



**An International Instrument on Conservation and Sustainable Use of
Biodiversity in Marine Areas beyond National Jurisdiction**

Matrix of Suggestions

16 December 2015

Preface

This document is intended as a tool to help negotiators involved in the UN Preparatory Committee charged with developing substantive recommendations for elements of a draft text on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. It has been prepared by an international group of legal experts as part of a project led by the IUCN Environmental Law Centre. Its purpose is to facilitate discussions on potential approaches to addressing the package of issues agreed in 2011, as well as to provide suggestions on some of the other elements common in many multilateral agreements.

This is a living document. We are eager to hear your views as to how we may continue to develop it to make it both useful and usable. Please send any remarks to Lydia Slobodian (lydia.slobodian@iucn.org).

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List of abbreviations

Aarhus Convention	United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters
ABMT	Area-based management tool
ABNJ	Areas beyond National Jurisdiction
ABS	Access and Benefit Sharing
BMUB	German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
BfN	German Federal Agency for Nature Conservation
Bonn Guidelines	Bonn guidelines on access to genetic resources and the fair and equitable sharing of the benefits arising from their utilization
CAMLR Convention	Conservation of Antarctic Marine Living Resources Convention
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CBD	Convention on Biological Diversity
CMS	Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)
The Convention	UNCLOS
EBSA	Ecologically or Biologically Significant Areas
EIA	Environmental impact assessment
EIS	Environmental information statement
Espoo Convention	Convention on Environmental Impact Assessment in a Transboundary Context
IUCN	International Union for Conservation of Nature
IUU Fishing	Illegal, Unreported and Unregulated Fishing
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture.
Kiev Protocol	Protocol On Strategic Environmental Assessment To The Convention On Environmental Impact Assessment In A Transboundary Context
Madrid Protocol	Protocol on Environmental Protection to the Antarctic Treaty
MGR	Marine genetic resources
MPA	Marine protected area
MSP	Marine spatial planning
MSR	Marine scientific research
Nagoya Protocol	The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity
Noumea Convention	Noumea Convention for the Protection of the Natural Resources and Environment of the South Pacific Region
OSPAR Convention	Convention for the Protection of the Marine Environment of the North-East Atlantic
RFMO/A	Regional fisheries management organisations and arrangements
Rotterdam Convention	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

SEA	Strategic environmental assessment
SPA	Specially Protected Area
SPA/BD Protocol	Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean to the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution
SPRFMO	South Pacific Regional Fisheries Management Organisation
TRIPS Agreement	Agreement on Trade Related Aspects of Intellectual Property Rights
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change
UNFSA	UN Fish Stocks Agreement (Agreement For The Implementation Of The Provisions Of The United Nations Convention On The Law Of The Sea Of 10 December 1982 Relating To The Conservation And Management Of Straddling Fish Stocks And Highly Migratory Fish Stock)
UNGA	United Nations General Assembly
UN Working Group	United Nations Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction
VME	Vulnerable Marine Ecosystem

Introduction

At the 2012 United Nations Conference on Sustainable Development (Rio+20), States committed themselves

‘to address, on an urgent basis, building on the work of the Ad Hoc Open-ended Informal Working Group and before the end of the sixty-ninth session of the General Assembly, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under the United Nations Convention on the Law of the Sea.’¹

This commitment was recalled and reaffirmed by the United Nations General Assembly (UNGA) in its 67th and 68th session.² In its resolution 68/70, the UNGA also requested the United Nations Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (UN Working Group) to make recommendations to the UNGA *‘on the scope, parameters and feasibility of an international instrument under the Convention’*.³ After two years of meetings on this topic, the UN Working Group during its 9th meeting adopted a recommendation on 23 January 2015 that the UN General Assembly should decide in favour of developing an international legally-binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.⁴

In UNGA Resolution 69/292 of 19th June 2015, the UNGA adopted the UN Working Group’s recommendation and to that end decided:

- To establish, prior to holding an intergovernmental conference, a preparatory committee (PrepCom), open to all States Members of the United Nations, members of specialized agencies and parties to the Convention, with others invited as observers in accordance with past practice of the UN;
- That the PrepCom is charged with developing substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under the Convention, taking into account the work of the UN Working Group;
- That the PrepCom should meet for no less than two sessions of 10 working days duration each in 2016 as well as in 2017. Committee sessions in 2016 will be from 28 March to 8 April and from 29 August to 12 September;
- That before the end of its 72nd session, the UNGA will decide on the convening of and on the starting date for an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the PrepCom on the elements and to elaborate the text of an international legally-binding instrument under the Convention.

¹ UNGA resolution 66/288. *‘The future we want.’* UN doc. A/RES/66/288, of 11 September 2012. Paragraph 162.

² UNGA resolution 67/78. *‘Oceans and the law of the sea.’* UN doc. A/RES/67/78, of 11 December 2012. Paragraph 181. UNGA resolution 68/70. *‘Oceans and the law of the sea.’* UN doc. A/RES/68/70, of 9 December 2013. Paragraph 197.

³ UNGA resolution 68/70. *‘Oceans and the law of the sea.’* UN doc. A/RES/68/70, of 9 December 2013. Paragraph 198.

⁴ A/69/780 Letter dated 13 February 2015 from the Co-Chairs of the Ad Hoc Open-Ended Informal Working Group to the President of the General Assembly.

It was indicated in the UNGA resolution that negotiations are to address the topics identified in the “package” agreed in 2011: in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.

Objective

This draft document is intended as a tool to help negotiators and others involved in the UN PrepCom process. Its aim is to present suggestions as options for possible elements of a draft text for an internationally legally binding instrument under UNCLOS. Where possible these are based on legal precedents and best practices used in other agreements and institutions. It focuses on the package deal of topics agreed in 2011 but additionally identifies some transversal issues such as governance principles and identifies other areas that could warrant further exploration, including institutional aspects, financial mechanisms, reporting and compliance review procedures, dispute resolution and advisory opinions, among others. Some of these transversal issues are discussed in this document; others are highlighted as a sort of checklist for future discussions.

The document has been developed by an international team of experts in the fields of the law of the sea and international environmental law, led by the International Union for Conservation of Nature (IUCN) Environmental Law Centre. While not reflecting the views of the funding agency, the project is supported by the German Federal Agency for Nature Conservation (BfN) with funds from the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB). The overall aim of this project has been to provide technical expertise to support government representatives during the UN Working Group process as well as the launching of the negotiations in 2016 and work of the PrepCom.

Approach of this Document

This document presents a variety of suggestions for key elements of an international instrument on the conservation and sustainable use of marine biodiversity in ABNJ under UNCLOS (hereafter termed “International instrument on marine biodiversity in ABNJ”). These suggestions are presented in a matrix form consisting of three columns providing: 1) the basic suggestion; 2) a more detailed proposal; and 3) references and examples of legal precedents and best practices where available.

The structure of this document addresses the main aspects of the package agreed in 2011:

- Marine genetic resources (questions related to access and benefit sharing, related institutional aspects, etc.)
- Area-based management tools including MPAs (general obligations, objectives, proposals, review and adoption, MPA management plans and measures, etc.)
- Environmental impact assessments (thresholds, minimum content, final decision, etc.) and strategic environmental assessments
- Capacity-building and the transfer of marine technology

It provides additional suggestions on general principles, obligations and scope, institutional aspects, financial mechanisms, reporting and compliance review, enforcement, and dispute resolution.

Additional Resources

IUCN has also developed a set of 13 policy briefs on key issues around the scope, parameters and feasibility of an international instrument under UNCLOS published in early 2014.

Paper I: [Introduction on Scope Parameters and Feasibility](#)

Paper II: [Enhancing Cooperation and Coordination](#)

Paper III: [Options and approaches for access and benefit- sharing](#)

Paper IV: [Governance principles](#)

Paper V: [Understanding ABMT and MPA](#)

Paper VI: [Options and approaches for establishing and managing Marine Protected Areas](#)

Paper VII: [Relation between EIA SEA and marine spatial planning](#)

Paper VIII: [Options for environmental impact assessment elements](#)

Paper IX: [Technology transfer and capacity building](#)

Paper X: [Existing regulatory institutional and governance gaps](#)

Paper XI: [Basic ideas for a possible institutional structure](#)

Paper XII: [International procedures to ensure science-based decision-making](#)

Paper XIII: [Compliance and verification mechanisms](#)

The complete set is available at:

https://www.iucn.org/about/work/programmes/environmental_law/elp_work/elp_work_issues/elp_work_bi_odiv/elc_marine_biodiversity

1 General Principles, Obligations and Scope

1.1 Scope

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Geographical scope	Applies to marine areas beyond national jurisdiction, including the high seas and the Area, as defined in the Convention.	UNCLOS Art 1 UNCLOS Art 86
Suggestion 2: Functional scope	Applies to processes and activities having a potential impact on ABNJ biodiversity and related to MGR in ABNJ.	Stockholm Declaration , Principles 21 and 22 Trail Smelter Arbitration Nuclear Weapons Advisory Opinion
Suggestion 3: Impact threshold	Applies to processes and activities which have or are likely to have significant adverse impacts on marine biodiversity and marine environment, individually or cumulatively in ABNJ. Also applies to activities related to the utilisation of marine genetic resources in or derived from ABNJ.	CBD Art 7 CBD Art 14
Suggestion 4: Jurisdictional scope	Applies to processes and activities under the jurisdiction or control of a State , undertaken within or beyond national jurisdiction, with potential impacts on marine biodiversity and marine environment in ABNJ and to activities related to the utilisation of marine genetic resources in or derived from ABNJ. For the purposes of this section, processes and activities subject to national jurisdiction and control include activities conducted: - from their territory; - within their maritime zones and under their jurisdiction; - by or from vessels or aircraft flying their flag; or - by their nationals	UNCLOS Art 117 (duty regarding nationals) UNCLOS Art 194 CBD Art 4

1.2 General principles and obligations

Suggestions	Detailed proposals	References/Examples
Suggestion 1: General obligation	Include a general obligation, which can be based on Art 192 of UNCLOS and CBD, <i>e.g.</i> : “States have the obligation to protect and preserve the marine environment and conserve marine biodiversity in ABNJ and sustainably use its components. States also have the obligation to share fairly and equitably the benefits arising from utilization of MGR derived from ABNJ.”	IUCN Policy Brief IV Governance Principles UNCLOS Art 192
Suggestion 2: Obligation to prevent significant adverse impacts	Include obligation for States, acting directly and cooperating through competent international organizations, to: - Identify processes and activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of marine biodiversity or its components in ABNJ	UNCLOS Art 194 (taking all measures necessary to not cause damage to other States or ABNJ) CBD Art 3 (Principle)

	<ul style="list-style-type: none"> - Take all measures necessary to ensure that activities under their jurisdiction or control are conducted so as to not cause significant adverse impacts on marine biodiversity and its components in ABNJ <p>See: Environmental Impact Assessments: Section 3, page 23; Scope, section 1.1, page 10; Marine Spatial Planning: Section 2.4, page 21; Marine Protected Areas: Section 2.3, page 15.</p>	<p>CBD Art 4 UNGA Res. 61/105, para 83-89 (significant adverse impacts)</p>
<p>Suggestion 3: Relevant UNCLOS principles</p>	<p>Refer to relevant principles drawn from the Convention, such as:</p> <ul style="list-style-type: none"> - Freedom of the High Seas (Art 87) - Duty of States to adopt with respect to their nationals measures for conservation of living resources of the high seas (Art 117) - Common heritage of mankind with respect to the Area (Art 136) - Activities in the Area carried out for benefit of mankind (Art 140) - Protection and preservation of the Marine Environment (Art 192) - Cooperation on a global/regional basis (Art 197) - Assessment of effects of activities (Art 206) - Right to and principles for MSR (Arts 238, 240) - Technology transfer (Art 266) 	<p>UNCLOS Art 87 (freedom of high seas) UNCLOS Art 117 (duty over nationals) UNCLOS Art 136 (common heritage of mankind) UNCLOS Art 140 (benefit of mankind) UNCLOS Art 192 (protection of biodiversity) UNCLOS art 197 (cooperation) UNCLOS art 206 (assessment) UNCLOS arts 238, 240 (MSR) UNCLOS art 206 (technology transfer)</p>
<p>Suggestion 4: Other general principles to apply in giving effect to the objectives of the Agreement</p>	<p>List relevant principles, which could include:</p> <ul style="list-style-type: none"> - respect for the law of the sea, in particular UNCLOS and its related instruments - international cooperation and coordination - decisions based on the best scientific and technical information available - precautionary approach - ecosystem approach - sustainable and equitable use of resources - accountability - transparency in decision-making processes - responsibility of States to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States or of ABNJ - recognition of interests of developing States, in particular the least developed States, small island developing States, and developing State coastal communities - the duty to take all measures consistent with the Convention and this agreement necessary to achieve the objectives of this agreement. 	<p>IUCN Policy Brief IV Governance Principles SPRFMO Convention Art 3 (list of principles) UNFSA, Art 5 (general principles) UNFSA Art 8 (cooperation) CBD Art 3 (state responsibility) UNFSA, Art 12 (transparency)</p>

<p>Suggestion 5: Specific obligations relating to biodiversity in ABNJ</p>	<p>Incorporate general list of obligations related to conservation and sustainable use of marine biodiversity in ABNJ. These could include obligations to:</p> <ul style="list-style-type: none"> - adopt measures to ensure long term conservation and sustainable use of marine biological diversity and its components in ABNJ; - prevent/minimize pollution - prevent/eliminate overfishing - particularly protect those marine ecosystems which have long recovery times following disturbance; - incorporate knowledge of the impacts of other human activities and environmental factors; - collect and share, in a timely manner, complete and accurate data; - promote and conduct scientific research and develop appropriate technologies in support of conservation and management of marine biodiversity and its components in ABNJ; - implement conservation and management measures through effective monitoring, control and surveillance; - ensure compliance with conservation and management measures and provide adequate sanctions for violations. 	<p>UNFSA, Art 5 (general principles) SPRFMO Convention Art 3 (list of principles)</p>
<p>Suggestion 6: Emergency measures</p>	<p>Provide that where there is urgent threat to the marine environment or marine biodiversity in ABNJ, States Parties act immediately, individually and through competent organizations to immediately stop harmful or potentially harmful activities under their jurisdiction or control.</p> <p>Measures taken on an emergency basis should be based on the best scientific evidence available. Such measures are temporary and must be reconsidered for decision at the next meeting of the decision-making body.</p>	<p>UNCLOS Art 221 (Measures to avoid pollution arising from maritime casualties) SPRFMO Art 20, para 5(b) (Conservation and Management Measures)</p>

1.3 Obligations for cooperation

Suggestions	Detailed proposals	References/Examples
<p>Suggestion 1: Obligation for States to cooperate</p>	<p>Include general provision requiring States to cooperate on a global or regional basis, building on UNCLOS Art 197.</p> <p><i>E.g.:</i> “States shall cooperate on a global basis and, as appropriate, on a regional basis as well as sub-regional basis, directly, or through competent international organizations, in formulating and elaborating rules, standards and recommended practices and procedures consistent with the Convention (UNCLOS) and this agreement, for the conservation and sustainable use of marine biodiversity and its components and protection and preservation of the marine environment, taking into account characteristic regional features.”</p>	<p>UNCLOS Art 197 CBD Art 5 UNFSA, Art 8 UNFSA, Art 9 (sub-regional/regional arrangements)</p>
<p>Suggestion 2: Direct obligation on competent international organizations to cooperate</p>	<p>Include direct obligation on competent international organizations. <i>E.g.:</i> “The competent international organizations referred to in this agreement shall take all appropriate measures to ensure, either directly or in close cooperation among themselves, the effective discharge of their functions and responsibilities under this agreement.”</p>	<p>UNCLOS Art 278</p>

<p>Suggestion 3: Specify content of the obligation to cooperate.</p>	<p>List specific measures on which states and/or competent international organizations should cooperate. These can include scientific, legal, institutional, political, etc., such as cooperation in:</p> <ul style="list-style-type: none"> - marine scientific research - conservation/management measures and standards - allocation of marine resources - collection/dissemination of data - monitoring, control, surveillance and enforcement - capacity building and technology transfer 	<p>UNFSA, Art 5 (general principles) UNFSA, Arts 9, 10 (State obligations in cooperating through sub-regional/regional arrangements) UNCLOS Part XII Section 2 (e.g. Art 200 on studies, research programmes and exchange of information and data, Art 201 on scientific criteria for regulations) UNCLOS Part XIII Section 2 on international cooperation (Art 242, 243 and 244)</p>
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2 Area-Based Management Tools (ABMTs), including Marine Protected Areas (MPAs)

2.1 ABMT Definitions

2.1.1 Area-based management tools (ABMTs)

Suggestions	Detailed proposals	References/Examples
<p>Suggestion 1: General definition of ABMTs</p>	<p><i>Area Based Management Tools (ABMTs)</i> are regulations of human activity in a specified area to achieve conservation or resource management objectives.</p>	<p>IUCN Policy Brief V, Understanding Area-based Management Tools and Marine Protected Areas</p>
<p>Suggestion 2: Also include types of ABMTs, including sectoral tools and cross-sectoral tools such as marine protected areas (MPAs) and marine spatial planning (MSP)</p>	<ul style="list-style-type: none"> - <i>Sectoral ABMTs</i> include measures adopted by a competent international organization to achieve biodiversity conservation objectives for a specific area such as IMO's Particularly Sensitive Sea Areas (PSSAs) or MARPOL Special Areas; temporal or spatial closed areas adopted by RFMOs including "Vulnerable Marine Ecosystems" (VMEs), ISA's Areas of Particular Environmental Interest and Preservation Reference Zones. - <i>Cross-sectoral ABMTs</i> are those tools that require cooperation and coordination across multiple organizations and bodies, including MPAs and MSP. 	<p>IUCN Policy Brief V, Understanding Area-based Management Tools and Marine Protected Areas</p>

2.1.2 Marine Protected Areas (MPAs)

Suggestions	Detailed proposals	References/Examples
<p>Suggestion 1: Adapt CBD definition</p>	<p>A geographically defined area located in the water column and/or seabed which is designated, regulated and managed to achieve specific conservation objectives.</p>	<p>CBD Art 2</p>
<p>Suggestion 2: Explicit</p>	<p>...including the long-term conservation of nature with</p>	<p>Guidelines for</p>

nature conservation objective (as per IUCN definitions)	associated ecosystem services and cultural values	applying the IUCN Protected Areas Categories to MPAs
Suggestion 3: Specific categories	MPAs may have a variety of objectives and stringency in regulation, ranging from strictly protected marine reserves to areas where uses compatible with the MPA objectives are allowed. The instrument could list specific categories or provide for recognition of categories developed by other bodies.	Madrid Protocol Annex V: Art 3 (Antarctic Specially Protected Areas); Art 4 (Antarctic Specially Managed Areas)

2.1.3 Marine Spatial Planning (MSP)

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Based on EU MSP definition	Marine spatial planning (MSP) means a process by which the relevant States and competent authorities analyse and organise human activities in marine areas to achieve ecological, economic and social objectives	EU Directive 2014/89/EU , Art 3
Suggestion 2: Apply the more detailed UNESCO IOC definition	Marine spatial planning is a public process of analysing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that usually have been specified through a political process. Characteristics of marine spatial planning include ecosystem-based, area-based, integrated, adaptive, strategic and participatory.	UNESCO IOC website IOC, Marine Spatial Planning: A Step-by-Step Approach toward Ecosystem-based Management

2.2 ABMT General Obligations, Criteria and Guidelines

2.2.1 ABMT Obligations

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Obligations to take actions related to area-based conservation	List obligations for area-based conservation based on CBD Art 8. These could include obligations to: <ul style="list-style-type: none"> - Establish a system of ecologically representative and well-connected marine protected areas and adopt other area-based management measures where special measures need to be taken to conserve marine biological diversity in ABNJ; - Apply internationally agreed scientific criteria and guidelines for the selection of marine protected areas or areas where special measures need to be taken to conserve biological diversity; - Regulate or manage marine activities or resources important for the conservation of marine biological diversity in ABNJ whether within or outside MPAs with a view to ensuring conservation and sustainable use; - Promote the protection of ecosystems, natural habitats and maintenance of viable populations of species in natural surroundings. - Integrate conservation and sustainable use of marine biological diversity into decision-making - Adopt measures to avoid or minimize adverse impacts on marine biological diversity in ABNJ See: Obligation to cooperate to establish MPAs , section 2.3.1, page 15; Marine Spatial Planning , section 2.4, p. 21.	CBD Art 8 (In-situ conservation) CBD Art 10 (sustainable use of components of marine biodiversity) CBD COP 10, Decision X/2 (Aichi Target 11) UNFSA, Art 10 (c) (in fulfilling obligation to cooperate, States shall adopt and apply any generally recommended international minimum standards)

2.2.2 ABMT Criteria and Guidelines

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Decision-making body to develop specific criteria and guidelines	Provide for the decision-making body to develop specific obligations, including scientific criteria and guidelines for the selection of marine protected areas and other areas where special measures need to be taken to conserve marine biological diversity. See: Institutional Aspects , section 6.1, page 34	UNCLOS Art 201 , scientific criteria for regulations UNFSA , Art 5 (general principles)
Suggestion 2: Refer to internationally recognized criteria	Refer to internationally recognized criteria for area-based conservation measures, such as: <ul style="list-style-type: none"> - CBD criteria for ecological or biological significant areas (EBSAs); - FAO criteria for vulnerable marine ecosystems (VMEs) - Criteria established by Regional Seas Conventions such as OSPAR, Barcelona Convention, CCAMLR - IMO Criteria for Particularly Sensitive Sea Areas (PSSAs) - International lists of species in need of enhanced protection, such as those adopted by CMS, CITES and other relevant international organizations. 	CBD COP Decision IX/20 , Annex I (scientific criteria for EBSAs) CBD criteria (EBSAs) OSPAR guidance documents FAO VME criteria IMO Resolution A.982(24) (PSSAs)

2.3 Marine Protected Areas (MPAs)

2.3.1 Obligation to cooperate to establish MPAs

Suggestions	Detailed proposals	References/Examples
Suggestion 1: General obligation based on CBD Aichi Target 11 on systems of protected areas	Include general obligation that States Parties cooperate to establish a system of effectively and equitably managed, ecologically representative and well-connected marine protected areas in ABNJ. See ABMT Obligations , section 2.2.1, page 14.	IUCN Policy Brief VI: Options and Approaches for Establishing and Managing Marine Protected Areas in ABNJ WSSD JPOI , para. 32 (c) CBD COP 10, Decision X/2 (Aichi Target 11) UNGA Res 66/288 (The future we want, para 177)

2.3.2 Objectives for MPAs

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Specify set of objectives for MPA systems	Provide for a system of MPAs to be established to achieve specified objectives. Objectives could be based on a combination of existing and new objectives, with reference to objectives listed in regional seas conventions.	CCAMLR Conservation Measure 91-04 OSPAR Guidelines for the Identification and Selection of MPAs OSPAR Guidance on Developing an Ecologically Coherent Network Of OSPAR MPAs

		SPA/BD Protocol to the Barcelona Convention Art 4 (objectives)
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2.3.3 Process for establishing MPAs

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Proposal for establishment of a new MPA for review by decision-making body	Provide for proposal of new MPAs for review by decision-making body, which may decide to adopt, modify or reject proposals or request further information. See: Institutional Aspects , section 6.1, page 34	IUCN Policy Brief VI: Options and Approaches for Establishing and Managing Marine Protected Areas in ABNJ
Suggestion 2: Entities entitled to submit proposals	Entities entitled to submit an MPA proposal may include: <ul style="list-style-type: none"> - States Parties to the agreement - Relevant competent international organizations - A subsidiary body (e.g. scientific committee) established pursuant to the instrument - An accredited group of scientific experts - Accredited NGOs 	Madrid Protocol, Annex V , Art 5 (procedure for submitting proposal by any Party, the Environment Committee, the Scientific Committee, or CCAMLR)
Suggestion 3: Review by decision-making body	Proposals would be reviewed by the decision-making body, possibly in conjunction with a subsidiary body. The decision-making body may decide to adopt, modify or reject proposals, or request further information. Decisions may be made by a specified majority or consensus. Special weight may be given to the voice of Parties in the region or particularly affected.	SPA/BD Protocol to the Barcelona Convention Madrid Protocol Annex V , Art 6 on Designation Procedures CCAMLR Conservation Measure 91-04 , para 3 (establishment of CCAMLR MPAs)
Suggestion 4: Selection criteria and objectives	The selection of MPA sites should be based on specified or referenced criteria and should fulfil specified objectives. See ABMT Criteria and Guidelines , section 2.2.2, page 15; Objectives for MPAs , section 2.3.2, page 15.	
Suggestion 5: Inscription on list of MPAs	MPAs adopted or endorsed pursuant to this agreement would be added to a list of internationally recognized MPAs.	
Suggestion 6: Interim measures	Provide that in any area under review, States Parties shall refrain from authorizing or permitting activities with the potential to impact marine biodiversity and its components, and in doing so, shall take into account the precautionary approach.	SPRFMO , Art 22 (new or exploratory fisheries).

2.3.4 Endorsement of regionally established MPAs

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Proposals for endorsement submitted to decision-making body	Create mechanism for proposals for endorsement of MPAs established at the regional level (outside the framework of this agreement) to be submitted to the decision-making body for review. Proposals could be submitted by: - States Parties to the instrument; - Relevant sub-regional, regional and sectoral organizations and bodies. Processes and interim measures described above would apply. See Processes for establishing new MPAs , section 2.3.2, page 15.	IUCN Policy Brief VI on Options and Approaches for Establishing and Managing Marine Protected Areas in ABNJ
Suggestion 2: Review of regional MPAs existing at the time of entry into force	Upon the entry into force of the agreement, the decision making body/COP and/or subsidiary body would promptly review existing regional MPAs with a view to endorsement, in cooperation with relevant sub-regional, regional and sectoral organizations and bodies. See: Institutional Aspects , section 6.1, page 34	

2.3.5 MPA Management Plans: Preparation

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Proponent of MPA to provide a draft management plan	Require the proponent of an MPA to submit a proposed Management Plan to the decision making body or subsidiary body (e.g. scientific committee) at the time it submits the MPA proposal.	Madrid Protocol, Annex V , Art 5, Art 6.
Suggestion 2: Subsidiary body to work with States Parties and through international organizations regional bodies to develop/adopt management plans	Subsidiary body to work with States Parties and through competent international organizations and relevant regional bodies to develop and adopt a management plans within two years of the designation of an MPA	OSPAR Convention Annex V , Art 3 (duties of the OSPAR Commission to develop means for instituting measures related to specific areas/species/habitats)
Suggestion 3: Regional advisory bodies or coordinating units create management plan	Regional advisory bodies or coordinating units established under this agreement to be responsible for coordinating the development of a management plan within a specified time (e.g. two years) of an MPAs adoption or endorsement pursuant to this agreement See: Institutional Aspects , section 6.1, page 34.	

2.3.6 MPA Management Plans: Contents

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Basic requirements for management plan	Specify general contents of a draft management plan, such as: - Goals and objectives for the MPA - Spatial boundaries - Proposed management measures - A monitoring plan - A research plan - Performance criteria for evaluating progress toward	SPA/BD Protocol to the Barcelona Convention Art 6 IUCN Guidelines for marine protected areas IUCN Guidelines for Protected Areas

	<p>goals and objectives, and effectiveness of specific management approaches</p> <ul style="list-style-type: none"> - Legislation and institutional framework/arrangements - Basic cycle for review, revision and updating. 	Legislation
<p>Suggestion 2: Detailed requirements for management plan listed in the agreement</p>	<p>Include more detailed contents for the management plan, such as:</p> <ul style="list-style-type: none"> - a description of the value or values for which special protection or management is required; - a statement of the aims and objectives of the Management Plan for the protection or management of those values; - management activities which are to be undertaken to protect the values for which special protection or management is required; - a description of the area; - the identification of zones within the area, in which activities are to be prohibited, restricted or managed for the purpose of achieving the aims and objectives above; - a clear description of conditions under which permits may be granted by the competent authority - codes of conduct for allowed activities; - other relevant restrictions on activities in the MPA 	<p>Madrid Protocol Annex V, Art 5 (3) (list of what a management plan should contain)</p> <p>Guidelines for the management of MPAs in the OSPAR maritime area (structure for an MPA Management Plan)</p> <p>IUCN list of Protected Areas publications</p> <p>Marine and Coastal Protected Areas: A Guide for Planners and Managers,</p>

2.3.7 MPA Management Measures

Suggestions	Detailed proposals	References/Examples
<p>Suggestion 1: General description of potential management measures</p>	<p>Provide a description of possible management measures, including, <i>inter alia</i>:</p> <ul style="list-style-type: none"> - Regulation, prohibition or permitting of activities with a potential to adversely affect marine biodiversity or its components or the marine environment of the MPA and surrounding (...) - Special requirements for EIAs and SEAs - Spatial planning measures for MPA and surrounding region - Any other measure required to fulfil management plan or to achieve objectives 	<p>OSPAR Convention Appendix 3 Criteria for identifying human activities for the purpose of Annex V</p>

<p>Suggestion 2: Obligation to undertake specified management measures</p>	<p>Prescribe management measures to be undertaken by Parties with respect to activities, vessels and persons under their jurisdiction and control, and with respect to relevant regional, sectoral and other international organizations, including:</p> <ul style="list-style-type: none"> - the prohibition of the dumping or discharge of wastes and other substances ... - the regulation of navigation; - the regulation of the introduction of any non-indigenous species; - the regulation or prohibition of any activity involving the exploration or the exploitation of the seabed or its subsoil; - the regulation of any scientific research activity; - the regulation or prohibition of fishing, hunting, taking of animals and harvesting as well as trade in animals, parts of animals, plants, parts of plants - the regulation of artificial installations - the regulation and if necessary the prohibition of any other activity or act likely to harm or disturb the state of conservation of the ecosystems or species or might impair the natural characteristics of the marine protected area; - special requirements for EIAs and permitting processes for activities with potential to affect MPAs - any other measure aimed at safeguarding ecological and biological processes 	<p>SPA/BD Protocol to the Barcelona Convention, Art 5 on Protection Measures</p>
<p>Suggestion 3 Adoption of conservation and management measures by competent international organizations</p>	<p>Provide that Parties cooperate to ensure that competent international organizations adopt conservation and management measures within a specified amount of time (e.g. 2 years).</p> <p>Measures should be designed to meet the conservation objectives of the MPA and otherwise prevent [significant] adverse impacts.</p>	<p>UNGA Res. 61/105 para 83 (calling upon RFMOs/A to adopt and implement measures to identify vulnerable marine ecosystems and prevent significant adverse impacts)</p>
<p>Suggestion 4: Measures which could be adopted by the decision making body</p>	<p>The decision-making body itself could take management measures to ensure that harmful or potentially harmful activities do not take place, where:</p> <ul style="list-style-type: none"> - No measures have been taken within the specified period of time - Measures taken are not deemed sufficient by the decision making body (after advice of the relevant subsidiary body) - There is an immediate or pressing emergency, in which case the decision-making body shall meet in extraordinary session to decide on measures. 	<p>Kuala Lumpur Protocol, Art 5 (competent authority may take measures when the operator has not)</p> <p>International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Art I (emergency measures)</p>

Suggestion 5: Emergency measures	If a threat of serious damage in a designated/proposed MPA, Parties shall act immediately to stop or prevent potential or actual harmful activities under their jurisdiction or control.	SPRFMO , Art 20, para 5 (emergency measures where serious threat) International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties , Art I
Suggestion 6: Interim measures	For MPAs pending adoption of sectoral measures, States shall refrain from permitting or expanding existing activities that may undermine the MPA.	South Pacific RFMO CMM 2.03 on Bottom Fishing , Para 8 8 (“freezing the footprint” rule)
Suggestion 7: Stricter measures	Provide that nothing in this agreement shall be interpreted as preventing a State Party from taking, individually or jointly with other States Parties, more stringent measures with respect to the conservation of marine biodiversity, including proposed or designated MPAs, consistent with international law.	International Convention for the Control and Management of Ships' Ballast Water and Sediments , Art 3 UNCLOS Art 192 UNCLOS Art 211.3 CMS Art XII.3 Cartagena Protocol Art 2

2.3.8 MPA Management Authority

Suggestions	Detailed proposals	References/Examples
Suggestion 1 Management through regional cooperation	States cooperate at the sub-regional, regional or international level as appropriate to manage designated MPAs.	UNCLOS Art 197 on Co-operation on a global or regional basis
Suggestion 2: Management by designated regional advisory bodies or coordinating units	States cooperate at the sub-regional, regional or global level through regional advisory bodies or coordinating units established under this agreement to manage designated MPAs. See: Institutional Aspects , section 6.1, page 34	UNCLOS Art 118 on Cooperation of States in the conservation/management of living resources
Suggestion 3: Cooperation through body designated by the decision making body, including possibility for establishing a new body	The decision making body designates a responsible body for MPA management, building on and in consultation with existing organizations. Where there is no competent organization, States cooperate to establish such an organization, or enter into other appropriate arrangements.	UNCLOS Art 118 on Cooperation of States in the conservation/management of living resources
Suggestion 4: Reporting to and recommendations from the decision making body on MPA in ABNJ management.	The recognized MPA management authority shall regularly report to the decision making body, which may provide advice and recommendations on the management of the MPA based on advice of the Scientific Committee	

2.3.9 Obligations to comply with and enforce management measures

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Direct obligation on States Parties to comply with applicable measures, and not authorize or undertake harmful activities	States Parties ensure that entities subject to their jurisdiction or control shall comply with the measures applicable to MPAs designated or endorsed pursuant to this agreement and do not authorize or undertake any activities that might be contrary to the objectives for which the MPAs were established.	SPA/BD Protocol to the Barcelona Convention Art 8 (3)
Suggestion 2: Direct obligation to investigate and enforce	States Parties shall: - Investigate and as necessary prosecute any activities by vessels, aircraft or persons under their jurisdiction or control that infringe conservation measures; - Sanctions shall be adequate to dissuade any breach of conservation measures.	FAO Compliance Agreement EU Council Regulation (EC) No 1005/2008 (IUU Regulation)
Suggestion 3: Prevent more than minor or transitory impacts on MPAs	Apply special requirements for EIAs. See: Threshold for EIAs/SEAs , section 3.3, page 24	

2.4 Marine Spatial Planning

Suggestions	Detailed proposals	References/Examples
Suggestion 1: General obligation for State Parties	Specify general obligations to - cooperate to spatially plan and manage human activities in ABNJ; - limit competing activities which could lead to the degradation of the marine environment or marine biodiversity; in connection with other measures implemented under this agreement (i.e. EIA, SEA, MPAs and ABMTs).	EU Directive 2014/89/EU (e.g. Art 4, 5) CBD, Marine Spatial Planning in the Context of the Convention
Suggestion 2: Specify more detailed obligations	Specify more detailed obligations, such as obligation to adopt a spatial plan for areas of specific interest, for example after a proposal of the scientific committee.	
Suggestion 2: More detailed obligations to be developed by decision making body	Provide for objectives, scientific criteria and minimum requirements for maritime spatial planning and plans to be developed by the decision making body or subsidiary body.	
Suggestion 3: Power given to the decision making body to adopt relevant measures	Provide authority for the decision making body (e.g. COP) to undertake and develop marine spatial planning measures directly. See: Institutional Aspects , section 6.1, page 34.	
Suggestion 4: Strategic environmental management plans	Strategic environmental management plans shall be developed and adopted by the appropriate organization or decision making body as necessary.	

2.5 Reporting, Monitoring and Review of ABMTs

2.5.1 Reporting

Suggestions	Detailed proposals	References/Examples
Suggestion 1: States to report on actions taken directly and through competent international organisations	States Parties cooperate, directly, through competent international organizations and pursuant to this agreement, to report annually to the decision making body on actions taken with respect to the development and application of area-based management measures relevant to the conservation and sustainable use of marine biodiversity and its components in ABNJ. Reports include responses to any decisions or recommendations of the decision making body See Reporting Requirements , section 6.3.1 page 36.	UNGA Res. A/61/105 para 91 (SG to report on actions taken by States and RFMOs) OSPAR Recommendation 2012/1 , 5.1 on Implementation reports
Suggestion 2: Responses to decisions of the decision-making body	Reports include responses to any decisions or recommendations of the decision-making body . See: ABMT Review mechanism , section 2.5.2, page 22.	
Suggestion 3: Information to be made publicly available	States Parties make publicly available information regarding adopted area-based management measures for the conservation and sustainable use of marine biodiversity and its components in ABNJ See Mapping of ABMTs : Section 2.5.3, page 23	UNGA Resolution 61/105 , para 87

2.5.2 ABMT Review Mechanism

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Decision making body to regularly review actions taken by States Parties acting through competent international organizations and adopt recommendations	In keeping under review the implementation of the agreement, the decision making body includes a regular review of area-based management measures taken by States Parties, competent international organizations and other bodies, and the status of the development of a system of MPAs, with a view to developing recommendations for improving their effectiveness, coherence and sufficiency. See: Institutional Aspects , section 6.1, page 34.	UNGA Res. A/61/105 para 91 (reporting on actions taken by States and RFMOs)
Suggestion 2: Scientific body tasked to perform the review and provide recommendations to decision making body	A subsidiary body (e.g. scientific committee) is charged with the provision of advice and formulation of recommendations to the Parties in connection with implementation of the agreement, including on: - The status of area-based management measures adopted by competent international bodies pursuant to this agreement - The effectiveness of the measures taken pursuant to this agreement - The need to update, strengthen or otherwise improve such measures - The need for additional measures See: Institutional Aspects , section 6.1, page 34.	Madrid Protocol , Art 12 Functions of the Committee
Suggestion 3: Competent international organizations invited to	Decision-making body invites States Parties and competent international organizations to respond to the recommendations within a specified time (e.g. 2 years)	UNGA Res. A/61/105 para 91 (reporting on actions taken by States

respond to the recommendations	and to report on their progress annually. See: Institutional Aspects , section 6.1, page 34.	and RFMOs)
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2.5.3 Mapping and global data base of ABMTs

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Provision on development of mapping and global data base	States Parties cooperate directly, through competent international organisations and pursuant to this agreement and the Convention: <ul style="list-style-type: none"> - To understand and map existing patterns of human use of and impacts on the marine environment in ABNJ; - To map ecologically or biologically significant areas and other critical and sensitive areas and vulnerable marine areas in ABNJ, with reference to relevant international criteria; - To establish a global database of area-based management measures adopted in ABNJ; - To collect and map other relevant information. 	UNCLOS Art 200 (research, information) UNGA Res. 61/105 para 90 (global database on VMEs) FAO VME database CBD COP Decision X/29 (EBSA information repository) EBSA Repository and Information-Sharing Mechanism
Suggestion 2: Centralized body under agreement to develop map and database	The decision making body or a subsidiary body, carries out the functions described in Suggestion 1. See: Institutional Aspects , section 6.1, page 34.	EMODnet Obis OSPAR MPA Map Tool

3 Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA)

3.1 EIA/SEA Definitions

3.1.1 Environmental Impact Assessments (EIAs)

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Adapt CBD definitions	“a process of evaluating the likely environmental impacts, including cumulative impacts, of a proposed project or development.”	CBD Art 14
Suggestion 2: Adapt ESPOO convention definitions	“procedure for evaluating the likely impact of a proposed activity on the environment.”	ESPOO Convention Art 1
Suggestion 3: Include definition of impact	Include definition of “impact” to clarify scope. <i>E.g.:</i> “‘Impact’ means any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors.”	ESPOO Convention Art 1

3.1.2 Strategic Environmental Assessment (SEAs)

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Kiev Protocol definition	“the evaluation of the likely environmental, including health, effects, of plans and programmes, and to the extent appropriate, policies and legislation, which comprises the	Kiev Protocol to the ESPOO Convention , Preamble, Art 2

	determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.”	
Suggestion 2: Include additional definitions related to SEA	Include related definitions like plans and programmes or environmental report.	Kiev Protocol , Art 2 EU SEA Directive , Art 2

3.2 General Obligation for EIAs/SEAs

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Obligation to ensure EIA is taken	Impose obligation on States to ensure EIAs are undertaken for activities or processes within their jurisdiction or control with potential to cause harm to biodiversity or the marine environment in ABNJ.	IUCN Policy Brief VIII: Options for Environmental Impact Assessments UNCLOS Art 206 UNCLOS Art 194.2 (all measures necessary to not cause damage to other States or ABNJ) CBD Art 4 (Jurisdictional Scope) CBD Art 7 (identification and monitoring) Espoo Convention Art 2(3) UNGA Res. 61/105 , paras. 83-89 (significant adverse impacts)
Suggestion 2: Obligation to undertake SEA	Impose obligation on States to conduct SEA of plans and programmes under their jurisdiction or control with potential to cause harm to biodiversity or the marine environment in ABNJ.	Kiev Protocol Art 4 (field of application concerning plans and programmes)

3.3 Threshold for EIAs/SEAs

Suggestions	Detailed proposals	References/Examples
Suggestion 1: significant adverse effects	Activities, plans and programmes are subject to a prior EIA/SEA where they may have significant adverse effects on the marine environment or marine biodiversity of ABNJ.	IUCN Policy Brief VIII CBD Art 14 (1)(a) (Impact Assessment) Espoo Convention Art 2(3) Kiev Protocol Art 4
Suggestion 2: substantial pollution or significant harmful changes	Activities, plans and programmes are subject to a prior EIA/SEA where they may cause substantial pollution of or significant and harmful changes to the marine environment or marine biodiversity of ABNJ.	UNCLOS Art 206 (assessment of potential effects of activities) Espoo Convention Art 2(3)
Suggestion 3: Establish a	Activities, plans and programmes that are likely to have	Madrid Protocol, Art 8

lower threshold for prior EIAs to be conducted in ABNJ MPAs	more than a minor or transitory effect on the marine environment or marine biodiversity within the MPA are subject to a prior EIA/SEA.	(EIA) Kiev Protocol Art 4 (field of application concerning plans and programmes)
Suggestion 4: Establish lower threshold for all activities	Activities, plans and programmes that are likely to have more than a minor or transitory effect on the marine environment or marine biodiversity of ABNJ are subject to a prior EIA/SEA.	Madrid Protocol, Art 8 (EIA) Kiev Protocol Art 4
Suggestion 5: List activities that are always subject to EIA	Specify activities, plans or programmes that are always subject to mandatory prior EIA, or subject to a lower threshold in determining whether an EIA is required. These could include, <i>inter alia</i> : <ul style="list-style-type: none"> - Aquaculture - Dumping of waste - Geo-engineering - Offshore hydrocarbon production - Marine scientific research - Laying of submarine cables and pipelines - Ocean energy operations 	Espoo Convention, Art 2(3) (general provisions); Appendix I (List of activities) Kiev Protocol Art 4 and Annexes I (list of projects) and II Kiev Protocol Art 5 (screening) EU Directive on EIA 2011/92/EU ; Annexes I and II as amended by EU Directive 2014/52/EU IUCN Policy Brief VIII
Suggestion 6: Decision-making body to develop/maintain list of activities subject to EIA	Provide for the decision making body to develop a list of activities, plans or programmes that are always subject to mandatory prior EIA/SEA, or subject to a lower threshold in determining whether an EIA/SEA is required. Provide criteria for listing activities, based on whether the activity, plan or programme has the potential to adversely affect marine biodiversity, alone or in combination with other existing activities.	

3.4 Responsibility for Undertaking EIA

Suggestions	Detailed proposals	References/Examples
Suggestion 1: EIA by proponent of activity	State Parties require proponents of activities to conduct prior EIA of activities that meet specified threshold.	IUCN Policy Brief VIII
Suggestion 2: EIA undertaken by State Party	State Parties shall conduct EIA of activities that meet specified threshold. These can be funded by fees from proponents of activities.	
Suggestion 3: Responsible entity left to State Party to decide	Include requirement that State Party ensures that an environmental impact assessment is undertaken, but do not specify responsible entity.	Espoo Convention, Art 2

3.5 Environmental Impact Statement (EIS)/SEA Report

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Minimum content specified in annex	Content of Environmental Impact Statement/SEA Report is specified in Appendix of Annex to the agreement. It could include: <ul style="list-style-type: none"> - description of proposed activity/plan/programme - description of initial environmental reference state - assessment of likely/potential impacts - description of expected biophysical changes resulting from proposed activity - identification of ecosystem services - description of methods, data and underlying 	IUCN Policy Brief VIII Espoo Convention Art 4 (EIA documentation); Appendix II (content of EIA documentation) Kiev Protocol Arts 6(1) and 7, Appendix 4

	<ul style="list-style-type: none"> assumptions used to predict impacts - description of practical alternatives - description of possible mitigation measures 	
Suggestion 2 Minimum content to be developed	Provide for decision-making body to identify guidelines/minimum requirements for EIS/SEA Reports	Espoo Convention Art 4 Kiev Protocol Art 6(3)

3.6 Notification and Consultation with other Parties

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Notification and consultation with all Parties	<p>Require States to notify all Parties, through mechanisms set up by the Convention, of proposed activities within their jurisdiction or control that meet the specified threshold. (See: Threshold for EIAs/SEAs, section 3.3, page 24.)</p> <p>Other Parties may respond within a specified time indicating whether they intend to participate in the EIA/SEA procedure. The comments of these Parties must be taken into account</p>	Espoo Convention Art 3 UNCLOS Art 205 (publication of reports) Kiev Protocol Art 10
Suggestion 2: Special weight to adjacent/affected Parties	Require States to notify all Parties of proposed activities, but give special weight to Parties adjacent to the areas to be affected, or likely to be affected by the proposed activities. Such Parties could be allowed a greater role in participating in the EIA/SEA procedure, or more say in final decision-making.	

3.7 Public and Interested Stakeholders

Suggestions	Detailed proposals	References/Examples
Suggestion 1: access to information	Require States to provide the public and interested stakeholders with access to all EIA/SEA documentation but not to provide comment or opinion on the documentation.	Espoo Convention Art 3 (8); Art 4(2) Aarhus Convention Art 2 (defining the public), Art 4 (access to information) Kiev Protocol Art 2 (definition of “public”)
Suggestion 2: opportunity to comment	Require States to permit the public and interested stakeholders to provide comments during the EIA process and on such EIA/SEA documentation and take the comments into account in making a decision.	Espoo Convention Espoo Convention, Art 2(6); Art 3(8) Aarhus Convention Art 6, 7 (public participation) Kiev Protocol Art 8 (public participation)

3.8 Final Decision on Proposed Activities: Responsible Authority

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Final decision by State	The final decision on whether a proposed activity, plan or programme should proceed will be made by the State under whose jurisdiction or control it takes place. In making this decision, it will take into account the EIS, comments by States Parties, recommendations of competent regional or international organizations,	Espoo Convention Art 6(1) and (2); Aarhus Convention Art 9 (access to justice) UNCLOS Art 205

	including institutions set up by the agreement, and comments by the public or interested stakeholders. It will give reasons why its decision has been taken. It will publish reports of the final decision, pursuant to UNCLOS Art 205.	(publication of reports), UNCLOS Art 206 (assessments) Kiev Protocol Art 11
Suggestion 2: Final decision by international organization	The final decision on whether a proposed activity, plan or programme should proceed will be made by a competent subregional, regional or international organization, or a decision-making body set up by the agreement. The competent body will consider the EIS, recommendations of the State within whose jurisdiction/control it takes place, comments by other States Parties, comments by the public or interested stakeholders, and possibly recommendations of a scientific or technical committee under the agreement.	UNCLOS Art 162 (Power to disapprove areas for exploitation where risk of serious harm to environment)
Suggestion 3: Review procedure	In conjunction with one of the above suggestions, the decision should be subject to review by a competent international organization or institution set up under the agreement (such as a compliance committee) at the request of a State Party or other stakeholder.	Espoo Convention Art 6(1) and (2); Art 15 (dispute resolution) Aarhus Convention Art 9 (access to justice)

3.9 Final Decision on Proposed Activities: Effect of Decision

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Activity does not proceed	Where the EIA process has indicated that there will likely be impacts meeting the specified threshold, the activity will not be authorized to proceed.	Espoo Convention Art 6(1) and (2) UNGA Res. 61/105 para 83 (a) (activities managed to prevent significant adverse impacts or not authorized)
Suggestion 2: Conditions placed on proposed activity	Where the EIA process has indicated that there will likely be significant adverse impacts on the marine environment or biodiversity of ABNJ, the State or other decision-making authority will either impose conditions on the proposed activity or prevent the activity from proceeding.	FAO Deep Sea Fishing Guidelines section 5.2 Kiev Protocol Art 11

3.10 Monitoring and Reporting

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Obligation on States to monitor	States endeavour to monitor the ongoing, potential and cumulative environmental impacts of activities and programmes and plans and report on these, through a mechanism set up under the agreement. Reports shall be made available to the public. See: Reporting Requirements , section 6.3.1 page 36.	UNCLOS Art 204 (monitoring risks/effects of pollution) UNCLOS Art 205 (publication of reports) Kiev Protocol Art 12 (monitoring and reporting)
Suggestion 2: Obligation on proponents of activities to monitor	States require proponents of activities to monitor the ongoing, potential and cumulative environmental impacts of activities and report on these to States Parties, who will in turn report through a mechanism set up under the agreement. Reports shall be made available to the public.	Madrid Protocol Art 3(2)(c)(ii) (environmental principles)
Suggestion 3:	The competent subregional, regional or international	

Subregional regional or international organization conducts the monitoring	organization shall ensure monitoring of the ongoing, potential and cumulative environmental impacts of activities and report on these through a mechanism set up under the agreement. Reports shall be made available to the public.	
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4 Marine Genetic Resources, including Access and Benefit Sharing

4.1 Definitions

4.1.1 Marine Genetic Resources (MGR)

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Use CBD and Nagoya Protocol definitions	Adapt definitions already agreed on in the CBD and Nagoya Protocol. <i>E.g.:</i> <ul style="list-style-type: none"> - “Marine genetic material” means any material of plant, animal, microbial or other origin, found in the marine environment, containing functional units of heredity ; - “Marine genetic resources” means marine genetic material of actual or potential value; - “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources, including through the application of biotechnology; - “Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use; - “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 	CBD Art 2 Nagoya Protocol Art 2
Suggestion 2: Define MSR	UNCLOS does not currently define marine scientific research. Develop a new definition through a consultative process.	
Suggestion 3: Additional definitions	Include additional definitions such as: <ul style="list-style-type: none"> - In situ resources, ex situ resources, data (broad definition) - Commercial and non-commercial research - Change of intent (i.e. change from purely research to commercial intent). 	

4.1.2 Access and benefit sharing (ABS)

Suggestions	Detailed proposals	References/Examples
Suggestion 1: general definition	“the way in which genetic resources may be accessed, and how the benefits that result from their use are shared among people or countries”	CBD Intro to ABS
Suggestion 2: ABS covers <i>in situ</i> and <i>ex situ</i> MGR and related data	Clarify that ABS regime covers <ul style="list-style-type: none"> - Access to <i>in situ</i> MGR - Sharing of benefits from <i>in situ</i> MGR and <i>ex situ</i> samples of MGR (collected/stored by public as well as private 	Norwegian Biobank Marbank

	repositories) and related data	
Suggestion 3: monetary and non-monetary benefit sharing	Clarify that benefit sharing covers both <ul style="list-style-type: none"> - Monetary benefit sharing; and - Non-monetary benefit sharing, which could include data, technology, products, etc. 	

4.2 General Principles related to ABS/MGR

Suggestions	Detailed proposal	References/Examples
Suggestion 1: Right to conduct MSR	Reiterate that all states have a right to conduct marine scientific research, under Art 238 of the Convention.	UNCLOS Art 238
Suggestion 2: Compliance with regulations to protect marine environment	Refer to principle in Art 240 of the Convention that: “marine scientific research shall be conducted in compliance with all relevant regulations adopted in conformity with this Convention including those for the protection and preservation of the marine environment ”	UNCLOS Art 240
Suggestion 3: Other principles for the conduct of MSR	Refer to other principles for the conduct of MSR listed in Art 240 of the Convention, <i>i.e.</i> : <ul style="list-style-type: none"> - Peaceful purposes - Appropriate scientific methods and means - Respect for/by other legitimate uses of the sea 	UNCLOS Art 240
Suggestion 4: Benefit of humankind	Refer to Art 140 of the Convention which provides for activities in the Area to be carried out for the benefit of mankind as a whole and for the equitable sharing of financial and other economic benefits derived from activities in the Area	UNCLOS Art 140

4.3 Access Obligations

Suggestions	Detailed proposal	References/Examples
Suggestion 1: Obligations for notification, reporting and recording	States take measures to ensure notification, reporting and recording of sampling activities in ABNJ. Notification, reporting and recording processes could be established at the national level and international level, through a clearing house mechanism or other mechanism established or authorized under this agreement. See: Institutional Aspects , section 6.1, page 34.	Nagoya Protocol Art 14 (clearing house) Nagoya Protocol Art 17 (monitoring) UNCLOS Art 248 (duty to provide information) Art 242; Art 143.3(a) (international cooperation) Art 244.1; Art 143.3(c) (publish information) Art 244.2, Art 144.2 (knowledge transfer)
Suggestion 2: Specify notification/reporting requirements	Requirements for reporting/notification by those intending to access MGR could be set out in the agreement or an Annex, or determined by the decision-making body. Reporting requirements could include <ul style="list-style-type: none"> - Information about collector - Type and quantity of genetic resource sought - Geographical prospecting area - Starting date and duration of activity - Evaluation of potential impacts on 	Nagoya Protocol MOP 1 Decision NP-1/2 Bonn Guidelines, para 36 (indicative list)

	<p>conservation/sustainable use of biodiversity</p> <ul style="list-style-type: none"> - Information on intended research/use - Indication of benefit-sharing arrangements 	
Suggestion 3: Requirements to be determined by decision-making parties	Contracting Parties develop and adopt their own notification, reporting and recording requirements based on international guidelines, codes of conduct, etc.	Nagoya Protocol Art 20 on Codes of Conduct, Guidelines and Best Practices and Standards
Suggestion 5: Requirements for EIAs	Require Environmental Impact Assessments in accordance with the relevant provisions of this agreement. (see EIAs and SEAs , section 3, page 23)	Art 240(d) ; Art 206 (protection of environment)
Suggestion 6: Guidelines for collecting samples	Best practice guidelines could be developed to support standardisation of collecting, storing and curating samples (i.e. accessing MGR in ABNJ) to facilitate access to MGR samples and international scientific cooperation (i.e. thereby supporting non-monetary benefit sharing).	InterRidge code of conduct InterRidge statement of commitment

4.4 Benefit Sharing Obligations

4.4.1 General benefit sharing mechanisms

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Comprehensive set of benefit sharing provisions for a multilateral system	<p>Develop a comprehensive multilateral benefit-sharing system introducing obligations to:</p> <ul style="list-style-type: none"> - Create a multilateral/pool system facilitating international access to and scientific research on MGR from ABNJ as well as associated data - Fair and equitable sharing of non-monetary benefits by facilitating international collaboration, technology transfer and capacity-building - Fair and equitable sharing of monetary benefits in case of commercial research and/or development of market products 	<p>Plant Treaty Arts 10-13 (multilateral benefit sharing system)</p> <p>Report of the PharmaSea WP6 Stakeholder Workshop (multilateral benefit-sharing regime)</p>

<p>Suggestion 2: Base system on public domain approach</p>	<p>In developing Suggestion 1, adopt a public domain approach.</p> <p>The overall principle of a public domain approach would be based on obligations for international cooperation and sharing of knowledge and data, and UNCLOS Art 241 which states that MSR shall not constitute the legal basis for any claim to marine resources.</p> <p>This would translate into obligations to:</p> <ul style="list-style-type: none"> - put samples of MGR collected in ABNJ as well as associated data in the public domain as soon as possible (possibility of embargo period) - Share through international network(s) of biorepositories and international network(s) of databases creating common pools - Store sub-samples (duplicate samples) in centralized biorepositories at national or international level (if possible) - share monetary benefits in case of commercial utilization (i.e. sample or data are not put in the public domain, or product is put on market and generates revenues) <p>Further policies, standards and guidelines would need to be subsequently adopted by appropriate international process.</p>	<p>UNCLOS Arts 242, 244 (international cooperation; publication; knowledge transfer)</p> <p>UNCLOS Arts 143, 144 (MSR and Tech Transfer)</p> <p>UNCLOS Art 241 (MSR not basis for claim to marine resources)</p> <p>UNGA Res. 2749, Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction</p> <p>Micro B3 Agreement on Access to Marine Microorganisms and Benefit-Sharing (public domain approach)</p> <p>Evanson C.K. and Winter G. “Common pools of Genetic Resources – Equity and Innovation in International Biodiversity Law” (Earthscan, 2013).</p>
<p>Suggestion 2: Basic benefit sharing provision – like CBD</p>	<p>Develop a basic benefit-sharing provision (as done under CBD):</p> <p>Comprising general principles and obligations aiming at</p> <ul style="list-style-type: none"> - Fair and equitable sharing of monetary and non-monetary benefits arising from the utilization of MGR from ABNJ - Facilitation of MSR on MGR from ABNJ through access to <i>ex situ</i> MGR from ABNJ and related MSR results/data - Promotion of collaboration in MSR on MGR from ABNJ 	<p>CBD Art 15 (general obligations for ABS)</p> <p>Bonn Guidelines</p> <p>Nagoya Protocol</p>

4.4.2 Types of monetary/non-monetary benefits

Suggestions	Detailed proposals	References/Examples
<p>Suggestion 1: Indicative list in an Annex</p>	<p>A detailed annex with a list of indicative monetary and non-monetary benefits is included in the agreement.</p>	<p>Nagoya Protocol Annex</p> <p>Monetary and Non-Monetary Benefits</p>
<p>Suggestion 2: COP decisions</p>	<p>A provision in the agreement indicates that COP decision should further define/elaborate the possible monetary and non-monetary benefits to be shared.</p>	<p>CBD Art 15 (general obligations for ABS)</p> <p>Bonn Guidelines</p> <p>Nagoya Protocol</p>

4.4.3 Monetary benefits from commercial research

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Mandatory up-front payments.	Access to MGR from ABNJ (i.e. sampling of <i>in situ</i> MGR and access to ex situ MGR as well as related data) for commercial purposes shall trigger an appropriate access fee to be paid by the user to a multilateral fund.	State Practice under the Nagoya Protocol.
Suggestion 2: Mandatory milestone payments.	Appropriate milestone payments shall be made by the researcher to a multilateral fund in case of commercialization (see use of terms): <ul style="list-style-type: none"> - Royalty payments after product based on in situ or ex situ MGR from ABNJ or related data is put on the market. - Exclusivity fee in case of protection of samples and/or data (e.g. through IPR), i.e. when in situ and ex situ MGR from ABNJ as well as associated data is not put in the public domain. 	ITPGRFA Art 13.2 (d) (ii) and Art 13.3 Part IV (Multilateral System of ABS) Micro B3 Agreement on Access to Marine Microorganisms and Benefit-Sharing (proprietary use of samples/data)
Suggestion 3: Mixture of suggestions 1 and 2	Mandatory upfront payments as well as mandatory milestone payments in case of commercial research.	
Suggestion 4: Mixture of voluntary and mandatory payments into endowment fund	Mixture of voluntary and mandatory payments from research institutions, commercial end-users, governments and others into an endowment fund for marine scientific research in ABNJ. See: Financial Mechanism , section 6.2, page 36.	

4.5 Monitoring and Enforcement for ABS system

Suggestions	Detailed proposals	References/Examples
Suggestion 1: General monitoring and compliance obligations	To support ABS implementation, the agreement shall include obligations for all Parties to: <ul style="list-style-type: none"> - Monitor sample and data flows throughout the whole chain of utilization (R&D) - Take appropriate and effective legislative measures to ensure compliance with ABS obligations under the agreement (i.e. measures to track ships, etc.) - Address situations of non-compliance (sanctions) - All to be further concretized and developed at national level See Reporting Requirements , section 6.3.1 page 36; Implementation and Enforcement , section 6.3.3, page 38.	Nagoya Protocol Art 15 (Compliance on ABS) Nagoya Protocol Art 17 (Monitoring) Explanatory Guide to the Nagoya Protocol . IUCN EPLP Series N°85.
Suggestion 2: Detailed monitoring and compliance obligations	Specify in the agreement: <ul style="list-style-type: none"> - List of checkpoints that need to be established at national level - Port State measures - Sanctions in case of non-compliance See Implementation and Enforcement , section 6.3.3, page 38.	Regulation (EU) No 511/2014 on compliance measures for users from the Nagoya Protocol

5 Capacity Building and Technology Transfer

5.1 Capacity building

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Capacity building provisions	<p>Obligation for all Contracting Parties to cooperate directly and through international and regional institutions and organizations in capacity-building, capacity development, and training in key areas related to the conservation and sustainable use of marine biodiversity in ABNJ.</p> <p>The key areas should be listed in the agreement or subsequently developed by the decision-making body. They could include:</p> <ul style="list-style-type: none"> - Capacity to implement and comply with the agreement - Capacity to develop, implement and enforce domestic legislation, administrative or policy measures for implementation of the agreement - Capacity to develop marine scientific research capabilities <p>The needs of developing country Parties and in particular LDC and small islands developing States should be fully taken into account.</p> <p>Mechanisms for involving the private sector should be developed.</p>	<p>UNCLOS Art 268 (basic objectives)</p> <p>UNCLOS Art 202 (scientific and technical assistance)</p> <p>UNCLOS Art 203 (developing States)</p> <p>UNFSA Art 25 (forms of cooperation)</p> <p>Nagoya Protocol Art 22 (list of key areas)</p> <p>UNFCC Art 9 (subsidiary body for capacity building)</p> <p>Cartagena Protocol, Art 22.2 (capacity building)</p>
Suggestion 2: Capacity building measures	<p>Measures to promote capacity building development may include inter alia:</p> <ul style="list-style-type: none"> - Legal, policy, scientific and institutional developments; - Monitoring and enforcement compliance; - Promotion of ABS; - Special measures to increase capacity of relevant stakeholders; - Technology transfer 	<p>Nagoya Protocol Art 22 (measures)</p> <p>Scholarship programmes, e.g. UN Nippon Fellowship</p>
Suggestion 3: Reporting requirements	<p>Information on capacity building and development initiatives at national, regional and international levels undertaken in accordance with the provisions of this agreement should be provided to the relevant bodies established under this agreement.</p> <p>See: Reporting Requirements, section 6.3.1 page 36.</p>	
Suggestion 4: Financial mechanism	<p>Establish global fund to support capacity building projects related to sustainable use of marine biodiversity in ABNJ.</p> <p>See: Financial Mechanism, section 6.2, page 36.</p>	

5.2 Transfer of marine technology

Suggestions	Detailed proposals	References/Examples
Suggestion 1: General obligation on technology transfer.	<p>Provide obligation to enhance implementation of UNCLOS requirements for technology transfer, with reference to IOC Criteria and Guidelines for the Transfer of Marine Technology.</p> <p>This should include an obligation to cooperate directly and through competent regional and international organizations to support, facilitate and promote technology transfer as well as to cooperate in such</p>	<p>UNCLOS Part XIV</p> <p>UNCLOS Art 144 (needs of developing states)</p> <p>IOC Criteria and Guidelines for the Transfer of Marine Technology</p> <p>Montreal Protocol Art</p>

	transfer activities.	10A (technology transfer) Minamata Convention Art 14 (tech transfer)
Suggestion 2: Detailed provisions to implement UNCLOS requirements on technology transfer	Based on UNCLOS requirements, include specific provisions on technology transfer, such as: <ul style="list-style-type: none"> - Clarification of the material scope of technology transfer (e.g. actual transfer of hardware) - Clarification of the nature of transfer (voluntary or mandatory) - Institutional structure for facilitating technology transfer, such as Clearing House mechanism (see Clearing House Mechanism, section 6.1.2, page 35) - Mechanisms for involving the private sector - Intellectual property rights protections 	UNCLOS Arts 242, 244.2 CBD Art 16 (IP) CBD Art 18 (technical and scientific cooperation) 1994 Implementing Agreement on Part XI Section 5 (private sector) Minamata Convention Art 13 (private sector) TRIPS Agreement Art 7, Art 40 (IP)
Suggestion 3: Reporting on tech transfer	Information on tech transfer activities should be provided to the relevant bodies established under this agreement. See: Reporting Requirements , section 6.3.1 page 36.	

6 Institutional and Operational Aspects

6.1 Institutional Aspects

6.1.1 Basic institutional structure

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Strong new institutional structure	Establish a strong new institutional structure with substantive powers, encompassing four main bodies: <ul style="list-style-type: none"> - Decision-making body/conference of the parties - Scientific committee - Secretariat - Regional Advisory Councils/Bodies or Coordination Units 	CBD Art 23, 24 25 (COP, Secretariat, SBSTA) CMS Art VII, VIII, IX (COP, Scientific Council, Secretariat) REGULATION (EU) No 1380/2013 on the Common Fisheries Policy art 43, 44 and 45 (Regional Advisory Councils)
Suggestion 2: Expand mandate of ISA to serve as basis of institutional structure	Expand mandate of the ISA and its constituent bodies so that <ul style="list-style-type: none"> - the Assembly of the ISA acts as decision-making body for this agreement - The ISA Legal and Technical Commission is expanded, or a parallel body established, to provide advisory functions to the decision-making body - The ISA Secretariat serves as Secretariat for this agreement. <p>This would normally imply the amendment of the UNCLOS under article 312.</p>	UNCLOS Part XI. Section 4. The Authority UNCLOS Art 312 (amendment) Agreement relating to the implementation of Part XI of UNCLOS, Annex, Section 1, 4.
Suggestion 3: Develop institutional structure based on Antarctic	As under the Antarctic Treaty, the Parties of the I.A. could meet in a forum to exchange information, consult on matters of common interest and formulate	Antarctic Treaty Art IX. Madrid Protocol , Art 10, 11, 12

Treaty model and DOALOS	<p>recommendations addressing the I.A key elements (conservation and sustainable use of marine biodiversity in ABNJ).</p> <p>As under the Madrid Protocol to the Antarctic Treaty, a Committee for Environmental Protection could be established to provide advice and formulate recommendations for the Consultative Meeting.</p> <p>The UN Division for Ocean Affairs and the Law of the Sea (DOALOS) could serve as Secretariat of the Agreement.</p>	DOALOS, Secretary-General's Bulletin ST/SGB/2008/13
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6.1.2 Clearing House Mechanism

Suggestions	Detailed proposals	References/Examples
Suggestion 1: New clearing house for implementing agreement, or international network of clearing houses	<p>A Clearing-House mechanism could be established to assist Parties to implement the agreement by</p> <ul style="list-style-type: none"> - providing a platform for coordination - promoting capacity building - providing access to information made publicly available relevant to the implementation of the agreement 	<p>Cartagena Protocol Art 20</p> <p>Nagoya Protocol Art 14 (Clearing House)</p> <p>Aarhus Clearing House</p> <p>Rotterdam Convention Art 14</p>
Suggestion 2: Use ABS Clearing House under Nagoya Protocol	Each Contracting Party should make available to the ABS Clearing House established under the Nagoya Protocol any ABS monitoring and compliance related information required by this Agreement.	<p>Nagoya Protocol Art 14 (Clearing House)</p> <p>ABS Clearing House</p>
Suggestion 3: Create a new ABS-specific clearing house and/or international network of clearing-houses	Establish a new ABS Clearing House to serve as a means for making available any ABS monitoring and compliance related information required by this agreement.	
Suggestion 3: Build on existing institutions	Expand mandate of International Seabed Authority or other existing institutions to support information sharing with respect to the agreement and opportunities for collaboration between States.	<p>UNCLOS Section 4. The Authority</p> <p>Intergovernmental Oceanographic Commission of UNESCO</p>

6.1.3 Other bodies

Concepts/Suggestions	Detailed proposals	References/Examples
Suggestion 1: General provisions allowing for establishment of relevant subsidiary bodies	Any subsidiary bodies necessary to serve the purpose of the agreement could be established by decision of the decision making bodies. Any such decision shall specify the tasks to be undertaken.	Nagoya Protocol Art 27 (subsidiary bodies)
Suggestion 2: Compliance Committee	<p>Establish a Compliance Committee to assist the Parties to comply with their obligations, as well as to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the agreement.</p> <p>This Compliance Committee can develop and implement procedures and measures to promote compliance and address non-compliance.</p>	Minamata Convention Art 15 (Implementation and Compliance Committee)

	See Compliance and Reporting , section 6.3, page 36.	
Suggestion 3: ABNJ platform (scientific, technical and socio-economic data)	An intergovernmental body or platform on ABNJ could be established under this agreement as a scientific body under the auspices of the United Nations, with the main objective of reviewing and assessing recent scientific, technical and socio-economic information produced worldwide, relevant to the understanding of conservation and sustainable use of marine biodiversity in ABNJ.	UNGA Res. A/43/755.

6.2 Financial Mechanism

Suggestions	Detailed proposals	References/Examples
Suggestion 1: General provision for subsequent development of a mechanism	Provide for the establishment of a mechanism for the provision of financial resources to developing country Parties on grant or concessional basis. The agreement can provide that conditions to access this mechanism and financial support will be defined at a later stage by the Parties through its decision making body.	CBD Art 21 (Financial mechanism) Plant Treaty Art 18 (financial resources) Nagoya Protocol Art 25 (financial mechanism and resources)
Suggestion 2: Obligation to contribute	States commit to allocate a specified amount of financial resources to support implementation of the agreement, including through: - financial support and incentives for national activities to implement the convention - new and additional financial resources to support developing countries in implementing the agreement - support for projects and activities related to technology transfer and capacity building	CBD Art 20 (Financial resources)
Suggestion 3: Global fund	Establish a global fund, such as an ABNJ multilateral trust fund, for receiving and utilizing financial resources. This fund could support projects and programmes related to protection and conservation, benefit-sharing, capacity building, and technology transfer.	Plant Treaty Art 19.3(f) (financial resources) UNFSA Art 26 (funds for developing countries to implement agreement)
Suggestion 4: Funding from fees for activities in ABNJ	Fees or royalties from operations undertaken in ABNJ could be used to support implementation of the convention. These fees could be managed through a global fund or other mechanism set up by the agreement.	UNCLOS Art 82 (payments re continental shelf beyond 200 miles) UNCLOS Art 150(d) (participation in revenues)
Suggestion 5: Designate existing funding body	Designate an existing institution (e.g. Global Environment Facility (GEF), Intergovernmental Oceanographic Commission of UNESCO) to provide framework for funding	

6.3 Reporting and Compliance

6.3.1 Reporting requirements

Suggestions	Detailed proposals	References/Examples
Suggestion 1: General reporting obligation, specific requirements to be	Include general provision that each Party shall report annually on the steps taken to implement this Agreement. The decision-making body will decide on specific	OSPAR Convention Art 23 (compliance) CBD article 26 (reports)

elaborated	reporting requirements for Parties such as: <ul style="list-style-type: none"> - reporting on legal, administrative or other measures taken by them for the implementation of the agreement; - reporting on problems encountered in the implementation of the agreement; - information on activities carried out in ABNJ 	Cartagena Protocol Art 33 (monitoring and reporting) Nagoya Protocol Art 29 (monitoring and reporting)
Suggestion 2: Specific reporting obligations	Specify reporting requirements relating to specific obligations, including: <ul style="list-style-type: none"> - Use of ABMTs (see ABMT Reporting, section 2.5.1, page 22) - Ongoing impacts of activities in ABNJ (see EIA/SEA Monitoring and Reporting, section 3.10, page 27) - Access and Benefit Sharing (see ABS Monitoring, section 4.5, page 32) - Capacity building and tech transfer (see Capacity Building and Technology Transfer, section 5, page 33) 	
Suggestion 3: Invite regional, sub regional to consult and report	Provide that the decision making body should invite regional, sub regional to consult and report on conservation and management measures addressed through other agreements related to biodiversity in ABNJ.	UNCLOS Art 278 (cooperation among international organisations) UNFSA Art 9 (RFMO/As) Aarhus Convention. Art 5 (collection/dessimination of environmental information)

6.3.2 Compliance measures

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Publication of assessments and recommendations by decision-making body	Decision-making body assesses compliance through review of submission of progress reports from Parties, and makes these assessments publicly available. Where Parties are not in compliance, the decision-making body provides concrete recommendations to Parties on improving compliance. These may include: <ul style="list-style-type: none"> - Elaboration, with the co-operation of the Party or Parties concerned, of compliance action plans, including targets and timelines. - Recommendations on financial and technical assistance, training, and specific capacity-building measures. 	IUCN Policy Paper XIII Compliance and Verification Mechanisms Kyoto Protocol. Decision 27/CMP.1 (compliance procedures/mechanisms) London Protocol LC 29/17 annex 7 (compliance procedures/mechanisms)
Suggestion 2: Compliance incentives	Create incentives for the implementation of the agreement to enhance compliance. Incentives could include: <ul style="list-style-type: none"> - financial and technical assistance - white lists of Parties giving full effect to obligations 	IUCN Policy Paper XIII Compliance and Verification Mechanisms
Suggestion 3: Consequences for non-compliance	Provide for specific consequences in the case of non-compliance. These could include: <ul style="list-style-type: none"> - suspension of the right to conduct activities within 	UNCLOS Arts 184, 185 Kyoto Protocol. Decision 27/CMP.1 (compliance

	<p>ABNJ, or to permit nationals, vessels or other entities within ABNJ</p> <ul style="list-style-type: none"> - suspension of voting rights or other rights and privileges granted under the agreement - provision of advice/assistance to support implementation where non-compliance results from gap in capacity - requirement for non-compliant Party to develop plan of action and timetable for coming into compliance 	<p>procedures/mechanisms)</p> <p>London Protocol LC 29/17 annex 7 (compliance procedures/mechanisms)</p>
Suggestion 3: Compliance principles	Include a provision stressing the necessity to respect compliance principles such as due process, fairness, transparency, consensus, good faith.	

6.3.3 Compliance mechanism

Suggestions	Detailed proposals	References/Examples
Suggestion 1: General mandate for the adoption of a compliance mechanism	<p>Include a general mandate for the adoption of a compliance mechanism, without specifying its scope or function. <i>E.g.:</i></p> <p>“The Parties, at their first meeting, shall consider and approve cooperative procedures and institutional mechanisms for determining non-compliance with the provisions of this Agreement and for treatment of Parties found to be in non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate.”</p>	<p>IUCN Policy Paper XIII Compliance and Verification Mechanisms</p> <p>Montreal Protocol Art 8 (non- compliance)</p> <p>Rotterdam Convention Art 17 (non- compliance)</p> <p>Cartagena Protocol Art 34 (compliance)</p> <p>London Protocol Art 11 (compliance)</p>
Suggestion 2 : Define certain compliance mechanisms parameters.	<p>Define parameters to guide the creation of a future compliance mechanism, including the following elements:</p> <ul style="list-style-type: none"> - Determine the nature and purpose of the mechanism. - Establish a Compliance Committee. - Establish rules of procedure. - Establish triggers, voting rules. 	<p>Minamata Convention Art 15 (Implementation and Compliance Committee)</p>
Suggestion 3: Details on Compliance Committee	<p>Provide specific details on the scope, functions and structure of a Compliance Committee.</p> <ul style="list-style-type: none"> - Composition. - Election of members and meetings. - Measures and procedures to address compliance issues. - Committee empowered to adopt decisions for Parties in persistent non-compliance & recommend measures to facilitate implementation and compliance. - Monitoring & reports. - NGOs and other observers have the power to trigger compliance mechanisms. <p>See Other Bodies, section 6.1.3 page 35</p>	<p>Rotterdam Convention COP Decision RC-6/9 (compliance procedures)</p> <p>Barcelona Convention Decision IG 17/2 & IG. 21/1.</p> <p>Kyoto Protocol. Decision 27/CMP.1 (compliance procedures/mechanisms)</p> <p>London Protocol LC 29/17 annex 7 (compliance procedures/mechanisms)</p>

6.3.4 Inspection

Suggestions	Detailed proposals	References/Examples
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<p>Suggestion 1: system of observation and inspection</p>	<p>Provide for establishment of a system of observation and inspection in order to promote the objective and ensure observance of the provisions of the agreement.</p> <p>States co-operate with each other to ensure the effective implementation of the system of observation and inspection, taking account of the existing international practice and schemes in place.</p> <p>This system could include:</p> <ul style="list-style-type: none"> - procedures for boarding and inspection by observers and inspectors designated by the Parties - procedures for prosecution and sanctions on the basis of evidence resulting from such boarding and inspections. 	<p>RFMOs inspection and enforcement scheme (CCAMLR, FFA, IBSFC, ICCAT, IOTC, NAFO, NEAFC, NPAFC)</p> <p>CAML Art XXIV</p>
<p>Suggestion 2: right for the Parties to designate observers</p>	<p>Provide that each Contracting Party shall have the right to designate observers to carry out any inspection in accordance with conditions defined in the agreement.</p>	<p>Antarctic Treaty Art VII</p> <p>Madrid Protocol Art 14 (inspection)</p> <p>Antarctic Treaty Res. 5 (1995) (Antarctic Inspection Checklists)</p>

6.4 Implementation and Enforcement

Suggestions	Detailed proposals	References/Examples
<p>Suggestion 1: Basic provision on implementation</p>	<p>Require each Party to take the necessary measures to implement the agreement, including the establishment or improvement of national laws, as well as other regulations and administrative measures, and the enforcement of such measures with appropriate sanctions.</p>	<p>IUCN Policy Paper XIII Compliance and Verification Mechanisms</p> <p>Cartagena Protocol Arts 2, 20, 33.</p> <p>Arms Trade Treaty Art 14 (enforcement)</p> <p>Barcelona Convention Art 4 (general undertakings)</p> <p>Rotterdam Convention Art 15 (implementation)</p> <p>CAML Art XXI (compliance)</p> <p>London Protocol Art 10 (application and enforcement)</p> <p>Noumea Convention Art 12 (implementation and enforcement)</p>
<p>Suggestion 2: Flag State duties</p>	<p>Specify responsibility of flag States to exercise jurisdiction over vessels flying their flag in ABNJ to ensure activities carried out by such vessels do not undermine the conservation, management, sustainable use and benefit sharing measures defined under the agreement.</p> <p>Specific obligations could include:</p> <ul style="list-style-type: none"> - to conduct vessel inspections, including verification of relevant documentation 	<p>UNCLOS Art 94 (duties of the flag State)</p> <p>UNCLOS Art 217 (enforcement by flag States)</p> <p>UNFSA Art 18 (Flag States)</p>

	<ul style="list-style-type: none"> - to conduct monitoring, control and surveillance of vessels - to cooperate in implementation of regional schemes for surveillance and enforcement - to prosecute violators of measures furthering the aims of the agreement and apply appropriate sanctions 	
Suggestion 3: Port State duties	<p>Specify responsibility of Port States to exercise jurisdiction over vessels entering their ports to promote implementation of the measures defined under the agreement.</p> <p>Specific obligations could include:</p> <ul style="list-style-type: none"> - inspection and monitoring; - seizing of evidence of illegal activity; - cooperation with Flag States, including through notification, cooperation in investigation, and sharing of evidence for purposes of prosecution - denial of Port services to vessels suspected of involvement in illegal activity 	<p>UNCLOS Art 218 1993 FAO Compliance Agreement Art V UNFSA Art 23 FAO Port State Measures Agreement [not in force]</p>
Suggestion 4: Duty to exercise jurisdiction over nationals	<p>Specify responsibility of all States to ensure that activities undertaken by their nationals do not undermine the measures defined under the agreement. Specific obligations might include:</p> <ul style="list-style-type: none"> - monitoring and tracking activities undertaken by nationals engaged in activities in ABNJ; - implementation of permitting and reporting schemes to regulate activities of nationals in ABNJ; - creation of criminal offences and sanctions applicable to nationals engaged in illegal or harmful activities in ABNJ; - prosecution of nationals engaged in such offences. <p>The agreement could impose liability on States that fail to carry out this responsibility.</p>	<p>UNCLOS Art 117 (duty regarding nationals); Art 139 (liability for failing to ensure compliance) 2001 FAO International Plan of Action on IUU Fishing ITLOS Advisory Opinion: Responsibilities and obligations of States with respect to activities in the Area (Feb 2011) para. 108.</p>

6.5 Dispute Resolution

Suggestions	Detailed proposals	References/Examples
Suggestion 1: Apply dispute settlement procedures elaborated in UNCLOS	Provide for application of dispute settlement procedures detailed in UNCLOS Part XV, adapted as necessary to the requirements of the Agreement	<p>UNCLOS Part XV. Settlement of Disputes</p> <p>ITLOS Rules of the Tribunal</p>
Suggestion 2: Develop new dispute resolution mechanism based on negotiation, mediation, and binding dispute settlement	The agreement could establish detailed provisions on dispute settlement specific to the agreement, drawing on existing institutions under UNCLOS such as the Law of the Sea Tribunal.	<p>Antarctic Treaty Art 11 Barcelona Convention Art 22 CAMLR Art XXV CBD Article 27</p>