



Republic of Palau
Office of the President

Tommy E. Remengesau, Jr.
President

P.O. Box 6051, Palau, PW 96940
Tel. (680) 767-2403/2828
Fax. (680) 767-2424/1662
Email: rop.president@palaunet.com

August 22, 2018
Serial No. 18-723

The Honorable Hokkons Baules
President of the Senate
10th Olbiil Era Kelulau
Ngerulmud, Palau National Capitol
Republic of Palau 96939

Signing Statement Re: HB 10-66-5S, HD1, SD1– Creating a national framework for access and fair and equitable sharing of benefits of genetic resources and traditional knowledge associated with genetic resources within the Republic; and for related purposes.

Dear President Baules:

It is with great satisfaction that today I sign into law House Bill No. 10-66-5S, HD1, SD1, creating a new national framework for access and benefit sharing of genetic resources and traditional knowledge associated with genetic resources within the Republic. This national framework is essential as we work to protect our biological diversity and standardize access and benefits sharing (“ABS”) in Palau.

As you know, the Republic is a party to the Convention on Biological Diversity, and is a signatory to the Nagoya Protocol on Access and Benefit Sharing. The Convention deals with three specific areas, as you note in your findings: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. While our governments and non-profits here in Palau may be familiar with this term, I am pleased to see you define “genetic material” as meaning “material of plant, animal, microbial or other origin containing functional units of heredity.” In other words, genetic material is the building blocks of life; it is the DNA of the world around us.

In order to fully secure a national framework, a new chapter is needed, and I think you are correct that it should go into Title 24 of the Palau National Code as Chapter 50. The crux of this bill can be found in Section 5002, which sets forth the scope. This new chapter covers “all genetic resources and associated traditional knowledge, innovations, and practices covered under the Convention and benefits arising from the commercial and any other utilization of such resources.”

Section 5003 clarifies this scope. It states that all access and benefit sharing agreements must be formed based on the following order of priority: sovereign rights; traditional heritage; traditional community-based approaches; equitable sharing of benefits; good governance and leadership; ecological integrity; stakeholder participation; on- and off- site conservation; and public awareness and capacity building.

Section 5004 is important to note as well. There, it states that all extraction, utilization, or study of genetic resources from Palau is prohibited unless a person is authorized to engage in such activity pursuant to a valid Access and Benefit Sharing Agreement (an “ABS Agreement”) contracted pursuant to this Chapter. The Ministry of Natural Resources, Environment, and Tourism is given the authority to issue a cease and desist letter restraining a party from activity undertaken in violation of this section while it pursues a legal remedy. Noncompliance with this letter is a violation of the chapter, and any conviction will result in at least a fine of two hundred and fifty thousand dollars (\$250,000) and at most one million dollars



(\$1,000,000) per violation. In addition to the fines, any genetic resources extracted, studied, or utilized in violation of this act must be returned.

As a result of this bill, any person desiring to extract, test, obtain, utilize, or study a genetic resources or the traditional knowledge associated therewith in the Republic must first submit an application to enter into an ABS Agreement and pay any associated fees established by regulation. The application will be submitted to the Committee, and must meet specific guidelines and provide certain essential pieces of information so that the Committee can make a proper decision. The Committee is established in Section 5006, and is made up of the Minister of Natural Resources, the Environment, and Tourism, the Minister of Community and Cultural Affairs, the Minister of Health, and others. This Committee will be responsible for writing the necessary regulations. Among other things, its duties will be to: evaluate the ABS Agreement applications; meet with resource owners as necessary; provide recommendations to resources owners; establish bylaws and regulations in conformity with the APA; ensure public notice of each application for an ABS Agreement; and coordinate the prosecution of any violation of this Chapter. Even if the Committee approves the application, the final say will still remain with the resources owner. Importantly, I thank you for establishing legislative presumptions of resource ownership. For instance, a clan is presumed to be the resource owner of a genetic resource situated on property owned by the clan, and traditional or customary law will govern access to genetic resources on such property.

With regard to benefit sharing, this bill sets forth fee division. All funds collected pursuant to an ABS Agreement involving only the genetic resources of the national government, for example, will be shared equally between the national government and the states, with the national government receiving 50% of all funds, and the remaining 50% being divided equally among the states.

I am pleased to see that you have set up an ABS Fund, established within the National Treasury for funds acquired pursuant to Section 5014. These funds will be used by the Committee for activities conducted in furtherance of its duties and responsibilities.

But perhaps the most impressive element of this bill is the process you followed in developing it. Through the comments submitted to my office, I can see that you and your colleagues put great effort into consulting with relevant experts and authorities throughout Palau. I appreciate that the OEK committees, and particularly those of Chairman Marino in the House of Delegates and Chairman Kuartei in the Senate, were able to incorporate advice and feedback from the Palau International Coral Reef Center, the Governors' Association, Council of Chiefs, and Mechesil Belau during your deliberation of this bill. The result is a consensus product, which I am proud to sign.

I thank you for your diligence in passing this important piece of legislation. It is an essential law that must be passed so that we may protect our genetic resources. Thank you for the work you have done, and I look forward to continuing our progress with the signing of this bill.

Sincerely,


Tommy E. Remengesau, Jr.
President of the Republic of Palau



Republic of Palau
Office of the President

Tommy E. Remengesau, Jr.
President

P.O. Box 6051, Palau, PW 96940
Tel. (680) 767-2403/2828
Fax. (680) 767-2424/1662
Email: rop.president@palaunet.com

August 22, 2018
Serial No. 18-723

The Honorable Sabino Anastacio
Speaker of the House of Delegates
10th Olbiil Era Kelulau
Ngerulmud, Palau National Capitol
Republic of Palau 96939

Signing Statement Re: HB 10-66-5S, HD1, SD1– Creating a national framework for access and fair and equitable sharing of benefits of genetic resources and traditional knowledge associated with genetic resources within the Republic; and for related purposes.

Dear Speaker Anastacio:

It is with great satisfaction that today I sign into law House Bill No. 10-66-5S, HD1, SD1, creating a new national framework for access and benefit sharing of genetic resources and traditional knowledge associated with genetic resources within the Republic. This national framework is essential as we work to protect our biological diversity and standardize access and benefits sharing (“ABS”) in Palau.

As you know, the Republic is a party to the Convention on Biological Diversity, and is a signatory to the Nagoya Protocol on Access and Benefit Sharing. The Convention deals with three specific areas, as you note in your findings: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. While our governments and non-profits here in Palau may be familiar with this term, I am pleased to see you define “genetic material” as meaning “material of plant, animal, microbial or other origin containing functional units of heredity.” In other words, genetic material is the building blocks of life; it is the DNA of the world around us.

In order to fully secure a national framework, a new chapter is needed, and I think you are correct that it should go into Title 24 of the Palau National Code as Chapter 50. The crux of this bill can be found in Section 5002, which sets forth the scope. This new chapter covers “all genetic resources and associated traditional knowledge, innovations, and practices covered under the Convention and benefits arising from the commercial and any other utilization of such resources.”

Section 5003 clarifies this scope. It states that all access and benefit sharing agreements must be formed based on the following order of priority: sovereign rights; traditional heritage; traditional community-based approaches; equitable sharing of benefits; good governance and leadership; ecological integrity; stakeholder participation; on- and off- site conservation; and public awareness and capacity building.

Section 5004 is important to note as well. There, it states that all extraction, utilization, or study of genetic resources from Palau is prohibited unless a person is authorized to engage in such activity pursuant to a valid Access and Benefit Sharing Agreement (an “ABS Agreement”) contracted pursuant to this Chapter. The Ministry of Natural Resources, Environment, and Tourism is given the authority to issue a cease and desist letter restraining a party from activity undertaken in violation of this section while it pursues a legal remedy. Noncompliance with this letter is a violation of the chapter, and any conviction will result in at least a fine of two hundred and fifty thousand dollars (\$250,000) and at most one million dollars



(\$1,000,000) per violation. In addition to the fines, any genetic resources extracted, studied, or utilized in violation of this act must be returned.

As a result of this bill, any person desiring to extract, test, obtain, utilize, or study a genetic resources or the traditional knowledge associated therewith in the Republic must first submit an application to enter into an ABS Agreement and pay any associated fees established by regulation. The application will be submitted to the Committee, and must meet specific guidelines and provide certain essential pieces of information so that the Committee can make a proper decision. The Committee is established in Section 5006, and is made up of the Minister of Natural Resources, the Environment, and Tourism, the Minister of Community and Cultural Affairs, the Minister of Health, and others. This Committee will be responsible for writing the necessary regulations. Among other things, its duties will be to: evaluate the ABS Agreement applications; meet with resource owners as necessary; provide recommendations to resources owners; establish bylaws and regulations in conformity with the APA; ensure public notice of each application for an ABS Agreement; and coordinate the prosecution of any violation of this Chapter. Even if the Committee approves the application, the final say will still remain with the resources owner. Importantly, I thank you for establishing legislative presumptions of resource ownership. For instance, a clan is presumed to be the resource owner of a genetic resource situated on property owned by the clan, and traditional or customary law will govern access to genetic resources on such property.

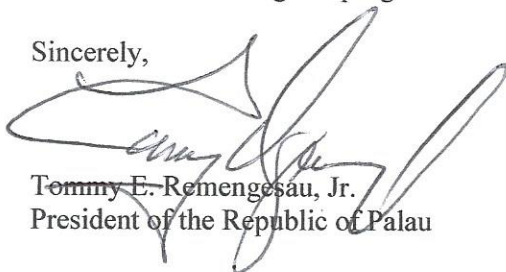
With regard to benefit sharing, this bill sets forth fee division. All funds collected pursuant to an ABS Agreement involving only the genetic resources of the national government, for example, will be shared equally between the national government and the states, with the national government receiving 50% of all funds, and the remaining 50% being divided equally among the states.

I am pleased to see that you have set up an ABS Fund, established within the National Treasury for funds acquired pursuant to Section 5014. These funds will be used by the Committee for activities conducted in furtherance of its duties and responsibilities.

But perhaps the most impressive element of this bill is the process you followed in developing it. Through the comments submitted to my office, I can see that you and your colleagues put great effort into consulting with relevant experts and authorities throughout Palau. I appreciate that the OEK committees, and particularly those of Chairman Marino in the House of Delegates and Chairman Kuartei in the Senate, were able to incorporate advice and feedback from the Palau International Coral Reef Center, the Governors' Association, Council of Chiefs, and Mechesil Belau during your deliberation of this bill. The result is a consensus product, which I am proud to sign.

I thank you for your diligence in passing this important piece of legislation. It is an essential law that must be passed so that we may protect our genetic resources. Thank you for the work you have done, and I look forward to continuing our progress with the signing of this bill.

Sincerely,



Tommy E. Remengesau, Jr.
President of the Republic of Palau



TENTH OLBIIL ERA KELULAU

EIGHTH SPECIAL SESSION

AUGUST 2018

HOUSE BILL NO. 10-66-5S, HD1, SD1

AN ACT

To create a national framework for access and fair and equitable sharing of benefits of genetic resources and traditional knowledge associated with genetic resources within the Republic of Palau; and for other related purposes.

OFFERED BY DELEGATE(S) Marino, Anastacio, Ngiraiwet, Kanai,

Rechelulk, Arurang, Otobed, Isechal, Saiske, Ngirtkaki-Kanai, ET AL,
Ongidobel

DATE INTRODUCED November 13, 2017

HOUSE ACTION

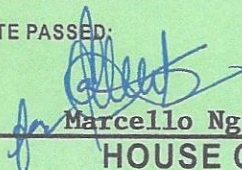
FIRST READING:	November 13, 2017
REFERRED TO:	Maritime, Climate Change & Protected Areas
STANDING COMMITTEE REPORT NO:	10-52
DATE ADOPTED:	May 17, 2018
SECOND READING:	May 17, 2018
LEGAL FORMAT:	Proper
REVIEW:	May 17, 2018
THIRD READING:	May 29, 2018
FINAL ACTION:	August 13, 2018

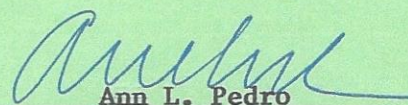
SENATE ACTION

FIRST READING:	June 06, 2018
REFERRED TO:	MCC, C&T and H&E
STANDING COMMITTEE REPORT NO:	10-132
DATE ADOPTED:	July 31, 2018
SECOND READING:	July 31, 2018
LEGAL FORMAT:	Proper
REVIEW:	August 02, 2018
THIRD READING:	August 02, 2018
FINAL ACTION:	

CONFERENCE COMMITTEE ACTION

DATE:	None
COMMITTEE REPORT:	None
DATE PASSED:	None


Marcello Ngirkelau
 HOUSE CLERK


Ann L. Pedro
 SENATE CLERK

1 (a) “ABS Agreement” or “Access and Benefit Sharing Agreement” means the
2 contractual undertaking for the fair and equitable sharing of the benefits arising from
3 appropriate access to genetic resources, including the transfer of relevant technologies or
4 use of traditional knowledge associated with genetic resources.

5 (b) “Biological diversity” means the variability among living organisms from all
6 sources including terrestrial, marine and other aquatic ecosystems and the ecological
7 complexes of which they are part; this includes diversity within species, between species,
8 and of ecosystems.

9 (c) “Biotechnology” means any technological application that uses biological
10 systems, living organisms, or derivatives thereof, to make or modify products or
11 processes for specific use.

12 (d) “Committee” or “ABS Committee” means the Committee of technical advisors
13 that assists the resource owner in the consideration, negotiation, and establishment of an
14 ABS Agreement.

15 (e) “Convention” means the Convention on Biological Diversity.

16 (f) “Derivative” means a naturally occurring biochemical compound resulting
17 from the genetic expression or metabolism of biological or genetic resources, even if it
18 does not contain functional units of heredity.

19 (g) “Extract” means the genetic resources obtained from samples or isolates by
20 extraction procedures.

21 (h) “Field of use” means the development for use, sale, manufacture for sale, and
22 sale of products within a specified field, but excludes commodities in trade.

23 (i) “Genetic material” means material of plant, animal, microbial or other origin
24 containing functional units of heredity.

25 (j) “Genetic resources” includes genetic material with actual or potential value.

26 (k) “Minister” means the Minister of the Ministry of Natural Resources,
27 Environment, and Tourism.

28 (l) “Ministry” means the Ministry of Natural Resources, Environment, and
29 Tourism.

1 (m) “Person” means an individual, partnership, association, joint-stock company,
2 trust, corporation, or other nongovernmental or governmental entity, however
3 organized.

4 (n) “Resource owner” means the person, clan, state, or national government that
5 owns the genetic resource or traditional knowledge associated with a genetic resource
6 that is contemplated by a party seeking access.

7 (o) “Territory” means Palau’s exclusive economic zone, including its territorial
8 waters, and all terrestrial property recognized by Palau as being within the sovereign
9 jurisdiction of the Republic of Palau.

10 (p) “Utilization of genetic resources” means to conduct research and development
11 on the genetic or biochemical composition of genetic resources, including through the
12 application of biotechnology.

13 § 5002. Scope and exclusions.

14 All genetic resources and associated traditional knowledge, innovations, and
15 practices covered under the Convention and benefits arising from the commercial and
16 any other utilization of such resources will be covered by this Chapter, with the exclusion
17 of human genetic resources. Commodities in trade are outside the scope of this Chapter,
18 and will not be contemplated by ABS Agreements or fields of use.

19 § 5003. Priorities for access and benefit sharing agreements.

20 All access and benefit sharing agreements must be formed based on the following
21 priorities:

22 (a) Sovereign rights. The individuals and traditional communities of Palau hold
23 sovereign rights over their biological diversity.

24 (b) Traditional heritage. The traditional knowledge and experience of the people of
25 Palau will be utilized to devise and implement strategies for sustainable stewardship of
26 our rich natural heritage.

27 (c) Traditional community-based approach. Communities have both the right and
28 responsibility to manage and use their genetic resources sustainably for their benefit and
29 that of future generations.

1 (d) Equitable sharing of benefits. All use, conservation, and management of
2 Palau’s biodiversity should benefit the people of Palau.

3 (e) Good governance and leadership. The National Government, State
4 Governments, and Traditional Leaders of Palau will work together, in full partnership
5 with local communities, to ensure the protection, conservation, and sustainable
6 management of our biodiversity, through effective governance and leadership.

7 (f) Ecological integrity. The diversity of Palau’s ecosystems must be maintained
8 and improved, conserving Palau’s biodiversity while enhancing its ecosystems’ capacity
9 to adapt to change.

10 (g) Stakeholder participation. The opportunity for full collaboration and
11 participation by relevant stakeholders is required for the effective coordination and
12 implementation of any access and benefit sharing agreement to ensure accountability and
13 transparency.

14 (h) On- and Off- Site conservation. Consideration shall be given to on- and off- site
15 conservation to conserve and manage threatened species and habitats.

16 (i) Public awareness and capacity building. All access and benefit sharing
17 agreements must be open and transparent, allowing the public notice and an opportunity
18 for comment regarding the conservation and sustainable use of biological diversity and
19 the fair and equitable sharing of benefits arising out of the utilization of genetic resources.

20 § 5004. Prohibition against extraction or study of genetic resources.

21 All extraction, utilization, or study of genetic resources from Palau’s territory is
22 prohibited unless a person is authorized to engage in such activity pursuant to a valid
23 ABS Agreement contracted pursuant to this Chapter. The Ministry is authorized to issue
24 a cease and desist letter restraining a party from activity undertaken in violation of this
25 section while the Ministry pursues a legal remedy. Noncompliance with a cease and desist
26 letter issued by the Ministry shall be a violation of this Chapter.

27 § 5005. Application for ABS Agreements.

28 (a) Any person desiring to extract, test, obtain, utilize or study a genetic resource or
29 the traditional knowledge associated with a genetic resource in the Republic of Palau’s

1 territory must first submit an application to enter into an ABS Agreement and pay any
2 associated fees established by regulation. The application shall be submitted to the
3 Committee. The application shall contain the following:

4 (1) a full and complete description of the activities and intent of the party
5 seeking the ABS Agreement;

6 (2) the dates and times of the desired extraction, utilization, or study of a
7 genetic resource;

8 (3) the location and a description of the area in which the extraction,
9 utilization, or study is to be undertaken;

10 (4) the species sought and a statement of the quantity of species sought if
11 the desired activity involves extraction;

12 (5) a statement identifying the methodologies for extraction of genetic
13 resources and a copy of the research proposal, if applicable;

14 (6) a statement regarding whether traditional knowledge associated with
15 the genetic resource will be contemplated in the ABS Agreement;

16 (7) a statement concerning any impact on ecological or human health that
17 may result from the extraction, utilization, or study of a genetic resource;

18 (8) any environmental monitoring or management plans that may need to
19 be established;

20 (9) the nature, duration, and extent of any expected research and
21 development plan; and

22 (10) any other requirements established by regulation.

23 (b) The Ministry shall establish by regulation the application form for extraction,
24 utilization, or study of genetic resources and the traditional knowledge associated with
25 genetic resources.

26 (c) The Committee shall initiate the procedures set forth in Section 5008, ensuring
27 that an ABS Agreement, if formed, complies with the requirements of Section 5009
28 utilizing the priorities of Section 5003.

29 (d) Submission of an application to enter into an ABS Agreement does not

1 authorize the permit holder to begin extraction of genetic resources, utilization of genetic
2 resources, or research activities in furtherance thereof. Such activity shall be considered
3 a violation of this Chapter.

4 § 5006. Committee for ABS Agreements.

5 (a) There is hereby established a Committee for ABS Agreements comprised of the
6 following members:

7 (1) the Minister of the Ministry of Natural Resources, Environment, and
8 Tourism, or his or her designee;

9 (2) the Minister of the Ministry of Community and Cultural Affairs, or his or
10 her designee;

11 (3) the Minister of the Ministry of Health, or his or her designee;

12 (4) a member of Rubekul Belau;

13 (5) a member of Mechesil Belau;

14 (6) the Attorney General, or an Assistant Attorney General;

15 (7) the Chief Executive Officer of the Palau International Coral Reef Center,
16 or his or her designee;

17 (8) a representative from the Governors' Association; and

18 (9) a representative from Palau Community College.

19 (b) The Minister of the Ministry of Natural Resources, Environment, and Tourism
20 shall serve as interim Chair to facilitate the formation of the ABS Committee and
21 promulgation of regulations. The ABS Committee shall by regulation establish the
22 process by which a Chair is designated. The Committee members enumerated in this
23 Section shall serve as technical advisors to the resource owner(s).

24 (c) Members of the Committee shall be compensated at \$50 per meeting for work
25 performed for the Committee. Civil service employees shall only be compensated for
26 work performed outside the hours of their employment.

27 (d) The Committee shall establish its bylaws and regulations in conformity with the
28 Administrative Procedures Act. Regulations promulgated by the Committee shall
29 establish the fee schedule for ABS Agreements and may tier the fee schedule based on the

1 complexity of the ABS Agreement, intended use of the genetic resources, or other
2 relevant factors.

3 (e) The duties of the Committee are as follows:

4 (1) evaluate each application for an ABS Agreement and notify the resource
5 owner(s) of a pending ABS Agreement application;

6 (2) meet with the resource owner(s) to advise them on the application for an
7 ABS Agreement;

8 (3) provide recommendations to the resource owner concerning the mutually
9 agreed terms necessary for the formation of an ABS Agreement;

10 (4) evaluate the legitimacy of the applicant and present findings to the
11 resource owner(s);

12 (5) establish bylaws and regulations in conformity with the Administrative
13 Procedures Act;

14 (6) ensure public notice of each application for an ABS Agreement and
15 provide an opportunity for public comment;

16 (7) if an ABS Agreement involves the use of traditional knowledge, ensure
17 that the holder(s) of traditional knowledge receives adequate benefits as a result of
18 the access and use of the associated genetic resource;

19 (8) coordinate the prosecution of any violation of this Chapter; and

20 (9) perform any other functions consistent with this Chapter.

21 § 5007. Notice.

22 Upon the receipt of an application for an ABS Agreement, the Committee
23 Chairman shall give public notice of the application and shall ensure delivery of such
24 notice to any resource owner defined in Section 5001(n). The Committee Chairman shall
25 comply with the public notice requirements listed in the Open Government Act. Public
26 notice shall provide the following:

27 (1) a description of the nature of the application;

28 (2) the location, dates, and species sought for extraction or utilization of
29 genetic resources; and

1 (3) instructions for petitioning for inclusion as a resource owner assessing the
2 application.

3 § 5008. Procedures for ABS Agreement Formation.

4 (a) Meeting and advice. The Committee shall meet with the resource owner(s)
5 following public notice of an application for an ABS Agreement. The Committee shall
6 advise the resource owner(s) concerning the legitimacy of the applicant and the suggested
7 terms of the ABS Agreement. The Committee shall facilitate any desired negotiation
8 between the resource owner and the applicant.

9 (b) Approval. Only upon the approval of the resource owner shall an ABS
10 Agreement be formed. If an application for an ABS Agreement is rejected by the resource
11 owner, the Committee shall inform the applicant in writing and state the reasons for the
12 rejection. Applicants may reapply, but must pay all fees associated with a new
13 application.

14 (c) The following presumptions shall apply to the determination of a resource
15 owner:

16 (1) the national government shall be presumed to be the resource owner of
17 a genetic resource found on national government property, meaning a genetic
18 resource found beyond the territorial sea of the Republic or a terrestrial genetic
19 resource found on land owned by the national government. The President of the
20 Republic shall be the presumed resource owner of the national government, and
21 may designate in writing a proxy for purposes of consideration and vote on an
22 ABS Agreement.

23 (2) A state government shall be presumed to be the resource owner of a
24 genetic resource found within twelve nautical miles of the terrestrial boundaries of
25 a state or a terrestrial genetic resource found on land owned by the state
26 government. The Governor of a state shall be the presumed representative of a
27 state government, but state law may provide for alternate representative(s) for
28 purposes of consideration and vote on an ABS Agreement.

29 (3) A clan shall be presumed to be the resource owner of a genetic resource

1 situated on property owned by a clan and traditional or customary law shall
2 govern access to a genetic resource on such property.

3 (4) Clean title to a property shall be presumed to identify an individual
4 resource owner for a genetic resource found on property not owned by the
5 national or state government or a clan.

6 **§ 5009. Components of an ABS Agreement.**

7 ABS Agreements must be entered into and drafted based on the priorities set forth
8 in Section 5003. ABS Agreements shall be crafted to meet the specific or unique
9 circumstances of the extraction, utilization, or study of genetic resources or traditional
10 knowledge associated with genetic resources. ABS Agreements shall include, inter alia,
11 the following mutually agreed terms as applicable:

12 (1) Identification of the parties;

13 (2) Definitions of terms;

14 (3) Limiting language regarding the intended field of use;

15 (4) Limiting language regarding the species sought and quantities that may be
16 collected or extracted;

17 (5) Methodology of resource extraction, and methodology of resource evaluation,
18 and sampling, including the required prior informed consent of the resource owner for
19 any variation in the resource extraction methodology;

20 (6) Duration of the ABS Agreement;

21 (7) Compensation for the utilization of state or national resources or personnel;

22 (8) Intellectual Property Rights;

23 (9) Confidentiality;

24 (10) Liability;

25 (11) Termination of the ABS Agreement;

26 (12) Traditional knowledge associated with genetic resources;

27 (13) Benefit sharing; and

28 (14) Change of intent.

29 **§ 5010. Third party use and the transfer of rights.**

1 (a) The rights and benefits of the parties to an ABS Agreement may not be
2 transferred nor shall third party use be permitted unless the requirements of this section
3 are met. Any unauthorized third party use or transfer of rights shall constitute a
4 violation of this Chapter.

5 (b) No ABS Agreement may allow for the transfer of rights to a third party or a
6 change in intent for the utilization of genetic material or its derivative without entering
7 into a new ABS Agreement, with prior informed consent of mutually agreed terms, by the
8 resource owner of the genetic resource implicated by the transfer or change in intent.
9 Only upon the approval of the resource owner shall a new ABS Agreement be formed.

10 § 5011. Archiving and reporting.

11 Upon the formation of an ABS Agreement, the parties shall submit the agreement to
12 the Ministry, which shall digitally archive the ABS Agreement and comply with any
13 international reporting obligations.

14 § 5012. Certificate of Compliance.

15 The Ministry shall perform annual compliance reviews for all ABS Agreements
16 archived pursuant to Section 5011, ensuring that all permitting requirements have been
17 met and that any extraction of genetic resources or utilization undertaken in furtherance
18 thereof is pursuant to a valid ABS Agreement. The Ministry shall issue a written report
19 summarizing its findings from the annual compliance review to the President of the
20 Republic and the presiding officers of the Olbiil Era Kelulau. The Ministry shall issue a
21 certification of compliance to the parties consistent with the obligations of the
22 Convention.

23 § 5013. Remedy for noncompliance.

24 If the Ministry has reason to believe that such ABS Agreement may no longer be
25 valid or that a party is not compliant with the mutually agreed terms, the Ministry shall
26 take appropriate action including pursuing legal remedies through the Attorney
27 General's Office. The Ministry is also authorized to issue a cease and desist letter
28 restraining a party from suspect activity while the Ministry pursues a legal remedy.
29 Noncompliance with a cease and desist letter issued by the Ministry shall be considered a

1 violation of this Chapter.

2 § 5014. Benefits sharing between national and state governments.

3 (a) The fees, profits, royalties, and other funds collected pursuant to an ABS
4 Agreement involving only the genetic resources of the national government shall be
5 shared equally between the national government and the states, with the national
6 government receiving 50% of all fees, profits, royalties, and other funds, and the
7 remaining 50% being divided equally among all states. The portion of funds due to the
8 states shall be distributed through appropriation in the fiscal year following the receipt of
9 funds. Funds retained by the national government pursuant to this section shall be
10 deposited in the ABS Fund established in Section 5018.

11 (b) The fees, profits, royalties, and other funds collected pursuant to an ABS
12 Agreement involving state resources shall be shared by the national government and the
13 state(s) implicated in the ABS Agreement. The national government shall receive 15%
14 of the fees, profits, royalties, and other funds collected pursuant to the ABS Agreement
15 and the state(s) shall divide the remaining 85% pursuant to agreement between the
16 state(s) implicated in the ABS Agreement. Funds retained by the national government
17 pursuant to this section shall be deposited in the ABS Fund established in Section 5018.

18 (c) The fees, profits, royalties and other funds collected pursuant to an ABS
19 Agreement formed with a resource owner other than the national or state government
20 shall be retained by the resource owner. Five percent (5%) of the fees, profits, royalties,
21 and other funds collected pursuant to an ABS Agreement shall be distributed to the
22 Minister of Finance by the resource owner. The Minister of Finance shall deposit funds
23 received pursuant to this subsection into the ABS Fund to cover the administration costs,
24 technical assistance, and enforcement responsibilities of the ABS Committee.

25 § 5015. Language of ABS Agreements.

26 All ABS Agreements shall be drafted in English, and the English language shall be
27 the governing language of an ABS Agreement in the event of a controversy, dispute, or
28 claim arising out of, in connection with, or in relation to the interpretation, performance,
29 or breach of an ABS Agreement.

1 **§ 5016. Jurisdiction.**

2 The courts of the Republic of Palau shall have exclusive jurisdiction over any
3 dispute arising under an ABS Agreement and the laws of the Republic of Palau shall
4 govern. Parties may contract to enter into binding arbitration in the event of any
5 controversy, dispute, or claim arising out of, in connection with, or in relation to the
6 interpretation, performance, or breach of an ABS Agreement. Binding arbitration shall
7 be conducted in the Republic of Palau and the rules for binding arbitration shall be
8 established by the Supreme Court of the Republic of Palau.

9 **§ 5017. Penalties.**

10 (a) A person who violates Section 5004, 5005, 5010, or 5013 shall be guilty of a
11 violation and upon conviction shall be fined not less than two hundred and fifty thousand
12 dollars (\$250,000) but not more than one million dollars (\$1,000,000) per violation.

13 (b) A person found in violation of this Chapter shall return any genetic resource
14 extracted, utilized, or studied if the genetic resource originated in the territory of the
15 Republic of Palau. Violation of this Chapter will not preclude a person from entering into
16 an ABS Agreement with a resource owner, but any fine associated with a violation shall
17 be separate from and in addition to the provisions of the ABS Agreement relating to fees,
18 profits, royalties or other benefit sharing.

19 (c) Civil remedies pursued under this section shall not extinguish or inhibit any
20 right to pursue legal action under contract law or other national law, or to pursue legal
21 action for a violation of the terms of an ABS Agreement.

22 **§ 5018. ABS Fund.**

23 (a) There shall be established within the National Treasury a separate and distinct
24 account for funds acquired pursuant to Section 5014 called the “ABS Fund”.

25 (b) The ABS Fund shall be administered by the Minister of Finance.

26 (c) The Minister of Finance is authorized to disburse available funds to the
27 Chairperson of the ABS Committee upon written request by the Chairperson.

28 (d) The funds in the ABS Fund shall be used by the ABS Committee for activities
29 conducted in furtherance of the duties and responsibilities assigned in this Chapter.

1 (e) The Committee shall prepare and submit an annual report itemizing the
2 expenses of the Committee and justifying any use of funds from the ABS Fund. The
3 report shall be submitted to the President of the Republic of Palau and the presiding
4 officers of the Olbiil Era Kelulau no later than February 1 of each year.

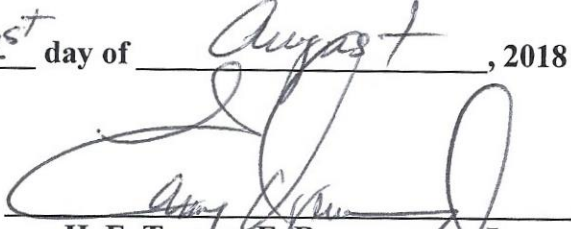
5 (f) Available funds shall also be subject to appropriation by the Olbiil Era Kelulau
6 for other lawful purposes.”

7 Section 3. Regulations. The Ministry of Natural Resources, Environment and
8 Tourism and the ABS Committee shall promulgate any necessary regulations within one
9 hundred and eighty (180) days of the effective date of this Act.

10 Section 4. Effective date. This Act shall take effect either upon its approval by the
11 President of the Republic of Palau or upon its becoming law without such approval.

PASSED: August 13, 2018

Approved this 22st day of August, 2018


H. E. Tommy E. Remengesau, Jr.
President of the Republic of Palau