



## Non-paper: Marine Genetic Resources, including questions on the sharing of benefits - a brief on broad options for benefit sharing

*This briefing should be seen in conjunction with the study “Traceability options for marine genetic resources from areas beyond national jurisdiction”, prepared by Arne Langlet & Paul Dunshirn, and largely presents an Executive Summary of a part of that study, namely the range of existing and potential proposals for benefit sharing under Part II of the BBNJ Agreement for discussion at IGC5. It also incorporates learnings from the IUCN/WCPA/WCEL workshop “Untangling the BBNJ Marine Genetic Resources proposals” that took place 23 and 24 January 2023.*

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Marine genetic resources (MGRs), including questions on the sharing of benefits, are one of the four elements of the 2011 package on the basis of which the UN General Assembly through resolution [A/RES/72/249](#) initiated the negotiations of an internationally legally binding instrument (the Agreement) on the conservation and sustainable use of biodiversity in areas beyond national jurisdiction (BBNJ), and have been addressed in Part II of the President’s draft texts.

Crucial issues with respect to MGRs before IGC5 were whether benefit sharing under Part II of the BBNJ Agreement would include provisions that require monetary benefit sharing, and, directly related to that question, what type of mechanisms would be needed to facilitate and monitor their implementation. The two competing positions are reflected as Options I and II under Article 11 & Article 13 of the President’s [“further revised draft text”](#) (dated 1 June 2022, currently last version with public distribution) and are discussed further as Option 2 and 1 respectively below.

During IGC5, member States made significant progress on Part II of the draft BBNJ Agreement, both in informal and small group negotiations and the flexibility expressed by delegations on monetary benefit sharing unlocked progress, but the negotiations ran out of time and IGC5 was suspended.

The resumed session of IGC5 to take place from 20 February to 3 March 2023 is expected to start where the August session was suspended, preserving progress made in both informal and small group sessions, with a consequence that not all discussions & ideas from IGC5, in particular from small groups, are reflected in the currently newest President’s draft text (“further refreshed text”, dated 26 August 2022, limited distribution) and some delegations have expressed uncertainty about what text will be used as basis for the resumed session, in particular for Part II on MGRs.

The purpose of this briefing is to provide a broad overview of potential avenues the MGR discussions at the resumed IGC5 session may take, based on publicly available sources. Options 1 & 2 describe the current formulations in the text<sup>1</sup>, while Options 3 and 4 represent potential alternative avenues for discussion. Given the uncertainty around the negotiation text and the status of different proposals, all options presented here should be considered as typologies for different ways to address benefit sharing of MGRs in the BBNJ Agreement, rather than specific proposals.

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<sup>1</sup> It should be noted that the exact location has changed between the “further revised text” text of 1 June 2022 and the “further refreshed text” of 26 August 2022, but the broad issue remains the same.

**Option 1: Sharing samples and data, tech transfer and capacity building.**

This option corresponds to Article 11 Option I of the “Further Revised Text” (dated 1 June 2022), and foresees the sharing of non-monetary benefits such as access to samples and data and bases its implementation on a system of already existing forms of transparency in scientific practices. Its proponents argue that the regulation needed to operationalize monetary benefit sharing, in particular establishing traceability, may place a burden on scientific research, that implementation costs would outstrip benefits to be expected from the monetization of MGRs of BBNJ, and that open access to digital sequence information (DSI) could be impacted.

**Option 2: Royalties and milestone payments tied to utilization**

Option 2 corresponds to Article 11 Option II of the “Further Revised Text”. In contrast to Option 1, it foresees monetary benefit-sharing, underpinned by a traceability system. Its proponents have argued that traceability of MGRs from initial collection of samples to patenting and product development is needed to implement monetary benefit-sharing in the form of royalties & milestone payments.

**Option 3: End-user PPP registration system**

The PPP (publications, patents, products) registration system option takes inspiration from [Brazil’s domestic legislation to implement the CBD Nagoya Protocol](#). Such a system adapted to the BBNJ context would require States to pass legislation which obliges the end-user to register publications, patents or products that contain MGRs from ABNJ. This option would also allow monetary benefit-sharing, e.g. as a percentage of the final product revenue.

**Option 4: Decoupled payment system**

The decoupled payment system was [conceived as an alternative of how monetary benefit-sharing could look like without the need for a track & trace system](#). In essence it consists of monetary benefit-sharing in the form of a fee paid by States that is, in its simplest form, decoupled from commercialization, and consequently the need for an extensive monitoring system. That said, a decoupled system could still include a review clause underpinned by some form of monitoring (e.g. a periodic study) or scaled-down traceability system (e.g. a hybrid between Option C & D).

Options 3 and 4 both include monetary benefit sharing, while at the same time significantly reducing the complexity of the monitoring system needed to implement them. Option 3 presents an example where traceability for most MGRs would stop where it also stops in Option 1, but restart again at stage of the end product, but for a much smaller number of MGRs. Option 4 is conceivable with monitoring ranging from a similar system as 3, over the periodic commissioning of a review study, to no monitoring system required at all. For a more detailed analysis of the different monitoring & traceability options, see the briefing “Traceability options for marine genetic resources from areas beyond national jurisdiction” by Arne Langlet and Paul Dunshirn.

Hybrids between the options described above are also thinkable: for example, delegations could consider a system that starts off as a decoupled payment system (Option 4), providing monetary benefits predictably from the get go and that transitions to a royalty based system (Option 2) at a later stage.

Last but not least, taking inspiration from the [recent decisions of CBD CoP 15 on DSI](#), member States could also consider enshrining the key principles of a future benefit sharing system under part II of the BBNJ Agreement and delegating the development of the system itself to an appropriate body, for example the Access and Benefit Sharing Mechanism (Art 11 bis of the further revised text).