Part;
- (c) Rates or mechanisms for the sharing of monetary benefits in accordance with article 14;

- (d) Matters relating to this Part in relation to the Clearing-House Mechanism;
 - (e) Matters relating to this Part in relation to the financial mechanism established under article 52;
 - (f) Any other matters relating to this Part that the Conference of the Parties may request the access and benefit-sharing committee to address.
4. Each Party shall make available to the access and benefit-sharing committee, through the Clearing-House Mechanism, the information required under this Agreement, which shall include:
- (a) Legislative, administrative and policy measures on access and benefit-sharing;
 - (b) Contact details and other relevant information on national focal points;
 - (c) Other information required pursuant to the decisions taken by the Conference of the Parties.
5. The access and benefit-sharing committee may consult and facilitate the exchange of information with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies on activities under its mandate, including benefit-sharing, the use of digital sequence information on marine genetic resources, best practices, tools and methodologies, data governance and lessons learned.
6. The access and benefit-sharing committee may make recommendations to the Conference of the Parties in relation to information obtained under paragraph 5 above.

Article 16

Monitoring and transparency

1. Monitoring and transparency of activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall be achieved through notification to the Clearing-House Mechanism, through the use of "BBNJ" standardized batch identifiers in accordance with this Part and according to procedures adopted by the Conference of the Parties as recommended by the access and benefit-sharing committee.
2. Parties shall periodically submit reports to the access and benefit-sharing committee on their implementation of the provisions in this Part on activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction and the sharing of benefits therefrom, in accordance with this Part.
3. The access and benefit-sharing committee shall prepare a report based on the information received through the Clearing-House Mechanism and make it available to

Parties, which may submit comments. The access and benefit-sharing committee shall submit the report, including comments received, for the consideration of the Conference of the Parties. The Conference of the Parties, taking into account the recommendation of the access and benefit-sharing committee, may determine appropriate guidelines for the implementation of this article, which shall take into account the national capabilities and circumstances of Parties.

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

Article 17 Objectives

The objectives of this Part are to:

- (a) Conserve and sustainably use areas requiring protection, including through the establishment of a comprehensive system of area-based management tools, with ecologically representative and well-connected networks of marine protected areas;
- (b) Strengthen 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;
- (c) Protect, preserve, restore and maintain biological diversity and ecosystems, including with a view to enhancing their productivity and health, and strengthen 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) Support developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, taking into account the special circumstances of small island developing States, through capacity-building and the development and transfer of marine technology in developing, implementing, monitoring, managing and enforcing area-based management tools, including marine protected areas.

Article 18 Area of application

The establishment of area-based management tools, including marine protected areas, shall not include any areas within national jurisdiction and shall not be relied upon as a basis for asserting or denying any claims to sovereignty, sovereign rights or

jurisdiction, including in respect of any disputes relating thereto. The Conference of the Parties shall not consider for decision proposals for the establishment of such area-based management tools, including marine protected areas, and in no case shall such proposals be interpreted as recognition or non-recognition of any claims to sovereignty, sovereign rights or jurisdiction.

Article 19 **Proposals**

1. Proposals regarding the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by Parties, individually or collectively, to the secretariat.
2. Parties shall collaborate and consult, as appropriate, with relevant stakeholders, including States and global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, the private sector, Indigenous Peoples and local communities, for the development of proposals, as set out in this Part.
3. Proposals shall be formulated on the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities, taking into account the precautionary approach and an ecosystem approach.
4. Proposals with regard to identified areas shall include the following key elements:
 - (a) A geographic or spatial description of the area that is the subject of the proposal by reference to the indicative criteria specified in Annex I;
 - (b) Information on any of the criteria specified in Annex I, as well as any criteria that may be further developed and revised in accordance with paragraph 5 below applied in identifying the area;
 - (c) Human activities in the area, including uses by Indigenous Peoples and local communities, and their possible impact, if any;
 - (d) A description of the state of the marine environment and biological diversity in the identified area;
 - (e) A description of the conservation and, where appropriate, sustainable use objectives that are to be applied to the area;
 - (f) A draft management plan encompassing the proposed measures and outlining proposed monitoring, research and review activities to achieve the specified objectives;
 - (g) The duration of the proposed area and measures, if any;

(h) Information on any consultations undertaken with States, including adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies, if any;

(i) Information on area-based management tools, including marine protected areas, implemented under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;

(j) Relevant scientific input and, where available, traditional knowledge of Indigenous Peoples and local communities.

5. Indicative criteria for the identification of such areas shall include, as relevant, those specified in Annex I and may be further developed and revised as necessary by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties.

6. Further requirements regarding the contents of proposals, including the modalities for the application of indicative criteria as specified in paragraph 5 above, and guidance on proposals specified in paragraph 4 (b) above shall be elaborated by the Scientific and Technical Body, as necessary, for consideration and adoption by the Conference of the Parties.

Article 20

Publicity and preliminary review of proposals

Upon receipt of a proposal in writing, the secretariat shall make the proposal publicly available and transmit it to the Scientific and Technical Body for a preliminary review. The purpose of the review is to ascertain that the proposal contains the information required under article 19, including indicative criteria described in this Part and in Annex I. The outcome of that review shall be made publicly available and 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 notify the Parties and make that retransmitted proposal publicly available and facilitate consultations pursuant to article 21.

Article 21

Consultations on and assessment of proposals

1. Consultations on proposals submitted under article 19 shall be inclusive, transparent and open to all relevant stakeholders, including States and global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, Indigenous Peoples and local communities.

2. The secretariat shall facilitate consultations and gather input as follows:
 - (a) States, in particular adjacent coastal States, shall be notified and invited to submit, inter alia:
 - (i) Views on the merits and geographic scope of the proposal;
 - (ii) Any other relevant scientific input;
 - (iii) Information regarding any existing measures or activities in adjacent or related areas within national jurisdiction and beyond 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 notified and invited to submit, inter alia:
 - (i) Views on the merits of the proposal;
 - (ii) Any other relevant scientific input;
 - (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 other elements for a draft 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 other relevant scientific input;
 - (iii) Any relevant traditional knowledge of Indigenous Peoples and local communities;
 - (iv) Any other relevant information.

3. Contributions received pursuant to paragraph 2 above shall be made publicly available by the secretariat.
4. In cases where the proposed measure affects areas that are entirely surrounded by the exclusive economic zones of States, proponents shall:
 - (a) Undertake targeted and proactive consultations, including prior notification, with such States;
 - (b) Consider the views and comments of such States on the proposed measure and provide written responses specifically addressing such views and comments and, where appropriate, revise the proposed measure accordingly.
5. The proponent shall consider the contributions received during the consultation period, as well as the views of and information from the Scientific and Technical Body, and, as appropriate, revise the proposal accordingly or respond to substantive contributions not reflected in the proposal.
6. The consultation period shall be time-bound.
7. 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.
8. The modalities for the consultation and assessment process, including duration, shall be further elaborated by the Scientific and Technical Body, as necessary, at its first meeting, for consideration and adoption by the Conference of the Parties, taking into account the special circumstances of small island developing States.

Article 22
Establishment of area-based management tools,
including marine protected areas

1. The Conference of the Parties, on the basis of the final proposal and the draft management plan, taking into account the contributions and scientific input received during the consultation process established under this Part, and the scientific advice and recommendations of the Scientific and Technical Body:
 - (a) Shall take decisions on the establishment of area-based management tools, including marine protected areas, and related measures;
 - (b) May take decisions on measures compatible with those adopted by relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, in cooperation and coordination with those instruments, frameworks and bodies;
 - (c) May, where proposed measures are within the competences of other global, regional, subregional or sectoral bodies, make recommendations to Parties to this Agreement and to global, regional, subregional and sectoral bodies to promote the adoption

of relevant measures through such instruments, frameworks and bodies, in accordance with their respective mandates.

2. In taking decisions under this article, the Conference of the Parties shall respect the competences of, and not undermine, relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

3. The Conference of the Parties shall make arrangements for regular consultations to enhance cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination with regard to related measures adopted under such instruments and frameworks and by such bodies.

4. Where the achievement of the objectives and the implementation of this Part so requires, to further international cooperation and coordination with respect to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, the Conference of the Parties may consider and, subject to paragraphs 1 and 2 above, may decide, as appropriate, to develop a mechanism regarding existing area-based management tools, including marine protected areas, adopted by relevant legal instruments and frameworks or relevant global, regional, subregional or sectoral bodies.

5. Decisions and recommendations adopted by the Conference of the Parties in accordance with this Part shall not undermine the effectiveness of measures adopted in respect of areas within national jurisdiction and shall be made with due regard for the rights and duties of all States, in accordance with the Convention. In cases where measures proposed under this Part would affect or could reasonably be expected to affect the superjacent water above the seabed and subsoil of submarine areas over which a coastal State exercises sovereign rights in accordance with the Convention, such measures shall have due regard to the sovereign rights of such coastal States. Consultations shall be undertaken to that end, in accordance with the provisions of this Part.

6. In cases where an area-based management tool, including a marine protected area, established under this Part subsequently falls, either wholly or in part, within the national jurisdiction of a coastal State, the part within national jurisdiction shall immediately cease to be in force. The part remaining in areas beyond national jurisdiction shall remain in force until the Conference of the Parties, at its following meeting, reviews and decides whether to amend or revoke the area-based management tool, including a marine protected area, as necessary.

7. Upon the establishment of, or amendment to the competence of, a relevant legal instrument or framework or a relevant global, regional, subregional or sectoral body, any area-based management tool, including a marine protected area, or related measures adopted by the Conference of the Parties under this Part that subsequently falls within the competence of such instrument, framework or body, either wholly or in part, shall remain in force until the Conference of the Parties reviews and decides, in close cooperation and

coordination with that instrument, framework or body, to maintain, amend or revoke the area-based management tool, including a marine protected area, and related measures, as appropriate.

Article 23 **Decision-making**

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-fourths majority of the Parties present and voting, before which the Conference of the Parties shall decide, by a two-thirds majority of the Parties present and voting that all efforts to reach consensus have been exhausted.
3. Decisions taken under this Part shall enter into force 120 days after the meeting of the Conference of the Parties at which they were taken and shall be binding on all Parties.
4. During the period of 120 days provided for in paragraph 3 above, any Party may, by notification in writing to the secretariat, make an objection with respect to a decision adopted under this Part, and that decision shall not be binding on that Party. An objection to a decision may be withdrawn at any time by written notification to the secretariat and, thereupon, the decision shall be binding for that Party 90 days following the date of the notification stating that the objection is withdrawn.
5. A Party making an objection under paragraph 4 above shall provide to the secretariat, in writing, at the time of making its objection, the explanation of the grounds for its objection, which shall be based on one or more of the following grounds:
 - (a) The decision is inconsistent with this Agreement or the rights and duties of the objecting Party in accordance with the Convention;
 - (b) The decision unjustifiably discriminates in form or in fact against the objecting Party;
 - (c) The Party cannot practicably comply with the decision at the time of the objection after making all reasonable efforts to do so.
6. A Party making an objection under paragraph 4 above shall, to the extent practicable, adopt alternative measures or approaches that are equivalent in effect to the decision to which it has objected and shall not adopt measures nor take actions that would undermine the effectiveness of the decision to which it has objected unless such measures or actions are essential for the exercise of rights and duties of the objecting Party in accordance with the Convention.
7. The objecting Party shall report to the next ordinary meeting of the Conference of the Parties following its notification under paragraph 4 above, and periodically thereafter,

on its implementation of paragraph 6 above, to inform the monitoring and review under article 26.

8. An objection to a decision made in accordance with paragraph 4 above may only be renewed if the objecting Party considers it still necessary, every three years after the entry into force of the decision, by written notification to the secretariat. Such written notification shall include an explanation of the grounds of its initial objection.

9. If no notification of renewal pursuant to paragraph 8 above is received, the objection shall be considered automatically withdrawn and, thereupon, the decision shall be binding for that Party 120 days after that objection is automatically withdrawn. The secretariat shall notify the Party 60 days prior to the date on which the objection will be automatically withdrawn.

10. Decisions of the Conference of the Parties adopted under this Part, and objections to those decisions, shall be made publicly available by the secretariat and shall be transmitted to all States and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.

Article 24 **Emergency measures**

1. The Conference of the Parties shall take decisions to adopt measures in areas beyond national jurisdiction, to be applied on an emergency basis, if necessary, when a natural phenomenon or human-caused disaster has caused, or is likely to cause, serious or irreversible harm to marine biological diversity of areas beyond national jurisdiction, to ensure that the serious or irreversible harm is not exacerbated.

2. Measures adopted under this article shall be considered necessary only if, following consultation with relevant legal instruments or frameworks or relevant global, regional, subregional or sectoral bodies, the serious or irreversible harm cannot be managed in a timely manner through the application of the other articles of this Agreement or by a relevant legal instrument or framework or a relevant global, regional, subregional or sectoral body.

3. Measures adopted on an emergency basis shall be based on the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities and shall take into account the precautionary approach. Such measures may be proposed by Parties or recommended by the Scientific and Technical Body and may be adopted intersessionally. The measures shall be temporary and must be reconsidered for decision at the next meeting of the Conference of the Parties following their adoption.

4. The measures shall terminate two years following their entry into force or shall be terminated earlier by the Conference of the Parties upon being replaced by area-based management tools, including marine protected areas, and related measures established in

accordance with this Part, or by measures adopted by a relevant legal instrument or framework or relevant global, regional, subregional or sectoral body, or by a decision of the Conference of the Parties when the circumstances that necessitated the measure cease to exist.

5. Procedures and guidance for the establishment of emergency measures, including consultation procedures, shall be elaborated by the Scientific and Technical Body, as necessary, for consideration and adoption by the Conference of the Parties at its earliest opportunity. Such procedures shall be inclusive and transparent.

Article 25 **Implementation**

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

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

3. The implementation of the measures adopted under this Part should not impose a disproportionate burden on Parties that are small island developing States or least developed countries, directly or indirectly.

4. Parties shall promote, as appropriate, 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 an 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 of 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 party to or 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 and frameworks and by such bodies shall not be discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Article 26
Monitoring and review

1. Parties shall, individually or collectively, report to the Conference of the Parties on the implementation of area-based management tools, including marine protected areas, established under this Part and related measures. Such reports, as well as the information and the review referred to in paragraphs 2 and 3 below, respectively, shall be made publicly available by the secretariat.
2. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be invited to provide information to the Conference of the Parties on the implementation of measures that they have adopted to achieve the objectives of area-based management tools, including marine protected areas, established under this Part.
3. 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, taking into account the reports and information referred to in paragraphs 1 and 2 above, respectively.
4. In the review referred to in paragraph 3 above, the Scientific and Technical Body shall assess the effectiveness of area-based management tools, including marine protected areas, established under this Part, including related measures and the progress made in achieving their objectives, and provide advice and recommendations to the Conference of the Parties.
5. Following the review, the Conference of the Parties shall, as necessary, take decisions or recommendations on the amendment, extension or revocation of area-based management tools, including marine protected areas, and any related measures adopted by the Conference of the Parties, on the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities, taking into account the precautionary approach and an ecosystem approach.

PART IV
ENVIRONMENTAL IMPACT ASSESSMENTS

Article 27
Objectives

The objectives of this Part are to:

- (a) Operationalize the provisions of the Convention on environmental impact assessment for areas beyond national jurisdiction by establishing processes, thresholds and other requirements for conducting and reporting assessments by Parties;

- (b) Ensure that activities covered by this Part are assessed and conducted to prevent, mitigate and manage significant adverse impacts for the purpose of protecting and preserving the marine environment;
- (c) Support the consideration of cumulative impacts and impacts in areas within national jurisdiction;
- (d) Provide for strategic environmental assessments;
- (e) Achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction;
- (f) Build and strengthen the capacity of Parties, particularly developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, to prepare, conduct and evaluate environmental impact assessments and strategic environmental assessments in support of the objectives of this Agreement.

Article 28

Obligation to conduct environmental impact assessments

1. Parties shall ensure that the potential impacts on the marine environment of planned activities under their jurisdiction or control that take place in areas beyond national jurisdiction are assessed as set out in this Part before they are authorized.
2. When a Party with jurisdiction or control over a planned activity that is to be conducted in marine areas within national jurisdiction determines that the activity may cause substantial pollution of or significant and harmful changes to the marine environment in areas beyond national jurisdiction, that Party shall ensure that an environmental impact assessment of such activity is conducted in accordance with this Part or that an environmental impact assessment is conducted under the Party's national process. A Party conducting such an assessment under its national process shall:
 - (a) Make relevant information available through the Clearing-House Mechanism, in a timely manner, during the national process;
 - (b) Ensure that the activity is monitored in a manner consistent with the requirements of its national process;
 - (c) Ensure that environmental impact assessment reports and any relevant monitoring reports are made available through the Clearing-House Mechanism as set out in this Agreement.
3. Upon receiving the information referred to in paragraph 2 (a) above, the Scientific and Technical Body may provide comments to the Party with jurisdiction or control over the planned activity.

Article 29**Relationship between this Agreement and environmental impact assessment processes under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies**

1. Parties shall promote the use of environmental impact assessments and the adoption and implementation of the standards and/or guidelines developed under article 38 in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members.
2. The Conference of the Parties shall develop mechanisms under this Part for the Scientific and Technical Body to collaborate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies that regulate activities in areas beyond national jurisdiction or protect the marine environment.
3. When developing or updating standards or guidelines for the conduct of environmental impact assessments of activities in areas beyond national jurisdiction by Parties to this Agreement under article 38, the Scientific and Technical Body shall, as appropriate, collaborate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.
4. It is not necessary to conduct a screening or an environmental impact assessment of a planned activity in areas beyond national jurisdiction, provided that the Party with jurisdiction or control over the planned activity determines:
 - (a) That the potential impacts of the planned activity or category of activity have been assessed in accordance with the requirements of other relevant legal instruments or frameworks or by relevant global, regional, subregional or sectoral bodies;
 - (b) That:
 - (i) the assessment already undertaken for the planned activity is equivalent to the one required under this Part, and the results of the assessment are taken into account; or
 - (ii) the regulations or standards of the relevant legal instruments or frameworks or relevant global, regional, subregional or sectoral bodies arising from the assessment were designed to prevent, mitigate or manage potential impacts below the threshold for environmental impact assessments under this Part, and they have been complied with.
5. When an environmental impact assessment for a planned activity in areas beyond national jurisdiction has been conducted under a relevant legal instrument or framework or a relevant global, regional, subregional or sectoral body, the Party concerned shall ensure that the environmental impact assessment report is published through the Clearing-House Mechanism.

6. Unless the planned activities that meet the criteria set out in paragraph 4 (b) (i) above are subject to monitoring and review under a relevant legal instrument or framework or relevant global, regional, subregional or sectoral body, Parties shall monitor and review the activities and ensure that the monitoring and review reports are published through the Clearing-House Mechanism.

Article 30
Thresholds and factors for conducting environmental
impact assessments

1. When a planned activity may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood, the Party with jurisdiction or control of the activity shall conduct a screening of the activity under article 31, using the factors set out in paragraph 2 below, and:

(a) The screening shall be sufficiently detailed for the Party to assess whether it has reasonable grounds for believing that the planned activity may cause substantial pollution of or significant and harmful changes to the marine environment and shall include:

- (i) A description of the planned activity, including its purpose, location, duration and intensity; and
- (ii) An initial analysis of the potential impacts, including consideration of cumulative impacts and, as appropriate, alternatives to the planned activity;

(b) If it is determined on the basis of the screening that the Party has reasonable grounds for believing that the activity may cause substantial pollution of or significant and harmful changes to the marine environment, an environmental impact assessment shall be conducted in accordance with the provisions of this Part.

2. When determining whether planned activities under their jurisdiction or control meet the threshold set out in paragraph 1 above, Parties shall consider the following non-exhaustive factors:

- (a) The type of and technology used for the activity and the manner in which it is to be conducted;
- (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 potential impacts of the activity, including the potential cumulative impacts and the potential impacts in areas within national jurisdiction;

- (f) The extent to which the effects of the activity are unknown or poorly understood;
- (g) Other relevant ecological or biological criteria.

Article 31

Process for environmental impact assessments

1. Parties shall ensure that the process for conducting an environmental impact assessment pursuant to this Part includes the following steps:

(a) *Screening.* Parties shall undertake screening, in a timely manner, to determine whether an environmental impact assessment is required in respect of a planned activity under its jurisdiction or control, in accordance with article 30, and make its determination publicly available:

(i) If a Party determines that an environmental impact assessment is not required for a planned activity under its jurisdiction or control, it shall make relevant information, including under article 30, paragraph 1 (a), publicly available through the Clearing-House Mechanism under this Agreement;

(ii) On the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities, a Party may register its views on the potential impacts of a planned activity on which a determination has been made in accordance with subparagraph (a) (i) above with the Party that made the determination and the Scientific and Technical Body, within 40 days of the publication thereof;

(iii) If the Party that registered its views expressed concerns on the potential impacts of a planned activity on which the determination was made, the Party that made that determination shall give consideration to such concerns and may review its determination;

(iv) Upon consideration of the concerns registered by a Party under subparagraph (a) (ii) above, the Scientific and Technical Body shall consider and may evaluate the potential impacts of the planned activity on the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities and, as appropriate, may make recommendations to the Party that made the determination after giving that Party an opportunity to respond to the concerns registered and taking into account such response;

(v) The Party that made the determination under subparagraph (a) (i) above shall give consideration to any recommendations of the Scientific and Technical Body;

(vi) The registration of views and the recommendations of the Scientific and Technical Body shall be made publicly available, including through the Clearing-House Mechanism;

(b) *Scoping*. Parties shall ensure that key environmental and any associated impacts, such as economic, social, cultural and human health impacts, including potential cumulative impacts and impacts in areas within national jurisdiction, as well as alternatives to the planned activity, if any, to be included in the environmental impact assessments that shall be conducted under this Part, are identified. The scope shall be defined by using the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities;

(c) *Impact assessment and evaluation*. Parties shall ensure that the impacts of planned activities, including cumulative impacts and impacts in areas within national jurisdiction, are assessed and evaluated using the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities;

(d) *Prevention, mitigation and management of potential adverse effects*. Parties shall ensure that:

(i) Measures to prevent, mitigate and manage potential adverse effects of the planned activities under their jurisdiction or control are identified and analysed to avoid significant adverse impacts. Such measures may include the consideration of alternatives to the planned activity under their jurisdiction or control;

(ii) Where appropriate, these measures are incorporated into an environmental management plan;

(e) Parties shall ensure public notification and consultation in accordance with article 32;

(f) Parties shall ensure the preparation and publication of an environmental impact assessment report in accordance with article 33.

2. Parties may conduct joint environmental impact assessments, in particular for planned activities under the jurisdiction or control of small island developing States.

3. A roster of experts shall be created under the Scientific and Technical Body. Parties with capacity constraints may request advice and assistance from those experts to conduct and evaluate screenings and environmental impact assessments for a planned activity under their jurisdiction or control. The experts cannot be appointed to another part of the environmental impact assessment process of the same activity. The Party that requested the advice and assistance shall ensure that such environmental impact assessments are submitted to it for review and decision-making.

Article 32**Public notification and consultation**

1. Parties shall ensure timely public notification of a planned activity, including by publication through the Clearing-House Mechanism and through the secretariat, and planned and effective time-bound opportunities, as far as practicable, for participation by all States, in particular adjacent coastal States and any other States adjacent to the activity when they are potentially most affected States, and stakeholders in the environmental impact assessment process. Notification and opportunities for participation, including through the submission of comments, shall take place throughout the environmental impact assessment process, as appropriate, including when identifying the scope of an environmental impact assessment under article 31, paragraph 1 (b), and when a draft environmental impact assessment report has been prepared under article 33, before a decision is made as to whether to authorize the activity.
2. Potentially most affected States shall be determined by taking into account the nature and potential effects on the marine environment of the planned activity and shall include:
 - (a) Coastal States whose exercise of sovereign rights for the purpose of exploring, exploiting, conserving or managing natural resources may reasonably be believed to be affected by the activity;
 - (b) States that carry out, in the area of the planned activity, human activities, including economic activities, that may reasonably be believed to be affected.
3. Stakeholders in this process include Indigenous Peoples and local communities with relevant traditional knowledge, relevant global, regional, subregional and sectoral bodies, civil society, the scientific community and the public.
4. Public notification and consultation shall, in accordance with article 48, paragraph 3, be inclusive and transparent, be conducted in a timely manner and be targeted and proactive when involving small island developing States.
5. Substantive comments received during the consultation process, including from adjacent coastal States and any other States adjacent to the planned activity when they are potentially most affected States, shall be considered and responded to or addressed by Parties. Parties shall give particular regard to comments concerning potential impacts in areas within national jurisdiction and provide written responses, as appropriate, specifically addressing such comments, including regarding any additional measures meant to address those potential impacts. Parties shall make public the comments received and the responses or descriptions of the manner in which they were addressed.

6. Where a planned activity affects areas of the high seas that are entirely surrounded by the exclusive economic zones of States, Parties shall:

(a) Undertake targeted and proactive consultations, including prior notification, with such surrounding States;

(b) Consider the views and comments of those surrounding States on the planned activity and provide written responses specifically addressing such views and comments and, as appropriate, revise the planned activity accordingly.

7. Parties shall ensure 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. The fact that confidential or proprietary information has been redacted shall be indicated in public documents.

Article 33

Environmental impact assessment reports

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

2. The environmental impact assessment report shall include, at a minimum, the following information: a description of the planned activity, including its location; a description of the results of the scoping exercise; a baseline assessment of the marine environment likely to be affected; a description of potential impacts, including potential cumulative impacts and any impacts in areas within national jurisdiction; a description of potential prevention, mitigation and management measures; a description of uncertainties and gaps in knowledge; information on the public consultation process; a description of the consideration of reasonable alternatives to the planned activity; a description of follow-up actions, including an environmental management plan; and a non-technical summary.

3. The Party shall make the draft environmental impact assessment report available through the Clearing-House Mechanism during the public consultation process, to provide an opportunity for the Scientific and Technical Body to consider and evaluate the report.

4. The Scientific and Technical Body, as appropriate and in a timely manner, may make comments to the Party on the draft environmental impact assessment report. The Party shall give consideration to any comments made by the Scientific and Technical Body.

5. Parties shall publish the reports of the environmental impact assessments, including through the Clearing-House Mechanism. The secretariat shall ensure that all Parties are notified in a timely manner when reports are published through the Clearing-House Mechanism.

6. Final environmental impact assessment reports shall be considered by the Scientific and Technical Body, on the basis of relevant practices, procedures and knowledge under this Agreement, for the purpose of developing guidelines, including the identification of best practices.

7. 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 30 and 31, shall be considered and reviewed by the Scientific and Technical Body, on the basis of relevant practices, procedures and knowledge under this Agreement, for the purpose of developing guidelines, including the identification of best practices.

Article 34 **Decision-making**

1. A Party under whose jurisdiction or control a planned activity falls shall be responsible for determining if it may proceed.

2. When determining whether the planned activity may proceed under this Part, full account shall be taken of an environmental impact assessment conducted in accordance with this Part. A decision to authorize the planned activity under the jurisdiction or control of a Party shall only be made when, taking into account mitigation or management measures, the Party has determined that it has made all reasonable efforts to ensure that the activity can be conducted in a manner consistent with the prevention of significant adverse impacts on the marine environment.

3. Decision documents shall clearly outline any conditions of approval related to mitigation measures and follow-up requirements. Decision documents 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 whether a planned activity under its jurisdiction or control may proceed.

Article 35 **Monitoring of impacts of authorized activities**

Parties shall, by using the best available science and scientific information and, where available, the relevant traditional knowledge of Indigenous Peoples and local communities, keep under surveillance the impacts of any activities in areas beyond national jurisdiction that they permit or in which they engage in order to determine whether these activities are likely to pollute or have adverse impacts on the marine environment. In particular, each Party shall monitor the environmental and any associated impacts, such as economic, social, cultural and human health impacts, of an authorized activity under their jurisdiction or control in accordance with the conditions set out in the approval of the activity.

Article 36

Reporting on impacts of authorized activities

1. Parties, whether acting individually or collectively, shall periodically report on the impacts of the authorized activity and the results of the monitoring required under article 35.
2. Monitoring reports shall be made public, including through the Clearing-House Mechanism, and the Scientific and Technical Body may consider and evaluate the monitoring reports.
3. Monitoring reports shall be considered by the Scientific and Technical Body, on the basis of relevant practices, procedures and knowledge under this Agreement, for the purpose of developing guidelines on the monitoring of impacts of authorized activities, including the identification of best practices.

Article 37

Review of authorized activities and their impacts

1. Parties shall ensure that the impacts of the authorized activity monitored pursuant to article 35 are reviewed.
2. Should the Party with jurisdiction or control over the activity identify significant adverse impacts that either were not foreseen in the environmental impact assessment, in nature or severity, or that arise from a breach of any of the conditions set out in the approval of the activity, the Party shall review its decision authorizing the activity, notify the Conference of the Parties, other Parties and the public, including through the Clearing-House Mechanism, and:
 - (a) Require that measures be proposed and implemented to prevent, mitigate and/or manage those impacts or take any other necessary action and/or halt the activity, as appropriate; and
 - (b) Evaluate, in a timely manner, any measures implemented or actions taken under subparagraph (a) above.
3. On the basis of the reports received under article 36, the Scientific and Technical Body may notify the Party that authorized the activity if it considers that the activity may have significant adverse impacts that were either not foreseen in the environmental impact assessment or that arise from a breach of any conditions of approval of the authorized activity and, as appropriate, may make recommendations to the Party.
4. (a) On the basis of the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities, a Party may register its concerns, with the Party that authorized the activity and with the Scientific and Technical Body, that the authorized activity may have

significant adverse impacts that were either not foreseen in the environmental impact assessment, in nature or severity, or that arise from a breach of any conditions of approval of the authorized activity;

(b) The Party that authorized the activity shall give consideration to such concerns;

(c) Upon consideration of the concerns registered by a Party, the Scientific and Technical Body shall consider and may evaluate the matter based on the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities and may notify the Party that authorized the activity, if it considers that such activity may have significant adverse impacts that were either not foreseen in the environmental impact assessment or that arise from a breach of any conditions of approval of the authorized activity and, after giving that Party an opportunity to respond to the concerns registered and taking into account such response and as appropriate, may make recommendations to the Party that authorized the activity;

(d) The registration of concerns, any notifications issued and any recommendations made by the Scientific and Technical Body shall be made publicly available, including through the Clearing-House Mechanism;

(e) The Party that authorized the activity shall give consideration to any notifications issued and any recommendations made by the Scientific and Technical Body.

5. All States, in particular adjacent coastal States and any other States adjacent to the activity when they are potentially most affected States, and stakeholders shall be kept informed through the Clearing-House Mechanism and may be consulted in the monitoring, reporting and review processes in respect of an activity authorized under this Agreement.

6. Parties shall publish, including through the Clearing-House Mechanism:

(a) Reports on the review of the impacts of the authorized activity;

(b) Decision documents, including a record of the reasons for the decision by the Party, when a Party has changed its decision authorizing the activity.

Article 38

Standards and/or guidelines to be developed by the Scientific and Technical Body related to environmental impact assessments

1. The Scientific and Technical Body shall develop standards or guidelines for consideration and adoption by the Conference of the Parties on:

(a) The determination of whether the thresholds for the conduct of a screening or an environmental impact assessment under article 30 have been met or exceeded for planned activities, including on the basis of the non-exhaustive factors set out in paragraph 2 of that article;

(b) The assessment of cumulative impacts in areas beyond national jurisdiction and how those impacts should be taken into account in the environmental impact assessment process;

(c) The assessment of impacts, in areas within national jurisdiction, of planned activities in areas beyond national jurisdiction and how those impacts should be taken into account in the environmental impact assessment process;

(d) The public notification and consultation process under article 32, including the determination of what constitutes confidential or proprietary information;

(e) The required content of environmental impact assessment reports and published information used in the screening process pursuant to article 33, including best practices;

(f) The monitoring of and reporting on the impacts of authorized activities as set out in articles 35 and 36, including the identification of best practices;

(g) The conduct of strategic environmental assessments.

2. The Scientific and Technical Body may also develop standards and guidelines for consideration and adoption by the Conference of the Parties, including on:

(a) An indicative non-exhaustive list of activities that require or do not require an environmental impact assessment, as well as any criteria related to those activities, which shall be periodically updated;

(b) The conduct of environmental impact assessments by Parties to this Agreement in areas identified as requiring protection or special attention.

3. Any standard shall be set out in an annex to this Agreement, in accordance with article 74.

Article 39

Strategic environmental assessments

1. Parties shall, individually or in cooperation with other Parties, consider conducting strategic environmental assessments for plans and programmes relating to activities under their jurisdiction or control, to be conducted in areas beyond national jurisdiction, in order to assess the potential effects of such plans or programmes, as well as of alternatives, on the marine environment.

2. The Conference of the Parties may conduct a strategic environmental assessment of an area or region to collate and synthesize the best available information about the area or region, assess current and potential future impacts and identify data gaps and research priorities.

3. When undertaking environmental impact assessments pursuant to this Part, Parties shall take into account the results of relevant strategic environmental assessments carried out under paragraphs 1 and 2 above, where available.

4. The Conference of the Parties shall develop guidance on the conduct of each category of strategic environmental assessment described in this article.

PART V CAPACITY-BUILDING AND THE TRANSFER OF MARINE TECHNOLOGY

Article 40 Objectives

The objectives of this Part are to:

(a) Assist Parties, in particular developing States Parties, in implementing the provisions of this Agreement, to achieve its objectives;

(b) Enable inclusive, equitable and effective cooperation and participation in the activities undertaken under this Agreement;

(c) Develop the marine scientific and technological capacity, including with respect to research, of Parties, in particular developing States Parties, with regard to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through access to marine technology by, and the transfer of marine technology to, developing States Parties;

(d) Increase, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

(e) More specifically, support developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, through capacity-building and the development and transfer of marine technology under this Agreement, in achieving the objectives relating to:

(i) Marine genetic resources, including the sharing of benefits, as reflected in article 9;

(ii) Measures such as area-based management tools, including marine protected areas, as reflected in article 17;

(iii) Environmental impact assessments, as reflected in article 27.

Article 41
Cooperation in capacity-building and the transfer of
marine technology

1. Parties shall cooperate, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, to assist Parties, in particular developing States Parties, in achieving the objectives of this Agreement through capacity-building and the development and transfer of marine science and marine technology.
2. In providing capacity-building and the transfer of marine technology under this Agreement, Parties shall cooperate at all levels and in all forms, including through partnerships with and involving all relevant stakeholders, such as, where appropriate, the private sector, civil society, and Indigenous Peoples and local communities as holders of traditional knowledge, as well as through strengthening cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.
3. In giving effect to this Part, Parties shall give full recognition to the special requirements of developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries. Parties shall ensure that the provision of capacity-building and the transfer of marine technology is not conditional on onerous reporting requirements.

Article 42
Modalities for capacity-building and for the transfer of
marine technology

1. Parties, within their capabilities, shall ensure capacity-building for developing States Parties and shall cooperate to achieve the transfer of marine technology, in particular to developing States Parties that need and request it, taking into account the special circumstances of small island developing States and of least developed countries, in accordance with the provisions of this Agreement.
2. Parties shall provide, within their capabilities, resources to support such capacity-building and the development and transfer of marine technology and to facilitate access to other sources of support, taking into account their national policies, priorities, plans and programmes.
3. Capacity-building and the transfer of marine technology should be a country-driven, transparent, effective and iterative process that is participatory, cross-cutting and gender-responsive. It shall build upon, as appropriate, and not duplicate existing programmes and be guided by lessons learned, including those from capacity-building and transfer of marine technology activities under relevant legal instruments and frameworks and relevant global,

regional, subregional and sectoral bodies. Insofar as possible, it shall take into account these activities with a view to maximizing efficiency and results.

4. Capacity-building and the transfer of marine technology shall be based on and be responsive to the needs and priorities of developing States Parties, taking into account the special circumstances of small island developing States and of least developed countries, identified through needs assessments on an individual case-by-case, subregional or regional basis. Such needs and priorities may be self-assessed or facilitated through the capacity-building and transfer of marine technology committee and the Clearing-House Mechanism.

Article 43

Additional modalities for the transfer of marine technology

1. Parties share a long-term vision of the importance of fully realizing technology development and transfer for inclusive, equitable and effective cooperation and participation in the activities undertaken under this Agreement and in order to fully achieve its objectives.

2. The transfer of marine technology undertaken under this Agreement shall take place on fair and most favourable terms, including on concessional and preferential terms, and in accordance with mutually agreed terms and conditions as well as the objectives of this Agreement.

3. Parties shall promote and encourage economic and legal conditions for the transfer of marine technology to developing States Parties, taking into account the special circumstances of small island developing States and of least developed countries, which may include providing incentives to enterprises and institutions.

4. The transfer of marine technology shall take into account all rights over such technologies and be carried out with due regard for all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology and taking into particular consideration the interests and needs of developing States for the attainment of the objectives of this Agreement.

5. Marine technology transferred pursuant to this Part shall be appropriate, relevant and, to the extent possible, reliable, affordable, up to date, environmentally sound and available in an accessible form for developing States Parties, taking into account the special circumstances of small island developing States and of least developed countries.

Article 44
Types of capacity-building and of the transfer of
marine technology

1. In support of the objectives set out in article 40, the types of capacity-building and of the transfer of marine technology may include, but are not limited to, support for the creation or enhancement of the human, financial management, scientific, technological, organizational, institutional and other resource capabilities of Parties, such as:

(a) The sharing and use of relevant data, information, knowledge and research results;

(b) Information dissemination and awareness-raising, including with respect to relevant traditional knowledge of Indigenous Peoples and local communities, in line with the free, prior and informed consent of these Indigenous Peoples and, as appropriate, local communities;

(c) The development and strengthening of relevant infrastructure, including equipment and capacity of personnel for its use and maintenance;

(d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms;

(e) The development and strengthening of human and financial management resource capabilities and of technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of marine technology;

(f) The development and sharing of manuals, guidelines and standards;

(g) The development of technical, scientific and research and development programmes;

(h) The development and strengthening of capacities and technological tools for effective monitoring, control and surveillance of activities within the scope of this Agreement.

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

3. The Conference of the Parties, taking account of the recommendations of the capacity-building and transfer of marine technology committee, shall periodically, as necessary, review, assess and further develop and provide guidance on the indicative and non-exhaustive list of types of capacity-building and of transfer of marine technology elaborated in Annex II, to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, subregions and regions.

Article 45
Monitoring and review

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

2. The monitoring and review referred to in paragraph 1 above shall be carried out by the capacity-building and transfer of marine technology committee under the authority of the Conference of the Parties and shall be aimed at:

(a) Assessing and reviewing the needs and priorities of developing States Parties in terms of capacity-building and the transfer of marine technology, paying particular attention to the special requirements of developing States Parties and to the special circumstances of small island developing States and of least developed countries, in accordance with article 42, paragraph 4;

(b) Reviewing the support required, provided and mobilized, as well as gaps in meeting the assessed needs of developing States Parties in relation to this Agreement;

(c) Identifying and mobilizing funds under the financial mechanism established under article 52 to develop and implement capacity-building and the transfer of marine technology, including for the conduct of needs assessments;

(d) Measuring performance on the basis of agreed indicators and reviewing results-based analyses, including on the output, outcomes, progress and effectiveness of capacity-building and transfer of marine technology under this Agreement, as well as successes and challenges;

(e) Making recommendations for follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to allow developing States Parties, taking into account the special circumstances of small island developing States and of least developed countries, to strengthen their implementation of the Agreement in order to achieve its objectives.

3. In supporting the monitoring and review of capacity-building and the transfer of marine technology, Parties shall submit reports to the capacity-building and transfer of marine technology committee. Those reports should be in a format and at intervals to be determined by the Conference of the Parties, taking into account the recommendations of the capacity-building and transfer of marine technology committee. In submitting their reports, Parties shall take into account, where applicable, input from regional and subregional bodies on capacity-building and the transfer of marine technology. The reports submitted by Parties, as well as any input from regional and subregional bodies on capacity-building and the transfer of marine technology, should be made publicly available. The Conference of the Parties shall ensure that reporting requirements should be streamlined and not onerous, in particular for developing States Parties, including in terms of costs and time requirements.

Article 46

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 possessing appropriate qualifications and expertise, to serve objectively in the best interest of the Agreement, nominated by Parties and elected by the Conference of the Parties, taking into account gender balance and equitable geographical distribution and providing for representation on the committee from the least developed countries, from the small island developing States and from the landlocked developing countries. The terms of reference and modalities for the operation of the committee shall be decided by the Conference of the Parties at its first meeting.
3. The committee shall submit reports and recommendations that the Conference of the Parties shall consider and take action on as appropriate.

PART VI

INSTITUTIONAL ARRANGEMENTS

Article 47

Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The first meeting of the Conference of the Parties shall be convened by the Secretary-General of the United Nations no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference of the Parties. Extraordinary meetings of the Conference of the Parties may be held at other times, in accordance with the rules of procedure.
3. The Conference of the Parties shall ordinarily meet at the seat of the secretariat or at United Nations Headquarters.
4. 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. Until such time as the rules of procedure have been adopted, the rules of procedure 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 shall apply.
5. The Conference of the Parties shall make every effort to adopt decisions and recommendations by consensus. Except as otherwise provided in this Agreement, if all

efforts to reach consensus have been exhausted, decisions and recommendations of the Conference of the Parties on questions of substance shall be adopted by a two-thirds majority of the Parties present and voting, and decisions on questions of procedure shall be adopted by a majority of the Parties present and voting.

6. The Conference of the Parties shall keep under review and evaluation the implementation of this Agreement and, for this purpose, shall:

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

(b) Review and facilitate the exchange of information among Parties relevant to the implementation of this Agreement;

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

(d) Establish such subsidiary bodies as deemed necessary to support the implementation of this Agreement;

(e) Adopt a budget by a three-fourths majority of the Parties present and voting if all efforts to reach consensus have been exhausted, at such frequency and for such a financial period as it may determine;

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

7. The Conference of the Parties may decide to request the International Tribunal for the Law of the Sea to give an advisory opinion on a legal question on the conformity with this Agreement of a proposal before the Conference of the Parties on any matter within its competence. A request for an advisory opinion shall not be sought on a matter within the competences of other global, regional, subregional or sectoral bodies, or on a matter that necessarily involves the concurrent consideration of any dispute concerning sovereignty or other rights over continental or insular land territory or a claim thereto, or the legal status of an area as within national jurisdiction. The request shall indicate the scope of the legal question on which the advisory opinion is sought. The Conference of the Parties may request that such opinion be given as a matter of urgency.

8. The Conference of the Parties shall, within five years of the entry into force of this Agreement and thereafter at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Article 48
Transparency

1. The Conference of the Parties shall promote transparency in decision-making processes and other activities carried out under this Agreement.
2. All meetings of the Conference of the Parties and its subsidiary bodies shall be open to observers participating in accordance with the rules of procedure unless otherwise decided by the Conference of the Parties. The Conference of the Parties shall publish and maintain a public record of its decisions.
3. The Conference of the Parties shall promote transparency in the implementation of this Agreement, including through the public dissemination of information and the facilitation of the participation of, and consultation with, relevant global, regional, subregional and sectoral bodies, Indigenous Peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders, as appropriate and in accordance with the provisions of this Agreement.
4. Representatives of States not party to this Agreement, relevant global, regional, subregional and sectoral bodies, Indigenous Peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders with an interest in matters pertaining to the Conference of the Parties may request to participate as observers in the meetings of the Conference of the Parties and of its subsidiary bodies. The rules of procedure of the Conference of the Parties shall provide for modalities for such participation and shall not be unduly restrictive in this respect. The rules of procedure shall also provide for such representatives to have timely access to all relevant information.

Article 49
Scientific and Technical Body

1. A Scientific and Technical Body is hereby established.
2. The Scientific and Technical Body shall be composed of members serving in their expert capacity and in the best interest of the Agreement, nominated by Parties and elected by the Conference of the Parties, with suitable qualifications, taking into account the need for multidisciplinary expertise, including relevant scientific and technical expertise and 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 Scientific and Technical Body, including its selection process and the terms of members' mandates, shall be determined by the Conference of the Parties at its first meeting.
3. The Scientific and Technical Body may draw on appropriate advice emanating from relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as well as from other scientists and experts, as may be required.

4. Under the authority and guidance of the Conference of the Parties, and taking into account the multidisciplinary expertise referenced in paragraph 2 above, the Scientific and Technical Body shall provide scientific and technical advice to the Conference of the Parties, perform the functions assigned to it under this Agreement and such other functions as may be determined by the Conference of the Parties and provide reports to the Conference of the Parties on its work.

Article 50 Secretariat

1. A secretariat is hereby established. The Conference of the Parties, at its first meeting, shall make arrangements for the functioning of the secretariat, including deciding on its seat.

2. Until such time as the secretariat commences its functions, the Secretary-General of the United Nations, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat, shall perform the secretariat functions under this Agreement.

3. The secretariat and the host State may conclude a headquarters agreement. The secretariat shall enjoy legal capacity in the territory of the host State and be granted such privileges and immunities by the host State as are necessary for the exercise of its functions.

4. The secretariat shall:

(a) Provide administrative and logistical support to the Conference of the Parties and its subsidiary bodies for the purposes of the implementation of this Agreement;

(b) Arrange and service the meetings of the Conference of the Parties and of any other bodies as may be established under this Agreement or by the Conference of the Parties;

(c) Circulate information relating to the implementation of this Agreement in a timely manner, including making decisions of the Conference of the Parties publicly available and transmitting them to all Parties, as well as to relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;

(d) Facilitate cooperation and coordination, as appropriate, with the secretariats of other relevant international bodies and, in particular, enter into such administrative and contractual arrangements as may be required for that purpose and for the effective discharge of its functions, subject to approval by the Conference of the Parties;

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

(f) Provide assistance with the implementation of this Agreement and perform such other functions as may be determined by the Conference of the Parties or assigned to it under this Agreement.

Article 51
Clearing-House Mechanism

1. A Clearing-House Mechanism is hereby established.
2. The Clearing-House Mechanism shall consist primarily of an open-access platform. The specific modalities for the operation of the Clearing-House Mechanism shall be determined by the Conference of the Parties.
3. The Clearing-House Mechanism shall:
 - (a) Serve as a centralized platform to enable Parties to access, provide and disseminate information with respect to activities taking place pursuant to the provisions of this Agreement, including information relating to:
 - (i) Marine genetic resources of areas beyond national jurisdiction, as set out in Part II of this Agreement;
 - (ii) The establishment and implementation of area-based management tools, including marine protected areas;
 - (iii) Environmental impact assessments;
 - (iv) Requests for capacity-building and the transfer of marine technology and opportunities with respect thereto, including research collaboration and training opportunities, information on sources and availability of technological information and data for the transfer of marine technology, opportunities for facilitated access to marine technology and the availability of funding;
 - (b) Facilitate the matching of capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and facilitate access to related know-how and expertise;
 - (c) Provide links to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other gene banks, repositories and databases, including those pertaining to relevant traditional knowledge of Indigenous Peoples and local communities, and promote, where possible, links with publicly available private and non-governmental platforms for the exchange of information;
 - (d) Build on global, regional and subregional clearing-house institutions, where applicable, when establishing regional and subregional mechanisms under the global mechanism;

(e) Foster enhanced transparency, including by facilitating the sharing of environmental baseline data and information relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction between Parties and other relevant stakeholders;

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

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

4. The Clearing-House Mechanism shall be managed by the secretariat, without prejudice to possible cooperation with other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies as determined by the Conference of the Parties, including the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, the International Seabed Authority, the International Maritime Organization and the Food and Agriculture Organization of the United Nations.

5. In the management of the Clearing-House Mechanism, full recognition shall be given to the special requirements of developing States Parties, as well as the special circumstances of small island developing States Parties, and their access to the mechanism shall be facilitated to enable those States to utilize it without undue obstacles or administrative burdens. Information shall be included on activities to promote information-sharing, awareness-raising and dissemination in and with those States, as well as to provide specific programmes for those States.

6. The confidentiality of information provided under this Agreement and rights thereto shall be respected. Nothing under this Agreement shall be interpreted as requiring the sharing of information that is protected from disclosure under the domestic law of a Party or other applicable law.

PART VII FINANCIAL RESOURCES AND MECHANISM

Article 52 Funding

1. Each Party shall provide, within its capabilities, resources in respect of those activities that are intended to achieve the objectives of this Agreement, taking into account its national policies, priorities, plans and programmes.

2. The institutions established under this Agreement shall be funded through assessed contributions of the Parties.

3. A mechanism for the provision of adequate, accessible, new and additional and predictable financial resources under this Agreement is hereby established. The mechanism shall assist developing States Parties in implementing this Agreement, including through funding in support of capacity-building and the transfer of marine technology, and perform other functions as set out in this article for the conservation and sustainable use of marine biological diversity.

4. The mechanism shall include:

(a) A voluntary trust fund established by the Conference of the Parties to facilitate the participation of representatives of developing States Parties, in particular least developed countries, landlocked developing countries and small island developing States, in the meetings of the bodies established under this Agreement;

(b) A special fund that shall be funded through the following sources:

(i) Annual contributions in accordance with article 14, paragraph 6;

(ii) Payments in accordance with article 14, paragraph 7;

(iii) 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;

(c) The Global Environment Facility trust fund.

5. The Conference of the Parties may consider the possibility of establishing additional funds, as part of the financial mechanism, to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, to finance rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction.

6. The special fund and the Global Environment Facility trust fund shall be utilized in order to:

(a) Fund capacity-building projects under this Agreement, including effective projects on the conservation and sustainable use of marine biological diversity and activities and programmes, including training related to the transfer of marine technology;

(b) Assist developing States Parties in implementing this Agreement;

(c) Support conservation and sustainable use programmes by Indigenous Peoples and local communities as holders of traditional knowledge;

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

(e) Fund the undertaking of any other activities as decided by the Conference of the Parties.

7. The financial mechanism should seek to ensure that duplication is avoided, and complementarity and coherence promoted, among the utilization of the funds within the mechanism.

8. 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.

9. For the purposes of this Agreement, the mechanism shall function under the authority, where appropriate, and guidance of the Conference of the Parties and shall be accountable thereto. The Conference of the Parties shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources.

10. The Conference of the Parties and the Global Environment Facility shall agree upon arrangements to give effect to the above paragraphs at the first meeting of the Conference of the Parties.

11. In recognition of the urgency to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, the Conference of the Parties shall determine an initial resource mobilization goal through 2030 for the special fund from all sources, taking into account, inter alia, the institutional modalities of the special fund and the information provided through the capacity-building and transfer of marine technology committee.

12. Eligibility for access to funding under this Agreement shall be open to developing States Parties on the basis of need. Funding under the special fund shall be distributed according to equitable sharing criteria, 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, archipelagic States and developing middle-income countries, and taking into account the special circumstances of small island developing States and of least developed countries. The special fund shall be aimed at ensuring efficient access to funding through simplified application and approval procedures and enhanced readiness of support for such developing States Parties.

13. In the light of capacity constraints, Parties shall encourage international organizations to grant preferential treatment to, and consider the specific needs and special requirements of developing States Parties, in particular the least developed countries, landlocked developing countries and small island developing States, and taking into account the special circumstances of small island developing States and of least developed countries, 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.

14. The Conference of the Parties shall establish a finance committee on financial resources. It shall be composed of members possessing appropriate qualifications and expertise, taking into account gender balance and equitable geographical distribution. The terms of reference and modalities for the operation of the committee shall be decided by the Conference of the Parties. The committee shall 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 committee 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.

15. The Conference of the Parties shall consider the reports and recommendations of the finance committee and take appropriate action.

16. The Conference of the Parties shall, in addition, undertake a periodic review of the financial mechanism to assess the adequacy, effectiveness and accessibility of financial resources, including for the delivery of capacity-building and the transfer of marine technology, in particular for developing States Parties.

PART VIII IMPLEMENTATION AND COMPLIANCE

Article 53 Implementation

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

Article 54
Monitoring of implementation

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

Article 55
Implementation and Compliance Committee

1. An Implementation and Compliance Committee to facilitate and consider the implementation of and promote compliance with the provisions of this Agreement is hereby established. The Implementation and Compliance Committee shall be facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive.
2. The Implementation and Compliance Committee shall consist of members possessing appropriate qualifications and experience nominated by Parties and elected by the Conference of the Parties, with due consideration given to gender balance and equitable geographical representation.
3. The Implementation and Compliance Committee shall operate under the modalities and rules of procedure adopted by the Conference of the Parties at its first meeting. The Implementation and Compliance Committee shall consider issues of implementation and compliance at the individual and systemic levels, inter alia, and report periodically and make recommendations, as appropriate while cognizant of respective national circumstances, to the Conference of the Parties.
4. In the course of its work, the Implementation and Compliance Committee may draw on appropriate information from bodies established under this Agreement, as well as relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as may be required.

PART IX
SETTLEMENT OF DISPUTES

Article 56
Prevention of disputes

Parties shall cooperate in order to prevent disputes.

Article 57
Obligation to settle disputes by peaceful means

Parties have the obligation to settle their disputes concerning the interpretation or application of this Agreement by negotiation, inquiry, mediation, conciliation, arbitration,

judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 58
Settlement of disputes by any peaceful means chosen by
the Parties

Nothing in this Part impairs the right of any Party to this Agreement to agree at any time to settle a dispute between them concerning the interpretation or application of this Agreement by any peaceful means of their own choice.

Article 59
Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the Parties concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes under article 60 of this Agreement.

Article 60
Procedures for the settlement of disputes

1. Disputes concerning the interpretation or application of this Agreement shall be settled in accordance with the provisions for the settlement of disputes provided for in Part XV of the Convention.
2. The provisions of Part XV of and Annexes V, VI, VII and VIII to the Convention shall be deemed to be replicated for the purpose of the settlement of disputes involving a Party to this Agreement that is not a Party to the Convention.
3. Any procedure accepted by a Party to this Agreement that is also a Party to 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, accepting or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 of the Convention for the settlement of disputes under this Part.
4. Any declaration made by a Party to this Agreement that is also a Party to 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, accepting 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.
5. Pursuant to paragraph 2 above, a Party to this Agreement that is not a Party to the Convention, when signing, ratifying, approving, accepting or acceding to this Agreement,

or at any time thereafter, shall be free to choose, by means of a written declaration, submitted to the depositary, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Agreement:

(a) The International Tribunal for the Law of the Sea;

(b) The International Court of Justice;

(c) An Annex VII arbitral tribunal;

(d) An Annex VIII special arbitral tribunal for one or more of the categories of disputes specified in said Annex.

6. A Party to this Agreement that is not a Party to the Convention that has not issued a declaration shall be deemed to have accepted the option in paragraph 5 (c) above. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration under Annex VII to the Convention, unless the parties otherwise agree. Article 287, paragraphs 6 to 8, of the Convention shall apply to declarations made under paragraph 5 above.

7. A Party to this Agreement that is not a Party to the Convention may, when signing, ratifying, approving, accepting or acceding to this Agreement, or at any time thereafter, without prejudice to the obligations arising under this Part, declare in writing that it does not accept any or more of the procedures provided for in Part XV, section 2, 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.

8. The provisions of this article shall be without prejudice to the procedures on the settlement of disputes to which Parties have agreed as participants in a relevant legal instrument or framework, or as members of a relevant global, regional, subregional or sectoral body concerning the interpretation or application of such instruments and frameworks.

9. Nothing in this Agreement shall be interpreted as conferring jurisdiction upon a court or tribunal over any dispute that concerns or necessarily involves the concurrent consideration of the legal status of an area as within national jurisdiction, nor over any dispute concerning sovereignty or other rights over continental or insular land territory or a claim thereto of a Party to this Agreement, provided that nothing in this paragraph shall be interpreted as limiting the jurisdiction of a court or tribunal under Part XV, section 2, of the Convention.

10. For the avoidance of doubt, nothing in this Agreement shall be relied upon as a basis for asserting or denying any claims to sovereignty, sovereign rights or jurisdiction over land or maritime areas, including in respect to any disputes relating thereto.

Article 61
Provisional arrangements

Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

PART X
NON-PARTIES TO THIS AGREEMENT

Article 62
Non-parties to this Agreement

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

PART XI
GOOD FAITH AND ABUSE OF RIGHTS

Article 63
Good faith and abuse of rights

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

PART XII
FINAL PROVISIONS

Article 64
Right to vote

1. Each Party to this Agreement shall have one vote, except as provided for in paragraph 2 below.
2. A regional economic integration organization Party to this Agreement, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

Article 65
Signature

This Agreement shall be open for signature by all States and regional economic integration organizations from 20 September 2023 and shall remain open for signature at United Nations Headquarters in New York until 20 September 2025.

Article 66
Ratification, approval, acceptance and accession

This Agreement shall be subject to ratification, approval or acceptance 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 shall be deposited with the Secretary-General of the United Nations.

Article 67
**Division of the competence of regional economic integration
organizations and their member States in respect of the matters
governed by this Agreement**

1. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of such organizations, one or more of whose member States is a Party to this Agreement, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.
2. In its instrument of ratification, approval, acceptance or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Agreement. Any such organization shall also inform the depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.

Article 68
Entry into force

1. This Agreement shall enter into force 120 days after the date of deposit of the sixtieth instrument of ratification, approval, acceptance or accession.
2. For each State or regional economic integration organization that ratifies, approves or accepts this Agreement or accedes thereto after the deposit of the sixtieth instrument of ratification, approval, acceptance or accession, this Agreement shall enter into force on the

thirtieth day following the deposit of its instrument of ratification, approval, acceptance or accession, subject to paragraph 1 above.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the member States of that organization.

Article 69
Provisional application

1. This Agreement may be applied provisionally by a State or regional economic integration organization that consents to its provisional application by so notifying the depositary in writing at the time of signature or deposit of its instrument of ratification, approval, acceptance or accession. Such provisional application shall become effective from the date of receipt of the notification by the depositary.

2. Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the depositary in writing of its intention to terminate its provisional application.

Article 70
Reservations and exceptions

No reservations or exceptions may be made to this Agreement, unless expressly permitted by other articles of this Agreement.

Article 71
Declarations and statements

Article 70 does not preclude a State or regional economic integration organization, when signing, ratifying, approving, accepting or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or regional economic integration organization.

Article 72
Amendment

1. A Party may, by written communication addressed to the secretariat, propose amendments to this Agreement. The secretariat shall circulate such a communication to all

Parties. If, within six months from the date of the circulation of the communication, not less than one half of the Parties reply favourably to the request, the proposed amendment shall be considered at the following meeting of the Conference of the Parties.

2. An amendment to this Agreement adopted in accordance with article 47 shall be communicated by the depositary to all Parties for ratification, approval or acceptance.

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

4. An amendment may provide, at the time of its adoption, that a smaller or larger number of ratifications, approvals or acceptances shall be required for its entry into force than required under this article.

5. For the purposes of paragraphs 3 and 4 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the member States of that organization.

6. A State or regional economic integration organization that becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 3 above shall, failing an expression of a different intention by that State or regional economic integration organization:

(a) Be considered as a Party to this Agreement as so amended;

(b) Be considered as a Party to the unamended Agreement in relation to any Party not bound by the amendment.

Article 73 Denunciation

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

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

Article 74
Annexes

1. The annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its parts includes a reference to the annexes relating thereto.
2. The provisions of article 72 relating to the amendment of this Agreement shall also apply to the proposal, adoption and entry into force of a new annex to the Agreement.
3. Any Party may propose an amendment to any annex to this Agreement for consideration at the next meeting of the Conference of the Parties. The annexes may be amended by the Conference of the Parties. Notwithstanding the provisions of article 72, the following provisions shall apply in relation to amendments to annexes to this Agreement:
 - (a) The text of the proposed amendment shall be communicated to the secretariat at least 150 days before the meeting. The secretariat shall, upon receiving the text of the proposed amendment, communicate it to the Parties. The secretariat shall consult relevant subsidiary bodies, as required, and shall communicate any response to all Parties not later than 30 days before the meeting;
 - (b) Amendments adopted at a meeting shall enter into force 180 days after the close of that meeting for all Parties, except those that make an objection in accordance with paragraph 4 below.
4. During the period of 180 days provided for in paragraph 3 (b) above, any Party may, by notification in writing to the depositary, make an objection with respect to the amendment. Such objection may be withdrawn at any time by written notification to the depositary and, thereupon, the amendment to the annex shall enter into force for that Party on the thirtieth day after the date of withdrawal of the objection.

Article 75
Depositary

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

Article 76
Authentic texts

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

ANNEX I

Indicative criteria for identification of areas

- (a) Uniqueness;
- (b) Rarity;
- (c) Special importance for the life history stages of species;
- (d) Special importance of the species found therein;
- (e) The importance for threatened, endangered or declining species or habitats;
- (f) Vulnerability, including to climate change and ocean acidification;
- (g) Fragility;
- (h) Sensitivity;
- (i) Biological diversity and productivity;
- (j) Representativeness;
- (k) Dependency;
- (l) Naturalness;
- (m) Ecological connectivity;
- (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) Sustainability of reproduction;
- (v) Existence of conservation and management measures.

ANNEX II**Types of capacity-building and of the transfer of marine technology**

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

- (a) The sharing of relevant data, information, knowledge and research, in user-friendly formats, including:
 - (i) The sharing of marine scientific and technological knowledge;
 - (ii) The exchange of information on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
 - (iii) The sharing of research and development results;
- (b) Information dissemination and awareness-raising, including with regard to:
 - (i) Marine scientific research, marine sciences and related marine operations and services;
 - (ii) Environmental and biological information collected through research conducted in areas beyond national jurisdiction;
 - (iii) Relevant traditional knowledge in line with the free, prior and informed consent of the holders of such knowledge;
 - (iv) Stressors on the ocean that affect marine biological diversity of areas beyond national jurisdiction, including the adverse effects of climate change, such as warming and ocean deoxygenation, as well as ocean acidification;
 - (v) Measures such as area-based management tools, including marine protected areas;
 - (vi) Environmental impact assessments;
- (c) The development and strengthening of relevant infrastructure, including equipment, such as:
 - (i) The development and establishment of necessary infrastructure;
 - (ii) The provision of technology, including sampling and methodology equipment (e.g., for water, geological, biological or chemical samples);

- (iii) The acquisition of the equipment necessary to support and further develop research and development capabilities, including in data management, in the context of activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction, measures such as area-based management tools, including marine protected areas, and the conduct of environmental impact assessments;
- (d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms, including:
 - (i) Governance, policy and legal frameworks and mechanisms;
 - (ii) Assistance in the development, implementation and enforcement of national legislative, administrative or policy measures, including associated regulatory, scientific and technical requirements at the national, subregional or regional level;
 - (iii) Technical support for the implementation of the provisions of this Agreement, including for data monitoring and reporting;
 - (iv) Capacity to translate information and data into effective and efficient policies, including by facilitating access to and the acquisition of knowledge necessary to inform decision makers in developing States Parties;
 - (v) The establishment or strengthening of the institutional capacities of relevant national and regional organizations and institutions;
 - (vi) The establishment of national and regional scientific centres, including as data repositories;
 - (vii) The development of regional centres of excellence;
 - (viii) The development of regional centres for skills development;
 - (ix) Increasing cooperative links between regional institutions, for example, North-South and South-South collaboration and collaboration among regional seas organizations and regional fisheries management organizations;
- (e) The development and strengthening of human and financial management resource capabilities and of technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of marine technology, such as:
 - (i) Collaboration and cooperation in marine science, including through data collection, technical exchange, scientific research projects and programmes, and the development of joint scientific research projects in cooperation with institutions in developing States;

- (ii) Education and training in:
 - a. The natural and social sciences, both basic and applied, to develop scientific and research capacity;
 - b. Technology, and the application of marine science and technology, to develop scientific and research capacities;
 - c. Policy and governance;
 - d. The relevance and application of traditional knowledge;
- (iii) The exchange of experts, including experts on traditional knowledge;
- (iv) The provision of funding for the development of human resources and technical expertise, including through:
 - a. The provision of scholarships or other grants for representatives of small island developing States Parties in workshops, training programmes or other relevant programmes to develop their specific capacities;
 - b. The provision of financial and technical expertise and resources, in particular for small island developing States, concerning environmental impact assessments;
- (v) The establishment of a networking mechanism among trained human resources;
- (f) The development and sharing of manuals, guidelines and standards, including:
 - (i) Criteria and reference materials;
 - (ii) Technology standards and rules;
 - (iii) A repository for manuals and relevant information to share knowledge and capacity on how to conduct environmental impact assessments, lessons learned and best practices;
- (g) The development of technical, scientific and research and development programmes, including biotechnological research activities.

