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DRAFT EXPLANATORY NOTES DESCRIBING, WITHIN THE CONTEXT OF THE ABS ELEMENTS,* THE DISTINCTIVE FEATURES OF AQUATIC GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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*) The *Elements to Facilitate Domestic Implementation of Access and Benefit-sharing for Different Subsectors of Genetic Resources for Food and Agriculture* (ABS Elements) are available in all UN languages at:
<http://www.fao.org/nr/cgrfa/cross-sectorial/abs/>

I. INTRODUCTION

1. Sustainable Development Goal (SDG) Target 2.5 and SDG Target 15.6 require countries to “promote access to and fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge, as internationally agreed.”
2. In 2015, at its Fifteenth Regular Session, the Commission on Genetic Resources for Food and Agriculture (Commission), welcomed the *Elements to Facilitate Domestic Implementation of Access and Benefit-sharing for Different Subsectors of Genetic Resources for Food and Agriculture* (ABS Elements) and invited the Director-General of FAO to bring them to the attention of the Conference.¹ The FAO Conference, at its Thirty-Ninth Session in June 2015, welcomed the ABS Elements and invited Members to consider and, as appropriate, make use of them. The Conference also noted the complementarity between the work of the Commission and 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 (Nagoya Protocol) in regard to access and benefit-sharing (ABS) for genetic resources.²
3. In 2017, at its last session, the Commission “agreed to produce non-prescriptive explanatory notes describing, within the context of the ABS Elements, the distinctive features and specific practices of different subsectors of genetic resources for food and agriculture (GRFA), to complement the ABS Elements.”³
4. The Commission invited Members, observers and other stakeholders to provide relevant inputs for such explanatory notes by electronic means, including on their practical experiences in implementing national ABS measures related to GRFA; and the distinctive features and the specific practices of different subsectors of GRFA.⁴
5. The Commission also requested the Secretariat to convene, in collaboration with the Secretariats of the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty) and the Convention on Biological Diversity (CBD), an international workshop to assist countries to raise awareness of distinctive features and specific practices of subsectors of GRFA in the context of the ABS Elements.⁵ It requested that the open-ended workshop be attended by at least one representative per region of each of the Commission’s intergovernmental technical working groups on plant, animal, forest and aquatic genetic resources and seven regionally representative experts from the subsectors of micro-organism and invertebrate GRFA.⁶
6. The International Workshop on Access and Benefit-Sharing for Genetic Resources for Food and Agriculture (Workshop) was held in Rome, Italy, from 10 to 12 January 2018. The Workshop considered inputs received from Members, observers and other stakeholders and provided a forum for participants to exchange information, experiences and views. The Workshop provided outputs for subsequent elaboration into non-prescriptive explanatory notes describing, within the context of the ABS Elements, the distinctive features and specific practices of different subsectors of GRFA.⁷ More information on the workshop, including submissions received from Members, observers and other stakeholders, are available on the Commission’s website.⁸ The outputs of the workshop as well as the Proceedings have been made available to the Ad Hoc Intergovernmental Technical Working Group on Aquatic Genetic Resources for Food and Agriculture (Working Group).⁹
7. This document proposes draft non-prescriptive explanatory notes describing, within the context of the ABS Elements, the distinctive features and specific practices of aquatic genetic resources for food and agriculture (AqGR). It briefly introduces the ABS Elements (II), presents the distinctive features of

¹ CGRFA-15/15/Report, paragraph 22(ii).

² C 2015/REP, paragraph 52.

³ CGRFA-16/17/Report, paragraph 25 (iii).

⁴ CGRFA-16/17/Report, paragraph 25 (iv).

⁵ CGRFA-16/17/Report, paragraph 25(v).

⁶ CGRFA-16/17/Report, paragraph 25 (v).

⁷ CGRFA-16/17/Report, paragraph 25(v), e–g.

⁸ <http://www.fao.org/nr/cgrfa/cgrfa-meetings/abs/itwg-abs/en/>

⁹ CGRFA/WG-AqGR-2/18/Inf.7; CGRFA/WG-AqGR-2/18/Inf.8.

AqGR, as identified during the Workshop (III). It further identifies areas where explanatory notes could further the aim of the ABS Elements to assist governments in taking into account, in the development, adaptation or implementation of ABS measures, the importance of AqGR, their special role for food security and the distinctive features of AqGR, while complying, as applicable, with international ABS instruments (IV).

II. ELEMENTS TO FACILITATE DOMESTIC IMPLEMENTATION OF ACCESS AND BENEFIT-SHARING FOR DIFFERENT SUBSECTORS OF GENETIC RESOURCES FOR FOOD AND AGRICULTURE

8. The Nagoya Protocol has been hailed as a giant step towards the implementation of the third objective of the Convention on Biological Diversity (CBD): the fair and equitable sharing of benefits arising out of the utilization of genetic resources, including by appropriate access to them. Implementing this third objective should contribute to the conservation of biological diversity and the sustainable use of its components, the other two objectives of the CBD.

9. The Nagoya Protocol requires its Contracting Parties to consider, in the development and implementation ABS measures, the importance of GRFA and their special role for food security¹⁰. It also explicitly recognizes the importance of genetic resources to food security, the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions, the interdependence of all countries with regard to GRFA as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledges in this regard the fundamental role of the Treaty.¹¹

10. In 2011, the Commission initiated a process that ultimately led to the preparation of the ABS Elements. The Commission established an Ad Hoc Technical Working Group on Access and Benefit-sharing for Genetic Resources for Food and Agriculture which, *inter alia*, identified “relevant distinctive features of the different sectors and subsectors of genetic resources for food and agriculture”.¹²

11. In 2013, the Commission replaced the Ad Hoc Working Group by the Team of Technical and Legal Experts on Access and Benefit-Sharing (ABS Expert Team) and mandated the latter to prepare, in collaboration with the Commission’s Working Groups on plant, animal and forest genetic resources, draft ABS Elements, which would be “*voluntary tools to assist national governments, not new international access and benefit-sharing instruments.*”¹³

12. In 2015, at its Fifteenth Regular Session, the Commission welcomed the ABS Elements. Subsequently, the FAO Conference, the highest Governing Body of FAO, at its Thirty-Ninth Session, welcomed the ABS Elements and invited Members to consider and, as appropriate, make use of them.¹⁴

13. The ABS Elements aim to assist governments considering developing, adapting or implementing ABS measures to take into account the importance of GRFA, their special role for food security and the distinctive features of the different subsectors of GRFA, while complying, as applicable, with international ABS instruments.

14. The ABS Elements recommend, in particular, to:

- consider in the development, adaptation or implementation of ABS measures, the distinctive features of the subsector of GRFA concerned, including its activities, socio-economic environment and use and exchange practices;
- identify and consult relevant governmental entities and non-governmental stakeholders holding, providing or using GRFA;

¹⁰ Nagoya Protocol, Article 8(c).

¹¹ Nagoya Protocol, Preamble.

¹² CGRFA-14/13/6.

¹³ CGRFA-14/13/Report, paragraph 40(xv).

¹⁴ C 2015/REP, paragraph 52(c) & (d).

- integrate ABS measures with broader food security and sustainable agricultural development policies and strategies;
- consider and evaluate available options for ABS measures;
- integrate the implementation of ABS measures into the (existing) institutional landscape;
- communicate and raise awareness of ABS measures; and
- assess *ex ante* and monitor the effectiveness and impact of ABS measures for GRFA.

15. The ABS Elements also provide guidance with regard to issues of particular relevance to ABS for GRFA, including AqGR:

- They point out, for example, that in the case of many GRFA, it may be difficult to determine with certainty their “country of origin”. GRFA have been widely exchanged across regions, countries and communities, often over long periods of time and many different stakeholders have contributed to their development, in different places and at different points in time.¹⁵ ABS measures usually require that the country of origin has given its prior informed consent (PIC) to the use of a genetic resource for research and development.
- The ABS Elements also point out that significant amounts of GRFA are privately held, in particular in sectors such as the livestock sector. They, therefore, recommend that ABS measures need to be clear as to whether they apply to privately held or only to publicly held GRFA and point out that ABS measures may have a significant impact on the exchange of GRFA.¹⁶
- The ABS Elements further consider which kind of uses of GRFA could trigger the application of ABS measures. ABS measures usually require PIC for access to genetic resources “for their utilization.” “Utilization”, according to the Nagoya Protocol, means “to conduct research and development on the genetic and/or biochemical composition of genetic resources”¹⁷. While practices, such as the capture or collection of live material from the wild and its subsequent use in aquaculture, usually termed as capture-based aquaculture (CBA), might clearly not qualify as “research and development” and therefore not trigger the application of ABS measures, aquaculture may simultaneously contribute to genetic improvement and therefore be considered “research and development.”
- The ABS Elements also address various options policymakers may wish to consider in designing ABS authorization procedures, on the one hand, and benefit-sharing arrangements, on the other. They refer, for example, to the possibility of standardizing procedures and conditions for the granting of access to genetic resources and to the possibility of facilitating benefit-sharing through partnership agreements. Such agreements may cover a whole range of genetic resources and address the sharing of various benefits as part of a longstanding partnership.

16. While the ABS Elements thus address issues of particular relevance to GRFA, including AqGR, the Commission, at its last session concluded that there is a need for more detailed explanatory notes, describing within the context of the ABS Elements, the distinctive features of genetic resources for food and agriculture.

¹⁵ ABS Elements, paragraph 35; see also M. Schloen et al. (2011). Access and benefit-sharing for genetic resources for food and agriculture – current use and exchange practices, commonalities, differences and user community needs. [Background Study Paper No. 59](#).

¹⁶ ABS Elements, paragraph 38.

¹⁷ Nagoya Protocol, Article 2.

III. DISTINCTIVE FEATURES OF AQUATIC GENETIC RESOURCES FOR FOOD AND AGRICULTURE

17. Starting in 2012, the Commission, in collaboration with its intergovernmental technical working groups on plant, animal and forest genetic resources, identified a list of distinctive features of genetic resources for food and agriculture which is annexed to the ABS Elements. While these distinctive features aim to reflect an equilibrium between all subsectors of food and agriculture, not every feature is necessarily applicable to each and every GRFA. Moreover, the features are distinctive, but not necessarily unique to GRFA. Table 1 presents the distinctive features and highlights those features which

TABLE 1: DISTINCTIVE FEATURES OF AQUATIC GENETIC RESOURCES FOR FOOD AND AGRICULTURE

A. The role of GRFA for food security	A.1 GRFA are an integral part of agricultural and food production systems and play an essential role for achieving food security and the sustainable development of the food and agriculture sector.	+
	A.2 Plant, animal, invertebrate and micro-organism GRFA form an interdependent network of genetic diversity in agricultural and aquatic ecosystems respectively.	+
B. The role of human management	B.1 (a) The existence of most GRFA is closely linked to human activity and (b) many GRFA can be regarded as human-modified forms of genetic resources.	-
	B.2 The maintenance and evolution of many GRFA depend on continued human intervention, and their sustainable utilization in research, development and production is an important instrument to ensure conservation.	+
C. International exchange and interdependence	C.1 Historically, GRFA have been widely exchanged across communities, countries and regions over often long periods of time, and a relevant part of the genetic diversity used in food and agriculture today is of exotic origin.	+
	C.2 Countries are interdependent with regard to GRFA and act both as providers of some GRFA and as recipients of others.	+
	C.3 The international exchange of GRFA is essential to the functioning of the sector, and its importance is likely to increase in future.	+
D. The nature of the innovation process	D.1 The innovation process for GRFA is usually of incremental nature and the result of contributions made by many different people, including indigenous and local communities, farmers, researchers and breeders, in different places and at different points in time.	-
	D.2 Many GRFA products are not developed out of an individual genetic resource, but with the contributions of several GRFA at different stages in the innovation process.	-
	D.3 Most products developed with the use of GRFA can in turn be used as genetic resources for further research and development, which makes it difficult to draw a clear line between providers and recipients of GRFA.	+
	D.4 Many agricultural products reach the market place in a form in which they may be used both as biological resources and as genetic resources.	+
E. Holders and users of GRFA	E.1 (a) GRFA are held and used by a broad range of very diverse stakeholders. (b) There are distinct communities of providers and users with respect to the different subsectors of GRFA.	+
	E.2 The different stakeholders managing and using GRFA are interdependent.	+
	E.3 A significant amount of GRFA is privately held.	+
	E.4 An important part of GRFA is held and can be accessed <i>ex situ</i> .	-
	E.5 An important part of GRFA is conserved <i>in situ</i> and on farm under different financial, technical and legal conditions.	+
F. GRFA exchange practices	F.1 The exchange of GRFA takes place in the context of customary practices and existing communities of providers and users.	-
	F.2 An extensive transfer of genetic material between different stakeholders along the value chain occurs in research and development.	+
G. Benefits generated with the use of GRFA	G.1 (a) While the overall benefits of GRFA are very high, (b) it is difficult to estimate at the time of the transaction the expected benefits of an individual sample of GRFA.	+
	G.2 The use of GRFA may also generate important non-monetary benefits.	+
	G.3 The use of GRFA may lead to external effects going far beyond the individual provider and recipient.	+

are considered particularly relevant (marked in the table by plus signs [+]) or less (or not) relevant (marked in the table by minus signs [-]) to AqGR. Table 1 has been prepared on the basis of the outcomes of the Workshop and considers comments received following the workshop.

18. With regard to the international exchange of AqGR and countries' interdependence in AqGR (feature C), it is important to note that only a few species have been widely exchanged across communities, countries and regions over long periods of time. While interdependence with regard to AqGR exists, it currently applies to relatively few species only. The high degree of exchange of AqGR for food and agriculture this is a relatively recent phenomenon for many species. However, as aquaculture matures, international exchanges of AqGR for research and development might become more frequent and interdependence of countries may increase as a result of this. With regard to the incremental nature of the innovation process (feature D), it is important to note that the modern aquaculture industry is still young. The Working Group may wish to review Table 1 and provide comments on the distinctive features of AqGR.

IV. DRAFT EXPLANATORY NOTES DESCRIBING, WITHIN THE CONTEXT OF THE ABS ELEMENTS, THE DISTINCTIVE FEATURES OF AQUATIC GENETIC RESOURCES FOR FOOD AND AGRICULTURE

19. The following draft explanatory notes aim to (1) provide relevant background information on aquaculture to policy-makers developing, adapting or implementing ABS measures and (2) clarify some of the issues raised in the ABS Elements as they are relevant to AqGR.

Background information on aquaculture

20. ABS policy-makers may find it useful to receive some background information on the use and exchange of AqGR.¹⁸ Explanatory notes could therefore explain that:

Aquaculture is a relatively new industry, with major developments having occurred in the last 60 years, although there are some forms such as carp farming that can be traced back thousands of years. The growth rate of aquaculture has been 8 – 10 percent per annum for the last 20 years, and today 50 percent of finfish consumed are farmed. Farmed finfish production now exceeds beef production worldwide. While aquaculture in marine and coastal areas gains importance, the overwhelming majority of global aquaculture production is still from inland areas.

Two parallel approaches are taken to satisfy consumer demand and increase food supply: domestication of new species and effective genetic management and genetic improvement of species that are already produced commercially. The number of species items registered with production data by FAO grew from 70 in 1950 to almost 600 in 2018. Some of the most commonly farmed species are salmonids, tilapias, carps, oysters and shrimp, representing three major taxonomic groups: finfish, bivalve shellfish and decapod crustaceans.

Genetic improvement of domesticated fish is still nascent, but the rapid development of the industry is increasingly dependent on the use and exchange of AqGR. Different kinds of genetic technologies are used to improve production including captive breeding, selective breeding, hybridisation and chromosome set manipulation. Genetic modification has been used only to a very limited extent. Since aquaculture and genetic improvement of AqGR is such a new undertaking, many farmed species are genetically very close to their wild relatives. Thus, the wild type, i.e. the non-domesticated and non-genetically improved type, continues to play an important role in aquaculture production and breeding. In some cases these stocks may be in a poor conservation status. The reliance on the wild type in aquaculture thereby provides an incentive to conserve these species and their habitats.

An exception to the continued need for wild species for aquaculture production is the production of some of the most commonly farmed species, such as Atlantic salmon and white-leg shrimp. For those, the need for genetic infusion from the wild has been nearly eliminated, and genetic improvements take place through breeding programmes and exchanges between commercial

¹⁸ See also [Background Study Paper No. 45](#).

breeders. This applies only to the small number of species now subject to industrialised aquaculture.

The main source of genetically improved AqGR for aquaculture of these species are large commercial farms or breeding centres. In aquaculture small farmers have not had the opportunity to domesticate and genetically improve species for thousands of years like in agriculture. The recent rapid developments in genetic improvement, in particular in the case of salmon and shrimp, has relied on funding and technology, and access to improved AqGR, and is often in the hands of larger businesses. Gene banks for AqGR are still scarce, and publicly financed gene banks are generally available only for a few of the most commonly used species in aquaculture.

Aquaculture has a high number of stakeholders along the supply chain from genetic improvement to farming and the sale of products ranging from smallholder producers to large-scale companies. While AqGR are primarily used for food production, they are also used for other purposes such as production of fish and other animals to be released into natural or modified waters for restocking and stock enhancement, as bait fish for both commercial and recreational fisheries and farming of ornamental fish.

Identification and consultation of relevant governmental entities and non-governmental stakeholders holding, providing or using GRFA

21. The ABS Elements recommend to consult government entities and non-governmental stakeholders holding, providing or using GRFA.¹⁹ Explanatory notes could explain that:

The competent authority for ABS will often not be the authority which is responsible for aquaculture/fisheries. As most stakeholders in aquaculture have limited knowledge of ABS and the implications of ABS for their sector, consultations could help to raise the awareness of the subsector and allow policy- and decision-makers to get an insight into the specificities of aquaculture research and development and existing use and exchange practices of the subsector.

Integration of ABS measures with broader food security and sustainable agricultural development policies and strategies

22. The ABS Elements recommend to consider ABS for GRFA in the wider context of sustainable agricultural development and food security.²⁰ Explanatory notes could therefore explicitly refer to policies and legislation in the areas of food security and aquaculture which could either integrate or refer to relevant provisions for ABS for AqGR:

Aquaculture is an adaptive and resilient farming practice that provides both direct and indirect benefits in terms of food security and poverty alleviation. In many developing countries, fish provide a significant source of high quality animal protein and often farmed fish is traded and consumed locally. Besides, poverty can be reduced and food security increased through the economic activity that aquaculture brings to communities regardless of whether the fish is consumed locally. Both fish farming itself and the industry processing farmed fish, may provide employment opportunities for large numbers of people in developing countries including rural women. Thus, ABS measures for AqGR should form part of broader food security considerations and relevant policies, including habitat policies.

While the rapid development of the aquaculture industry has implied that environmental, veterinary and sanitary regulation have not always followed suit, regulations are increasingly being introduced. This includes the regulation of introductions of AqGR from other countries and ecosystems. Such regulations, including legislative, administrative and policy measures as well as codes of practice could be used to address or could make reference to ABS for AqGR, with a view to reduce the bureaucratic burden and streamline administrative procedures.

Integration of implementation of ABS measures into the institutional landscape

¹⁹ ABS Elements, paragraph 15.II.

²⁰ ABS Elements, paragraph 15.III.

The ABS Elements recommend to identify existing institutional arrangements that may be used to address ABS.²¹ Responsibility for the national ABS framework is often with one single competent authority across sectors and with one-size-fits-all approaches to ABS arrangements. However, the international ABS framework allows for adaptation to distinctive features of sectors and for sectoral competent authorities. Thus, a result of the consultations between the responsible ministries, the central ABS competent authority and the aquaculture authority could be a delegation of ABS competence to the latter for ABS related to AqGR.

Flows of germplasm, including international flows and possible gaps in ABS measures

23. The ABS Elements recommend that in developing, adapting and implementing ABS measures, the relevance of germplasm flows should be considered²². Explanatory notes could explain that:

Aquaculture is an important and expanding industry in both developing and developed countries. The flows of germplasm go in all directions: South–North, North–South, South–South and North–North.

Chile, for example, is the second largest producer of farmed salmon although salmon does not occur naturally in the southern hemisphere. African tilapia is mainly produced in Asia, and the Pacific oyster, which is the basis for the oyster industry both in North America and Europe, was introduced from Japan. Due to the growing number of species being domesticated and due to increased trade of ornamental fish, international exchanges of AqGR are expected to increase in numbers and quantity.

Possible implications of the scope of ABS measures

24. The ABS Elements stress that ABS measures need to be clear as to which GRFA are covered by relevant access provisions and which not.²³ This consideration applies likewise to the temporal and the subject-matter scope of ABS measures. Explanatory notes could explain that:

Aquaculture is a predominantly new industry still depending on wild species and with few and newer *ex-situ* facilities for genetic resources. Temporal scope in relation to material originating from other countries and collected prior to the entry into force of the CBD and/or the Nagoya Protocol is therefore a less relevant topic for aquaculture than for other GRFA, such as crop plants.

AqGR often reach the market in a form in which they may be used both as “biological resource” (e.g., for human consumption) or as a genetic resource (i.e. for research and development, including breeding). Regulating access to AqGR used as “biological resource” may have significant impact on trade of fish and aquatic plant commodities. Several ABS laws leave the exchange of biological resources unregulated; however, if a biological resource is suddenly used for research or development, they require the user to request a permit and to share potential benefits.

Development of AqGR in the course of aquaculture

25. Access to genetic resources for their “utilization”, as defined by the Nagoya Protocol, will usually trigger the application of ABS measures. “Utilization”, according to the Nagoya Protocol, means “to conduct research and development on the genetic and/or biochemical composition of genetic resources”²⁴. The ABS Elements point out that it may be difficult in some cases to decide whether a GRFA is utilized within the meaning of the Nagoya Protocol.²⁵ Explanatory notes could explain:

While practices, such as the capture of live material from the wild and its subsequent use in aquaculture, usually termed as capture-based aquaculture (CBA), might clearly not qualify as “research and development” and therefore not trigger the application of ABS measures,

²¹ ABS Elements, paragraph 30.

²² ABS Elements, paragraph 15 I.e.

²³ ABS Elements, paragraph 36.

²⁴ Nagoya Protocol, Article 2.

²⁵ ABS Elements, paragraph 46-48.

aquaculture may simultaneously contribute to genetic improvement and therefore be considered “research and development.” ABS measures should therefore draw a clear line between activities related to AqGR that are considered “utilization” and those which are not.

Standardization of PIC and MAT (mutually agreed terms)

26. The ABS Elements encourage governments to consider the different options of authorization procedures, including the option of standardizing procedures, terms and conditions. The ABS Elements refer to the Standard Material Transfer Agreement of the Treaty, as an example. Explanatory notes could explain that:

Currently, the exchange of genetic resources is primarily regulated through private law business contracts. Because most genetically improved aquatic species are fertile and can be easily reproduced, contracts often restrict the use of AqGR and prohibit their use for rival breeding programs. Current business practices in the aquaculture industry may provide inspiration for the design of the terms and conditions of ABS agreements for AqGR.

Despite the limited attention to ABS in the aquaculture sector, there have certainly been cases where the provider of the original AqGR benefited from the results of research and development performed by a third party on the AqGR. Sharing research and development results with the provider of AqGR will therefore often be a standard condition of ABS agreements.

V. GUIDANCE SOUGHT

27. The Working Group is invited to

- Review and revise, as appropriate, the distinctive features of AqGR, as identified in Table 1 of this document, and
- Review and revise, as appropriate, the explanatory notes contained in this documents and suggest additional explanatory notes, for submission to the Commission.