

30/03/2023

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OIA 28574

Tēnā koe

I refer to your email of 30 March 2023 in which you request the following under the Official Information Act 1982 (OIA):

'- Key documents - including notes - prepared in advance of 2023 negotiations for the UN treaty for the conservation and sustainable use of marine biodiversity in these areas beyond national jurisdiction (BBNJ) that relate to New Zealand's position.

This should not include documents and communications which are administrative or logistical in nature.

- any advice from MFAT/MPI to Ministers relating to the potential for legal action or public pushback from commercial fishing interests relating to the BBNJ.

- Any communications from organisations with fishing interests (for example individual fishers, fishing companies, iwi or representative bodies) relating to the BBNJ.'

On 2 May 2023, the timeframes for responding to your request were extended by 20 working days, to 30 May 2023. This was because consultations necessary to make a decision on your request were such that a proper response could not reasonably be made within the original time frame (section 15A(1)(b) of the OIA refers). Following this extension, we are now in a position to respond.

The documents relevant to parts one and three of your request are attached. We have withheld some information in these documents under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis;
- 9(2)(a): to protect individuals' privacy;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments;
- 9(2)(h): to maintain legal professional privilege; and
- 9(2)(j): to avoid prejudice to negotiations.

Where the information has been withheld under section 9 of the OIA, we have identified no public interest in releasing the information that would outweigh the reasons for withholding it.

Please note that the Ministry of Foreign Affairs and Trade does not hold any information relating to "*the potential for legal action or public pushback from commercial fishing interests relating to the BBNJ.*" Consequently, this part of your request is refused under section 18(e) of the OIA, as the information requested, in so far as it relates to information held by this agency, does not exist.

Please note that we may publish this letter (with your personal details redacted) and enclosed documents on the Ministry's website.

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'SC', written in a cursive style.

Sarah Corbett
for Secretary of Foreign Affairs and Trade



31 January 2023

Minister of Foreign Affairs

For action by

10 February 2023

United Nations treaty on marine biodiversity in areas beyond national jurisdiction – approach to the resumed fifth negotiating round

BRIEFING Overview Submission

PURPOSE Provides an update on negotiations for a new treaty on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction ahead of the expected final round taking place in New York from 20 February – 3 March.

Tukunga tūtohua – Recommended referrals

Minister for Oceans and Fisheries	For information by	17 February 2023
Minister for the Environment	For information by	17 February 2023
Minister of Conservation	For information by	17 February 2023
Associate Minister of Foreign Affairs	For information by	17 February 2023
Parliamentary Under-Secretary to the Minister for Oceans and Fisheries	For information by	17 February 2023

Taipitopito whakapā – Contact details

NAME	ROLE	AGENCY	WORK PHONE
Luke Roughton	Lead Adviser, Legal Division	Ministry of Foreign Affairs and Trade	s9(2)(a)
Abby Hutchison	Legal Adviser, Legal Division	Ministry of Foreign Affairs and Trade	s9(2)(a)

Mā te Tari Minita e whakakī – Minister's Office to complete

<input type="checkbox"/> Approved	<input type="checkbox"/> Noted	<input type="checkbox"/> Referred
<input type="checkbox"/> Needs amendment	<input type="checkbox"/> Declined	<input type="checkbox"/> Withdrawn
<input type="checkbox"/> Overtaken by events	<input type="checkbox"/> See Minister's notes	

Comments

United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

Pito matua – Key points

- Negotiations on a new international legally binding agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) are resuming at the United Nations in New York from 20 February to 3 March. This is expected to be the final negotiating round.
- BBNJ will build on UNCLOS by strengthening rules, structures and tools to ensure the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. It contains four substantive parts: marine genetic resources, including the regime for benefit-sharing; area-based management tools, including marine protected areas; environmental impact assessments; and capacity building and the transfer of marine technology.
- Officials consider that the existing negotiating mandate (CAB-22-MIN-0301 confirming ERS-22-MIN-0035), as updated by Ministers with power to act in August 2022, remains fit-for-purpose. As this is a resumed session, the existing credentials for the delegation remain valid.
- Aotearoa New Zealand will continue to support a high ambition BBNJ treaty that halts the decline and promotes the restoration, conservation and sustainable use of marine biodiversity beyond national jurisdiction, in ways that bolster existing rules and institutions, reflect Māori interests, and support Pacific countries' aspirations for the agreement.
- This mandate was updated by Ministers with power to act during the last intergovernmental conference (IGC5) to authorise New Zealand to agree to the treaty, including mandatory assessed financial contributions to support developing countries and capacity building, linked to the purposes of the agreement, s9(2)(j)
s9(2)(j), s9(2)(g)(i)
- Negotiations will not be straightforward despite being so close to the finish line. There are several significant outstanding issues, some of which are politically charged or highly technical. s9(2)(g)(i)
- Even if widespread agreement can be reached on the text, s9(2)(g)(i), s9(2)(j)
- There is high interest in BBNJ, particularly from environmental non-government organisations (ENGOS). Officials are continuing to engage with the range of interested parties including ENGOS, fishing industry, academics, the BBNJ Māori working group and the Tokelau Fisheries Management Agency. The New Zealand delegation includes an international law academic, a member of an ENGO and two members of the Māori working group, as observers (some participating virtually, others attending in person on a self-funded basis).



Victoria Hallum
for Secretary of Foreign Affairs and Trade

United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|--|-----------------|
| 1 | <p>Note that negotiations towards an international legally binding agreement under the United Nations Convention on the Law of Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction are resuming from 20 Feb – 3 March at United Nations headquarters in New York, in what is intended to be its final negotiating session;</p> | Yes / No |
| 2 | <p>Note that the existing Cabinet mandate, as updated during the course of the previous session by Ministers with power to act, remains applicable for the next round of negotiations, and provides officials with the ability to respond across a range of potential scenarios which could arise during this final phase of the negotiations;</p> | Yes / No |
| 3 | <p>Note that officials will be engaging with the interested stakeholders and with members of the BBNJ Māori working group, to hear their input ahead of, and during, the final negotiating round;</p> | Yes / No |
| 4 | <p>Note that Cabinet has agreed that in circumstances where officials consider further Ministerial instruction is needed, the Minister of Foreign Affairs, the Minister of Oceans and Fisheries, the Minister for the Environment, and the Minister for Conservation, have the power to act and take decisions on New Zealand's voting power;</p> | Yes / No |
| 5 | <p>Refer a copy of this submission to the Minister for Oceans and Fisheries, the Minister for the Environment, the Minister of Conservation, the Associate Minister of Foreign Affairs and the Parliamentary Under-Secretary to the Minister for Oceans and Fisheries for information.</p> | Yes / No |

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

Pūrongo – Report

Background to the negotiations

1. In December 2017, the United Nations General Assembly (UNGA) launched an intergovernmental conference to negotiate an international legally binding agreement under the United Nations Convention on the Law of Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. This agreement is often referred to as **BBNJ**.
2. Areas beyond national jurisdiction (ABNJ) are, respectively, the high seas and the deep seabed beyond states' exclusive economic zones and continental shelves. These represent over two-thirds of the world's ocean (see **Annex 1** for a graphic showing different maritime zones under UNCLOS).
3. BBNJ is ultimately about kaitiakitanga – countries' shared stewardship responsibilities for the ocean and its resources. The agreement has the potential to improve international cooperation to fulfil these responsibilities, by strengthening rules, structures and tools to underpin collective action to ensure the conservation and sustainable use of marine biological diversity.
4. BBNJ will supplement the current oceans governance framework set out under UNCLOS, addressing gaps in the framework related to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.
5. BBNJ is organised around four substantive elements:
 - a) marine genetic resources, including questions of benefit sharing (MGRs);
 - b) area-based management tools, including marine protected areas (ABMTs);
 - c) environmental impact assessments (EIAs); and
 - d) capacity building and the transfer of marine technology (CBTMT).

State of the negotiations

6. To date there have been five rounds of negotiations (sessions of the intergovernmental conference, or IGCs) towards the BBNJ agreement. The fifth session (IGC5) held in August 2022 was intended to be the final one, and while it made significant progress, it did not, as had been hoped, result in the adoption of the treaty. Sufficient progress was made however to give confidence that negotiations could conclude with one final round.
7. A reflection of that confidence is that rather than closing the session and mandating a sixth session, the IGC decided to 'suspend' the fifth session and reconvene, which is taking place from 20 February to 3 March 2023.
8. Cabinet agreed an updated negotiating mandate for IGC5 in August 2022 (CAB-22-MIN-0301 confirming ERS-22-MIN-0035 – see **Annex 2**). This mandate was adjusted by Ministers with power to act during IGC5 in response to developments in the negotiations¹.

¹ "United Nations treaty on marine biodiversity of areas beyond national jurisdiction – adjustment to negotiating mandate." 26 August 2022.

United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

This authorised New Zealand to agree to mandatory assessed contributions to support developing countries and capacity building linked to the purposes of the Agreement, s9(2)(j). Officials consider that the Cabinet mandate, as updated by Ministers with power to act, still captures New Zealand's core interests and remains fit-for-purpose.

9. s9(2)(g)(i)

Negotiations are heading in the direction New Zealand is seeking, but some contentious issues remain to be solved before conclusion is reached, as set out below.

10. Overall, however, officials are confident that the negotiations are at a stage that if a treaty text can be concluded, it will meet New Zealand's key objectives. In light of this, the New Zealand delegation intends to engage at the resumed session with a strong focus on identifying solutions and compromises to the remaining outstanding issues with a view to maximising the chances of conclusion. See **Annex 3** for a summary of the negotiating dynamics at IGC5.

Area-based management tools, including marine protected areas

11. BBNJ aims to fill a governance gap in the existing legal framework by creating a mechanism to establish cross-sector area-based management tools (ABMTs), including marine protected areas, in areas beyond national jurisdiction.
12. New Zealand's objectives for the ABMTs chapter have largely been met in the current draft, including through a finely balanced compromise that would allow the BBNJ Treaty Conference of Parties (COP) to establish ABMTs, including MPAs, in ABNJ while respecting the competences of other regional and sectoral bodies that have mandates in those areas.
13. A key outstanding issue in this part is the extent to which future Parties to the BBNJ Treaty will be able to opt-out of all or part of an area based management tool decision. While not our preference, such an opt-out provision will likely be necessary for some of the most significant actors in ABNJ to become party to the new treaty s6(a). The New Zealand delegation has been working to tightly circumscribe any such provision so that it does not unduly compromise the objectives of the treaty. Officials consider that this will be achievable.
14. A further priority issue for New Zealand is providing the COP with the ability to agree emergency measures on a temporary basis when a natural phenomenon or human-caused disaster has, or is likely to have, significant adverse impacts on marine biological diversity. This New Zealand-led proposal now has considerable support, but is likely to still need further negotiation and adjustments before it can be agreed.

Environmental impact assessments

15. BBNJ aims to operationalise and make effective the general obligations on states to undertake an environmental impact assessment (EIA) for all activities carried out in areas beyond national jurisdiction. This chapter sets out processes, guidelines and thresholds for states to follow when carrying out EIAs.
16. The most significant outstanding issue in the EIA chapter is whether the threshold for screening and conducting an EIA will be the UNCLOS threshold (substantial pollution or significant and harmful changes), or a lower threshold (more than a minor or transitory

United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

effect). New Zealand and other developed states prefer the UNCLOS threshold, but there was widespread openness to considering a solution that involves both thresholds applying at different stages (a 'tiered' solution). This will need further elaboration, as very little time was given to discussing this issue.

17. A further issue is the extent to which the COP has a role in making or reviewing decisions to authorise an activity once an EIA has been conducted. Most developed states, including New Zealand, would prefer to have that decision making power remain with states and regional and international bodies which states have given that power to, while others would like the COP to approve all EIAs. It should be possible to reach a compromise solution to this that builds in transparency, accountability, and capacity-building, while keeping decision making state-led and not unduly burdensome.
18. There are also outstanding questions about whether BBNJ EIA obligations will apply to EIAs for activities regulated by other bodies, such as fishing or shipping. There is broad agreement that EIAs will not be required under BBNJ where another body regulates the activity and has equivalent EIA requirements or otherwise manages the activity so that its impacts are below the BBNJ EIA threshold. It was also agreed that the BBNJ institutions and Parties will have a role in elaborating and promoting the use of EIAs and guidelines. This direction of travel in the EIA chapter is consistent with New Zealand's objectives.

Capacity-building and the transfer of marine technology

19. States generally agree that there is need for an effective, recipient country-driven capacity building and transfer of marine technology scheme under BBNJ so that all countries can contribute to the overall objective of conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction. s6(a), s9(2)(j)
20. Specific modalities for capacity building, and whether funding for this will be mandatory or voluntary, will likely only be agreed after other elements of the treaty have been settled.
21. New Zealand will continue to work with Pacific partners to ensure that this chapter will work in our region, reflects Pacific countries' ambitions and takes into account their particular needs. We support the use of existing mechanisms where possible, such as the Global Environment Facility as a funding mechanism.

Marine genetic resources (the key to unlocking the agreement)

22. Marine genetic resources (MGRs) – genetic materials of value obtained from a marine organism – were essentially unknown when UNCLOS was negotiated. There is therefore no applicable regime for marine genetic resources beyond national jurisdiction. BBNJ aims to fill this gap.
23. The MGR is the part of the treaty with the biggest divide to bridge. s9(2)(j)

24. Due to an increased willingness of states to find compromises during this session, IGC5 saw substantial progress in this part. However, the ideological differences that are the

United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

source of tension were unable to be reconciled, and significant portions of the text remain unresolved. The three primary issues remaining include:

- a) **The triggers for benefit sharing:** Whether benefits should be shared at the point of collection or utilisation, or both, remains contentious, and no agreement was reached on whether commercialisation should trigger benefit sharing.
- b) **The nature of 'benefits':** There was no agreement on whether monetary benefit sharing should take place and how it would be operationalised if it did. The interaction of the benefit-sharing regime with intellectual property rights (IPRs) was also not resolved, with developed countries upholding existing intellectual property law.
- c) **The scope of the part and definitions:** Whether BBNJ should have any retrospective application, and how fish/fishing/fishing-related activities should be treated, are yet to be decided. s9(2)(j)

The

definition of a 'marine genetic resource' itself is also disputed.

25. Towards the end of IGC5, a proposed middle ground 'deal' on monetary benefit sharing emerged. This would:

- a) Establish a mandatory regular (likely annual) contribution, according to a formula to be determined, to a specialised fund under the Agreement's financial instrument, to support developing countries and capacity building (this would be additional to assessed contributions to the overall BBNJ budget for operational purposes); and
- b) Direct the Conference of the Parties (COP) to review the commercialisation of products resulting from the utilisation of MGRs in the future, and, if substantial and tangible monetary benefits are arising, to consider the development of modalities for monetary benefit sharing to replace the mandatory contribution model.

26. s6(b)(i), s9(2)(j)

27. As mandatory contributions of this kind were not envisioned in New Zealand's negotiating mandate before IGC5, Ministers with power to act decided to update the mandate during the course of IGC5 to enable New Zealand to agree to mandatory financial contributions as a part of the treaty, s9(2)(j). There was however insufficient time to discuss and agree this 'package', including which States Parties would be responsible for making the contributions, and the quantum of those contributions.

28. Officials consider that the updated mandate provides sufficient scope for New Zealand to agree to a range of possible solutions to these unresolved issues. No financial commitments under the BBNJ Treaty would accrue to New Zealand, including under this compromise proposal, until New Zealand has signed and ratified the Treaty and it has entered into force.

United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

Cross-cutting issues

29. 'Cross-cutting' provisions of the agreement include the preamble, principles, implementation and compliance, dispute settlement and institutional provisions.
30. While there are many outstanding issues in this area, a prominent outstanding issue on the cross-cutting provisions is decision-making. Some states prefer for decisions by the COP to be taken by consensus, arguing that this is the only way to ensure the treaty is truly "international." Other states, including New Zealand, consider that whilst consensus should be the objective, if it is unable to be reached, a fall-back of majority voting should be provided for in the text. A possible compromise will be to allow majority voting if all efforts to reach consensus have been exhausted so long as the majority needed is sufficiently large so as to provide comfort that decisions will not be taken against the will of a few. Despite this, some form of opt-out may also be needed, at least for a subsection of COP decisions (see above in area-based management tools).
31. New Zealand has also continued to push the importance of sound governance principles for BBNJ, science and ecosystem-based approaches, and the precautionary approach when scientific evidence is uncertain or lacking. We have continued to promote a discrete article on transparency and have worked with Pacific Small Island Developing States to propose references which recognise the important role of indigenous peoples and their traditional knowledge, and the rights of coastal states, and will continue to advocate for these.

Possible outcomes of negotiations

32. There is a high degree of political will among States to conclude negotiations on the BBNJ treaty at the upcoming resumed session. Whether this is achieved depends on the extent to which states with positions on either extreme of the most significant outstanding issues (this does not include New Zealand) are willing to compromise. Officials assess that there is a willingness to compromise, as the resumed session is considered to be a 'now or never' moment for the negotiations.
33. s6(a), s9(2)(g)(i), s9(2)(j)
34. Officials do not consider it likely that a treaty will be put up for adoption that is inconsistent with New Zealand's current negotiating mandate, but if negotiations begin to trend in that direction, officials will seek advice from Ministers with power to act (the Minister of Foreign Affairs, the Minister for Oceans and Fisheries, the Minister for the Environment, and the Minister of Conservation). Once a treaty is adopted (whether by consensus or a vote) states take a separate decision on signing and ratifying the treaty, which for New Zealand requires further consideration by Cabinet and the Parliamentary Treaty Examination process.

Consultation with interested groups

35. A range of groups continue to take strong interest in BBNJ negotiations, including Māori, industry, environmental groups, academics, and scientists. Officials have continued to engage with these groups, and with Tokelau, which has a strong interest in fisheries and oceans issues but does not directly participate in the negotiations.

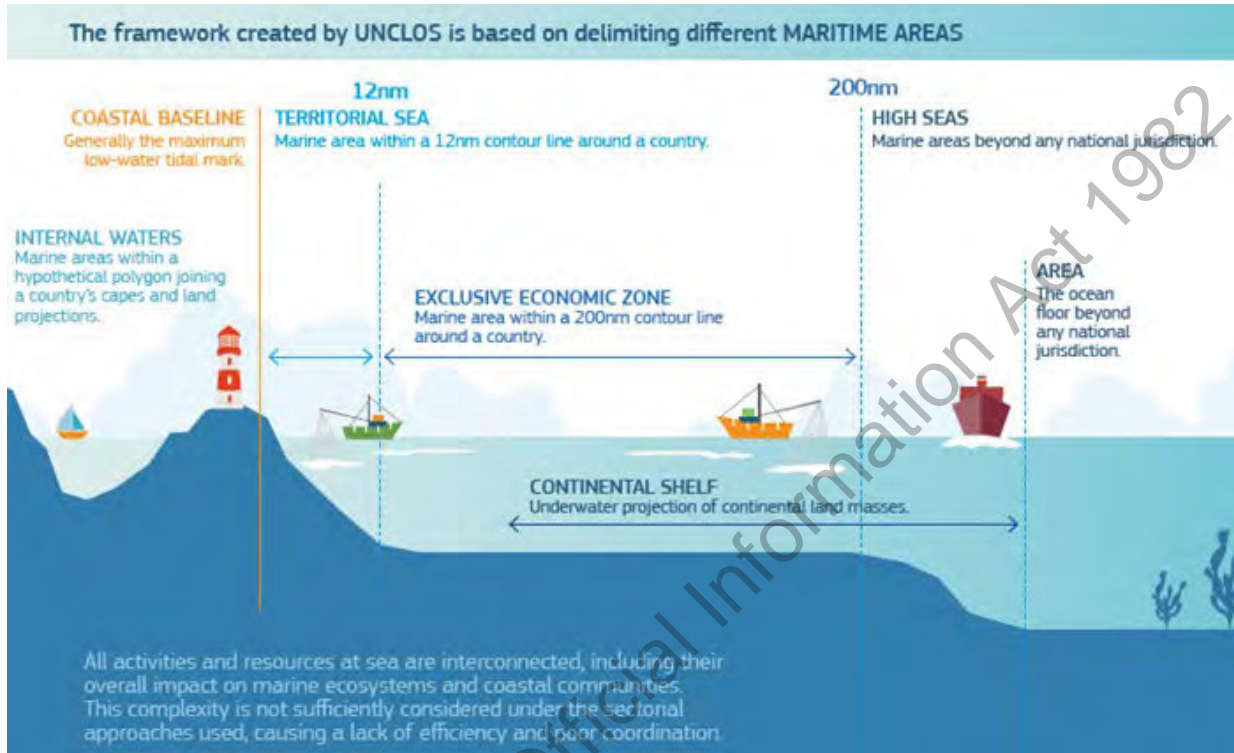
United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

36. Officials will continue to engage with stakeholders in the lead up to the resumed IGC5, and to the extent possible, during the session. New Zealand also has Māori representatives, an environmental representative, and an academic on its delegation for IGC5, as non-governmental participants, on a self-funded basis, and in accordance with the Cabinet Procedures for Including Non-Official Representative on Official Delegations to International Meetings (CO (00)14).
37. The resumed IGC5 is likely to generate media attention. It is proposed that the Minister of Foreign Affairs act as the ministerial spokesperson for New Zealand, and the New Zealand head of delegation (Deputy Secretary Victoria Hallum) act as officials-level spokesperson.

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United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

Annex 1: Maritime areas under UNCLOS



United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

Annex 2: Current Cabinet mandate recommendations

Recommendations

The Minister of Foreign Affairs recommends that the Committee:

1. **Note** that the fifth, and potentially final, round of negotiations on a legally binding international treaty, under the United Nations Convention on the Law of the Sea, on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ) will take place in New York in August 2022;
2. **Agree** that New Zealand support a treaty that:

Overarching goal

- 1.1. Halts the decline and promotes the restoration of marine biodiversity in areas beyond national jurisdiction (ABNJ) through establishing an effective global regime for cooperation and coordination between states and regional and international organisations to improve the conservation and sustainable use of marine biodiversity in ABNJ;

Scope, principles, and relationship to other agreements, frameworks and organisations

- 1.2. Covers all existing and new activities and sectors impacting on marine biodiversity in ABNJ and sets out clear rules and processes for environmental impact assessments (EIAs), area based management tools (ABMTs) and marine protected areas (MPAs), and access to marine genetic resources (MGRs), supported by provisions on capacity building and technology transfer;
- 1.3. Is underpinned by the principles and approaches set out in paragraph 18;
- 1.4. Establishes clear global standards and mechanisms to identify and implement marine conservation objectives, to be delivered by existing organisations to the extent possible, and by the BBNJ Conference of Parties (COP) in other cases, thereby promoting coordination between states, the BBNJ COP and these organisations, and lifting the performance of existing organisations;

Other cross-cutting issues

- 1.5. Recognises the interests of coastal states whose maritime zones are adjacent to ABNJ, and enables New Zealand to actively consider Māori interests in ABNJ, including kaitiakitanga and Taonga species, and the application of traditional knowledge and mātauranga Māori;
- 1.6. Contains decision making procedures that empowers the COP to take effective decisions and which strike a balance between ensuring broad support for measures taken, and avoiding approaches that lead to weak conservation outcomes;
- 1.7. Contains monitoring, review and compliance and dispute settlement provisions designed to promote its effective implementation, and financial arrangements that are cost effective and efficient;

Area based management tools, including marine protected areas

United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

- 1.8. Facilitates the establishment of multi-sector area-ABMTs as well as an interconnected network of ecologically representative, highly protected MPAs to enable comprehensive ecosystem-based management and effective protection of the marine biodiversity in ABNJ;
- 1.9. Complements rather than replaces the competence of existing regional and sectoral organisations and ensure that these bodies are able to continue to exercise their mandates;
- 1.10. Fosters consistency and progressive improvement across the oceans governance regime through the establishment of common standards and guidelines on the establishment of ABMTs and MPAs;
- 1.11. Enables the COP to make recommendations to other relevant bodies, and ideally, be able to impose interim or emergency measures when needed;

Environmental impact assessments

- 1.12. Effectively operationalises the existing UNCLOS rules on EIAs for all activities conducted in ABNJ in order to protect and preserve the marine environment;
- 1.13. Establishes thresholds, processes and guidelines for the conduct and reporting of EIAs – including cumulative impacts, adaptive management and strategic environmental assessments – drawing on existing standards and guidelines developed by international organisations and promoting transparency and compliance, s9(2)(j)
- 1.14. Recognises the existing responsibilities of states and roles of regional and sectoral organisations and mechanisms for the conduct of EIAs in ABNJ;
- 1.15. s9(2)(j)

Marine genetic resources and sharing of benefits

- 1.16. Creates a pragmatic sui generis regime for access to MGRs in ABNJ, which includes mechanisms for equitable sharing of benefits while respecting existing intellectual property rights and intellectual property law;
- 1.17. Encourages research into MGRs in ABNJ, incentivises comprehensive knowledge-sharing, encourages cooperation and compliance, and manages the environmental impacts of activities related to MGRs;
- 1.18. s9(2)(j) could provide the COP the ability to consider developing a monetary benefit sharing regimes in the future if significant commercialisation of MGRs takes place;

Capacity building and the transfer of marine technology

United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

- 1.19. Facilitates the full and effective participation of developing countries – including Pacific Island states – in the conservation and sustainable use of marine biodiversity in ABNJ and in the sharing of knowledge from MGRs;
 - 1.20. Strengthens the implementation and coordination of capacity building; and
 - 1.21. s9(2)(j)
2. **Agree** that in circumstances where officials consider further Ministerial instruction is needed, for example, if the treaty being put to a vote is substantively inconsistent with this mandate, the Minister of Foreign Affairs, the Minister for Oceans and Fisheries, the Minister for the Environment, and the Minister of Conservation should have the power to act and take decisions on New Zealand's voting position.

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United Nations treaty on marine biodiversity – approach to fifth resumed negotiating round

Annex 3: Summary of dynamics in the latest negotiating round (IGC5)

s6(a)

Released under the Official Information Act 1982



26 August 2022

Minister of Foreign Affairs

For action by

26 August 2022

United Nations treaty on marine biodiversity of areas beyond national jurisdiction – adjustment to negotiating mandate

BRIEFING Decision Submission

PURPOSE To seek an update to the negotiating mandate of New Zealand's delegation to the negotiations on a new international legally binding agreement on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) to authorise New Zealand to be able to agree to mandatory assessed contributions for capacity building in the text of the Agreement, s9(2)(j)

Tukunga tūtohua – Recommended referrals

Minister for Oceans and Fisheries	For concurrence by	26 August 2022
Minister for the Environment	For concurrence by	26 August 2022
Minister of Conservation	For concurrence by	26 August 2022
Associate Minister of Foreign Affairs	For information by	26 August 2022
Parliamentary Under-Secretary to the Minister for Oceans and Fisheries	For information by	26 August 2022

Taipitopito whakapā – Contact details

NAME	ROLE	AGENCY	WORK PHONE
Victoria Hallum	Divisional Manager, Legal Division	Ministry of Foreign Affairs and Trade	s9(2)(a)

Mā te Tari Minita e whakakī – Minister's Office to complete

<input type="checkbox"/> Approved	<input type="checkbox"/> Noted	<input type="checkbox"/> Referred
<input type="checkbox"/> Needs amendment	<input type="checkbox"/> Declined	<input type="checkbox"/> Withdrawn
<input type="checkbox"/> Overtaken by events	<input type="checkbox"/> See Minister's notes	

Comments

United Nations treaty on marine biodiversity of areas beyond national jurisdiction – adjustment to negotiating mandate

Pito matua – Key points

- Negotiations on a new international legally binding agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (often abbreviated as BBNJ) are currently underway in New York. It is possible that the text of the Agreement will be concluded (or substantively concluded) at the current round, which concludes on Friday 26 August.
- Cabinet agreed a negotiating mandate for this round on 8 August 2022 (CAB-22-MIN-0301 and ERS-22-MIN-0035 refer). This provides that in circumstances where officials consider that further ministerial instruction is needed the Minister of Foreign Affairs, the Minister for Oceans and Fisheries, the Minister for the Environment, and the Minister of Conservation have power to act and take decisions on New Zealand's position.
- As we enter the last two days of negotiations, one of the most difficult remaining issues is whether and how the Agreement will establish a regime for the sharing of monetary benefits arising from the collection and utilisation of marine genetic resources (MGRs). Broadly, developed and developing countries are divided on this issue.
- s9(2)(j)

a proposed compromise solution on the monetary benefit sharing issue that would:

- establish a mandatory regular (likely annual) contribution, according to a formula to be determined, to a specialised fund under the Agreement's financial instrument, to support, among other things, capacity building initiatives in developing countries (this would be *additional* to assessed contributions to the overall BBNJ budget for operational purposes); and
- direct the Conference of the Parties (COP) to review the commercialisation of products resulting from the utilisation of MGRs in the future, and, if substantial and tangible monetary benefits are arising, to consider the development of modalities for monetary benefit sharing to replace the mandatory contribution model.
- If agreed this proposal would make the Agreement noteworthy for its approach to funding capacity building and responding to calls for fair and equitable benefit sharing. The proposal would certainly deliver on New Zealand's mandate to facilitate and full and effective participation of developing countries – including, in particular Pacific Island States – in the conservation and sustainable use of biodiversity in areas beyond national jurisdiction and in the sharing of knowledge from MGRs (recommendation 2.19 of the Cabinet minute refers).
- The second part of this potential solution is within the scope of the Cabinet mandate – it states that, s9(2)(j), New Zealand could agree to the COP having the ability to consider developing a monetary benefit sharing regime in the future if significant commercialisation takes place. s6(a), s9(2)(g)(i), s9(2)(j)

s6(a), s9(2)(j)

United Nations treaty on marine biodiversity of areas beyond national jurisdiction – adjustment to negotiating mandate

- The compromise solution would also deliver on New Zealand's mandate by ensuring respect for existing intellectual property rights and law, and by encouraging research into MGRs (by preventing a regime that would otherwise introduce significant burdens on researchers).
- In respect of the first part of the compromise proposal, the Cabinet mandate currently provides New Zealand with the ability to agree to an high-level obligation to provide capacity building and facilitate access to transfer of marine technology if needed to reach agreement. However, it is silent on whether New Zealand would agree to a specific mechanism for mandatory monetary contributions to support developing countries and capacity building linked to the purposes of the agreement in the text of the agreement. Officials seek your authorisation to be able to agree to mandatory contributions as outlined above, if this is necessary to reach agreement on the Agreement text as a whole.
- The proposal for mandatory monetary contributions for capacity building would be separate and additional to assessed contributions for operational purposes (which are a normal part of any new treaty framework of this nature). It is not possible to predict with confidence the quantum of these contributions, as the formula for determining them is still subject to negotiation, s9(2)(j)
- s6(b)(i)
- s9(2)(g)(i), s9(2)(j)
- Authorisation for New Zealand to be able to accept mandatory contributions to support developing countries and capacity building linked to the purposes of the Agreement in the final text in order for that text to be adopted, would not, on its own, result in any financial commitments for New Zealand. Following the adoption of the Agreement once negotiations conclude, New Zealand will have the opportunity to examine the Agreement in its entirety before making a decision about whether to sign the Agreement and to then ratify it.

s9(2)(j)

United Nations treaty on marine biodiversity of areas beyond national jurisdiction – adjustment to negotiating mandate

- Financial commitments would only apply if New Zealand ratifies the final Agreement and not until the Agreement enters into force. Before this, we would have the opportunity to determine the source of the funding, including whether this could come from New Zealand's Official Development Assistance budget.

Deborah Geels
for Secretary of Foreign Affairs and Trade

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United Nations treaty on marine biodiversity of areas beyond national jurisdiction – adjustment to negotiating mandate

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|---|-----------------|
| 1 | <p>Note that the negotiations on a new international legally binding agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (often abbreviated as BBNJ) currently underway in New York, and which will conclude on Friday 26 August, may result in the finalisation of the text of the Agreement and its adoption by consensus or a vote;</p> | Yes / No |
| 2 | <p>Note s9(2)(j)

a proposed compromise solution on the monetary benefit sharing issue that would establish a mandatory assessed contribution for capacity building initiatives in developing countries;</p> | Yes / No |
| 3 | s6(a) | Yes / No |
| 4 | <p>Note that the Cabinet mandate enables New Zealand to agree to a high level obligation to provide capacity building and facilitate transfer of technology it is silent on whether New Zealand would agree to specific mechanism for mandatory monetary contributions to support developing countries and capacity building in the text of the agreement;</p> | Yes / No |
| 5 | <p>Authorise New Zealand's delegation to the BBNJ negotiations to be able to accept a mechanism for mandatory assessed contributions for developing countries and capacity building linked to the purposes of the agreement as outlined above, being included in the text s9(2)(j)</p> | Yes / No |

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

Hon David Parker
Minister for Oceans and Fisheries
Minister for the Environment
Date: / /

Hon Poto Williams
Minister of Conservation
Date: / /

Briefing for Tokelau on negotiations for a new UN treaty on marine biodiversity beyond national jurisdiction

Background

- The Ministry of Foreign Affairs and Trade, together with other New Zealand government agencies, represents New Zealand (including Tokelau) in the international negotiations at the United Nations for a new treaty on marine biodiversity in the high seas and deep seabed.
- This treaty will be a third implementing agreement to the UN Convention on the Law of the Sea. It aims to improve the conservation and sustainable use of marine biodiversity (which means the variety and diversity of life in the sea). It will apply to activities beyond national jurisdiction (in the high seas and deep seabed outside any country's exclusive economic zone or continental shelf). The agreement is known as the BBNJ treaty (for Biodiversity Beyond National Jurisdiction).

What stage are negotiations at?

- Negotiations have taken place over a first round in September 2018, a second round in March 2019, a third round in August 2019, a fourth round in March 2022, and a fifth round in August 2022. The fifth round was intended to be the final round, and while it did see significant progress in bringing different positions closer together, it did not, as had been hoped, result in the adoption of the treaty.
- Rather than closing the session and mandating a sixth session, delegates decided to 'suspend' the fifth session and reconvene at a later date - now set for 20 February to 3 March 2023. While many delegations expressed disappointment that the treaty was unable to be concluded in the last session, there is a good level of confidence that the increased pace of negotiations and flexibility of delegations at this session, means that one final push will deliver a treaty.
- New Zealand's goal is an ambitious and effective agreement that improves the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. We are aiming for a treaty that attracts the broadest possible support. Other Pacific Island Forum countries hold similar objectives.
- A revised treaty text was released on the final Friday morning of the fifth negotiating session that took into account discussions from the previous two weeks, and the outcomes of various small working groups that had convened in that time. We anticipate this will be the basis of the negotiations when we resume.
- New Zealand considers that there are reasonable prospects for the successful conclusion of negotiations by the end of this round, and that a treaty that meets our objectives is a likely outcome.

What will the treaty cover?

The draft text has four main chapters. The key issues for negotiation in each chapter are:

Area-based management tools, including marine protected areas on the high seas

- New Zealand sees the new BBNJ agreement as an opportunity to develop a mechanism to establish multi-sector area based management tools, including marine protected areas, in areas beyond national jurisdiction. This would support comprehensive ecosystem-based management and effective protection of marine biodiversity in areas beyond national jurisdiction.
- UN members have agreed that the new treaty must not undermine existing rules and institutions regarding high seas biodiversity conservation and use. New Zealand has therefore been advocating for appropriate involvement by competent regional and sectoral bodies in global processes related to area-based management tools, including ensuring access to relevant science.
- Discussion on area-based management tools progressed constructively at the latest session, and most of the technical issues in this part of the treaty are now resolved.
- The key issue in this part of the negotiations is how the BBNJ treaty will interact with other relevant regional and sectoral bodies that operate in ABNJ. There is a balance to strike between creating a cohesive system and not undermining existing bodies, including, for example, the Western and Central Pacific Fisheries Commission (WCPFC). New Zealand was part of a small team leading the drafting on this issue which finally converged on a finely balanced compromise that would allow the COP to make decisions to establish area based management tools while “respecting the competencies” of other bodies.

Environmental impact assessment

- UNCLOS contains general requirements on states to assess the environmental impacts of activities in the marine environment (Articles 204 to 206), but these are not well articulated or implemented. BBNJ therefore, provides an opportunity to set out an integrated framework that ensures EIAs are conducted consistently and comprehensively in ABNJ.
- New Zealand’s interests in this area include ensuring the protection of the marine environment by lifting standards for, and clarifying the processes and rules applicable to, the conduct of EIAs for activities in ABNJ. We also have an interest in ensuring the provisions in this chapter are not unduly burdensome and respect the rights and interests of coastal states, and international bodies with competence to conduct environmental impact assessments.
- Substantial progress was made on resolving the many minor and technical issues that were outstanding in the chapter.
- There are four main outstanding issues in this chapter that will need to be resolved in February: the extent to which the EIA chapter will apply to activities in national waters with effects beyond national jurisdiction, how this chapter will apply to EIAs for activities regulated by other international frameworks and bodies; the extent to which the COP has a role in making or reviewing decisions to authorise an activity once an EIA has been conducted; and what the threshold for screening and conducting an EIA should be.

Marine genetic resources taken from areas outside national jurisdiction

- Marine genetic resources (MGRs) – genetic materials of value obtained from a marine organism – were essentially unknown when UNCLOS was negotiated. There is therefore no applicable regime for access and use of MGRs in ABNJ and BBNJ is expected to fill this gap.
- New Zealand is seeking a clear legal regime for MGRs to enable future activity by New Zealand companies, research institutes or scientists. s9(2)(j)
- The question of fair and equitable benefit sharing from access and use of MGRs, and what should be included in this concept, will be key to agreeing the final text of the treaty at the upcoming session. In order to reach agreement it will be necessary to find a pragmatic and original solution to access and benefit sharing. A possible middle ground could be to establish a mandatory regular contribution to a specialised fund under the Agreement (which would, among other things, go towards capacity building initiatives for developing countries), and to leave it open for the BBNJ COP to develop measures benefit sharing in the future as commercialisation becomes feasible.

Capacity-building and transfer of marine technology

- Under UNCLOS, there are existing obligations to promote the development of marine scientific capacity in developing states and to promote the transfer of marine science and technology. This chapter aims to build on these obligations. This chapter of the treaty largely depends on what is agreed in the other three chapters, with the primary outstanding issues being funding needs and funding mechanisms.
- New Zealand supports a treaty that encourages developing countries to participate in the conservation and sustainable use of biodiversity in areas beyond national jurisdiction, including marine genetic resource activities. New Zealand also wants the treaty to improve implementation and coordination of capacity building and the voluntary transfer of marine technology for ABNJ, taking into account the specific needs of Pacific Island Countries.

What happens next?

- If there is an interest, MFAT officials would be pleased to meet with representatives from the Government of Tokelau before the next round of negotiations to provide you with an in-person update and to hear your perspectives on the negotiations. Please let us know if this is something Tokelau would be interested in.
- We will also provide further written updates, and, if there is interest, a further briefing following the conclusion of the upcoming round.

Application of BBNJ to Tokelau

- When a final treaty is concluded and New Zealand undertakes its domestic treaty examination process, we will consult Tokelau about whether or not it wishes to be bound by a New Zealand ratification of the BBNJ treaty.

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

Overview

- Part II on marine genetic resources (MGRs) remains the most fraught Part of the draft agreement, and will be instrumental in the final 'deal' to be struck.
- New Zealand's overall interest is in a regime that enables fair and equitable benefit sharing, but is pragmatic and streamlined, so as to avoid deterring marine scientific research, and to incentivise knowledge sharing. s9(2)(j)

- The key divide in the Part remains around benefit-sharing – in particular whether monetary benefit sharing should take place and how it will be operationalised.
- IGC5 saw developed and developing countries showing much more flexibility than previously. A proposed 'deal' s6(a), s9(2)(j) would:
 - entail the sharing of monetary benefits through a special fund, with the purpose of supporting capacity building and transfer of technology projects (thereby decoupling monetary benefit sharing from collection or use)
 - see the rate of contributions determined by the Conference of the Parties and not exceeding [x%] of a Party's overall budgetary payments
 - establish an Access and Benefit Sharing mechanism with a committee to make recommendations on, inter alia, appropriate modalities to operationalise capacity building and transfer of technology projects, and the potential commercialisation of products based on the utilisation of marine genetic resources of areas beyond national jurisdiction
 - require the Conference of the Parties to review the extent of commercialisation of products, and, by consensus, decide on alternative modalities for payments to the special fund (to replace the approach above) should substantial monetary benefits be found to be arising
- s6(a), s9(2)(j)

- New Zealand's mandate going into IGC5 was sufficiently broad to enable New Zealand to agree to a high level obligation to provide capacity building and facilitate transfer of technology. The mandate was expanded IGC5, with the approval of delegated Ministers, to enable the delegation to accept a mechanism for mandatory assessed contributions for developing countries and capacity

building linked to the purposes of the agreement s9(2)(j)

e.

- s6(a), s9(2)(j)
- The Scope of the Part and definitions is also contentious. Whether BBNJ should have any retrospective application, and how fish/fishing/fishing-related activities should be treated, are both issues that saw no resolution at IGC5 in spite of extensive small group work. The definition of an 'MGR' itself is also disputed – a key issue in this regard is whether it would include digital sequence information/genetic sequence data.
- Triggers for benefit sharing present the third set of unresolved questions: whether benefits should be shared at the point of collection or utilisation, or both, remains contentious, and no agreement was reached on whether commercialisation should trigger benefit sharing. s9(2)(j)
- s9(2)(j)

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Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ)

Resumed fifth session of the Intergovernmental Conference (IGC5bis)
20 February to 3 March
Delegation Brief

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Contents

DELEGATION INFORMATION	6
FORMAL TIMETABLE AND ROLES AND RESPONSIBILITIES	8
PREAMBLE	10
PART I GENERAL PROVISIONS	12
Article 1 Use of terms	12
Article 2 General objective	15
Article 3 Application	16
Article 3bis Sovereign immunity	16
Article 4 Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies	16
Article 4 bis Without prejudice	17
Article 5 General principles and approaches	17
Article 6 International cooperation	18
PART II MARINE GENETIC RESOURCES, INCLUDING QUESTIONS ON THE SHARING OF BENEFITS	20
Article 7 Objectives	20
Article 8 Application	21
Article 9 Activities with respect to marine genetic resources of areas beyond national jurisdiction	22
Article 10 Collection <i>in situ</i> of marine genetic resources of areas beyond national jurisdiction	23
Article 10 bis Traditional knowledge of indigenous peoples and local communities associated with marine genetic resources in areas beyond national jurisdiction	25
Article 11 Fair and equitable sharing of benefits	26
Article 11 bis Access and benefit sharing mechanism	28
[Article 12 Intellectual property rights]	30
Article 13 Transparency and traceability	31
PART III MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS	32
Article 14 Objectives	Error! Bookmark not defined.
DELETED Article 15	Error! Bookmark not defined.
DELETED Article 16	Error! Bookmark not defined.
Article 17 Proposals	Error! Bookmark not defined.

Article 17 bis Publicity and preliminary review of proposals	Error! Bookmark not defined.
Article 18 Consultation on and assessment of proposals	Error! Bookmark not defined.
Article 19 Decision-making	Error! Bookmark not defined.
Article 19 bis XXX	Error! Bookmark not defined.
[Article 20 ante] Emergency measures	Error! Bookmark not defined.
Article 20 Implementation	Error! Bookmark not defined.
Article 21 Monitoring and review	Error! Bookmark not defined.
PART IV ENVIRONMENTAL IMPACT ASSESSMENTS	32
Article 21bis Objectives	51
Article 22 Obligation to conduct environmental impact assessments	52
Article 23 Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies	54
Article 24 Threshold[s] and factors for environmental impact assessments	56
DELETED Article 25	59
DELETED Article 26	59
DELETED Article 27	59
DELETED Article 28	59
DELETED Article 29	59
Article 30 Process for environmental impact assessments	59
DELETED Article 31	62
DELETED Article 32	62
DELETED Article 33	62
Article 34 Public notification and consultation	62
Article 35 Environmental impact assessment reports	63
DELETED Article 36	65
DELETED Article 37	65
Article 38 Decision-making	65
Article 39 Monitoring of impact of authorised activities	66
Article 40 Reporting on impacts of authorised activities	67
Article 41 Review of authorized activities and their impacts	67
Article 41 bis Guidance to be developed by Scientific and Technical Body	69
Article 41 ter Strategic environmental assessments	70
PART V CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY	72

Article 43 Cooperation in capacity-building and transfer of marine technology	75
Article 44 Modalities for capacity-building and the transfer of marine technology	76
Article 45 Modalities for the transfer of marine technology	77
Article 46 Types of capacity-building and transfer of marine technology	79
Article 47 Monitoring and Review	81
Article 47bis Capacity building and the transfer of marine technology	82
PART VI INSTITUTIONAL ARRANGEMENTS	85
Article 48 Conference of the Parties	85
Article 48 bis Transparency	88
Article 49 Scientific and Technical Body	89
Article 50 Secretariat	90
Article 51 Clearing-house mechanism	91
PART VII FINANCIAL RESOURCES AND MECHANISM	94
Article 52 Funding	94
PART VIII IMPLEMENTATION AND COMPLIANCE	94
Article 53 Implementation and compliance	98
Article 53 bis Monitoring of implementation	98
Article 53 ter Implementation and Compliance Committee	98
PART IX SETTLEMENT OF DISPUTES AND ADVISORY OPINIONS	100
Article 54 ante Prevention of disputes	100
Article 54 Obligation to settle disputes by peaceful means	100
Article 54 ter ante Settlement of disputes by any peaceful means chosen by the Parties	100
Article 54bis Prevention of disputes	100
Article 54 ter Disputes of a technical nature	100
Article 55 Procedures for the settlement of disputes	101
Article 55 bis Provisional arrangements	103
DELETED Article 55ter	104
PART X NON-PARTIES TO THIS AGREEMENT	104
Article 56 Non-parties to this Agreement	104
PART XI GOOD FAITH AND ABUSE OF RIGHTS	104
Article 57 Good faith and abuse of rights	104
PART XII FINAL PROVISIONS	104
Article ante 58 Right to vote	104
Article 58 Signature	105

Article 59 Ratification, approval, acceptance and formal confirmation	105
Article 59 bis Division of the competence of regional economic integration organizations and their member States in respect of the matters governed by this Agreement	105
DELETED Article 60	106
Article 61 Entry into force	106
Article 62 Provisional application	106
Article 63 Reservations and exceptions	107
Article 63 bis Declarations and statements	107
DELETED Article 64	107
Article 65 Amendment	107
Article 66 Denunciation	109
DELETED Article 67	109
Article 68 Annexes	109
Article 69 Depositary	110
Article 70 Authentic texts	110
ANNEXES	112
ANNEX I Indicative criteria for identification of areas	112
ANNEX II Types of capacity-building and transfer of marine technology	112

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DELEGATION INFORMATION

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Non-official delegates

Joanna Mossop (<i>travelling</i>)		
Associate Professor, Associate Dean (Research), VUW Faculty of Law s9(2)(a) s9(2)(a)	s6(a)	Arrives: 1740 18 February Departs: 1940 6 March

Rio Greening		
Maori working group on BBNJ s9(2)(a)		

Rachel Witana		
Maori working group on BBNJ s9(2)(a)		

Barry Weeber (<i>travelling</i>)		
Environment and Conservation Organisations New Zealand s9(2)(a)	s6(a)	Arrives: 19 February Departs: 5 March

FORMAL TIMETABLE AND ROLES AND RESPONSIBILITIES

Week 1 20-24 February					
	Monday 20	Tuesday 21	Wednesday 22	Thursday 23	Friday 24
0830 – 0900am	Delegation meeting @ UN delegates lounge				
0900 – 0945am	Daily CANNZI meeting @ UN delegates lounge				
10am – 1pm	<p>Plenary 10:00 to 10:45 3 Programme of work</p> <p>Informal informals – 10:45 to 1:15pm Area-based management tools</p> <p>Cross-cutting issues</p>	<p>Informal informals Environmental impact assessments</p> <p>Cross-cutting issues</p>	<p>Plenary 10-10.30am</p> <p>Informal informals 10.30am – 1.30pm Area-based management tools Cross-cutting issues</p>	<p>Plenary 10-10.30am</p> <p>Informal informals 10:30am to 1:30pm Area-based management tools Cross-cutting issues</p>	<p>Plenary 10-10.30am</p> <p>Informal informals 10:30am – 1:30pm Capacity-building and the transfer of marine technology Cross-cutting issues</p>
1pm					
2pm					
3pm – 6pm	<p>Informal informals Marine genetic resources</p> <p>Capacity-building and the transfer of marine technology</p>	<p>Informal informals Marine genetic resources</p> <p>Cross-cutting issues</p>	<p>Informal informals Environmental impact assessments</p> <p>President’s consultations</p>	<p>Informal informals Environmental impact assessments</p> <p>President’s consultations</p>	<p>Informal informals Area-based management tools</p> <p>President’s consultations</p>
6pm -					

Week 2 27-3 March					
	Monday 27	Tuesday 28	Wednesday 1	Thursday 2	Friday 3
0830 – 0900am	Delegation meeting @ UN delegates lounge				
0900 – 0945am	Daily CANNZI meeting @ UN delegates lounge				

10am – 1pm	<p>Plenary 10:00 to 10:45</p> <p>Informal informals 10:45am to 1:30pm</p> <p>Cross-cutting issues</p> <p>Marine genetic resources</p>	<p>Plenary 10:00 to 10:30</p> <p>Informal informals 10:30am to 1:30pm</p> <p>Cross-cutting issues</p> <p>Area-based management tools</p>	<p>Plenary 10:00 to 10:30</p> <p>Informal informals – TBC</p>	<p>Plenary 10:00 to 10:30</p> <p>Informal informals – TBC</p>	<p>Plenary 10:00 to 11:00</p> <p>Informal informals – 11:00 to 1:00</p> <p>President’s consultations</p>
1pm					
2pm					
3pm – 6pm	<p>Informal informals</p> <p>Environmental impact assessments</p> <p>President’s consultations</p>	<p>Informal informals</p> <p>Capacity building and transfer of marine technology</p> <p>President’s consultations</p>	<p>Informal informals – TBC</p>	<p>Informal informals – TBC</p>	<p>Informal informals</p> <p>4 Credentials of representatives</p> <p>7 Consideration and adoption of the documents of the conference, including the report of the conference to the General Assembly</p> <p>5 General exchange of views</p> <p>8 Other matters</p> <p>9 Closure of the session</p>
6pm -					

Topic	Lead	Back-up
CCIs	Victoria	Alex/Abby
ABMTs	Alex	Hilary
EIAs	Luke	Hilary
MGRs	Victoria	Luke/Abby
CBTMT	Zoe	

PREAMBLE

Para	Text	Position
	<i>The Parties to this Agreement,</i>	Note: We expect the Preamble to be finalised near the end of the negotiations. s9(2)(j)
	<i>Recalling</i> the relevant provisions of the United Nations Convention on the Law of the Sea, including the obligation to protect and preserve the marine environment,	Support - s9(2)(j)
	<i>Stressing</i> the need to respect the balance of rights, obligations and interests set out in the Convention,	Support
	<i>Recognizing</i> the need to address, in a coherent and cooperative manner, biodiversity loss and degradation of ecosystems of the ocean, due to, in particular, climate change, pollution and unsustainable use,	Support
	<i>Stressing</i> the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,	Support
	<i>Recognizing</i> the importance of contributing to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing States	From UNCLOS preamble. s9(2)(j) Will probably be discussed in light of how common heritage is dealt with.
	<i>Recognizing also</i> 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,	Support
	<i>Recalling</i> the United Nations Declaration on the Rights of Indigenous Peoples,	Support
	<i>Affirming</i> that nothing in this Agreement shall be construed as diminishing or extinguishing the existing rights of Indigenous Peoples or the interests of local communities,	Support
	[<i>Recognizing</i> the obligation to assess the potential effects on the marine environment of activities that may cause substantial pollution of or significant and	Reflects art 206 language. s9(2)(j)

	harmful changes to the marine environment regardless of whether these activities are conducted in or beyond the areas where sovereign rights are exercised in accordance with the Convention.]	
	[<i>Mindful</i> of the obligation to ensure that pollution arising from incidents or activities does not spread beyond the areas where sovereign rights are exercised in accordance with the Convention,]	s9(2)(h), s9(2)(j)
	<i>Desiring</i> 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 preserving the inherent value of biodiversity of areas beyond national jurisdiction,	Support
	<i>Respecting</i> the sovereignty, territorial integrity and political independence of all States,	Accept s9(2)(j)
	[<i>Recalling</i> , with respect to non-parties to the Convention, that Part III, Section 4, of the Vienna Convention on the Law of Treaties sets out the rules on treaties and third States,]	s9(2)(j)
	<i>Committed</i> to achieving sustainable development,	Support.
	<i>Aspiring</i> to achieve universal participation,	Support
	<i>Have agreed</i> as follows:	

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PART I GENERAL PROVISIONS

Mandate (for cross-cutting issues)

To support a treaty that:

Overarching goal

- Halts the decline and promotes the restoration of marine biodiversity in areas beyond national jurisdiction (ABNJ) through establishing an effective global regime for cooperation and coordination between states and regional and international organisations to improve the conservation and sustainable use of marine biodiversity in ABNJ;

Scope, principles, and relationship to other agreements, frameworks and organisations

- Covers all existing and new activities and sectors impacting on marine biodiversity in ABNJ and sets out clear rules and processes for environmental impact assessments (EIAs), area based management tools (ABMTs) and marine protected areas (MPAs), and access to marine genetic resources (MGRs), supported by provisions on capacity building and technology transfer;
- Is underpinned by the principles and approaches set out in paragraph 18¹;
- Establishes clear global standards and mechanisms to identify and implement marine conservation objectives, to be delivered by existing organisations to the extent possible, and by the BBNJ Conference of Parties (COP) in other cases, thereby promoting coordination between states, the BBNJ COP and these organisations, and lifting the performance of existing organisations;

Other cross-cutting issues

- Recognises the interests of coastal states whose maritime zones are adjacent to ABNJ, and enables New Zealand to actively consider Māori interests in ABNJ, including kaitiakitanga and Taonga species, and the application of traditional knowledge and mātauranga Māori;
- Contains decision making procedures that empowers the COP to take effective decisions and which strike a balance between ensuring broad support for measures taken, and avoiding approaches that lead to weak conservation outcomes;
- Contains monitoring, review and compliance and dispute settlement provisions designed to promote its effective implementation, and financial arrangements that are cost effective and efficient.

Article 1 Use of terms

Para	Text	Position
	For the purposes of this Agreement:	
1.	"Access <i>ex situ</i> ", in relation to marine genetic resources of areas beyond national jurisdiction, means access to samples, and access to associated data and information [, as defined in article 1, paragraph 2].	s9(2)(j)

¹ Para 18 lists kaitiakitanga or stewardship of the marine environment; the precautionary approach; an ecosystem based approach; the use of best available science and information; recognition of cumulative impacts on the marine environment; good governance (including transparent and accountable decision making); cost effectiveness and efficiency; and other relevant principles of international law such as the principle of equity, the polluter-pays principle, and the avoidance of transboundary harm.

		s9(2)(j)
[2.	"Associated data and information", in relation to marine genetic resources of areas beyond national jurisdiction, means relevant data and information in any format, including such data and information that could be considered as digital sequence information on genetic resources under the Convention on Biological Diversity.]	s9(2)(j)
3.	"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.	This language was discussed at length at IGC5.1 and there seemed to be consensus on current draft. NZ priority is to retain the distinction between ABMTs, which can have conservation and/or sustainable use objectives, and MPAs, which have conservation as their primary objective.
4.	"Areas beyond national jurisdiction" means the high seas and the Area.	Support.
5.	"Biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.	Support – aligns with the CBD.
6.	"Collection in situ", in relation to marine genetic resources, means the collection or sampling of marine genetic resources in areas beyond national jurisdiction.	
7.	"Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982.	
8.	"Cumulative impacts" means [the combined] [incremental] [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.	
9.	"Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.	Support – aligns with the CBD.
10.	"Environmental impact assessment" means a process to identify and evaluate the potential impacts of an activity to inform decision making.	
11.	"Marine genetic resources" means any material of marine plant, animal, microbial	Support – this is the definition of MGR used in the CBD context. Consistency.

	or other origin containing functional units of heredity of actual or potential value.	
12.	<p>"Marine protected area" means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives</p>	<p>This language was discussed at length at IGC5.1 and there seemed to be consensus on current draft.</p> <p>s6(a), s9(2)(j)</p> <p>Prefer retention of "long term biodiversity" – but could drop the word "biodiversity" as seems to be broad consensus among likemindeds to do so (and both if we have to).</p> <p><i>IUCN definition of protected area: "A protected area is a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values."</i></p> <p><i>CBD GBF TARGET 3: Ensure and enable that by 2030 at least 30 per cent of terrestrial, inland water, and of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures, recognizing indigenous and traditional territories, where applicable, and integrated into wider landscapes, seascapes and the ocean, while ensuring that any sustainable use, where appropriate in such areas, is fully consistent with conservation outcomes, recognizing and respecting the rights of indigenous peoples and local communities, including over their traditional territories</i></p>
[13.	"Marine technology" includes information and data, provided in a user-friendly format, on marine sciences and related	Can support.

	marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment for <i>in situ</i> and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to the conservation and sustainable use of marine biodiversity.]	A simpler definition was used in previous versions of the text under the definition of "transfer of marine technology." This was "...instruments, equipment, expertise, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean." That definition has since been removed as it was essentially doubling up, but could bring the simpler definition through here.
14.	"Party" means a State or regional economic integration organization that has consented to be bound by this Agreement and for which this Agreement is in force.	
15.	"Regional economic integration organization" means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Agreement and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Agreement.	
[16.	"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.]	
17.	"Utilization of marine genetic resources" means to conduct research and development on marine genetic resources or associated data and information, including through the application of biotechnology, as defined in article 1, paragraph 5, and commercialization.	s9(2)(j) This will flow from what is decided in the MGR part re: ABS.

Article 2 General objective

Para	Text	Position
	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.	Support.

Article 3 Application

Para	Text	Position
	This Agreement applies to areas beyond national jurisdiction.	Support – s6(a), s9(2)(j)

Article 3bis Sovereign immunity

Para	Text	Position
	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 4 Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

Para	Text	Position
1.	This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention without prejudice to 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.	Support
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.	Support
[3.	The legal status of non-parties to the Convention or any other related agreements with regard to those	Better to have in the preamble if that's on the table. We don't think that it is necessary and it could be unhelpful to

instruments is not affected by this Agreement.]	include, but seems like a reference to this will be necessary.
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Article 4 bis Without prejudice

Para	Text	Position
	This Agreement, including any decision or recommendation of the Conference of the Parties or any of its subsidiary bodies, 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.	Can support s9(2)(j)

Article 5 General principles and approaches

Para	Text	Position
	In order to achieve the objective of this Agreement, Parties shall be guided by the following:	
	(a) The polluter pays principle;	
	[(b) The principle of the common heritage of mankind;]	
	(c) Option 1: The principle of equity; Option 2: The fair and equitable sharing of benefits;	s9(2)(j)
	[(d) The application of precaution;]	Do not support. We support either reverting to well-defined terminology e.g. precautionary approach/principle.
	(e) An ecosystem approach;	Support.
	(f) An integrated approach;	
	(g) An approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification and restores ecosystem integrity;	Can support. Largely encompassed by (e), but references to climate change and ocean acidification are a partial recognition of cumulative impacts (from changes in natural systems).
	(h) The use of the best available science and scientific information;	Support.
	(i) The use of relevant traditional knowledge of indigenous peoples and local communities, where available;	Support. Has been split out into its own principle.
	(j) The respect, promotion and consideration of their respective obligations relating to the rights of indigenous peoples and local communities when taking action to address the	Support, especially as a standalone principle/approach distinct from (h), which deals with knowledge systems.

	conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;	This was a proposal made by PSIDS, Australia, Norway and New Zealand between IGC3 and 4 (not picked up in the IGC4 text). It was adapted from the preambles of UNFCCC COP Decision 2/CP.23 (on the Local Communities and Indigenous Peoples Platform (2017)) and of UNFCCC COP Decision 2/CP.24 (on the Local Communities and Indigenous Peoples Platform (2018)), both of which were adopted by consensus.
	(k) 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;	
	(l) Full recognition of the special circumstances of small island developing States.	

Article 6 International cooperation

Para	Text	Position
1.	Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and promoting cooperation among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies [and members thereof] in the achievement of the objective of this Agreement.	
2.	A Party that is also a party to [member of, or participant in,] a relevant legal instrument, framework, or global, subregional, regional or sectoral body, shall endeavour to promote the objective of this Agreement when participating in decision-making under that other instrument, framework or body.	<p>Support. This is new text.</p> <p>Aligns with our desire to see BBNJ closely coordinate with, and lift performance, of existing instruments, frameworks or bodies.</p> <p>s9(2)(j)</p> <p>Note stronger language in Article 20(4) specifically on ABMTs: "Parties shall promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members, to support the implementation of the decisions and recommendations made by the Conference of the Parties under this Part"</p>

3.	Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objective of this Agreement.	Support.
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Released under the Official Information Act 1982

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

Mandate
<p>To seek a treaty that:</p> <ul style="list-style-type: none"> • Creates a pragmatic sui generis regime for access to MGRs in ABNJ, which includes mechanisms for equitable sharing of benefits while respecting existing intellectual property rights and intellectual property law; • Encourages research into MGRs in ABNJ, incentivises comprehensive knowledge-sharing, encourages cooperation and compliance, and manages the environmental impacts of activities related to MGRs; • s9(2)(j) could provide the COP the ability to consider developing a monetary benefit sharing regimes in the future if significant commercialisation of MGRs takes place;

Article 7 Objectives

Para	Text	Position
	The objectives of this Part are:	<p>This Article was subject to discussion in a small group. Final agreement could not be reached. The final report back to the facilitator is here.</p> <p>s6(a) verbs at the beginning of sub-paras were dropped (such as "promote") to neutralise the text, and this was done.</p>
	(a) The fair and equitable sharing of benefits arising from marine genetic resources of areas beyond national jurisdiction for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;	Can be fine with this text.
	(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, taking into account the special circumstances of small island developing States, to carry out activities with respect to marine genetic resources of areas beyond national jurisdiction;	<p>Fine subject to approach to listing.</p> <p>s6(a), s9(2)(j)</p>
	(c) The generation of knowledge, scientific understanding and technological innovation, [including through the development and conduct of marine	This paragraph does not make sense as drafted (might need to be reshuffled i.e. could the brackets go to the end of the sentence?)

s6(a), s9(2)(j)

Article 9 Activities with respect to marine genetic resources of areas beyond national jurisdiction

Para	Text	Position
1.	Activities with respect to marine genetic resources of areas beyond national jurisdiction may be carried out by all Parties, irrespective of their geographical location, and natural or juridical persons under the jurisdiction and control of the Parties in accordance with this Agreement.	Can support although not really necessary s9(2)(h)
2.	Parties shall promote cooperation in activities with respect to marine genetic resources of areas beyond national jurisdiction.	Fine.
3.	[Access in situ to] [Collection in situ of] marine genetic resources of areas beyond national jurisdiction shall be [carried out] [conducted] with due regard for the rights and legitimate interests of coastal States in areas within their national jurisdiction and also 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 established under article 51, with a view to implementing this Agreement.	s9(2)(j)
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.	Can support s9(2)(j)
[5.	The utilization of marine genetic resources of areas beyond national jurisdiction shall be for the interests of all States and for the benefit of mankind as a whole, particularly for the benefit of advancing the scientific knowledge of humanity and promoting the conservation and sustainable use of marine biological	s9(2)(j)

	diversity, taking into consideration the interests and needs of developing States.]	
6.	Activities with respect to marine genetic resources of areas beyond national jurisdiction shall be carried out exclusively for peaceful purposes.	Can support – s9(2)(h)

Article 10 Collection *in situ* of marine genetic resources of areas beyond national jurisdiction

Para	Text	Position
1.	Parties shall take the necessary legislative, administrative or policy measures to ensure that collection <i>in situ</i> of marine genetic resources of areas beyond national jurisdiction shall be subject to notification to the clearing-house mechanism in accordance with this Part.	Support. Simplified from IGC5 – no longer includes reference to “utilisation of MGRs” nor specific notification of particularly concerned parties. Think that this is more pragmatic.
2.	The following information shall be notified to the clearing-house mechanism six months or as early as possible prior to the collection <i>in situ</i> of marine genetic resources of areas beyond national jurisdiction:	Can support, s9(2)(j)
	(a) The nature and objectives of the project under which the collection is carried out, including, as appropriate, any programme(s) of which it forms part;	Support.
	(b) The subject matter of the research or, if known, marine genetic resources to be targeted or collected, and the purposes for which such resources will be collected;	Support.
	(c) The geographical areas in which the collection is to be undertaken;	Support.
	(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, and any contribution to major programmes;	Support.
	(e) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate.	Support.
	(f) The name(s) of the sponsoring institution(s), the director(s), and the person in charge of the project;	Support.

	(g) Opportunities, for scientists of all States, in particular for scientists from developing States, to be involved in or associated with the project;	Support.
	(h) 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.	Support. This is the key reason for a six month timeframe – ensuring that capacity building opportunities are adequately broadcast.
4.	Parties shall ensure that the following information is notified to the clearing-house mechanism as soon as it becomes available, but no later than one year from the collection <i>in situ</i> of marine genetic resources of areas beyond national jurisdiction:	Support this para generally. If we are looking for pragmatic solutions to notification pre-collection (which might not always be possible), this should be standard.
	(a) The repository or database where associated data and information, where available, are or will be deposited;	Support.
	(b) Where the original samples, if available, [with their associated unique identifiers,] are or will be held;	Support.
	(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.	Support.
5.	Parties shall ensure that databases and repositories under their jurisdiction are required to periodically notify the notification system within the clearing-house mechanism regarding access <i>ex situ</i> during that period of time.	Support.
6.	Where marine genetic resources of areas beyond national jurisdiction are subject to utilization by natural or juridical persons under their jurisdiction and control, the following information shall be notified to the clearing-house mechanism no later than three years from the start of the relevant utilization or as soon as such information becomes available:	Support this para. s9(2)(j)
	(a) Where the results of the utilization can be found, including associated data and information;	Fine.
	(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;	Fine.
	(c) Where the original sample that is the subject of utilization, if available, is held;	Fine.
	(d) The modalities envisaged for access <i>ex situ</i> ;	Fine.

7.	In case of commercialization of products based on the utilization of marine genetic resources of areas beyond national jurisdiction, parties shall notify the clearing-house mechanism of information received from natural or juridical persons under their jurisdiction and control on such commercialization.	Support – s9(2)(j)
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Article 10 bis Traditional knowledge of Indigenous Peoples and local communities associated with marine genetic resources in areas beyond national jurisdiction

Para	Text	Position
	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.	Support – s6(a) New Zealand must actively consider Māori interests in ABNJ, including kaitiakitanga and Taonga species, and the application of traditional knowledge and mātauranga Māori.

TRADITIONAL KNOWLEDGE AT ICG 5:

Affirming that nothing in the Treaty shall be construed as diminishing or extinguishing the existing rights of indigenous peoples in the preamble, and having recognition of traditional knowledge of indigenous peoples and local communities throughout the text was an important issue for PSIDS and New Zealand at ICG5.

This is particularly important in Article 10 bis which seeks to ensure that traditional knowledge associated with marine genetic resources in areas beyond national jurisdiction 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. To date, this work has been led by the PSIDS with support from New Zealand, Canada and Australia.

At the beginning of ICG5 there was strong support for references to traditional knowledge of indigenous peoples and local communities throughout the text, s6(a), s9(2)(j)

s6(a), s9(2)(j)

Article 11 Fair and equitable sharing of benefits

NOTE: This and the next article are the two vital articles for the “package deal” being negotiated by a group of developed countries.

Para	Text	Position
1.	The benefits arising from activities with respect to 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.	s9(2)(j)
2.	[Non-monetary] [b][B]enefits shall be shared [and may be] in the form of:	Accept all brackets here.
	(a) Access <i>ex situ</i> ;	No need to capitalise “Benefits.” Support.
	(b) Information contained in the notifications provided in accordance with article 10;	Support.
	(c) Transfer of technology in line with relevant modalities provided under Part V of this Agreement;	Support.
	(d) Capacity-building, including by financing research programmes, and partnership opportunities 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;	Support - link to CBTMT Part. This is stronger language in Article 45(1): <i>“Parties shall endeavour to ensure that the transfer of marine technology takes place on fair and most favourable terms, including on concessional and preferential terms, in accordance with mutually agreed terms and conditions.”</i>
	(e) Open access to findable, accessible, interoperable and reusable (FAIR) scientific data in accordance with international practice in those fields;	Support.
	(f) Scientific cooperation, in particular with scientists from and scientific institutions in developing States;	Support.
	[(g) Other forms of benefits as determined by the Conference of the Parties on the	Support. s6(a), s9(2)(j)

	basis of recommendations by the access and benefit-sharing mechanism established under article 11 bis.]	
3.	Parties shall take the necessary legislative, administrative or policy measures to ensure that available samples, as well as associated data and information, subject to utilization by natural or juridical persons under their jurisdiction and control are deposited in publicly accessible databases or repositories, maintained either nationally or internationally, as soon as they become available and no later than three years from the start of the relevant utilization, taking into account current international practice in these fields.	Fine.
4.	Access to the original samples and associated data and information in the databases and repositories under a Party's jurisdiction may be subject to reasonable conditions as follows:	Support.
	(a) The need to preserve the physical integrity of original samples;	Support.
	(b) The reasonable costs associated with maintaining the relevant database, biorepository or gene bank in which the sample, data or information is held;	Support.
	(c) The reasonable costs associated with providing access to the sample, data or information.	Support.
[5.	Monetary benefits shall be shared through the financial mechanism established under article 52 with the modalities determined by the Conference of the Parties such as:	s9(2)(j)
	(a) Milestone payments;	s9(2)(j)
	(b) Royalties;	s9(2)(j)
	(c) Other forms as are determined by the Conference of the Parties on the basis of recommendations by the access and benefit-sharing mechanism.]	See above.
[6.	The Conference of the Parties shall determine the rate of payments related to monetary benefits on the basis of the recommendations of the access and benefit-sharing mechanism. The initial rate of payment shall be 2 per cent of the value	s9(2)(j)

	of sales of the product the commercialization of which is based on the utilization of marine genetic resources of areas beyond national jurisdiction. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 8 per cent thereafter, except as otherwise determined by the Conference of the Parties.]	s9(2)(j)
[7.	The payments shall be made through the financial mechanism established under article 52, which shall distribute them to Parties to this Agreement, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries, taking into account the special circumstances of small island developing States, in accordance with mechanisms established by the access and benefit-sharing mechanism.]	s9(2)(j)
8.	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 of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction and control are shared in accordance with this Agreement.	s9(2)(j)

Article 11 bis Access and benefit sharing mechanism

Para	Text	Position
1.	An access and benefit-sharing mechanism is hereby established.	Support the formation of an ABS mechanism.

		s9(2)(j)
2.	The access and benefit-sharing mechanism shall be composed of members possessing appropriate qualifications who are nominated by Parties and elected by the Conference of the Parties taking into account gender balance and equitable geographic distribution, and providing for representation on the mechanism from developing States, including the least developed countries and small island developing States. The terms of reference and modalities for the operation of the	Could accept – if we supported an ABS we would want provisions around membership specified in the text.

	mechanism shall be determined by the Conference of the Parties.	
4.	The mechanism may make recommendations to the Conference of the Parties on matters relating to this Part, including:	
	(a) Rules, guidelines or a code of conduct for the collection <i>in situ</i> of marine genetic resources, access <i>ex situ</i> and the utilization of such resources in accordance with this Part;	Can accept.
	(b) Measures to implement decisions taken in accordance with this Part;	Can accept.
	[(c) Rates or mechanisms for the sharing of monetary benefits in accordance with article 11;]	s9(2)(j)
	(d) Matters relating to this Part in relation to the clearing-house mechanism;	Can accept.
	(e) Matters relating to this Part in relation to the financial mechanism established under article 52;	Can accept.
	(f) Any other matters relating to this Part that the Conference of the Parties may request the access and benefit-sharing mechanism to address.	Can accept.
5.	Each Party shall make available to the access and benefit-sharing mechanism, through the clearing-house mechanism, the information required under this Agreement, which shall include:	Can accept.
	(a) Legislative, administrative and policy measures on access and benefit-sharing;	Can accept.
	(b) Contact details and other relevant information on national focal points;	Can accept.
	(c) Other information required pursuant to the decisions taken by the Conference of the Parties.	Can accept.

[Article 12 Intellectual property rights]

Para	Text	Position
	Parties shall implement this Agreement and relevant agreements concluded under the auspices of the World Intellectual Property Organization and the World Trade Organization in a mutually supportive and consistent manner.]	s9(2)(j)

Article 13 Transparency and traceability

Para	Text	Position
1.	The Scientific and Technical Body established under article 49 shall, on instruction from the Conference of the Parties, collect information on current international best practices relating to activities with respect to marine genetic resources of areas beyond national jurisdiction. On the basis of its work, the Conference of the Parties may recognize these as guidelines or best practices for activities with respect to marine genetic resources of areas beyond national jurisdiction.	Note: This article has been cut down to one option since IGC5. This text largely reflects our preferred option.
2.	Transparency regarding the sharing of benefits arising from activities with respect to marine genetic resources of areas beyond national jurisdiction and traceability shall be achieved through notification to the clearing-house mechanism.	Support.
3.	Parties shall [annually] [biennially] [periodically] submit reports to the access and benefit-sharing mechanism on their implementation of the provisions in this Part. The access and benefit-sharing mechanism shall review such reports and make recommendations to the Conference of the Parties. The Conference of the Parties may adopt the recommendations of the access and benefit-sharing mechanism to facilitate the implementation of this Part.	Do not support – this level of detail is not necessary for treaty text. s9(2)(j)
[4.	The Conference of the Parties shall assess and review, at regular intervals, the issue of commercialization of products based on the utilization of marine genetic resources of areas beyond national jurisdiction. If tangible and substantial monetary benefits arise therefrom, the Conference of the Parties will explore alternatives to identify the most appropriate processes for relevant financial contributions.]	Can support. s9(2)(j)
[5.	The Conference of the Parties shall determine appropriate guidelines for the implementation of this article, which shall take into account the national capabilities and circumstances of Parties.]	Can support.

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

Mandate
<p>To seek a treaty that:</p> <ul style="list-style-type: none"> • Facilitates the establishment of multi-sector area-ABMTs as well as an interconnected network of ecologically representative, highly protected MPAs to enable comprehensive ecosystem-based management and effective protection of the marine biodiversity in ABNJ; • Complements rather than replaces the competence of existing regional and sectoral organisations and ensure that these bodies are able to continue to exercise their mandates; • Fosters consistency and progressive improvement across the oceans governance regime through the establishment of common standards and guidelines on the establishment of ABMTs and MPAs; • Enables the COP to make recommendations to other relevant bodies, and ideally, be able to impose interim or emergency measures when needed;

Article 14 Objectives

Para	Text	Position
	The objectives of this Part are to:	This article was streamlined and refined at IGC5.1.
	(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 network of marine protected areas;	Support
	(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;	Support
	(c) Protect, preserve, restore and maintain biodiversity 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;	Support
	(d) Support food security and other socioeconomic objectives, including the protection of cultural values;	Square brackets were removed at IGC5.1. Support
	[(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	This was added at IGC5.1. It is in square brackets because some delegates thought it was more appropriate to cover this point in the CBTT chapter rather than in separate chapters.

	<p>account the special circumstances of small island developing States, through capacity-building and the transfer of marine technology in developing, implementing, monitoring, managing and enforcing area-based management tools, including marine protected areas.]</p>	<p>A proposal is included on this para in the President’s compilation document of 1 Feb 2023, however it is largely the same as already reflected so it is a little confusing as to how it fits.</p> <p>This is an important concept and should be stated somewhere in the treaty, but as long as a consistent approach is taken across all chapters of the treaty, we don’t have a strong view as to whether it remains here or is moved to the CBTT chapter</p>
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DELETED Article 15

Deleted

DELETED Article 16

Deleted

Article 17 Proposals

Para	Text	Position
		<p>This article was refined during IGC5.1 and now reflects the majority of NZ comments. The wording of “precaution” concept is the major outstanding issue in this Article.</p>
1.	<p>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.</p>	<p>Support.</p>
2.	<p>Parties shall collaborate and consult, as appropriate, with relevant stakeholders, [including States, global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, indigenous peoples and local communities, for the development of proposals, as set out in this Part].</p>	<p>Support.</p> <p>Don’t have strong view on text in square brackets. Probably makes more sense to retain but also important to take a consistent approach with elsewhere in treaty e.g. Article 18.</p>
3.	<p>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 application of precaution and] an ecosystem approach [and not using the lack of full scientific certainty as a reason for postponing precautionary measures</p>	<p>This is the first time the concept of “precaution” is used in Part III. Whatever is decided here needs to be consistent with remainder of treaty. NZ’s preference is precautionary approach but this is unlikely to be the final outcome.</p> <p>The remainder of the para is fine, so long as consistent with rest of treaty.</p>

	where there are threats of serious or irreversible harm]	Support retention of relevant traditional knowledge of indigenous peoples and local communities.
4.	Proposals shall include the following key elements:	Support
	(a) A geographic or spatial description of the area that is the subject of the proposal by reference to one or more of the indicative criteria specified in annex I;	Support, including new reference to annex I criteria
	(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, applied in identifying the area;	Support
	(c) Human activities in the area, including uses by indigenous peoples and local communities, and their possible impact, if any;	Support
	(d) A description of the state of the marine environment and biodiversity in the identified area;	Support
	(e) A description of the conservation and, where appropriate, sustainable use objectives that are to be applied to the area;	Support, including the new language "where appropriate". Make sure that is retained.
	(f) A draft management plan encompassing the proposed measures, and outlining proposed monitoring, research and review activities to achieve the specified objectives;	Support – this is an improvement on pre-IGC5 language.
	(g) The duration of the proposed area and measures, if any;	Support, including addition of "if any". Important to retain this language. s6(a), s9(2)(j)
	(h) Information on any consultations undertaken with States, including adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies, if any.	Support, including broadening of this para to all states. Seek ensure text around "including adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies, if any." is retained.
	(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;	Support – this was added at IGC5.1 and is a useful addition. Note inconsistency with 18(b)(iii) re no mention of measures

	(j) Relevant scientific input and, where available, traditional knowledge of indigenous peoples and local communities.	Support – this was added at IGC5.1 and is a useful addition. s6(a), s9(2)(j)
5.	Indicative criteria for [the identification of such areas] [proposals] under [paragraph 4a] [this Part] 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.	Support This was previously contained in an article on "Identification of areas" which has now been deleted. Prefer "the identification of such areas" language as it mirrors the title of annex I but flexible.
6.	Further requirements regarding the contents of proposals and guidance on proposals specified in paragraph 4(b) shall be elaborated by the Scientific and Technical Body, as necessary, for consideration and adoption by the Conference of the Parties.	Support

Article 17 bis Publicity and preliminary review of proposals

Para	Text	Position
1.	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 preliminary review by the Scientific and Technical Body shall take into account the indicative criteria described in this Part and in annex I. The outcome of that review shall be conveyed to the proponent by the secretariat. The proponent shall retransmit the proposal to the secretariat, having taken into account the preliminary review by the Scientific and Technical Body. The secretariat shall notify the parties and make that retransmitted proposal publicly available and facilitate consultations on the proposals as described in article 18.	Pre-IGC5, this para was included in Article 18. It has been moved to its own Article, which makes sense. It has also been refined and improved. Support

Article 18 Consultation on and assessment of proposals

Para	Text	Position
		Support

		This Article had minor refinements at IGC5.1
1.	Consultations on proposals submitted under article 17 shall be inclusive, transparent and open to all relevant stakeholders, including States, global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, indigenous peoples and local communities.	Support, including additions at IGC5.1 of 'states' and "the scientific community"
2.	The secretariat shall facilitate consultations and gather inputs as follows:	Revised chapeau Support
	(a) States, in particular adjacent coastal States, shall be invited to submit, inter alia: (i) Views on the merits of the proposal; (ii) Any other relevant scientific inputs; (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;	Slightly revised Support, including the revisions in (iii) – addition of activities; and addition of reference to beyond national jurisdictions Note "in particular" here but "including" in the proposal stage (Art. 17(4)(h)).
	(b) Bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be invited to submit, inter alia: (i) Views on the merits of the proposal; (ii) Any other relevant scientific inputs; (iii) Information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas; (iv) Views regarding any aspects of the measures and priority elements for a management plan identified in the proposal that fall within the competence of that body; (v) Views regarding any relevant additional measures that fall within the competence of that instrument, framework or body; (vi) Any other relevant information;	Support– largely same as previous drafts Note inconsistency between 18(2)(b)(iii) and ith 17(4)(i)
	(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 inputs; (iii) Any relevant traditional knowledge of indigenous peoples and local communities; (iv) Any other relevant information.	Support – largely same as previous drafts
3.	Contributions received pursuant to paragraph 2 shall be made publicly	Support

	available by the secretariat [with the consent of the provider of the contribution].	If square brackets are retained references to free, prior informed consent with regard to traditional knowledge would need to be outlined here.
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; and (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.	Support – noting this was a Micronesia, Caribbean Community, Australia, New Zealand , Seychelles and Pacific Small Island Developing States proposal made prior to IGC5.1
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.	Support – this para has been revised and improved. Support retention of language in square brackets
6.	The consultation period shall be time-bound [and the duration informed by the Scientific and Technical Body in consultation with the proponent(s) and allow for a reasonable amount of time for all stakeholders to provide input].	This was the subject of a lot of discussion at IGC5.1. We accept that there may need to be some flexibility in duration, so can accept language in square brackets. We could potentially suggest adding a maximum timeframe.
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.	Support – not changes at IGC5.1
8.	The modalities for the consultation and assessment process 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 Parties.	This has been slightly refined. Support, including reference to SIDs – try to ensure this is retained.

Article 19 Decision-making

Para	Text	Position
		Paras 1-4 of this Article is based on a CANNZ proposal made at IGC5.1 and negotiated through a small group led by Norway. Refinements were also made to para 5-8 at IGC5.1 which were included in Article 15 & 19 in previous drafts.

		<p>Further discussion occurred on the last days on paras 1-4 and some issues were resolved, as reflected in the Presidents "compilation of proposals" document of 1 Feb 23.</p> <p>At the end of IGC5.1 there was general comfort with this Article although some delegates have raised issues and questions intersessionally, particularly on the "recognition" provision in para 2.</p>
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 inputs received during the consultation process established under this Part, and the scientific advice and recommendations from the Scientific and Technical Body:	Support
	(a) Shall take decisions on the establishment of area-based management tools, including marine protected areas, and related measures;	Support
	(b) [May take decisions on measures [complementary to] [compatible with] those adopted by relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies; and]	<p>Small group agreed on the following (after substantial discussion. This was one of the most controversial issues in this chapter at IGC5.1. Note the editorial change required – "with" needs to be added after "compatible":</p> <p>(b) May take decisions on measures [complementary to] compatible those adopted by relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, and</p>
	(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 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.	Support
2.	The Conference of the Parties may recognize, in accordance with the objectives, criteria and decision-making process laid down in this Part, area-based management tools, including, marine protected areas, established under relevant regional, subregional and sectoral bodies, at the request of that body or of a Party authorized to act on its behalf, or Parties authorized to act on its behalf. The following Articles apply to area-based	<p>Support</p> <p>Note that this includes the "recognition" concept s6(a), s9(2)(j)</p> <p>This was inserted near the end of IGC5.1 and will likely still prove controversial. If there is agreement on this concept, it might be better placed in Art 17 or in a standalone article near Art 17. We might also need to specify processes for</p>

	<p>management tools, including marine protected areas, recognised under this paragraph, as if they were established under this Part: XX</p> <p>The Conference of the Parties shall elaborate the procedures which shall include the provision of adequate information, transparency, notification, consultation with relevant stakeholders and review by the Scientific and Technical Body, and the manner in which the provisions of this Part shall apply for recognition of area-based management tool, including marine protected areas.</p>	<p>recognition, or at least state which parts of Art 17 - 18 apply.</p>
<p>3.</p>	<p>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.</p>	<p>Small group agreed on the following (after substantial discussion. This was one of the most controversial issues in this chapter at IGC5.1:</p> <p>“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.”</p>
<p>4.</p>	<p>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] [among] related measures adopted under such instruments and frameworks and by such bodies.</p>	<p>Small group agreed on the following (square brackets removed; “with regard to” retained; “among” removed):</p> <p>“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] [among] related measures adopted under such instruments and frameworks and by such bodies.”</p> <p>Support small group outcome</p>
<p>5.</p>	<p>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</p>	<p>Support</p>

	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 next meeting, reviews and decides whether to amend or revoke the area-based management tool, including a marine protected area, as necessary.	Support
7.	An area-based management tool, including a marine protected area, established under this Part shall continue in force when a new regional [agreement] [treaty] body is established with competence to establish an area-based management tool or a marine protected area that overlaps, geographically, with the area-based management tool or marine protected area established under this Part.	Support. Minor preference for [treaty] but either would be fine.
8.	Upon the establishment or amendment of a legal instrument or framework [or relevant global, regional, subregional or sectoral body], measures adopted by the Conference of Parties under this Part that are within the competence of the new instrument, framework, or body may be amended or revoked.	This was added at IGC5.1, Support. Language in first set of brackets should be included here as well. Noted that the details of this provision would need to be worked out later.

Article 19 bis XXX

Para	Text	Position
		<p>This Article was significantly re-worked at IGC5.1. The current draft is based on an EU proposal prior to IGC5.1.</p> <p>Following the deadline for this latest draft text there was further discussion and informal agreement that is not reflected here, including on opt-out provisions. This is included in the Presidents "compilation of proposals" document of 1</p>

		<p>Feb 23, although unfortunately the document does not reflect all of the discussion that happened on the last day with respect to opt-out paras 5 and 8.</p> <p>At the end of IGC5.1, there was general comfort with the version negotiated in the informal group – there may be some confusion at IGC5.2 as to which version we are working off.</p>
1.	As a general rule, the Decisions [and recommendations] under this part shall be taken by consensus.	<p>Small group agreed on removal of square brackets at end of IGC5.1.</p> <p>Support small group outcome</p>
2.	If no consensus is reached, Decisions [and recommendations] under this part shall be taken by a three-quarter majority of the representatives present and voting, before which the Conference of the Parties shall decide, by a two third majority, present and voting that every effort to reach agreement by consensus has been exhausted. (Pending agreement in Cross-Cutting)	<p>Small group agreed on removal of square brackets at end of IGC5.1.</p> <p>Support small group outcome</p> <p>Note link with general decision making in Article 48</p>
3.	Decisions adopted under this part shall enter into force [120][180] days after the meeting of the Conference of the Parties at which it was adopted, and shall be binding on all Parties.	<p>Small group agreed on 120 days and added link to optout as follows:</p> <p>“Decisions adopted under this part shall enter into force 120 days after the meeting of the Conference of the Parties at which it was adopted, and shall be binding on all Parties, <u>except for those Parties which make an objection in accordance with paragraph 4 of this Article.</u>”</p> <p>Support small group outcome</p>
4. (will become 9.)	Decisions of the Conference of the Parties adopted under this part shall be made publicly available by the Depositary and shall be transmitted to all States and relevant legal instruments and frameworks, including the relevant global, regional, subregional and sectoral bodies.	<p>Small group added link to opt out + change of responsibility from Depositary to Secretariat, as follows:</p> <p>“Decisions of the Conference of the Parties adopted under this part, <u>and objections to these,</u> shall be made publicly available by the Depositary <u>Secretariat</u> and shall be transmitted to all States and relevant legal instruments and frameworks, including the relevant global, regional, subregional and sectoral bodies.”</p> <p>Support small group outcome</p> <p>Note also that this para will become para 9.</p>
OPT-OUT:		

The following paras are the opt-out provisions, negotiated in a small group at IGC5.1 led by Australia s6(a) , and (nearly) finalised too late for inclusion in the 26 Aug text. They have been included in the Presidents compilation document distributed on 1 Feb 2023, although Australia made soe further changes late on 26 Aug that are not reflected. s6(b)(i)

<p>4.</p>	<p>During the period of 120 days provided for in paragraph 3 of this Article, 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 ninety days following the date of the notification stating that the objection is withdrawn.</p>	<p>Support – there seems to be general comfort with this para.</p>
<p>5.</p>	<p>A Party presenting an objection under paragraph 4 shall provide to the Secretariat in writing, at the time of presenting its objection, the reason for its objection, which shall be based on one or more of the following grounds:</p> <ul style="list-style-type: none"> (i) the Decision is inconsistent with this Agreement or rights of the objecting Party under the Convention or other relevant rules of international law; (ii) the Decision unjustifiably discriminates in form or in fact against the objecting Party; or (iii) the Party cannot practicably comply with the Decision at the time of the objection. 	<p>This para was revised as follows on the last day of IGC5.1 s6(b)(i) – these changes are not reflected in the Presidents compilation document:</p> <p>“A Party presenting an objection under paragraph 4 shall provide to the Secretariat in writing, at the time of presenting its objection, the [details][reason] for its objection, which shall be based on one or more of the following grounds:</p> <ul style="list-style-type: none"> (i) the Decision is inconsistent with this Agreement or rights of the objecting Party under the Convention or other relevant rules of international law; (ii) the Decision unjustifiably discriminates in form or in fact against the objecting Party; or (iii) the Party <u>[has a legal impossibility to comply]</u>[cannot practicably comply with the Decision] <u>[after taking all reasonable efforts]</u> at the time of the objection.”
<p>6.</p>	<p>A Party making an objection under paragraph 4 shall endeavor to adopt alternative measures or approaches that are equivalent in effect to the Decision to which it has objected, and shall not adopt measures [or approaches], [nor take</p>	<p>Support – there seems to be general comfort with this para.</p> <p>Flexible on language in square brackets</p>

	actions] that would undermine the effectiveness of the Decision to which it has objected.	
7.	A Party shall report to the Conference of the Parties on its implementation of 19bis 6 [in accordance with Article 21 paragraph 1].	Support – there seems to be general comfort with this para. Flexible on language in square brackets
8.	An objection to a Decision made in accordance with paragraph 4 shall be reviewed every three years by the objecting party, and only renewed if the party considers it is still necessary, by written notification to the Secretariat. If no such notification of renewal is received, the objection shall be considered automatically withdrawn and thereupon the Decision shall be binding for that Party ninety days after that objection is automatically withdrawn. The Secretariat shall notify the Party 60 days prior to the date the objection will be automatically withdrawn.	This para was revised as follows on the last day of IGC5.1 s6(b)(i) – these changes are not reflected in the Presidents compilation document: “An objection to a Decision made in accordance with paragraph 4 shall be reviewed every three years by the objecting party, and only renewed if the party considers it is still necessary, by written notification[, which includes the objecting party’s views on the necessity of renewal of the objection] to the Secretariat. If no such notification of renewal is received, the objection shall be considered automatically withdrawn and thereupon the Decision shall be binding for that Party ninety days after that objection is automatically”

[Article 20 ante] Emergency measures

Para	Text	Position
		<p>General comments: Provisions on emergency measures were discussed at IGC5.1, including in a small group facilitated by New Zealand.</p> <p>Key changes made at IGC5.1 include: the scope of the provisions was limited to “emergency measures” (it was previously interim and emergency measures); they were moved to the ABMTs chapter (currently Article 20 ante); and details on procedures were added.</p> <p>There seems to be general and increasing comfort with these provisions.</p> <p>The following issues were not fully resolved at the end of IGC5.1: thresholds; and consequence if a relevant IFB adopts equivalent measures.</p>

<p>1.</p>	<p>The Conference of the Parties shall adopt an area-based management tool, including a marine protected area in areas beyond national jurisdiction to be applied on an emergency basis, if necessary, where an activity, or when a natural phenomenon or human-caused disaster has, or is likely to have, a significant adverse impact on marine biological diversity of areas beyond national jurisdiction, to ensure that the adverse impact is not exacerbated.</p>	<p>Previous version (22 Aug 22) for reference:</p> <p>The Conference of the Parties shall adopt an area-based management tool, including a marine protected area in areas beyond national jurisdiction to be applied on an emergency basis, if necessary, where an activity, or when a natural phenomenon or human-caused disaster has, or is likely to have, a significant adverse impact on marine biological diversity of areas beyond national jurisdiction, to ensure that the adverse impact is not exacerbated.</p> <p>The 11 July 22 draft referred to "interim or emergency measures". In the 22 Aug and 26 Aug drafts, the scope has been narrowed to "emergency measures" so as to avoid confusion over the distinction between the two terms.</p> <p>This draft also adds a specific reference to adoption of "an area-based management tool, including a marine protected area" so as to explicitly narrow the scope of these provisions.</p> <p>The previous draft treaty text (22 August 2022) referred to situations which could lead to adoption of emergency measures – (i) when an activity presents a "serious threat" to BBNJ; and (ii) when a natural phenomenon or human caused disaster has, or is likely to have, "significant adverse impact" on BBNJ. Some participants at IGC5 expressed concern that this created a dual threshold and was confusing s6(a). This approach of having a "dual threshold" is not unusual and draws on models from the UN Fish Stocks Agreement, Article 6(7) and the SPRFMO (South Pacific Regional Fisheries Management Organisation) Convention, Article 20(5).</p> <p>To address this concern, the President, in the latest draft treaty text, has retained the "significant adverse impact" threshold, while removing the reference to "serious threat".</p> <p>In the final stages of IGC5 there was disagreement between some delegations on the threshold and a suggestion that we should revert to "serious threat", or even "serious or irreversible harm" s6(a). This</p>
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		<p>was deemed not acceptable to many delegations s6(a)</p> <p>The best option at this stage is probably to maintain what is in the current President's text.</p> <p>s6(a), s9(2)(g)(i)</p> <p>s6(a)</p> <p>s6(a)</p> <p>s6(a)</p>
	<p>(a) Measures under this paragraph shall be considered necessary only if the threat or adverse impact of an activity cannot be managed in a timely manner through the application of the other provisions of this Agreement or by a relevant legal instrument or framework or global, regional, subregional or sectoral body.</p>	<p>Some delegations are concerned about how this would be implemented. In particular, what is "timely"?; how/who would judge whether a relevant IFB is effectively managing the threat or adverse impact? These issues could be addressed (to a degree) through procedures referred to in para (c).</p> <p>Delegations seem comfortable with this paragraph as drafted but I see potential for it to be opened up.</p>
	<p>(b) Measures taken 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. 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, must be reconsidered for decision at the next meeting of the Conference of the Parties following their adoption, and shall expire either upon being replaced by area-based</p>	<p>The reference in the previous text (22 Aug) to "<i>as well as</i> relevant traditional knowledge..." has been changed to "<i>where available, relevant traditional knowledge...</i>", This is an amendment made by the President to improve consistency throughout the text.</p> <p>Delegations seem comfortable with this paragraph as drafted, although at the end of IGC5.1 s6(a)</p>

	<p>management tools established in accordance with the provisions of this Agreement or at a date to be decided by the Conference of the Parties that shall not be later than two years following their adoption, whichever is earlier.</p>	<p>This is a valid point and could be rectified as follows: "...The measures shall be temporary, must be reconsidered for decision at the next meeting of the Conference of the Parties following their adoption, and shall expire either upon being replaced by area-based management tools established in accordance with the provisions of this Agreement <u>or by a relevant legal instrument or framework or global, regional, subregional or sectoral body</u> or at a date to be decided by the Conference of the Parties that shall not be later than two years following their adoption, whichever is earlier."</p>
	<p>(c) Procedures 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 first meeting. Such procedures shall be inclusive and transparent.</p>	<p>This paragraph was added to the 22 Aug 22 draft in response to questions about the procedures for establishing emergency measures and as a result of a NZ, Singapore and PSIDs text proposal at IGC5. This draft adds that procedures are to be considered and adopted by the COP "at its first meeting".</p> <p>Delegations seem comfortable with this paragraph as drafted, although there are still some questions being asked about processes, in particular how decisions would be made intersessionally.</p>

Article 20 Implementation

Para	Text	Position
		<p>Support, noting we didn't spend much time on this at IGC5.1.</p> <p>Note that square brackets on paras 4 and 5 were removed at IGC5.1. Square brackets remain on paras 3 and 6</p> <p>No text changes made at IGC5.1 apart from a minor editorial one</p>
1.	<p>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.</p>	<p>Support It seems useful and a standard provision in treaties of this nature (as individuals are not bound by international treaties unless states implement them).</p>

<p>2.</p>	<p>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.</p>	<p>Support This is a useful provision although nothing would stop Parties doing this anyway regardless.</p>
<p>[3.</p>	<p>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.]</p>	<p>Support retention but also open to having this covered in some way in the CBMT section. s6(a)</p> <p>Note that similar provisions are contained in some fisheries agreements like WCPFC and SPRFMO.</p> <p>Pre-IGC5.1 - s6(a)</p> <p>An example of where this may be relevant is where coastal states are encouraged to adopt compatible measures and that coastal SIDS has a particularly large EEZ, e.g. If ABMT monitoring required port states/coastal states to do port inspections to ensure that a protected species wasn't taken in an ABMT area this could create a large burden on SIDS if they are the nearest ports.</p>
<p>4.</p>	<p>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.</p>	<p>Support – note that square brackets were removed at IGC5.1.</p> <p>This is an important paragraph. The para could be expanded to also encourage States to strengthen relevant instruments, frameworks and bodies, where relevant, to effectively implement/operationalise them.</p> <p>Note that New Zealand also added this concept to our proposal on Article 6, submitted at IGC3.</p>
<p>5.</p>	<p>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,</p>	<p>Support – note that square brackets were removed at IGC5.1.</p> <p>This is a valuable provision. However, if it is deleted it won't preclude this happening anyway.</p>

	including a marine protected area, to adopt measures supporting the decisions and recommendations by the Conference of the Parties on area-based management tools, including marine protected areas, established under this Part.	
[6.	A Party that is not a 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, frameworks and bodies, shall not be discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.]	Support retaining this text.

Article 21 Monitoring and review

Para	Text	Position
		Support This Article was refined and improved (minor changes) at IGC5.1
1.	Parties, individually or collectively, shall 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, respectively, shall be made publicly available by the secretariat.	Support
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 the area-based management tool, including marine protected area, established under this Part.	New para during IGC5.1, based on proposal originally made by NZ at an earlier IGC. Link to objectives added I 26 Aug draft Support
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, respectively.	Support, noting this will enable the STB to review measures established by other bodies (which we support, but others may not)

<p>4.</p>	<p>The review referred to in paragraph 3 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.</p>	<p>Support</p>
<p>5.</p>	<p>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 application of precaution and] an ecosystem approach [and not using the lack of full scientific certainty as a reason for postponing precautionary measures where there are threats of serious or irreversible harm].</p>	<p>Support – note precaution concept appears here.</p>
		<p>^{s6(a)} proposal for 21(5bis) which they formally proposed late at IGC5.1 and may or may not re-raise (noting it has not been formally discussed):</p> <p>5bis. Where the Scientific and Technical Body completes the review of a marine protected area and advises that –</p> <ul style="list-style-type: none"> a) a pressure is adversely impacting the achievement of the conservation objective of the marine protected area; b) a measure identified in the management plan of the marine protected area is still needed to address the pressure; and c) the relevant body with competence to adopt the measure has not made a decision on the measure, <p>the Conference of the Parties may establish the measure. The measure thus established ceases to be in force when the relevant body makes a decision on the measure.</p>

		[A reference to this power is likely also needed in Article 19 on CoP decision-making, but we do not want to prejudge the outcome of the small group work on that article]
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Released under the Official Information Act 1982

PART IV ENVIRONMENTAL IMPACT ASSESSMENTS

Mandate
<p>To seek a treaty that:</p> <ul style="list-style-type: none"> • Effectively operationalises the existing UNCLOS rules on EIAs for all activities conducted in ABNJ in order to protect and preserve the marine environment; • Establishes thresholds, processes and guidelines for the conduct and reporting of EIAs – including cumulative impacts, adaptive management and strategic environmental assessments – drawing on existing standards and guidelines developed by international organisations and promoting transparency and compliance, s9(2)(j) <p style="text-align: center;">;</p> <ul style="list-style-type: none"> • Recognises the existing responsibilities of states and roles of regional and sectoral organisations and mechanisms for the conduct of EIAs in ABNJ; • s9(2)(j)

Article 21bis Objectives

Para	Text	Position
	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;	Support
	(b) Support the consideration of cumulative impacts and impacts in areas within national jurisdiction;	Support the cumulative effects (a key marine management issue we traditionally fail to account for). Would support the addition of transboundary impact if by transboundary they mean impacts that go from ABNJ into an adjacent country's EEZ.
	(c) Provide for strategic environmental assessments;	Support as long as clear understanding of definition and purpose of SEA is achieved.
	[(e) Ensure that activities covered by this Part are assessed and managed [to prevent significant adverse impacts, or are not permitted to proceed] [for the purpose of protecting and preserving the marine environment];]	Support. Prefer the second set of square brackets. If decision making thresholds/benchmarks are to be included, that should be in article 38.
	[(f) Build and strengthen the capacity of developing States Parties to prepare, conduct and evaluate environmental impact assessments and strategic environmental assessments in support of the objectives of this Agreement.]	Support

Article 22 Obligation to conduct environmental impact assessments

Para	Text	Position
1.	Parties shall ensure that the potential effects on the marine environment of planned activities under their jurisdiction or control, [which take place in areas beyond national jurisdiction] [which have an impact in areas beyond national jurisdiction], are assessed as set out in this Part before they are authorized.	The choice between square brackets (location-based or effects-based approach) looks like it will be resolved in favour of location-based, but on the basis of the 'bridging text' below.
[2.	On the basis of articles 204 to 206 of the Convention, Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to implement [the provisions of] this Part [and any further measures [on the conduct of environmental impact assessments] adopted by the Conference of the Parties].]	Support, but do not think "provisions of" is helpful wording. Would support the bracketed referring to other measures adopted by COP.
	<p>Proposed 'bridging text' for location and impact-based approaches (note that this is not in the updated text and this would be in place of the 3 options below, and would see "with impacts" deleted throughout the part):</p> <p>When a planned activity that is to be conducted in marine areas within national jurisdiction [is likely to have more than a minor or transitory effect][may cause substantial pollution of or significant and harmful changes to the marine environment] in areas beyond national jurisdiction, the Party with jurisdiction or control over such activity shall ensure that an environmental impact assessment of such activity is conducted in accordance with this Part or an [environmental impact] assessment is conducted under the Party's national processes. A Party conducting such an assessment under its national process shall</p> <p>(a) Notify the [Scientific and Technical Body][clearing-house mechanism] in a timely manner so as to provide an opportunity for the Scientific and Technical Body to provide comments during the public consultation</p>	<p>Support bridging text and work with informal drafting group to refine.</p> <p>Note link to outstanding question of applicable threshold/s.</p>

	<p>process [or at another suitable juncture in its national process].</p> <p>(b) Ensure that the activity is monitored in a manner consistent with the requirements of its national process ; and</p> <p>(c) Ensure that the environmental impact assessment reports and any relevant monitoring reports are published through the clearing-house mechanism.</p>	
OPTION I :		
3.	<p>When Parties determine that a planned activity in marine areas within national jurisdiction is likely to have impacts in areas beyond national jurisdiction, Parties shall publish the reports of the results of any environmental impact assessments prepared under their national legislation, including through the clearing-house mechanism.</p>	
4.	<p>A Party may extend the application of this Part to planned activities under its jurisdiction or control, which take place in marine areas within national jurisdiction and are likely to have impacts in areas beyond national jurisdiction. In that case, it shall notify the [Secretary-General/depositary] accordingly, at the time of expressing its consent to be bound by this Agreement or at any time thereafter.</p>	
OPTION II :		
3.	<p>Where a planned activity that is to be conducted in marine areas within national jurisdiction is likely to have more than a minor or transitory effect in areas beyond national jurisdiction, the Party with jurisdiction or control over such activity shall ensure that an environmental impact assessment of such activity is conducted in accordance with this Part or an assessment is conducted of such activity under the Party's national legislation that is substantively equivalent to the assessment required under this Part. The Party shall:</p>	
	<p>(a) Notify the Scientific and Technical Body in a timely manner so as to provide an opportunity for such body to provide comments during the public consultation process;</p>	

	(b) Ensure that the activity is subject to monitoring, reporting and review in the manner as provided in this Part;	
	(c) Ensure that all reports regarding the activity are made public in the manner provided in this Part.	
	OPTION III:	
[3.	Where a planned activity falling under the jurisdiction of a Party has the potential to have impacts/effects in areas beyond national jurisdiction and meets or exceeds the threshold criteria for the conduct of environmental impact assessments set out in this Part, it shall be subject to an environmental impact assessment that is substantively equivalent to the one required under this Part. The Party may request the Conference of the Parties to provide advice and assistance for conducting environmental impact assessment, as well as in determining if a planned activity under its jurisdiction may proceed as provided in article 38 paragraph 4, and monitoring, reporting and review of the authorized activities.]	

Article 23 Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

Para	Text	Position
1.	The Conference of the Parties shall develop mechanisms for the Scientific and Technical Body to consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment.	Support.
2.	Parties shall promote the use of environmental impact assessments, [and [global minimum] standards] and guidelines under this Part, in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members.	Support. "global minimum standards" is unlikely to be agreed as some read this as meaning legally binding standards. This won't be acceptable for some delegations. Not a redline for us to include "standards" as standards could be set in guidelines.
3.	[Global minimum standards and] [g][G]uidelines for the conduct of environmental impact assessments of activities [with impacts] in areas beyond	Support. See comment on "standards" above.

	<p>national jurisdiction [by Parties to this Agreement] under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be developed by the Scientific and Technical Body through consultation or collaboration with these instruments, frameworks and bodies, for consideration and adoption by the Conference of the Parties. [These global minimum standards shall be set out in an annex to this Agreement.] These guidelines shall be updated periodically. Parties shall promote the adoption and implementation of these [global minimum standards and] guidelines in the conduct of environmental impact assessments of activities for areas beyond national jurisdiction that fall under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members.</p>	
<p>4.</p>	<p>It is not necessary to conduct an environmental impact assessment of a planned activity [with impacts] in areas beyond national jurisdiction provided that [the Party with jurisdiction or control over the planned activity] [the Scientific and Technical Body] [, following consultation with the relevant legal instrument or framework or relevant global, regional, subregional or sectoral body,] determines that:</p>	<p>Support determination by the party with jurisdiction or control – not the STB. Consultation with relevant IFB should not be necessary if the party is making the determination.</p>
	<p>Option A: (a) 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)(i) The assessment already undertaken for the planned activity is [functionally] [substantively] equivalent [and comparably comprehensive, including with respect to such elements as the assessment of cumulative impacts] 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, when complied with, prevent or mitigate or manage potential impacts below the threshold for environmental</p>	<p>Prefer Option A. This is the option that small group discussions have focused on.</p> <p>Note the need to ensure comfort with (b)(ii) once the BBNJ EIA threshold/s have been decided.</p>

	impact assessments under this Part, and have been complied with.	
	Option B: The activity is being conducted in accordance with rules and guidelines appropriately established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies that require environmental impact assessments, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.	Do not favour this option.
[5.	Where a planned activity falling under the jurisdiction of a Party has the potential to have impacts/effects in areas beyond national jurisdiction and meets or exceeds the threshold criteria for the conduct of environmental impact assessments set out in this Part, it shall be subject to an environmental impact assessment that is substantively equivalent to the one required under this Part. The Party shall:	If bridging text in article 22 is adopted, this may be unnecessary.
	(a) Submit the impact assessment to the Scientific and Technical Body for its input and recommendations;	
	(b) Ensure that approved activities are subject to monitoring, reporting and review in the same manner as provided in this Part;	
	(c) Ensure that all reports are made public in the manner provided in this Part.]	
6.	A Party that has conducted an environmental impact assessment under a relevant legal instrument or framework or a relevant global, regional, subregional or sectoral body for a planned activity [with impacts] in areas beyond national jurisdiction, shall ensure that the environmental impact assessment report is published through the clearing-house mechanism.	Support.
7.	Unless the planned activities that meet the criteria set out in paragraph 4 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.	Support.

Article 24 Threshold[s] and factors for environmental impact assessments

Para	Text	Position
		<p>Note: This will be one of the most contentious points in this Part. s9(2)(j)</p>
1.	<p>Option A: <i>Option A.1:</i> When a Party [proposes] [plans] any activity that may have an effect on the marine environment, it shall conduct a screening to determine the likely effects on the marine environment:</p> <p>(a) If it is determined, on the basis of the screening, that the planned activity is likely to have less than a minor or transitory effect on the marine environment, no further assessment under the provisions of this Part shall be required;</p> <p>(b) If it is determined, on the basis of the screening, that the planned activity is likely to have a minor or transitory effect or greater on the marine environment or the effects are unknown or poorly understood, an environmental impact assessment in respect of such activity shall be conducted in accordance with the provisions of this Part.</p> <p>1 bis. Prior to the planned activity being authorized to proceed under this Part, data, information and analysis that supports the determinations made in paragraph 1 shall be submitted to the Scientific and Technical Body. The Scientific and Technical Body shall review the data, information and analysis submitted to support the determinations made under paragraph 1, subparagraph (a). Parties shall publish and communicate reports detailing the basis of the determinations made in paragraph 1, [which may be made] through the clearing-house mechanism.</p> <p><i>Option A.2:</i> When Parties have reasonable grounds for believing that planned</p>	<p>Prefer A.2</p> <p><i>Option A.1</i> proposes the 'minor or transitory' threshold for determining whether an EIA will be conducted. It would lower the UNCLOS 206 threshold that we see as the baseline threshold for the conduct of an EIA.</p> <p>This option also proposes screening for <i>all</i> activities, which is an impractical proposal.</p> <p>Addition of "unknown" or "poorly understood" could be a useful addition here and elsewhere as it builds precaution into the assessment.</p> <p>s6(a), s9(2)(j)</p> <p>Preferred sub-option of Option A.</p>

	activities under their jurisdiction or control:	There is a missing step in this option, in which the results of screening may confirm that the activity will have only a minor or transitory effect and so an EIA is <i>not</i> conducted.
	(a) Are likely to have more than a minor or transitory effect on the marine environment, they shall, as far as practicable, conduct an initial screening, as referred to in article 30, of the potential effects of such activities on the marine environment in the manner provided in this Part; or	A more sensitive threshold to trigger the screening step is a potential landing zone (in combination with the call-in mechanism). "As far as practicable" language potentially creates room for EIAs to be conducted poorly. Suggest deletion.
	(b) May cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, [conduct] [ensure that] an environmental impact assessment [is conducted] on the potential effects of such activities on the marine environment and shall submit the results of such assessment in the manner provided in this Part.	Support this threshold. We can be open to either "[conduct]" or "[ensure that... conducted]"
	Option B: In accordance with article 206 of the Convention, when Parties have reasonable grounds for believing that planned activities under their jurisdiction or control in areas beyond national jurisdiction may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, [individually or collectively,] as far as practicable, assess the potential effects of such activities on the marine environment.	Support this option, though open to ways to introduce more sensitive thresholds and triggers into the EIA process.
2.	[Environmental impact assessments under this Agreement shall be conducted in accordance with the threshold[s] and processes set out in this Part, including consideration of the following non-exhaustive [criteria] [factors]] [When determining whether planned activities under their jurisdiction or control meet the threshold in paragraph 1, Parties shall consider the following non-exhaustive factors]:	This chapeau does not really work with the following list, which is more around the things that should be considered within both screening and an environmental impact assessment. Consider rewording along the lines of: <i>Environmental impact assessments under this Agreement shall be conducted in accordance with the threshold and criteria set out in this Part, and consider the following non-exhaustive criteria, as well as in accordance with the processes set out in this Part:</i> Otherwise, can support.
	(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 of the activity and the potential impacts in areas within national jurisdiction, taking into account the presence of any other reasonably foreseeable activity in an area within or beyond national jurisdiction with potential [for] cumulative impacts;	
	(f) Other relevant ecological or biological criteria	

DELETED Article 25

DELETED Article 26

DELETED Article 27

DELETED Article 28

DELETED Article 29

Article 30 Process for environmental impact assessments

Para	Text	Position
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 to determine whether an environmental impact assessment is required in respect of a planned activity under its jurisdiction or control in accordance with article 24 [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 information to support that conclusion publicly available through the clearing-house mechanism under this Agreement.	1(a) needs a reference to best available science etc.—as proposed in 1(a)(iii). Or rely on reference to BAS in general principles and approaches. s9(2)(j)

<p>(ii) A Party may register its [views] [concerns] on a decision published in accordance with subparagraph i with the [Party that made the determination] [and the] [Scientific and Technical Body] within [insert number] days of the publication.</p> <p>(iii) The Party that made the determination under (i) shall consider the [views][concerns] provided under (ii) and may review its determination.</p> <p>[(iv) Upon consideration of the [views] [concerns] registered by a Party under (ii), the Scientific and Technical Body [shall] review the decision [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.]</p> <p>[(v) The Party that made the determination under (i) shall consider any recommendations by Scientific and Technical Body</p>	<p>Support addition of '[on the basis of the best available science and scientific information and, where available, relevant traditional knowledge of indigenous peoples and local communities]'</p>
<p>(b) <i>Scoping</i>. Parties shall ensure that [identify] key environmental [, social, economic, cultural] impacts and other relevant issues, including potential cumulative impacts, [impacts in areas within national jurisdiction] [and] [[transboundary impacts] as well as alternatives to be included in the environmental impact assessments that shall be conducted under this Part [are identified]. The scope shall be defined [after considering public comments and] by using the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities.]</p>	<p>Agree with adding social and cultural impact—it can only help biodiversity.</p>
<p>(c) <i>Impact assessment and evaluation</i>. 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</p>	
<p>(d) <i>Mitigation, prevention and management of potential adverse effects</i>.</p> <p>(i) Parties shall [ensure that] [identify] [analyze] measures to prevent, mitigate, and manage [(or offset)] potential adverse</p>	

	<p>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].</p> <p>(ii) Parties shall ensure that, where appropriate, these measures are incorporated into an environmental management plan;</p>	
	(e) Public notification and consultation in accordance with article 34;	
	(f) Preparation, consideration, review and publication of an environmental impact assessment report in accordance with article 35;	
2.	Parties may conduct joint environmental impact assessments, in particular for activities under the jurisdiction or control of [small island] developing States.	
	OPTION I:	
[3.	A Party may designate a third party to [conduct] [assist with the conduct of] an environmental impact assessment required under this Agreement. Such a third party may be drawn from the [pool] [roster] of experts created pursuant to paragraph 4 below. Environmental impact assessments conducted by such a third party must be submitted to the Party for review and decision-making.]	
[4.	A pool [roster] of experts [may] [shall] be [identified by] [created under] the Scientific and Technical Body. Parties with capacity constraints may [commission] [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.]	
	OPTION II:	
3.	A roster of experts [may] [shall] be [identified by] [created under] the Scientific and Technical Body. Parties with capacity constraints may [commission] [request advice and assistance from] those experts to conduct environmental impact assessments for a planned activity under their jurisdiction or control. The Party that [commissioned] [requested the advice and assistance] shall [ensure that such environmental impact assessments are submitted to the Party for review and decision-making] [forward such environmental impact assessments for	

<p>review by the Scientific and Technical Body and decision-making by the Conference of the Parties.</p>	
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DELETED Article 31

DELETED Article 32

DELETED Article 33

Article 34 Public notification and consultation

Para	Text	Position
1.	<p>Parties, shall ensure timely public notification of planned activities under their jurisdiction or control, including, as appropriate, through the secretariat planned and effective, time-bound opportunities for stakeholder participation throughout the environmental impact assessment process, including through the submission of comments, before a decision is made whether to authorize the activity.</p>	
2.	<p>Option A: Stakeholders in this process include potentially affected States, [in particular adjacent coastal States,] [Indigenous Peoples and local communities with relevant traditional knowledge,] relevant global, regional, subregional and sectoral bodies, non-governmental organizations, the general public, academia, scientific experts [and] [affected parties,] [and] [communities and organizations that have special expertise or jurisdiction,] [and] [interested Parties] .</p>	<p>Support, including much of the square-bracketed text.</p>
	<p>Option B: [... to all relevant stakeholders, including all States, with an emphasis on the States potentially most affected. Such States shall be determined taking into account the nature and potential effects on the marine environment of the planned activity and shall include coastal States whose exercise of sovereign rights for the purpose of exploring and exploiting, and conserving and managing natural resources may reasonably be believed to be affected by the activity, and States that carry out, in the area of the planned activity, human activities that may</p>	

	reasonably be believed to be affected, including economic activities;]	
3.	Public notification and consultation shall [, in accordance with article 48 bis, paragraph 3, be transparent and inclusive, conducted in a timely manner [, and targeted and proactive [, where practicable,] when involving adjacent small island developing States].	Support.
4.	Substantive comments received during the consultation process[, including from adjacent coastal 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. Parties shall make public the comments received and the responses or descriptions of the manner in which they were addressed.	Support – including coastal state and transboundary impact references, though need to take into account what others are saying about these.
[5.	The Scientific and Technical Body may conduct further public consultation on reports that it is requested to review under this Agreement.]	Do not support – this should be the State's responsibility
[6.	In cases where the [planned] [proposed] activities affect areas of the high seas that are entirely surrounded by the exclusive economic zones of States, Parties shall:	Support – s9(2)(j)
	(a) Maintain targeted and proactive consultations, including prior notification, with such surrounding States;	Support – s9(2)(j)
	(b) Consider the views and comments of those surrounding States on the planned activities and provide written responses specifically addressing such views and comments [, and revise the proposed activities accordingly].]	s9(2)(j)
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.	Support
8.	[Additional procedures] [Guidance] may be developed by the Conference of the Parties to facilitate consultation at the international level.	Support

Article 35 Environmental impact assessment reports

Para	Text	Position
1.	Parties shall ensure the preparation of an environmental impact assessment report for any such assessment undertaken pursuant to this Part.	Support.
2.	Where an environmental impact assessment is required in accordance with this Part, the environmental impact assessment report shall include, as a minimum, the following 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, [impacts in areas within national jurisdiction][transboundary impacts]], a description of potential prevention, mitigation and management measures, 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.	Support. s9(2)(j) "...information of the public consultation process" should probably be "outcomes/results of the public consultation undertaken including how comments have been addressed" or similar. Think this should more clearly refer to the inclusion of an environmental management plan that specifies the measures that will be taken to prevent, remedy or mitigate effects. Agree with adding references to cumulative impacts and impacts within national jurisdiction.
[3.	Draft environmental impact assessment reports [for activities deemed through the screening as likely to have more than minor or transitory impact] prepared pursuant to this Agreement shall be considered and reviewed by the Scientific and Technical Body.]	
[4.	[Before proceeding with a recommendation to the Conference of the Parties under article 38, paragraph 1, the] [The] Scientific and Technical Body may recommend rectifications to the Party. [The Party may require the Scientific and Technical Body, at any time, to make a recommendation to the Conference of the Parties.]]	
5.	Parties [and the Scientific and Technical Body] 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 and reviewed by the Scientific and Technical Body, on the basis of the practices, procedures and	

	knowledge acknowledged 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 24 and 30, shall be considered and reviewed periodically by the Scientific and Technical Body, on the basis of the practices, procedures and knowledge acknowledged under this Agreement, for the purpose of developing guidelines, including the identification of best practices.	

DELETED Article 36

DELETED Article 37

Article 38 Decision-making

Para	Text	Position
		<p>The most divisive issue in this chapter. s9(2)(j)</p> <p>A more likely landing zone is that decision making stays with States, but with higher degrees of transparency, accountability, monitoring and review and potentially an expanded call-in mechanism to apply beyond the screening stage.</p>
1.	<p>Option A: A Party under whose jurisdiction or control a planned activity falls shall be responsible for determining if it may proceed.</p> <p>Option B: A Party under whose jurisdiction or control a planned activity falls shall be responsible for determining if it may proceed when the proposed activity has been determined to likely have equal to or less than a minor or transitory effect on the marine environment under article 24, or require an environmental impact assessment under article 23, paragraph 5.</p>	<p>Support this as a baseline.</p>

	<p>1bis. The Conference of the Parties shall be responsible for determining whether a planned activity under the jurisdiction or control of a Party, which has been determined to likely have greater than a minor or transitory effect on the marine environment under article 24, or require an environmental impact assessment under article 30, may proceed, in accordance with the following procedural requirements:</p>	
	<p>(a) The environmental impact assessment report shall be submitted for review to the Scientific and Technical Body, which shall, taking into due account inputs received during public consultation, review the report and make a recommendation to the Conference of the Parties on whether the planned activity under the jurisdiction or control of a Party should proceed;</p>	
	<p>(b) A revised environmental impact assessment report may be submitted to a panel of experts appointed by the Scientific and Technical Body for reconsideration where the Scientific and Technical Body has recommended that the planned activity under the jurisdiction or control of a Party should not proceed.</p>	
<p>2.</p>	<p>When determining whether the planned activity may proceed, a Party shall take full account of the results of an environmental impact assessment conducted in accordance with this Part. [No decision allowing the planned activity under the jurisdiction or control of a Party to proceed shall be made where the environmental impact assessment indicates that the planned activity under the jurisdiction or control of a Party would have significant adverse impacts on the environment [which cannot be mitigated].]</p>	
<p>3.</p>	<p>[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.</p>	
<p>4.</p>	<p>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.</p>	

Article 39 Monitoring of impact of authorised activities

Para	Text	Position
	[In accordance with article 204 of the Convention,] Parties shall, using recognized scientific methods, keep under surveillance the [effects] [impacts] of any activities in areas beyond national jurisdiction which they permit or in which they engage in order to determine whether these activities are likely to [pollute] [have adverse impacts on] the marine environment. In particular, Parties shall monitor the [environmental, social, economic, cultural, human health and other related] impacts [on the marine environment] of an authorized activity under their jurisdiction or control in accordance with the conditions set out in the approval of the activity.	

Article 40 Reporting on impacts of authorised activities

Para	Text	Position
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 39.	
2.	Reports shall be made public, including through the clearing-house mechanism[:]	
	[(a) The Scientific and Technical Body may request independent consultants or an expert panel to undertake a further review of the reports submitted to [it][the clearing-house mechanism];]	
	[(b) Other States, and the bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, in accordance with their respective mandates, may analyse the reports and highlight cases of non-compliance, any lack of information or other shortcomings, and provide recommendations regarding the environmental assessment and review].	
3.	Reports [shall] [may] be considered by the Scientific and Technical Body for the purpose of developing guidelines on the monitoring of impacts of authorized activities, including the identification of best practices.	

Article 41 Review of authorized activities and their impacts

Para	Text	Position
1.	Parties shall ensure that the [environmental] impacts of the authorized activity monitored pursuant to article 39 are reviewed.	
2.	<p>Should the monitoring required under article 39 identify significant adverse impacts that were not foreseen in the environmental impact assessment[, in nature or severity, or if any of the conditions set out in the approval of the activity are breached,] the Party [with jurisdiction or control over] [which authorized] the activity [or the Scientific and Technical Body] shall review its decision authorizing the activity [and, as appropriate:</p> <p>[(a) Notify the Conference of the Parties, other Parties and the public, including through the clearing-house mechanism;]</p> <p>[(b) Halt the activity;]</p> <p>[(c) Require the proponent to propose and implement measures to mitigate and/or prevent those impacts;]</p> <p>[(d). Evaluate and implement measures proposed under subparagraph (c) [, after which the Scientific and Technical Body shall recommend whether the activity should continue]]].</p> <p>2 bis. On the basis of the recommendation of the Scientific and Technical Body, the Conference of the Parties shall decide whether the activity may resume.</p>	
[3.	On the basis of the recommendation of the Scientific and Technical Body, the Conference of the Parties shall decide whether the activity may resume.]	
4.	In the case of disagreements in respect of monitoring, the Parties concerned shall seek resolution by non-adversarial means, including [referring the matter to the Implementation and Compliance Committee to facilitate resolution] [diplomatic means [, without [affecting] recourse to judicial or non-judicial bodies]].]	
5.	Relevant stakeholders, including all States, [in particular adjacent coastal States, including small island developing States,] [with an emphasis on the States potentially most affected as determined under article 34, paragraph 1, subparagraph a,] shall be kept informed through the clearing-house mechanism of [and consulted actively, as appropriate, in] the monitoring, reporting and review	

	processes in respect of an activity approved under this Agreement.	
6.	Parties shall publish, including in the clearing-house mechanism:	
	(a) Reports on the review of the environmental impacts of the authorized activity;	
	(b) Decision-making documents, when a Party has reviewed its decision authorizing the activity.	

Article 41 bis Guidance to be developed by Scientific and Technical Body

Para	Text	Position
1.	The Scientific and Technical Body [shall] [may] develop [standards and guidelines] [guidance] [guidelines] for consideration and adoption by the Conference of the Parties on:	
	(a) The determination of whether the threshold for the conduct of an environmental impact assessment under article 24 has been reached or exceeded for planned activities, including on the basis of the non-exhaustive factors set out in article 24, paragraph 2;	
	(b) The assessment of cumulative impacts in areas beyond national jurisdiction and how those impacts should be taken into account in the process for conducting environmental impact assessments;	
	(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 process for conducting environmental impact assessments;	
	(d) The public notification and consultation process under article 34, 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 35, including best practices;	
	[(f) The nature and extent of new information or changed circumstances that would warrant a supplemental environmental impact assessment;]	
	(g) The monitoring of and reporting on the impacts of authorized activities as set out	

	in articles 39 and 40, including the identification of best practices; and	
	(h) The conduct of strategic environmental assessments.	
2.	The Scientific and Technical Body may also develop [standards and guidelines] [guidance] [guidelines] for consideration and adoption by the Conference of the Parties, including on:	
	(a) An indicative non-exhaustive list of activities that [by default demand] [normally] [require] [or] [do not require] an environmental impact assessment that shall be periodically updated through consultation and collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies;	
	(b) The conduct of environmental impact assessments [by Parties to this Agreement] in areas identified under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies as requiring protection or special attention, through consultation or collaboration with these instruments, frameworks and bodies, in accordance with article 23, paragraph 1.	

Article 41 ter Strategic environmental assessments

Para	Text	Position
1.	Parties, individually or in cooperation with other Parties, [[may] [shall] conduct] [shall consider conducting] strategic environmental assessment for plans and programmes relating to activities under their jurisdiction or control, to be conducted in areas beyond national jurisdiction, to assess the potential effects of that plan or programme, as well as alternatives, on the marine environment.	
2.	The Conference of the Parties [may] [shall] 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 paragraph 1, 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.	

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PART V CAPACITY-BUILDING AND TRANSFER OF MARINE TECHNOLOGY

Mandate
<p>To support a treaty that:</p> <ul style="list-style-type: none"> • Facilitates the full and effective participation of developing countries – including Pacific Island states – in the conservation and sustainable use of marine biodiversity in ABNJ and in the sharing of knowledge from MGRs; • Strengthens the implementation and coordination of capacity building; and • s9(2)(j)

Key points	
<i>Approach</i>	<ul style="list-style-type: none"> • We don't have specific proposals at this time and are keen to hear what others think about the best ways to ensure meaningful and effective CBTMT.
General	<ul style="list-style-type: none"> • We seek CBTMT provisions that are meaningful and effective, without being onerous and complicated. • We want to see capacity building mainstreamed across the agreement for better effectiveness. • New Zealand is situated in a neighbourhood of small island developing states, closely connected to the areas beyond national jurisdiction which surround them. From our perspective, a successful capacity building approach will take into account the specific needs of these "large ocean states", and others wishing to participate in the conservation and sustainable use of biodiversity in ABNJ. • To this end, we are interested in hearing others' views on areas where assistance might be required and their preferences for modalities to help deliver capacity in those areas.

CBTMT Chapter challenges and opportunities		
Challenge/issue	Outline and broad positions	Intersessional engagement
<u>Recognition of special circumstances of SIDS</u> – Article 43bis – aims to ensure disproportionate burden of implementation is not transferred to them	Proposed by AOSIS following IGC3 s6(a) s9(2)(j)	s6(a)
<u>Mandatory vs voluntary capacity building</u> – Article 44	This is the main outstanding issue in this chapter s6(a)	s6(a)

<p><u>Needs assessments</u> – Article 44 – how and by whom are they funded?</p>	<p>New Zealand supports use of needs assessments and is open to best mechanism for this. s6(a)</p> <p>There is a question about who conducts needs assessments – state? clearing house mechanism? other?</p> <p>s6(a)</p>	<p>s6(a)</p>
<p><u>Funding mechanism,</u> and whether voluntary or mandatory – Article 52</p>	<p>New Zealand prefers use of existing mechanisms to the establishment of new ones.</p> <p>s9(2)(j)</p> <p>New Zealand has heard the concerns of developing states about current funding arrangements, and supports the intent to improve predictability of funding arrangements under BBNJ with the mechanism that best achieves this. We recognise that this has led to a debate about voluntary and mandatory funding, and that further discussions are needed on what actually needs to go into the treaty to achieve sustainable funding arrangements.</p> <p>s6(a)</p> <p>New Zealand has agreed to this in the UNFCCC context, so would not rule it out for BBNJ. s9(2)(j)</p> <p>New Zealand is open to the idea of the GEF being used as the financial mechanism for BBNJ. The Conference of the Parties could provide guidelines to the GEF on spending, as is done for the Convention on Biodiversity. We welcome others’ views about how this could work best.</p>	
<p><u>Modalities</u></p>	<p>Prior to IGC4 the EU, supported by AOSIS, had proposed combining Arts 44 and 45. If this is raised again [unlikely] NZ could support as long as it was</p>	

	clear which provisions are only relevant to TMT, which could be accomplished with clear drafting.	
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Article 42 Objectives

Para	Text	Position
	The objectives of this Part are to:	Somewhat circular discussions at IGC5 about whether or not to include/reinsert refs to CBTMT in the objectives section of other Parts. NZ is flexible as long as the language used is consistent throughout.
	(a) Assist Parties, in particular developing States Parties, in implementing the provisions of this Agreement, to achieve its objectives;	At IGC3 PSIDS/Tuvalu suggested adding "particularly small island states and least developed countries". If proposed again, NZ to support.
	(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, taking into account the special circumstances of small island developing States, through capacity-building and the transfer of marine technology under this Agreement in achieving the objectives in relation to: (i) Marine genetic resources, including the sharing of benefits, as reflected in article 7; (ii) Measures such as area-based management tools, including marine protected areas, as reflected in article 14;	s6(a) "Listing of states" is the subject of small group discussions and is better seen as a cross-cutting issue (as is CBTMT to some extent). s6(a)

(iii) Environmental assessments, as reflected in article 21bis.	
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Article 43 Cooperation in capacity-building and transfer of marine technology

Para	Text	Position
1.	Parties shall cooperate, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, to assist Parties, in particular developing States Parties, in achieving the objectives of this Agreement through capacity-building and the development and transfer of marine technology.	
2.	In providing capacity-building and the transfer of marine technology under this Agreement, Parties shall cooperate at all levels and in all forms, including through partnerships with and involving all relevant stakeholders, such as, where appropriate, the private sector, civil society, Indigenous Peoples and local communities and holders of traditional knowledge, as well as through strengthening cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.	At IGC5.1 - s6(a)
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, as well as the special circumstances of small island developing States. Parties shall ensure that the provision of capacity-building and the transfer of marine technology is not conditional on onerous reporting requirements.	Discussion at IGC4 that this was a general duty to cooperate and that the special needs of states listed (as well as non-onerous reporting requirements) would be better set out in a separate article. However this was not a subject of discussion at IGC5 and it would probably not be useful to be proactive.

Article 44 Modalities for capacity-building and the transfer of marine technology

Para	Text	Position
1.	Parties [within their capabilities], shall ensure capacity-building for, and shall cooperate to ensure the transfer of marine technology to, developing States Parties, taking into account the special circumstances of small island developing States, that need and request it, in accordance with the provisions of this Agreement.	<p>The trickiest article to land. Subject of extensive small group work. The text from the WG is "Developed States Parties and other Parties, within their capabilities, shall ensure capacity-building for, s6(a)</p> <p style="text-align: center;">the transfer of marine technology to, Parties that need and request it, in particular developing states parties, in accordance with the provisions of this Agreement." NZ's strong preference is to retain "within their capabilities".</p> <p>s6(a), s9(2)(j)</p> <p>Biotechnology – cleaner to include this in the definition of "marine technology" in Art. 1, rather than separately in the text. Only raise this view if it becomes an issue and others raise it first. s6(a)</p> <p>Reference: CBD.</p>
2.	Parties shall provide, within their capabilities, resources to support such capacity-building and the transfer of marine technology, and to facilitate access to other sources of support, in accordance with their national policies, priorities, plans and programmes.	<p>s6(b)(i)</p> <p style="text-align: center;">This was accepted in the small group discussions.</p>
3.	Capacity-building and the transfer of marine technology should be a country-driven, transparent, effective, and iterative process that is participatory, cross-cutting and gender-responsive. It shall build upon, as appropriate, and not duplicate existing programmes and be guided by lessons learned, including those from capacity-building and the transfer of marine	

	<p>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.</p>	
<p>4.</p>	<p>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, 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.</p>	<p>NZ supports needs assessment and open to others' views as to the mechanism. See value in having regional mechanism but coordinated at the global level (e.g. guidelines).</p> <p>s9(2)(j)</p> <p>s6(a)</p>

Article 45 Modalities for the transfer of marine technology

Para	Text	Position
<p>1.</p>	<p>Parties [, within their capabilities,] shall cooperate to ensure that transfer of marine technology undertaken under this Agreement takes place on fair and most favourable terms, including on concessional and preferential terms, in accordance with mutually agreed terms and conditions, and the provisions of this Agreement.</p>	<p>s6(b)(i)</p>

		<p>s6(b)(i)</p> <p>References:</p> <p>International treaty on plant genetic resources 13.2(b)(iii) "fair and most favourable terms".</p> <p>IOC guidelines on TMT Part B - "transfer of marine technology should be conducted on fair and reasonable terms and conditions."</p> <p>UNCLOS 266 - "fair and reasonable terms and conditions".</p>
[2.	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, including through the provision of incentives to enterprises and institutions.]	s6(a)

3.	The transfer of marine technology shall be carried out with due regard for all legitimate interests, including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology.	See above discussion no 45(1). Need to ensure IP rights are protected.
4.	Marine technology transferred pursuant to this Part shall be appropriate, relevant and, to the extent possible, be 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.	Reformulated in small group to split out “appropriate” and “relevant” which should always apply from “reliable, affordable, up to date, environmentally sound and available in an accessible form” which are more subjective and don’t always apply. Don’t want to rule out the ability to transfer slightly outdated tech which might still be useful. General agreement on this.

Article 46 Types of capacity-building and transfer of marine technology

Para	Text	Position
1.	In support of the objectives set out in article 42, the types of capacity-building and transfer of marine technology may include, and are not limited to, support for the creation or enhancement of the human, scientific, technological, organizational, institutional and resource capabilities of Parties, such as:	<p>s6(a), s6(b)(i)</p> <p>Eventual small group agreement on inclusion of a reference to financial sources.</p>

	(a) The sharing of relevant data, information, knowledge and research results;	This list largely agreed. s6(a), s6(b)(i)
	(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 local communities, as appropriate;	
	(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 resources and technical expertise through exchanges, research collaboration, technical support, education and training, and the transfer of technology;	
	(f) The development and sharing of manuals, guidelines and standards;	
	(g) The development of technical, scientific and research and development programmes;	
	(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 transfer of marine technology identified in this article are elaborated in annex II.	Fine. Annex 2 was removed following IGC4 but was reinserted in IGC5. The list of CBTMT to be provided in the annex is only indicative so this is an area where developed states have shown flexibility. Developing states prefer it for reasons of specificity.
3.	The Conference of the Parties, taking account of the recommendations of the capacity-building and transfer of marine technology committee, shall review, assess, and further develop and provide guidance on the indicative and non-exhaustive list of types of capacity-building and transfer of marine technology elaborated in annex II periodically, as necessary, to reflect technological progress and innovation and to respond and adapt to the evolving needs of States, subregions and regions.	Fine. s6(a), s6(b)(i) Eventually agreed in the small group to leave as-is. s6(a) This was co-sponsored by CANNZ but is not in the latest version of the text.

Article 47 Monitoring and Review

Para	Text	Position
	<p>This section sets up fairly granular M&R but it is largely considered settled text. NZ intervened in the first week on the level of detail and got support across WEOG but the developing states strongly prefer specificity (see overview comment).</p> <p>NZ view on CBTMT M&R is that this should be on whether the CBTMT provided is facilitating effective implementation of the agreement (so at a higher level rather than being down in the weeds at the activity level). CBTMT M&R is connected here back to needs assessments. NZ is open to M&R being managed by a subsidiary body on implementation as in CBD. NZ should also support a role for the COP in reviewing the effectiveness of CBTMT under this agreement, rather having states do this separately and voluntarily.</p> <p>Prior to IGC4 WWF proposed calling this Article "reporting, monitoring, and review" and strengthening reporting requirements. They argued that without mandatory reporting, reviews become an impossible exercise as there is no evidence.</p> <p>If/when a further revised text is issued, review this section against the roles and powers of any new financial mechanism/committee.</p>	
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 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 least developed countries in accordance with article 44, paragraph 4;	Support. s9(2)(j)
	(b) Reviewing the support required, provided and mobilized, and gaps in meeting the assessed needs of developing States Parties in relation to this Agreement;	
	(c) Identifying and mobilizing funds under the financial mechanism 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, progress and effectiveness of capacity-building and transfer of marine technology	s6(a)

	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, to strengthen their implementation of the Agreement.	
3.	Monitoring and review shall be carried out by the capacity-building and transfer of marine technology committee under the guidance of the Conference of the Parties.	
4.	In supporting the monitoring and review of capacity-building and the transfer of marine technology, Parties shall submit reports in a format and at such intervals to be determined by the Conference of the Parties, on the recommendation of the capacity building and transfer of marine technology committee, including, where applicable, inputs from regional and subregional committees on capacity-building and the transfer of marine technology, which should be made publicly available. Parties shall ensure that reporting requirements for Parties, in particular developing States Parties, are streamlined and not onerous in any way, including in terms of costs and time requirements.	s6(a) Could support a role for the COP in providing guidance on/templates for reporting.

Article 47 bis Capacity building and the transfer of marine technology

Para	Text	Position
1.	A capacity-building and transfer of marine technology committee is hereby established.	Developed states preference for COP to do this, which was one of three options in the first IGC5 text. CANZ also expressed support for this function to be fulfilled by the implementation and compliance committee. Ultimately however this is an area where the landing zone is a committee – this is not a red line for anyone and is generally considered settled.
2.	The committee shall consist of members possessing appropriate qualifications who serve in their expert capacity, nominated by Parties and elected by the Conference of the Parties, taking into account gender	s6(a), s6(b)(i)

	<p>balance and equitable geographic distribution, and providing for representation on the committee from the least developed countries and small island developing States. The terms of reference and modalities for the operation of the committee shall be determined by the Conference of the Parties.</p>	<p>s6(a), s6(b)(i)</p> <p>s6(a), s6(b)(i)</p>
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		s6(a), s6(b)(i)
3.	The Conference of the Parties shall consider the reports and recommendations of the committee on capacity-building and the transfer of marine technology and take appropriate action.	s6(a), s6(b)(i) But not a major issue.

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PART VI INSTITUTIONAL ARRANGEMENTS

Article 48 Conference of the Parties

Para	Text	Position
1.	A Conference of the Parties is hereby established.	
2.	The first meeting of the Conference of the Parties shall be convened by the Secretary-General of the United Nations no later than one year after the entry into force of this Agreement. Thereafter, ordinary meetings of the Conference shall be held at regular intervals to be determined by the Conference at its first meeting.	Support.
3.	The Conference of the Parties shall by consensus adopt at its first meeting rules of procedure for itself and its subsidiary bodies, financial rules governing its funding and the funding of the secretariat and any subsidiary bodies, and thereafter rules of procedure and financial rules for any further subsidiary body that it may establish. 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.	<p>Support. However, when it comes to decision making, we would prefer that this be a standalone, general provision that covers the whole agreement.</p> <p>We are open to different types of decision-making processes for different types of decisions. We see value in models that can operate when consensus is unachievable. Don't want the adoption of ROPs to be blocked indefinitely.</p> <p>Despite some delegations expressing comfort with consensus being the threshold here s6(a) there was significant concern that this could result in the adoption of ROPs being blocked. s6(a)</p>
4.	Except as otherwise provided in paragraph 3 of this article and article 19bis of this Agreement, decisions and recommendations of the Conference of the Parties shall be adopted by consensus. 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	<p>Note: this was cut down from two options at the beginning of IGC5. Got rid of the option where ROPs apply in the absence of consensus – more support for some sort of tiered decision making.</p> <p>Decision making was a contentious issue at IGC5.</p> <p>s6(a)</p>

	<p>by a majority of the Parties present and voting.</p>	<p>s6(a)</p> <p>Others s6(a) thought that whilst consensus was the ideal, the agreement needed to provide for voting in situations where consensus was unachievable.</p> <p>Discussion was then around thresholds s6(a) s9(2)(j)</p> <p>Three quarters would be doable.</p> <p>Question around whether one threshold for all decisions or differentiated thresholds for substance v procedure. NZ – support differentiated. Lots of examples of this in law of the sea context e.g. SPRFMO and the ISA.</p>
<p>5.</p>	<p>The Conference of the Parties shall monitor and keep under review the implementation of this Agreement and, for this purpose, shall:</p>	<p>This article essentially lays out the functions of the COP. If that is the intention (and we think it would be useful), the chapeau should be explicit, e.g.:</p> <p><u>“The Conference of the Parties shall, in accordance with its mandate and the specific provisions of this agreement, exercise the following functions:”</u> [drawn from art 8 of SPRFMO]</p> <p>Suggest an additional subpara which captures that the COP will monitor and review implementation (rather than having this in the chapeau).</p> <p>s6(a)</p>
	<p>(a) Adopt decisions and recommendations related to the implementation of this Agreement;</p>	<p>Can support.</p>
	<p>(b) Review and facilitate the exchange of information among Parties relevant to the implementation of this Agreement;</p>	<p>Can support.</p>
	<p>(c) Promote, including by establishing appropriate processes, cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts towards, and the harmonization of relevant policies and</p>	<p>Can support.</p> <p>Think that subpara c is important as it goes to the ultimate aim of the BBNJ agreement. Would prefer not to lose the latter half of this paragraph. In its discussion of coherence, goes to the important principle</p>

	measures for, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;	of creating a system that evolves over time – adding “and its members” into this para.
	(d) Establish such subsidiary bodies as deemed necessary to support the implementation of this Agreement;	Support. The list of subsidiary bodies featured in the IGC4 text has been removed – this provides more flexibility for the COP to decide what subsidiary bodies they make think necessary. s6(a)
	(e) Adopt a budget, at such frequency and for such a financial period as it may determine;	s9(2)(j)
	(f) Undertake other functions identified in this Agreement or as may be required for its implementation.	Support.
6.	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 may not be sought on a matter within the competence of other global, regional, subregional or sectoral bodies; or on a matter that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory or a claim thereto. 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. <i>[Moved from article 55 ter]</i>	This was moved from Article 55 ter (dispute settlement) – it was thought that it fit better here under the functions of the Conference of the Parties. s6(a) The current language reflects this – only provides for an advisory opinion in limited circumstances. s6(a)
7.	The Conference of the Parties shall, within five years of the entry into force of this Agreement and thereafter at intervals to be determined by it, assess and review the adequacy and effectiveness of the provisions of this Agreement and, if necessary, propose means of strengthening the implementation of those provisions in order to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.	Support review function of the COP. This is integral to ensuring the ongoing effectiveness of the treaty and its institutions. We suggest there should be flexibility for the COP to decide that it wants this review to be undertaken by, or be contributed to, by independent experts or one of the subsidiary bodies.

		<p>The review should cover the effectiveness and adequacy of the provisions of the Agreement, and also: Performance of the institutional bodies set up under the Agreement in carrying out their designated functions; and Decisions taken under the Agreement against the objectives, principles and standards set out in the Agreement. (This language is drawn from Article 36(2) of UNFSA)</p> <p>There is useful language in the Port State Measures Agreement (Article 24) and the SPRFMO Convention ((Article 30) that could be drawn from.</p>
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Article 48 bis Transparency

Para	Text	Position
1.	<p>The Conference of the Parties shall promote transparency in decision-making processes and other activities carried out under this Agreement.</p>	<p>This is New Zealand’s proposal. Actively promote.</p> <p>The purpose of the article is to promote transparency in the operation of the Agreement generally, and specifically in relation to decision making processes and participation in meetings of the COP and subsidiary bodies.</p> <p>The text of the proposal is drawn from Article 18 of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (SPRFMO).</p> <p>See back of briefing for the “Q and A” paper on this provision.</p>
2.	<p>All meetings of the Conference of the Parties and its subsidiary bodies shall be open to all participants and observers registered in accordance with paragraph 4 of this article unless otherwise decided by the Conference of the Parties. The Conference of the Parties shall publish and maintain a public record of its decisions.</p>	
3.	<p>The Conference of the Parties shall promote transparency in the implementation of this Agreement, including through the public dissemination of information, and the facilitation of participation of, and consultation with, relevant global, regional, subregional and sectoral bodies, Indigenous Peoples and local communities with relevant traditional</p>	

	knowledge, the scientific community, civil society and other relevant stakeholders as appropriate, and in accordance with the provisions of this Agreement.	
4.	Representatives of States not party to this Agreement, relevant global, regional, subregional and sectoral bodies, Indigenous Peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders with an interest in matters pertaining to the Conference of the Parties may request to participate in the meetings of the Conference of the Parties and of its subsidiary bodies, as observers or otherwise, as appropriate. The rules of procedure of the Conference of the Parties shall provide for modalities for such participation and shall not be unduly restrictive in this respect. The rules of procedure shall also provide for such representatives to have timely access to all relevant information.	

Article 49 Scientific and Technical Body

Para	Text	Position
1.	A Scientific and Technical Body is hereby established.	<p>Can support.</p> <p>However, would prefer for the establishment provision to explain the body’s purpose and to include an important principles around evidence-based decision making. See below for a textual suggestion from IGC4 brief.</p> <p>“A Scientific and Technical Body <u>to provide scientific and technical advice to enable the COP to take evidence-based decisions</u>, is hereby established”</p>
2.	The Body shall be composed of experts with suitable scientific qualifications, taking into account the need for multidisciplinary expertise, including expertise in relevant traditional knowledge of Indigenous Peoples and local communities, gender balance and equitable geographical representation. The terms of reference and modalities for the operation of the Body, including its selection process and the terms of members’ mandates, shall be determined by the Conference of the Parties.	<p>Support.</p> <p>Allows flexibility for the COP to decide the modalities of how this body will operate, though we will want these to be finalised as soon as possible and be robust and specific as to the roles and expertise needed and how the STB will be selected. s9(2) (j)</p>

		<p>s9(2)(j)</p> <p>Particularly support the reference to traditional knowledge.</p> <p>See notes on "listing of countries" – relevant here in the composition of the body.</p>
3.	The Body may draw on appropriate advice emanating from relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as well from as other scientists and experts, as may be required.	Support.
4.	Under the authority and guidance of the Conference of the Parties, the Body shall provide scientific and technical advice to the Conference and perform the functions assigned to it under this Agreement and such other functions as may be determined by the Conference.	Support. Allows flexibility for the mandate to be expanded at a later point.

Article 50 Secretariat

Para	Text	Position
1.	<p>Option A: A secretariat is hereby established. Until such time as the secretariat commences its functions, the Secretary-General of the United Nations, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat, shall perform the secretariat functions under this Agreement.</p> <p>Option B: The secretariat functions for this Agreement shall be performed by the Secretary-General of the United Nations, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat.</p>	<p>s9(2)(j)</p> <p>s6(a), s9(2)(j)</p>

		s6(a), s9(2)(j)
2.	The secretariat shall:	Can support this list.
	(a) Provide administrative and logistical support to the Conference of the Parties and its subsidiary bodies for the purposes of the implementation of this Agreement;	
	(b) Arrange and service the meetings of the Conference of the Parties and of any other bodies as may be established under this Agreement or by the Conference;	
	(c) Circulate information relating to the implementation of this Agreement in a timely manner, including making publicly available and transmitting to all Parties, in particular to adjacent coastal States, as well as to relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, decisions of the Conference of the Parties;	
	(d) Facilitate cooperation and coordination, as appropriate, with the secretariats of other relevant international bodies and, in particular, enter into such administrative and contractual arrangements as may be required for that purpose and for the effective discharge of its functions, subject to approval by 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

Para	Text	Position
1.	A clearing-house mechanism is hereby established.	Support the establishment of a clearing-house mechanism. This is the key way in which to ensure transparency in this Agreement.
2.	The clearing-house mechanism shall consist primarily of an open-access platform. The specific modalities for the	Support.

	operation of the clearing-house mechanism shall be determined by the Conference of the Parties.	Suggest that CHM be maintained by the Secretariat.
3.	The clearing-house mechanism shall:	Support this list.
	(a) Serve as a centralized platform to enable Parties to access, provide and disseminate information with respect to activities taking place pursuant to the provisions of this Agreement, including information relating to: (i) Marine genetic resources of areas beyond national jurisdiction, including questions on the sharing of benefits, and data and scientific information on, as well as, in line with the principle of free, prior and informed consent, traditional knowledge associated with marine genetic resources of areas beyond national jurisdiction; (ii) The establishment and implementation of area-based management tools, including marine protected areas; (iii) Environmental impact assessments; (iv) Requests for capacity-building and the transfer of marine technology and opportunities with respect thereto, including research collaboration and training opportunities, information on sources and availability of technological information and data for the transfer of marine technology, opportunities for facilitated access to marine technology and the availability of funding;	
	(b) Facilitate the matching of capacity-building needs with the support available and with providers for the transfer of marine technology, including governmental, non-governmental or private entities interested in participating as donors in the transfer of marine technology, and facilitate access to related know-how and expertise;	
	(c) Provide links to relevant global, regional, subregional, national and sectoral clearing-house mechanisms and other databases, repositories and gene banks, including those pertaining to relevant traditional knowledge of Indigenous Peoples and local communities and promote, where possible, links with publicly available private and non-governmental platforms for the exchange of information;	
	(d) Build on global, regional and subregional clearing-house institutions, where applicable, when establishing	

	regional and subregional mechanisms under the global mechanism;	
	(e) Foster enhanced transparency, including by facilitating the sharing of baseline data and information relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction between Parties and other relevant stakeholders;	
	(f) Facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration;	
	(g) Perform such other functions as may be determined by the Conference of the Parties.	
4.	The clearing-house mechanism shall be managed by the secretariat, without prejudice to possible cooperation with other relevant organizations as determined by the Conference of the Parties, [including the Intergovernmental Oceanographic Commission 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].	Fine.
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.	Support – recognition of SIDS. The CHM needs to be accessible.
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.	Support.

PART VII FINANCIAL RESOURCES AND MECHANISM

Article 52 Funding

Para	Text	Position
1.	Each Party undertakes to provide, within its capabilities, resources in respect of those activities that are intended to achieve the objectives of this Agreement, in accordance with its national policies, priorities, plans and programmes.	
2.	The institutions established under this Agreement shall be funded through assessed contributions of the Parties.	General support for ACs for institutional arrangements. This is standard.
3.	A mechanism for the provision of adequate, accessible and predictable financial resources under this Agreement is hereby established. The mechanism shall assist developing States Parties in implementing this Agreement, including through funding in support of capacity-building and the transfer of marine technology.	This is subject to a wider debate. s9(2)(j) No objections to the establishment of a mechanism.
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 States and small island developing States, in the meetings of the bodies under this Agreement;	Not controversial. s6(a)
	(b) A special fund established by the Conference of the Parties that shall be funded through [assessed contributions from Parties] [and/or payments made by private entities pursuant to the provisions of this Agreement] and that shall be open to additional contributions from Parties and private entities wishing to provide financial resources to support the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction to: (i) Fund capacity-building projects under this Agreement, including effective projects on the conservation and sustainable use of marine biological diversity and activities and programmes, including training related to the transfer of marine technology; (ii) Assist developing States Parties to implement this Agreement;	This is subject to a wider debate in the context of benefit sharing from MGRs/MSR commercialisation. s9(2)(j) s6(a)

	<p>(iii) Finance the rehabilitation and ecological restoration of marine biological diversity of areas beyond national jurisdiction;</p> <p>(iv) Support conservation and sustainable use programmes by holders of traditional knowledge of Indigenous Peoples and local communities;</p> <p>(v) Support public consultations at the national, subregional and regional levels; and</p> <p>(vi) Fund the undertaking of any other activities as agreed by the Conference of the Parties;</p>	<p>s6(a)</p>
	<p>(c) The Global Environment Facility trust fund.</p>	<p>Generally accepted.</p>
<p>5.</p>	<p>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.</p>	
<p>6.</p>	<p>For the purposes of this Agreement, the mechanism shall be operated under the authority and guidance of, and be accountable to, the Conference of the Parties. The Conference of the Parties shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources. The mechanism shall operate within a democratic and transparent system of governance.</p>	<p>s6(a)</p> <p>NZ intervened in support of keeping the last sentence (transparent governance is important) and this was supported on the floor by the GEF representative.</p>
<p>7.</p>	<p>Access to funding under this Agreement shall be open to developing States Parties on the basis of need, taking into account the needs for assistance of Parties with special requirements, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States and coastal African States, archipelagic States and developing middle-income countries, and taking into account the special circumstances of small island developing States. The funding mechanism established under this Agreement shall be aimed at ensuring efficient access to funding through</p>	

	simplified application and approval procedures and enhanced readiness of support for such developing States Parties.	
8.	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 States and small island developing States, and taking into account the special circumstances of small island developing States, in the allocation of appropriate funds and technical assistance and the utilization of their specialized services for the purposes of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.	
9.	The Conference of the Parties shall establish a working group on financial resources. It shall be composed of members possessing appropriate qualifications and expertise. The terms of reference and modalities for the operation of the working group shall be determined by the Conference of the Parties. The working group 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 working group on financial resources shall consider, inter alia:	
	(a) The assessment of the needs of the Parties, in particular developing States Parties;	
	(b) The availability and timely disbursement of funds;	
	(c) The transparency of decision-making and management processes concerning fundraising and allocations;	
	(d) The accountability of the recipient developing States Parties with respect to the agreed use of funds.	
	The Conference of the Parties shall consider the reports and recommendations of the working group on financial resources and take appropriate action.	
10.	The Conference of the Parties will, 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.	
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Released under the Official Information Act 1982

PART VIII IMPLEMENTATION AND COMPLIANCE

Article 53 Implementation and compliance

Para	Text	Position
1.	Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to ensure the implementation of this Agreement.	<p>Support.</p> <p>Note: Articles 53 – 53ter of the pre-IGC5 text were the much preferred option for implementation and compliance.</p> <p>Prior to IGC5 there was another option which was much more general and left it to the COP to make arrangements for implementation and compliance.</p>

Article 53 bis Monitoring of implementation

Para	Text	Position
1.	Each Party shall monitor the implementation of its obligations under this Agreement and shall, at intervals and in a format to be determined by the Conference of the Parties, report to the Conference on measures that it has taken to implement this Agreement.	<p>Support – important to include specific obligation on Parties to report to COP on implementation.</p> <p>Maintains flexibility in the how and when of a reporting mechanism. This is useful as we want to ensure that any reporting mechanism and requirements are workable for SIDS.</p>

Article 53 ter Implementation and Compliance Committee

Para	Text	Position
1.	A committee to facilitate and consider the implementation of and promote compliance with the provisions of this Agreement is hereby established. The committee shall be [expert-based and] facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive.	<p>Support the establishment of an implementation and compliance committee.</p> <p>Issue here: should we define the committee's role too much? Shouldn't this be left to the COP? s9(2)(j)</p> <p>Questions around the overlap with other institutions also raised here.</p>
2.	The members of the committee shall be nominated by Parties and elected by the Conference of the Parties, with due consideration to equitable geographical representation, shall serve objectively and in the best interest of this Agreement. The	<p>Support.</p> <p>Some differences of opinion about whether the committee members should serve as independent experts. Some developed states s6(a) wanted the process to</p>

	members shall be persons with experience related to this Agreement.	be state led. The last sentence reflects that. s6(a)
3.	The committee shall operate under the modalities and rules of procedure adopted by the Conference of the Parties at its first meeting, considering 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 capabilities and circumstances, to the Conference of the Parties.	<p>Can support.</p> <p>"Due consideration to equitable geographical representation" is used in UNCLOS with regard to the LTC of the ISA.</p> <p>Note that this has, however, created problems down the line in that it leaves open what "due consideration" should mean.</p> <p>Reporting changed from "annually" to provide more flexibility.</p>
4.	In the course of its work, the 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.	Support.

Released under the Official Information Act 1982

PART IX SETTLEMENT OF DISPUTES AND ADVISORY OPINIONS

Article 54 ante Prevention of disputes

Para	Text	Position
	Parties shall cooperate in order to prevent disputes.	There was very little dispute about 54 and 54 ante. s9(2)(j)

Article 54 Obligation to settle disputes by peaceful means

Para	Text	Position
	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.	Support.

Article 54 ter ante Settlement of disputes by any peaceful means chosen by the Parties

Para	Text	Position
	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.	s9(2)(h) s6(a) s9(2)(j)

Article 54bis Prevention of disputes**Article 54 ter Disputes of a technical nature**

Para	Text	Position
1.	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 55 of this Agreement.	Taken from UNFSA. Facilitator had suggested amending this to remove the last phrase and simply say that the panel decision is not binding. s6(b)(i)

Article 55 Procedures for the settlement of disputes

Para	Text	Position
	OPTION I:	
1.	Disputes concerning the interpretation or application of this Agreement shall, at the request of any party to the dispute, be submitted for binding decision in accordance with procedures for the settlement of disputes provided for in Part XV of the Convention whether or not the parties to the dispute are also Parties to the Convention.	NZ supports this. s6(a), s9(2)(j)
2.	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 or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.	
3.	Any declaration made by a Party to this Agreement 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 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.	

<p>4.</p>	<p>A Party to this Agreement that is not a Party to the Convention, when signing, ratifying, approving or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, submitted to the depositary, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Agreement:</p> <ul style="list-style-type: none"> (a) The International Tribunal for the Law of the Sea; (b) The International Court of Justice; (c) An arbitral tribunal constituted under annex VII to the Convention; (d) A special arbitral tribunal under annex VIII to the Convention for one or more of the categories of disputes specified therein. <p>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 4(c) of article 55. 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.</p>	
<p>5.</p>	<p>A Party to this Agreement that is not a Party to the Convention may, when signing, ratifying, approving or acceding to this Agreement, or at any time thereafter, without prejudice to the obligations arising under this Part, declare in writing that it does not accept any or more of the procedures provided for in section 2 of Part XV of the Convention with respect to one or more of the categories of disputes set out in article 298 of the Convention for the settlement of disputes under this Part. Article 298 of the Convention shall apply to such a declaration.</p>	
<p>6.</p>	<p>The provisions of this article shall be without prejudice to the procedures on the settlement of disputes that Parties have agreed to as participants in a relevant legal instrument or framework, or as member of a relevant global, regional, subregional or sectoral body concerning the interpretation and application of such instruments and frameworks.</p>	
<p>7.</p>	<p>Nothing in this Agreement shall be interpreted as conferring jurisdiction upon a court or tribunal over any dispute that</p>	<p>s6(a) is based on art 298 but goes further. s6(a) It</p>

	necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory or a claim thereto of a Party to this Agreement.	s6(a) Some expressed concern about the changed language. But this was not the focus of our discussions. s6(a)
	OPTION II:	
1.	In the event of a dispute between Parties concerning the interpretation or application of this Agreement, the parties concerned shall, unless they agree otherwise, seek a solution by negotiation.	NZ prefers Option I and that is where most of the discussion was focused. Think Option II will disappear at resumed session.
2.	If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.	
3.	When ratifying, accepting, approving or acceding to this Agreement, or at any time thereafter, a Party may declare in writing to the depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 of this article, it accepts one or all of the following means of dispute settlement as compulsory:	
	(a) Arbitration, in accordance with the procedure [to be adopted by the Conference of the Parties] [laid down in annex VII to the Convention];	
	(b) Submission of the dispute to the International Tribunal for the Law of the Sea; or	
	(c) Submission of the dispute to the International Court of Justice.	
[4.	If the parties to the dispute have not, in accordance with paragraph 3 of this article, accepted the same or any procedure, the dispute shall be submitted to conciliation [in accordance with the procedure to be adopted by the Conference of the Parties] [pursuant to the procedure set out in section 2 of annex V to the Convention] unless the parties otherwise agree.]	
5.	This article shall not apply to any dispute concerning the land territory, sovereignty, sovereign rights or jurisdiction of a Party to this Agreement.	

Article 55 bis Provisional arrangements

Para	Text	Position
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	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.	Support.
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DELETED Article 55ter

PART X NON-PARTIES TO THIS AGREEMENT

Article 56 Non-parties to this Agreement

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

PART XI GOOD FAITH AND ABUSE OF RIGHTS

Article 57 Good faith and abuse of rights

Para	Text	Position
	States 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.	Support.

PART XII FINAL PROVISIONS

Article ante 58 Right to vote

Para	Text	Position
1.	Each Party to this Agreement shall have one vote, except as provided for in paragraph 2.	Support.
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.	Support.

	Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.	
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Article 58 Signature

Para	Text	Position
	This Agreement shall be open for signature by all States and regional economic integration organizations from [insert date] and shall remain open for signature at United Nations Headquarters in New York until [insert date].	To be confirmed at conclusion.

Article 59 Ratification, approval, acceptance and formal confirmation

Para	Text	Position
	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.	Support.

Article 59 bis Division of the competence of regional economic integration organizations and their member States in respect of the matters governed by this Agreement

Para	Text	Position
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	Support – wording from the Paris Agreement.

	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.	

DELETED Article 60

Article 61 Entry into force

Para	Text	Position
1.	This Agreement shall enter into force 30 days after the date of deposit of the [thirtieth] [sixtieth] instrument of ratification, approval, acceptance, accession or formal confirmation.	<p>Need to determine number of ratifications needed.</p> <p>The UNFSA entered into force after the deposit of thirty instruments of ratification – UNCLOS was sixty.</p> <p>Think we can probably be okay with the lower number.</p> <p>Most states seemed to express preference for something in between the two (maybe forty-five instruments?)</p>
2.	For each State or regional economic integration organization that ratifies, approves or accepts this Agreement or accedes thereto after the deposit of the [thirtieth] [sixtieth] instrument of ratification, approval, acceptance, accession, or formal confirmation this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification, approval, acceptance or accession or formal confirmation.	
3.	For the purposes of paragraphs 1 and 2 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the member States of that organization.	

Article 62 Provisional application

Para	Text	Position
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 Secretary-General of the United Nations..	All fine.
2.	Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the depositary in writing of its intention to terminate its provisional application.	

Article 63 Reservations and exceptions

Para	Text	Position
	No reservations or exceptions may be made to this Agreement.	Support.

Article 63 bis Declarations and statements

Para	Text	Position
	Article 63 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.	Support.

DELETED Article 64

Article 65 Amendment

Para	Text	Position
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.	Support – s9(2)(h) s6(a)
2.	The Conference of the Parties shall make every effort to reach agreement on the adoption of any proposed amendment by way of consensus. If all efforts to reach consensus have been exhausted, the procedures established in the rules of procedure adopted by the Conference of the Parties shall apply.	Reference: <i>UNFSA art 45 has different wording because when efforts for consensus were exhausted it applied the rules of procedure that applied at the UN Conference on straddling fish stocks, unless otherwise decided.</i> Variation makes sense. But, if we decide on a general decision making rule for the COP, we may want to simply apply it to amendments as well. s6(a)
3.	An amendment adopted in accordance with paragraph 2 of this article shall be communicated by the depositary to all Parties for ratification, approval or acceptance.	
4.	Amendments to this Agreement shall enter into force for the Parties ratifying, approving or accepting them on the thirtieth 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.	
5.	An amendment may provide that a smaller or larger number of ratifications, approvals or acceptances shall be required for its entry into force than required under this article.	

6.	For the purposes of paragraphs 4 and 5 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the member States of that organization.	
[7.	A State or regional economic integration organization that becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 4 of this article shall, failing an expression of a different intention by that State or regional economic integration organization:	Support? Was not included in the previous iteration of the text. Reference: UNFSA
	(a) Be considered as a Party to this Agreement as so amended;	
	(b) Be considered as a Party to the unamended Agreement in relation to any Party not bound by the amendment.]	

Article 66 Denunciation

Para	Text	Position
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.	Support - s9(2)(h) s6(a) Withdrawal v denunciation - s9(2)(h)
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.	

DELETED Article 67

Article 68 Annexes

Para	Text	Position
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.	

<p>[2.</p>	<p>The annexes may be revised from time to time by Parties. Notwithstanding the provisions of article 65, the following provisions shall apply in relation to amendments to annexes to this Agreement: (a) 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 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 that meeting for all Parties except those that make a reservation in accordance with paragraph 3 of this article.]</p>	<p>Note: this language is from UNFSA (Article 48). We are open to having a simplified process for amending the annexes. The technical nature of the annexes means that they should be able to be amended as new information comes to light. s6(a) s6(a) We are also open to an extended period of time in which countries are able to object if needed.</p>
<p>[3.</p>	<p>Notwithstanding article 63, during the period of 180 days provided for in paragraph 2, subparagraph (b) of this article, any Party may by notification in writing to the depositary make a reservation with respect to the amendment. Such reservation 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 reservation.]</p>	

Article 69 Depositary

Para	Text	Position
	<p>The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.</p>	<p>Support.</p>

Article 70 Authentic texts

Para	Text	Position
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	The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.	Support.
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ANNEXES

ANNEX I Indicative criteria for identification of areas

Para	Text	Position
		Support. These are largely based on EBSA criteria. NZ inputted extensively to these criteria at earlier IGCs and all of our suggestions have now been taken on board. They were further refined at IGC5.1
	(a) Uniqueness;	Square brackets were removed at IGC5.1
	(b) Rarity;	Square brackets were removed at IGC5.1
	(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;	Square brackets were removed at IGC5.1
	(j) Representativeness;	Square brackets were removed at IGC5.1
	(k) Dependency;	
	(l) Naturalness;	This was revised from "Exceptional naturalness" at IGC5.1
	(m) Ecological connectivity;	
	(n) Important ecological processes occurring therein;	
	(o) Economic and social factors;	Square brackets were removed at IGC5.1
	(p) Cultural factors;	Square brackets were removed at IGC5.1
	[(q) Cumulative and transboundary impacts;]	
	(r) Slow recovery and resilience;	
	(s) Adequacy and viability;	
	(t) Replication;	
	(u) Sustainability of reproduction	Added at IGC5.1
	(v) Existence of conservation and management measures	Added at IGC5.1

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

Para.	Text	Position
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<p>[Under this Agreement, capacity-building and the transfer of marine technology initiatives may include, and are not limited to:</p> <ul style="list-style-type: none"> (a) The sharing of relevant data, information, knowledge and research, in user-friendly formats, including: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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 principle of prior informed consent]; (iv) Stressors on the ocean that affect marine biological diversity of areas beyond national jurisdiction, including the adverse effects of climate change and 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: <ul style="list-style-type: none"> (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 [the collection of] [access to] and the utilization of marine genetic resources, measures such as area-based management tools, including marine protected areas, and the conduct of environmental impact assessments; 	<p>All fine as long as we retain the language making it clear that this is an inclusive and non-exhaustive list.</p>
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<p>(d) The development and strengthening of institutional capacity and national regulatory frameworks or mechanisms, including:</p> <ul style="list-style-type: none"> (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 data and information 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; <p>(e) The development and strengthening of human resources and technical expertise through exchanges, research collaboration, technical support, education and training and the transfer of technology, such as:</p> <ul style="list-style-type: none"> (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) [Short-term, medium-term and long-term] [e][E]ducation and training in: 	<p style="text-align: center; opacity: 0.5; font-size: 2em; transform: rotate(-45deg);"> Released Under the Official Information Act 1982 </p>
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<p>a. The natural and social sciences, both basic and applied, to develop scientific and research capacity;</p> <p>b. Technology, and the application of marine science and technology, to develop scientific and research capacities;</p> <p>c. Policy and governance;</p> <p>d. The relevance and application of traditional knowledge;</p> <p>(iii) The exchange of experts, including experts on traditional knowledge;</p> <p>(iv) The provision of funding for the development of human resources and technical expertise, including through:</p> <p>a. The provision of scholarships or other grants for representatives of small island developing States Parties in workshops, programmes or other relevant training programmes to develop their specific capacities;</p> <p>b. The provision of financial and technical expertise and resources, in particular for small island developing States, concerning environmental impact assessments;</p> <p>(v) The establishment of a networking mechanism among trained human resources;</p> <p>(f) The development and sharing of manuals, guidelines and standards, including:</p> <p>(i) Criteria and reference materials;</p> <p>(ii) Technology standards and rules;</p> <p>(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;</p> <p>(g) The development of technical, scientific and research and development programmes, including biotechnological research activities.</p>	<p>Released under the Official Information Act 1982</p>
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OTHER BRIEFING MATERIAL

Emergency and Interim Measures proposal – Q/A

Article 48(6) provides for the BBNJ COP to establish interim and emergency measures. This document provides further information which may be useful for delegations in considering this provision.

1. What is the difference between Interim and Emergency Measures?

We envisage two types of interim or emergency measures (noting that all such measures would be temporary under Article 48(6)):

- i. Measures required to temporarily fill the governance gap while longer term measures are being developed, either by the BBNJ COP or by a competent regional, sectoral or global body. For example, new scientific information could indicate an urgent need to protect a threatened, endangered or newly discovered species, or vulnerable marine ecosystem, threatened by natural or anthropogenic impacts. In this case, measures would be consistent with the application of precaution.
- ii. Measures required to respond to an emergency, i.e. an activity, natural phenomenon or human caused disaster. These measures may only be needed temporarily until the emergency subsides, but in some cases may be replaced by more permanent measures. Some examples of such emergencies are: underwater volcanic eruptions or submarine landslides; an incursion or sudden expansion of invasive species; climate change impacts, e.g. marine heatwaves; a shipping disaster; marine pollution; or a space debris strike.

2. What process would be followed for establishment of Interim or Emergency Measures?

It will be important that processes to establish interim or emergency measures are robust, transparent and inclusive, while being sufficiently timely. We would envisage the process being similar to that of ABMT establishment, as set out in Part 3 of the draft text, with provision for greater efficiency and timeliness. Rather than inserting the detail on processes into the treaty text itself, one option is to add an enabling clause providing for processes to be further elaborated for adoption by the COP at a later date, for example:

6.(b)bis Processes for establishment of interim or emergency measures shall be elaborated by the Scientific and Technical Body, as necessary, for consideration and adoption by the Conference of Parties. Such processes shall be inclusive and transparent.

3. How would the BBNJ COP interact with other bodies?

We envisage that interim or emergency measures could potentially be established to cover matters under the mandate of another competent regional, sectoral or global body if the other body was not in a position to adopt measures in a sufficiently timely manner. To avoid the potential risk of “undermining”, according to the current draft text, the interim or emergency measures would expire no later than two years after their adoption. We would also expect cooperation and collaboration between the BBNJ COP and other relevant bodies at all stages of the interim and emergency measures process.

4. What are some examples of interim or emergency measures adopted by other bodies?

Some examples include:

- i. Interim measures on pelagic and bottom fisheries were adopted in the South Pacific Regional Fisheries Management Organisation context. These were subsequently replaced with longer term Conservation and Management Measures.
- ii. The Commission on the Conservation of Antarctic Marine Living Resources has adopted a measure providing for time-limited Special Areas for Scientific Study in newly exposed marine areas following ice-shelf retreat or collapse.

5. What are some examples of possible Interim and Emergency Measures in the BBNJ context?

Some hypothetical examples of when and how interim or emergency measures could be used:

- i. New information identifies the presence of a potentially important vulnerable marine ecosystem in ABNJ that is threatened by activities occurring within the area. Interim or emergency measures could include:
 - a. Protection of the vulnerable marine ecosystem while scientific research is undertaken to better understand the ecosystem and the likelihood of significant adverse impacts; and
 - b. Measures to prevent significant adverse impacts on the vulnerable marine ecosystem.
- ii. New information identifies an important foraging area for a small critically endangered seabird in ABNJ that is threatened by activities occurring within the area. Interim or emergency measures could include:
 - a. Measures to prevent significant adverse impacts on the seabird species, for example to reduce vessel collisions due to light pollution.
- iii. An earthquake triggers an underwater landslide that causes significant adverse impacts to a unique, rare or representative marine area covered by an ABMT or MPA. Interim or emergency measures could include:
 - a. Protection of the damaged area while scientific research is undertaken to better understand impacts on BBNJ and timescales of recovery; and
 - b. Establishment of an ABMT or MPA at an alternative geographic location with similar biodiversity values.
- iv. An increase of sea temperature caused by climate change impacts causes a serious threat to threatened or endangered species by shifting the geographic distribution of an important life history stage and increasing its exposure to human threats. Interim or emergency measures could include:
 - a. Protection of the area important for the life history stage while scientific research is undertaken to better understand impacts and how to avoid, remedy or mitigate them; and/or
 - b. Measures to regulate an activity in ABNJ.

s6(b)(i), s9(2)(j)

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s6(b)(i), s9(2)(j)

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s6(b)(i), s9(2)(j)

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14 March 2019

Ministry of Foreign Affairs and Trade

Attention: Alice Revell

Alice.Revell@mfat.govt.nz

Tēnā koe Alice

NEGOTIATIONS ON A LEGALLY BINDING INSTRUMENT FOR THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION (BBNJ)

1. Thank you for inviting Te Ohu Kaimoana to provide you with our views on the key issues to be covered in the upcoming negotiations on a new instrument to conserve and sustainably use biodiversity beyond national jurisdiction (BBNJ). Te Ohu Kaimoana agrees there is a need to ensure activities on the High Seas are well managed, so that ocean resources can be sustainably used for the benefit of present and future generations. The adverse effects of use on marine ecosystems need to be managed and their resources conserved to support that objective. This response touches on the key issues, based on our role under the Maori Fisheries Act, and guided by the Maori Fisheries Strategy agreed to by Iwi in 2016.
2. We have provided our preliminary views to the Department of Conservation (DOC) on the development of a revised New Zealand Biodiversity Strategy (NZBS). Our response focused on three key principles that need to be acted on more deliberately in the revised NZBS:
 - a. Respect for the Treaty of Waitangi, Treaty settlements and associated rights
 - b. Matching solutions to real problems
 - c. Strengthening the links between different regimes that manage activities affecting marine biodiversity.

These matters are as relevant to the BBNJ as they are to the NZBS.

3. Our response to DOC noted that the goals and principles of the current NZBS reflect these matters, however they have not been addressed adequately and have neither properly recognised the Crown's Treaty obligations, nor use the full potential of our own set of marine management institutions, including the Fisheries Act 1996, to protect marine biodiversity. A copy of our response to DOC – identifying our role and explaining our views is attached.

4. In the remainder of this response, we briefly highlight key issues arising from the Treaty of Waitangi and the Fisheries Settlement and draw from our response to DOC the possible implications for the position the New Zealand Government might take in negotiations on the new BBNJ agreement.

The Treaty, Fisheries Settlement and Māori World View

5. Taking the perspective of a Māori world view, conservation is a component of sustainable use, and not an end in itself. The concept of Te Hā o Tangaroa Kia ora Ai Tāua focusses specifically on the relationship between Maori and Tangaroa (see p8 – 10 of the attachment). The relationship between people and Tangaroa is one of mutual dependence. Tangaroa is not valued solely for its own sake, but as part of a web of active relationships based on whakapapa. By caring for Tangaroa, we gain the right to benefit from the resources he provides. This world view is shared by numerous indigenous peoples around the world. It is a view which is interwoven with rangatiratanga, guaranteed under Article Two of the Treaty of Waitangi in respect of taonga including fisheries.
6. Under this view, “conservation” is part of “sustainable use”, that is, it is carried out in order to use resources for the benefit of current and future generations. There is potential for BBNJ to deliver large permanent MPAs on the High Seas for their own sake, without considering how they contribute to the management of resources such as fisheries. This approach also effectively reduces the area in which fisheries may be accessed, so that future catch limits are reduced beyond what is necessary to achieve sustainable use. Under the Fisheries Settlement, Maori were guaranteed 20% of all new stocks introduced into the Quota Management System (QMS). There is thus a broad principle that 20% of all national commercial fishing rights allocated to New Zealand should be made available to Maori. Once a national limit is established, 20% would transfer to Te Ohu Kaimoana for allocation to Iwi. An approach of designating MPAs to protect biodiversity in a fashion that is not integrated with the management of fisheries would be contrary to Te Hā o Tangaroa Kia ora Ai Tāua and reduce the potential of the Fisheries Settlement.
7. In relation to managing fisheries and the effects of fishing on biodiversity, the purpose and principles of our Fisheries Act 1996 echo Te Hā o Tangaroa Kia ora Ai Tāua. There has never been any disagreement by beneficiaries of the Fisheries Settlement that quota rights secured under the settlement are subject to a responsibility to ensure sustainability – this requirement was a key reason for Māori and iwi accepting the QMS. Furthermore, Māori understand that the protection of biodiversity is an important subset of what sustainability means. This is clear in the way the Fisheries Act describes what it means to achieve its purpose to “provide for the utilisation of fisheries resources while ensuring sustainability”. Under section 8 of the Fisheries Act, utilisation means “conserving¹, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being”. Ensuring sustainability means:

¹ Under s 2, conservation means “the maintenance or restoration of fisheries resources for their future use; and conserving has a corresponding meaning”.

- a. Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations
 - b. Avoiding, remedying or mitigating the effects of fishing on the aquatic environment.
8. Moreover, section 9 of the Fisheries Act includes three explicit environmental principles that:
- a. associated or dependent species should be maintained above a level that ensures their long-term viability
 - b. biological diversity of the aquatic environment should be maintained
 - c. habitat of particular significance for fisheries management should be protected.
9. The agreements made between the Crown and Maori and documented in the Deed of Settlement support the proposition that the effects of fishing on biodiversity should be managed as part of the fisheries management regime to achieve the purpose of the Fisheries Act. In this respect, we emphasise that New Zealand can only control our fishing activities on the High Seas via the Fisheries Act. So it is an important consideration for underpinning our position on the High Seas.

Implications for BBNJ

10. As noted above, we consider New Zealand's overall approach to sustainable utilisation of fisheries resources provides a useful basis for developing New Zealand's position on the BBNJ. This would mean fisheries resources would be managed on a sustainable basis and in such a way that marine biological diversity is maintained. Ideally, a fisheries allocation regime would also be in place that provides the parties with secure enduring access rights to fisheries, allocated on a proportional basis, so that each party's catch limit rises and falls proportionately depending upon the state of fish stocks and other related issues such as the need to manage risks to biological diversity.
11. Drawing from the issues we have identified here, and in the attachment, New Zealand's position on BBNJ would usefully include the following approaches.

Don't create new regimes where they are not required

12. A key question with the BBNJ is whether it intends to add new obligations to existing arrangements or fill gaps where there are none. If the former, there is a danger that the BBNJ will simply duplicate and potentially clash with many of the other initiatives that have been established through related international agreements such as the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. In our view, an agreement on BBNJ should be integrated through existing mechanisms such as these, which are already addressing the effects of activities on marine biological diversity. In this way, the interests of coastal states in the High Seas areas concerned can be acknowledged as part of those existing arrangements.
13. Regional Fisheries Management Organisations (RFMO) in the Pacific Region, such as the South Pacific Fisheries Management Organisation (SPRFMO) provide a useful framework for BBNJ to build upon. Under

SPRFMO, approaches to protecting biological diversity from the effects of fishing are already in place using environmental assessments to better understand the impacts of fishing combined with area-based approaches to manage fishing activity in an adaptive way. We note that a similar approach is taken for mining on the High Seas through the International Seabed Authority and various related regional groups.

14. We also note that the UN Fish stocks Agreement contains an obligation under Article 5 not only to adopt measures to ensure long-term sustainability of straddling and highly migratory fish stocks but also to protect biodiversity in the marine environment (s g). It makes sense to ensure BBNJ complements existing agreements and not reinvent the wheel.
15. We acknowledge that not all high seas areas are covered by an RFMO and institutions will need to be established or revitalised in some cases to ensure marine resources are conserved and sustainability used. Where RFMOs are not functioning, but parties wish to carry out activities such as fishing in areas concerned, there could be a provision that commits them to establishing or revitalising arrangements under other relevant conventions, such as the UN Fish stocks Agreement, and use BBNJ as a means to obtain that commitment. BBNJ could also act as a mechanism to share knowledge and experience from functioning RFMOs of managing activities and their effects on biodiversity.

Approach Environmental Impact Assessment (EIA) in an adaptive manner

16. We agree that if management of the effects of activities on marine biodiversity is to be effective, processes to assess the effects of activities on marine biodiversity need to be in place. An approach to EIA can be flexible and require different levels of assessment depending on the nature of the risks involved. In New Zealand's fisheries management system, our environmental assessment processes are built into management in an adaptive way— as outlined above. Fish stocks are monitored and assessed to check that catch limits are appropriate, and so too are the effects of fishing on biodiversity. This enables activity to proceed and adjustments to be made in light of new information about threats and risks.
17. Given the enormous challenge of researching biodiversity on the high seas, a similarly flexible approach is clearly appropriate if the objective of conserving and sustainably using marine biodiversity is to be achieved. For example, we note that under SPRFMO, several Conservation Management Measures have been put in place to enable an adaptive approach to management through measures that apply to "exploratory fisheries" which, once certain information criteria are met, can be managed as "established fisheries".

Tailor Area Based Management Tools (ABMT) to the activities being managed

18. Area Based Management Tools (ABMT) can be used to achieve the objective of conserving and sustainably utilising marine biodiversity in various ways. As long as their use is intended to meet the objectives of BBNJ, the way they are used should remain flexible and not prescriptive. For this reason, we don't favour including MPAs as a specific category – particularly given the move to continually increase the percentage coverage of MPAs across the globe. This approach doesn't provide for any flexibility in approach and certainly does not contribute to an adaptive approach to management.
19. One of the problems with the NZBS and indeed the Convention on Biological Diversity is setting targets for Marine Protected Areas (MPAs). Such targets are not based on risks or threats and indeed it is not clear what they are actually based on. It is simply argued that we need more.
20. An international study commissioned by Te Ohu Kaimoana echoes these concerns, and based on a review of the international literature, makes several findings about MPAs relating to:
 - a. the vagueness and variation in definitions of MPAs
 - b. lack of generally understood criteria for their establishment
 - c. lack of cost-benefit and trade-off analysis
 - d. lack of integration with national laws and indigenous rights
 - e. lack of compensation to affected users – with very limited exceptions
 - f. undefined baseline assumptions: open access fisheries and the race to fish with resulting human degradation of biological systems is typically the justification for MPAs. Rights-based systems result in different incentives for resource use than open access regulatory systems, and these can respond to problems in a timelier and more effective way².
21. By integrating marine protection across management regimes, the objectives for marine protection become clear, monitoring programmes can be put in place and corrections made along the way. In New Zealand, appropriate protection is applied in an adaptive fashion as we learn more about biodiversity and fishing effects. This doesn't just apply to areas containing sensitive habitats, but also to particular species that may be involved in bycatch. We also note that our management of fish stocks is also adaptive – and needs to be in the face of global warming – in that the status of stocks is reviewed and catch limits adjusted as necessary.
22. Thus, it is important New Zealand does not lock itself into an ill-defined and unprincipled approach. Where there are areas of biodiversity that are important to protect on the High Seas, a risk-based approach in light of the effects of fishing (or any other activity) should be taken to determine what level of protection is appropriate and under what conditions that may change. We note that in the SPRMO example, the

² Libecap, G D, Arbuckle, M and Lindley, C: (in prep) *An Analysis of the Impact on Māori Property Rights in Fisheries of Marine Protected Areas (MPA) and Recreational Fishing Outside the Quota Management System (QMS): Output 1: Marine Protected Areas and Ecosystem-Based Management – A Critical Global Overview*. See a more detailed summary of key findings in our attached response to DOC – pp 12 – 14.

approach to identification of areas that can and cannot be fished is negotiable over time, depending on the level of information that is available. In this regard, environmental assessment processes and implementation of ABMT form part of an adaptive approach to managing large areas of ocean for which there is little information.

Nāku noa, nā



Dion Tuuta

Chief Executive

Attachment: Te Ohu Kaimoana's preliminary views to the Department of Conservation on the development of a revised New Zealand Biodiversity Strategy

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28 February 2020

Mr C Seed
Ministry for Foreign Affairs and Trade
Private Bag 18 901
Wellington 6160, New Zealand

Attention: Alice Revell

Draft Agreement for Sustainable Use of Marine Biological Diversity beyond National Jurisdiction

1. Thank you for the opportunity to comment on the “Draft Agreement for Sustainable Use of Marine Biological Diversity beyond National Jurisdiction, dated 27 November 2019, released by the Ministry of Foreign Affairs and Trade (MFAT) to stakeholders for comment.

WHO WE ARE

2. Seafood New Zealand (“SNZ”) delivers industry good services for the wider benefit of the seafood industry as currently represented by the aquaculture, deepwater, inshore finfish, paua and rock lobster sectors. SNZ adds value to those industry sectors by advising and assisting them to:
 - i. Protect and promote the New Zealand seafood industry and its reputation;
 - ii. Protect and promote the opportunity and right to produce seafood; and
 - iii. Retain and advance cost-effective access to our international and domestic seafood markets.
3. SNZ is funded and supported by the major fishing companies – Sanford, Sealord Group, Talley’s Group, Moana New Zealand, Vela Group, Independent Fisheries, United Fisheries, Ngai Tahu Seafoods, Solander Group – and iwi through Te Ohu Kaimoana – and aquaculture interests including New Zealand King Salmon, as well as more than 100 smaller quota holders who contribute accordingly.
4. While the focus of our activity relates to fishing within the Exclusive Economic Zone, New Zealand vessels operate outside the zone and fish in the high seas beyond national jurisdiction, e.g. in the Antarctic, southern Pacific, Indian and Atlantic waters. We participate as a stakeholder on the management of the high seas in which we operate.
5. The New Zealand seafood industry is committed to sustainable utilisation of our fisheries and any wider fishing activity. We support wholeheartedly the FAO Fish Stocks Agreement, the Fisheries Act 1996 and other legislative or international agreements which apply to our fishing activity. Included in our commitment is a commitment to the conservation and sustainability of wider marine biodiversity. We recognise the need for, the value of and support for sustainable utilisation and conservation of all resources, be they marine or terrestrial, at both the genetic and species scale.

THE DRAFT AGREEMENT

6. We have considered the objectives and content of the draft agreement. We have commented only on matters in which we as stakeholders have a strong interest and do not seek to comment on the specific wording of the agreement.

Governance of Biodiversity

7. It has been suggested by some interested stakeholders, e.g. High Seas Alliance and ECO, that, where BBNJ considers it appropriate to do so, BBNJ should assume primacy of biodiversity protection over State parties or their mandated organisations. That would include the adequacy of measures to:
 - i. protect marine genetic biodiversity;
 - ii. protect all marine biodiversity;
 - iii. identify areas requiring protection;
 - iv. select appropriate area based management tools;
 - v. evaluate environmental impact assessments (EIA) or strategic impact assessments (SEIA); and
 - vi. audit EIAs and SEIAs.
8. In essence, the proposals seek to transfer responsibility for and governance of marine biodiversity from individual states and their mandated organisations to the Conference of Parties that are signatories to the BBNJ.
9. We note your comment that there was strong pushback from state parties on that suggestion. We endorse and support that action.
10. UNCLOS binds State Parties to the conservation of the wider marine biodiversity in all marine activities. Agreements forming mandated organisations may contain that same obligation. To the extent that they do not explicitly contain that obligation, the UNCLOS obligation is paramount and obligates any fishing activity to the conservation of the marine environment.
11. Any stakeholder interested in the management of marine biodiversity has opportunities to lobby for additional efforts if they consider the responsible body is deficient or lacking in its performance. However, they are not entitled to establish a body outside those processes and provide it with the power to usurp the rightful position of existing bodies, as seems to be advocated by the High Seas Alliance.
12. We cannot agree with any suggestions that the BBNJ should have primacy over all ocean governance agreements for biodiversity protection where a State or a mandated organisation has jurisdiction over an area. Nor do we support that the signatory parties should by majority vote have power to take action in areas where a State or mandated organisation has jurisdiction over that area.

Definition of Area Based Management Tools and Marine Protected Areas.

13. MFAT advised the stakeholder meeting on 21 February that, having taken advice from the Minister of Conservation, New Zealand did not support the concept of “sustainable use” in respect of marine protection areas. The preference was to maintain a consistency with the IUCN Marine Protection Area (MPA) definitions, which can provide for sustainable customary take but no industrial take.
14. We do not support that position.
15. The current IUCN MPA classification dates back to 1988 and, while there has been some modification of the wording, the principles underlying the MPA classes have not changed nor effectively been reviewed since 1988.
16. Fisheries and marine environment management have however progressed significantly since 1988 with significant emphasis now being placed on sustainable utilisation. Biodiversity protection can be achieved by a number of management tools, MPAs are but one option. The IUCN MPA descriptions have failed to keep abreast of and accommodate changes in fisheries and marine environment

management. Adherence to the IUCN MPA classification is not necessary to ensure that marine protected areas can exist to achieve biodiversity conservation goals while allowing for sustainable utilisation of the resources.

17. The definitions of area based management tools and marine protected areas currently proposed in the draft agreement refer to achieving particular conservation and sustainable use objectives that afford higher protection than the surrounding areas. That is consistent with international best practice resource management. The definitions are also consistent with the overall objective of the agreement to promote sustainable development of the marine environment.
18. That is not to say that all area-based management tools, including marine protection areas, should not provide for sustainable use. Whether or not sustainable use is appropriate within the areas is dependent on an evaluation of the objectives and needs of the area. No-take and no-interference may be entirely appropriate under different scenarios. For example, where the biodiversity is unique to an area, total protection of the benthic area may be mandatory to preserve the nature of the area or where an eco-system is considered to be a closed system, total biodiversity protection may be appropriate to provide a scientific reserve with little /no anthropogenic interference.
19. It is vacuous to aver that protecting biodiversity in the air and water columns above a specified benthos is to protect the ecosystem of the area and, in particular, the benthos. Biodiversity in the water and air columns above a benthic area may be transitory or at best seasonally resident, driven by factors other than the benthos. The degree of integration in any ecosystem associated with the benthos decreases progressively with increasing distance from the benthos.
20. Consequently, total protection of the biodiversity in the water column may not be necessary through area based management tools where other controls exist to ensure the sustainability of biodiversity in the water space above the benthos. For example, where fish stocks, marine mammals or other marine species are sustainably managed by other sustainability frameworks, such as scientifically assessed catch limits, no-take protection is not necessarily imperative. Again, in the absence of other management tools focused on the sustainability of fisheries or aquatic life, area-based management tools may provide benefits to fisheries and marine species management.
21. The selection and application of an appropriate area based management tool must assess the needs and the effectiveness of the options available. It is not a "one size fits all" approach but rather an approach tailored to the needs of the ecosystem. The text contains no reference to the IUCN classification and should not import that reference in the definition of a marine protection area.
22. Current best practice fisheries management must take into account the sustainability of environmental impacts. In that context, management of the resources is as much focused on achieving the long term sustainability goal for both utilisation and conservation outcomes. It is agreed that some current fisheries management frameworks do not seek to achieve the duality of those objectives and higher conservation protection may be required to ensure the viability of representative or rare ecosystems.
23. Of niggling concern is the universal practice in the text to extend the wording of "*area based management tools*" with the phrase "*including marine protection areas*". Area based management tools are defined in the agreement to include the marine protection area tool. Inserting the phrase "*including marine protection areas*" wherever the term "*area based management tools*" is used is unnecessary and inappropriate. Continuous linkage of the tools infers that marine protection areas should be used in all circumstances and other tools may be considered as otherwise appropriate. Marine protected areas are but a tool among others and should have no primacy over any other tool. The tool selected should be that considered most appropriate to achieve the desired biodiversity protection outcome.

Our Recommendations

24. We submit that New Zealand should support the following positions:

- i. the BBNJ should not have jurisdiction over State Parties or mandated organisations for the protection of marine biodiversity in areas where those Parties and organisations have existing jurisdiction;
- ii. the definitions of “area-based management tool” and “marine protected area” should continue to include sustainable use objectives;
- iii. the use of the term “marine protected area” in the draft text should remain with lower case text to differentiate it from an IUCN **Marine Protected Area**; and
- iv. where the term “area-based management tools” is used generically, it should not have the accompanying descriptor “including marine protected areas”.

Contact for further discussions

25. Should you seek additional comments or discussion on the above, please contact s9(2)(a) , Policy Manager, Seafood New Zealand, on his mobile s9(2)(a) or by e-mail s9(2)(a) .

Yours

Tim Pankhurst
Chief Executive
Seafood New Zealand

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