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 resource 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
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.
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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, HDI, SDI

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, Rechelul, Arurang, Otobed, Inechali, Saiske, Ngirtkakl-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

[Signatures]
Marcello Ngirkelau
HOUSE CLERK

Ann I. Pedro
SENATE CLERK
TENTH OLBII ERA KELULAU
Fifth Regular Session, January 2018

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.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBII ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Legislative findings.

The Olbiil Era Kelulau finds that the Republic of Palau’s environment is a host to immeasurable beauty and biological diversity. These natural resources are highly demanded by bioprospectors and other researchers who seek access to Palau’s biodiversity for study and commercial purposes. The Republic of Palau is a party to the Convention on Biological Diversity and a signatory to the Nagoya Protocol on Access and Benefit Sharing. The Convention encompasses three specific areas: 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. The Republic of Palau is no stranger to these concepts, as biodiversity access and benefit sharing has been contemplated and implemented in various ways for more than fifteen years by national and state government leaders, nonprofit groups, environmental organizations, and many other stakeholders. Bearing these perspectives in mind, the Olbiil Era Kelulau finds that a national framework for access and benefit sharing of genetic resources and traditional knowledge associated with genetic resources should be created to standardize the access and benefits arrangements and protect Palau’s biodiversity, knowledge, and heritage.

Section 2. Amendment. To amend Title 24 of the Palau National Code to add a new chapter as follows:

"Chapter 50

Access and Benefit Sharing of Genetic Resources

§ 5001. Definitions.

Terms used in this chapter shall be defined as follows:
(a) "ABS Agreement" or "Access and Benefit Sharing Agreement" means the contractual undertaking for the fair and equitable sharing of the benefits arising from appropriate access to genetic resources, including the transfer of relevant technologies or use of traditional knowledge associated with genetic resources.

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

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

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

(e) "Convention" means the Convention on Biological Diversity.

(f) "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.

(g) "Extract" means the genetic resources obtained from samples or isolates by extraction procedures.

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

(i) "Genetic material" means material of plant, animal, microbial or other origin containing functional units of heredity.

(j) "Genetic resources" includes genetic material with actual or potential value.

(k) "Minister" means the Minister of the Ministry of Natural Resources, Environment, and Tourism.

(l) "Ministry" means the Ministry of Natural Resources, Environment, and Tourism.
(m) "Person" means an individual, partnership, association, joint-stock company, trust, corporation, or other nongovernmental or governmental entity, however organized.

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

(o) "Territory" means Palau's exclusive economic zone, including its territorial waters, and all terrestrial property recognized by Palau as being within the sovereign jurisdiction of the Republic of Palau.

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

§ 5002. Scope and exclusions.

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 will be covered by this Chapter, with the exclusion of human genetic resources. Commodities in trade are outside the scope of this Chapter, and will not be contemplated by ABS Agreements or fields of use.

§ 5003. Priorities for access and benefit sharing agreements.

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

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

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

(c) Traditional community-based approach. Communities have both the right and responsibility to manage and use their genetic resources sustanably for their benefit and that of future generations.
(d) Equitable sharing of benefits. All use, conservation, and management of Palau’s biodiversity should benefit the people of Palau.

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

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

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

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

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

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

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

§ 5005. Application for ABS Agreements.

(a) Any person desiring to extract, test, obtain, utilize or study a genetic resource or the traditional knowledge associated with a genetic resource in the Republic of Palau’s
territory must first submit an application to enter into an ABS Agreement and pay any
associated fees established by regulation. The application shall be submitted to the
Committee. The application shall contain the following:

1. a full and complete description of the activities and intent of the party
   seeking the ABS Agreement;
2. the dates and times of the desired extraction, utilization, or study of a
   genetic resource;
3. the location and a description of the area in which the extraction,
   utilization, or study is to be undertaken;
4. the species sought and a statement of the quantity of species sought if
   the desired activity involves extraction;
5. a statement identifying the methodologies for extraction of genetic
   resources and a copy of the research proposal, if applicable;
6. a statement regarding whether traditional knowledge associated with
   the genetic resource will be contemplated in the ABS Agreement;
7. a statement concerning any impact on ecological or human health that
   may result from the extraction, utilization, or study of a genetic resource;
8. any environmental monitoring or management plans that may need to
   be established;
9. the nature, duration, and extent of any expected research and
   development plan; and
10. any other requirements established by regulation.

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

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

(d) Submission of an application to enter into an ABS Agreement does not
authorize the permit holder to begin extraction of genetic resources, utilization of genetic resources, or research activities in furtherance thereof. Such activity shall be considered a violation of this Chapter.

§ 5006. Committee for ABS Agreements.

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

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

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

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

(4) a member of Rubekul Belau;

(5) a member of Mechesil Belau;

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

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

(8) a representative from the Governors’ Association; and

(9) a representative from Palau Community College.

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

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

(d) The Committee shall establish its bylaws and regulations in conformity with the Administrative Procedures Act. Regulations promulgated by the Committee shall establish the fee schedule for ABS Agreements and may tier the fee schedule based on the
complexity of the ABS Agreement, intended use of the genetic resources, or other
relevant factors.

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

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

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

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

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

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

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

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

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

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

§ 5007. Notice.

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

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

(2) the location, dates, and species sought for extraction or utilization of
genetic resources; and
(3) instructions for petitioning for inclusion as a resource owner assessing the application.

§ 5008. Procedures for ABS Agreement Formation.

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

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

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

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

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

(3) A clan shall be presumed to be the resource owner of a genetic resource
situated on property owned by a clan and traditional or customary law shall
govern access to a genetic resource on such property.

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

§ 5009. Components of an ABS Agreement.

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

(1) Identification of the parties;

(2) Definitions of terms;

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

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

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

(6) Duration of the ABS Agreement;

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

(8) Intellectual Property Rights;

(9) Confidentiality;

(10) Liability;

(11) Termination of the ABS Agreement;

(12) Traditional knowledge associated with genetic resources;

(13) Benefit sharing; and

(14) Change of intent.

§ 5010. Third party use and the transfer of rights.
(a) The rights and benefits of the parties to an ABS Agreement may not be transferred nor shall third party use be permitted unless the requirements of this section are met. Any unauthorized third party use or transfer of rights shall constitute a violation of this Chapter.

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

§ 5011. Archiving and reporting.

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

§ 5012. Certificate of Compliance.

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

§ 5013. Remedy for noncompliance.

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

§ 5014. Benefits sharing between national and state governments.

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

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

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

§ 5015. Language of ABS Agreements.

All ABS Agreements shall be drafted in English, and the English language shall be the governing language of an ABS Agreement in the event of a controversy, dispute, or claim arising out of, in connection with, or in relation to the interpretation, performance, or breach of an ABS Agreement.
§ 5016. Jurisdiction.

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

§ 5017. Penalties.

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

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

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

§ 5018. ABS Fund.

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

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

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

(d) The funds in the ABS Fund shall be used by the ABS Committee for activities conducted in furtherance of the duties and responsibilities assigned in this Chapter.
(e) The Committee shall prepare and submit an annual report itemizing the expenses of the Committee and justifying any use of funds from the ABS Fund. The report shall be submitted to the President of the Republic of Palau and the presiding officers of the Olbiil Era Kelulau no later than February 1 of each year.

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

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

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

PASSED: August 13, 2018

Approved this 22nd day of August, 2018

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