

# 'One Ocean' Symposium

Saturday 24th August 2019—9am to 5pm  
Scandinavia House, 58 Park Ave, New York, NY 10016, USA

## Information paper

### Digital Sequence Information as a Marine Genetic Resource under the Proposed UNCLOS Legally Binding Instrument

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#### Background

The *Convention of Biological Diversity* (CBD) and its supplementary agreement the *Nagoya Protocol*, the Food and Agriculture Organisation of the United Nations' *International Treaty for Plant Genetic Resources for Food and Agriculture* (Plant Treaty) and the World Health Organisation of the United Nations' *Pandemic Influenza Preparedness Framework* (PIP Framework) all establish schemes for access and benefit sharing (ABS) some biological materials. In 2018 the 13<sup>th</sup> meeting of the Conference of the Parties to the CBD (and the second Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol) decided to consider any potential implications of the use of digital sequence information on genetic resources (DSI) for the three objectives of the CBD at its next meeting. They also established an *Ad Hoc* Technical Expert Group tasked with compiling and synthesizing the views about DSI submitted and commissioning a fact-finding and scoping study to clarify the terminology and concepts, and the terms and conditions of the use of DSI in the context of the CBD and the Nagoya Protocol.

Similar discussions are underway at the Plant Treaty and PIP Framework forums. The same issues affect the negotiation of an ABS scheme for the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction in the international legally binding instrument under the United Nations *Convention on the Law of the Sea*. The purpose of this paper is to speculate about the various possible treatments of DSI (and information more generally) in the proposed international legally binding instrument under UNCLOS (ILBI) with possible insights from the CBD, Nagoya Protocol, Plant Treaty and PIP Framework arrangements.

#### Key recommendations for delegates/negotiations

The DSI issues remain deeply contested in all the CBD, Nagoya Protocol, Plant Treaty and PIP Framework forums, with the same concerns apparent in the current third session of the intergovernmental conference's preparatory materials. If DSI is to be addressed and included in the ABS under the ILBI, then the essential choices available to negotiators are:

1. To consider DSI is already included within the current definitions of genetic resources.
2. Expressly include DSI within the definition of (marine) genetic resources.
3. Include DSI as a derivative of (marine) genetic resources.
4. Seek alternative arrangements to compensate for DSI not being a resource.

Our analysis concludes that including information like DSI within the ABS transaction challenges the current practices of science research with detrimental consequences for the progress of open science, and that now would be a good time to reconsider alternatives ways to deliver benefits from the rich countries to poorer countries *and* maintain the progress of open science.

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