



Ocean Sampling Day, June 21st, 2020

Legal Requirements Regarding Permissions

The Institute of Marine Biology, Biotechnology and Aquaculture of the Hellenic Centre for Marine Research in Heraklion, Crete (IMBBC-HCMR) will coordinate the Ocean Sampling Day of 2020 and will be the recipient of samples to be submitted for sequencing.

All participants of the Ocean Sampling Day (OSD) 2020 will need to take the following steps in order to comply with Access and Benefit-Sharing (ABS) requirements set out in the Convention on Biological Diversity (CBD) and the Nagoya Protocol (NP) (Section 1 – ABS requirements) AND other requirements according to the international law of the sea (Section 2 – Different permits).

This document is based on the “Legal Workflow Regarding Permitting Requirements”, produced within the framework of Micro B3. We thank Professor Frank Oliver Glöckner and the Micro B3 community for having made OSD a global event and for providing us with the Legal Workflow Regarding Permitting Requirements.

There are three different cases of sampling:

CASE A: waters under national jurisdiction (internal waters – territorial seas – exclusive economic zones)

CASE B: areas beyond national jurisdiction (the high seas and the deep seabed beyond the continental shelf)

CASE C: the Antarctic Treaty area

Check in which maritime zone the sampling is planned!

Case A: Sampling in internal waters – territorial seas – exclusive economic zones

Section 1: ABS requirements

If you are planning to sample in internal water, territorial sea and/or exclusive economic zone, regardless of whether you are sampling in a foreign country or your own country (the country of your research institution), you need to take the following steps:

Step 1: As soon as possible, notify the Primary National Focal Point (NFP) for the Convention on Biological Diversity (CBD NFP) or the National Focal Point on Access and Benefit-Sharing for the Nagoya Protocol of the country where you plan to sample (Provider State) and ask if any additional steps need to be taken (if the Provider State is a party to the NP). Contact details of the CBD/NP NFP of the Provider State can be found at www.cbd.int/information/nfp.shtml

Step 2: Ask for advice on the specific requirements to be fulfilled prior to sampling activities according to the Provider State's legislation on ABS.

IMPORTANT: Such requirements may include **a simple notification of the sampling and/or an ABS agreement.**

Note: Basic information on national ABS legislations and measures can be found at <https://absch.cbd.int/countries/VE> and here <https://absch.cbd.int>

Step 3: If the Provider State has ABS legislation requiring prior informed consent (PIC) and mutually agreed terms (MAT), contact the Provider State's competent authority for ABS (as indicated by the CBD or the NP NFP) and start negotiating an ABS agreement. You may use as basis for the negotiation the Micro B3 ABS model agreement, as updated by IMBCC-HCMR for the OSD 2020 event (<http://www.assembleplus.eu/research/ocean-sampling-day-2020>)

Note: The ABS model agreement for OSD 2020 can be accepted and signed by the Competent National Authority on ABS as it is (choosing one of the three options: public domain use – proprietary use – hybrid use); or it can serve as the basis for negotiating a new agreement; or the Competent National Authority on ABS may propose its own model agreement.

Note: In the latter cases, the main features of the ABS model agreement (viral license clause, Art. 5.1; and renegotiation clause in case of change of intent, Art. 4.4) which are compulsory for complying with the OSD guidelines have to be integrated into the new/proposed ABS agreement. If these main features are not accepted, opt for not sampling in that particular country.

Step 4: Access and use the material only in accordance with the requirements set out in the permit and/or the ABS agreement.

Step 5: Transfer the sampled material and/or the associated knowledge (which includes data and scientific results) to a third party only in accordance with the requirements set out in the permit/ABS agreement.

Note: You need to be absolutely sure that you have the right to transfer the material and/or associated knowledge before sending it for sequencing or bio-archiving or to a third party. If the permit/agreement is silent on this, it does not mean that you have the right to transfer. In the latter case, a clarification with the Provider State might be necessary. *See figure 2.*

Step 6: If you do not have the right to transfer or you want to use the material and/or associated knowledge for other purposes than the ones agreed upon in the ABS agreement/permit you obtained (change of intent), go back to the relevant authorities of the Provider State and renegotiate.

Step 7: Before transferring the collected material and/or associated knowledge to the sequencing and the bioarchiving institution, sign a material transfer agreement (MTA) and/or a data transfer agreement (DTA), according to the Ocean Sampling Day practice.

Note: Both MTA and DTA have to contain the viral clauses of the ABS model agreement (Article 5.1, 5.2).

Note: The bio-repository institution needs to agree with the depositing institution on the standards to be respected and on the legal status of the deposited materials.

Section 2: Law of the sea permits

According to the Law of the Sea you need a research permit/to obtain the consent of the coastal state in order to undertake Marine Scientific Research in the territorial seas and exclusive economic zones.

If you are planning to sample:

- a) In your own national waters (of the country of your research institution) contact the authority who is competent to release such a permit (it is usually the Ministry of Environment or the Ministry of Research or the Ministry of Transports) and provide full details of the research project
- b) In another country's waters contact the Embassy of the Provider State and provide full details of the research project. The Embassy should assist in obtaining the necessary consent from the competent authority

Note: It might be the case that different Ministries are involved in releasing the permit.

Note: For marine protected areas there might be further restrictions.

Figure 1: Overview of legal documents needed prior to the OSD

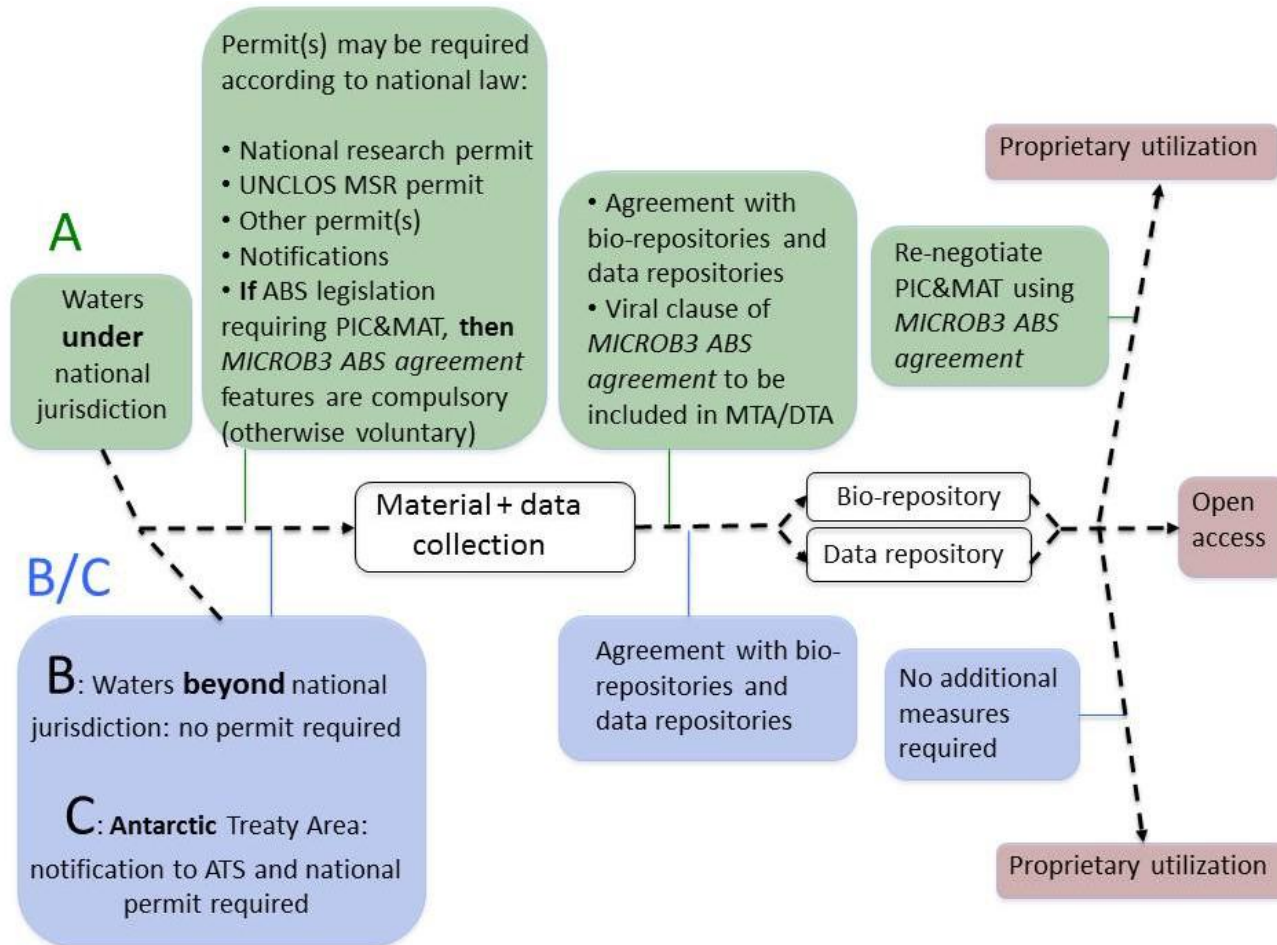
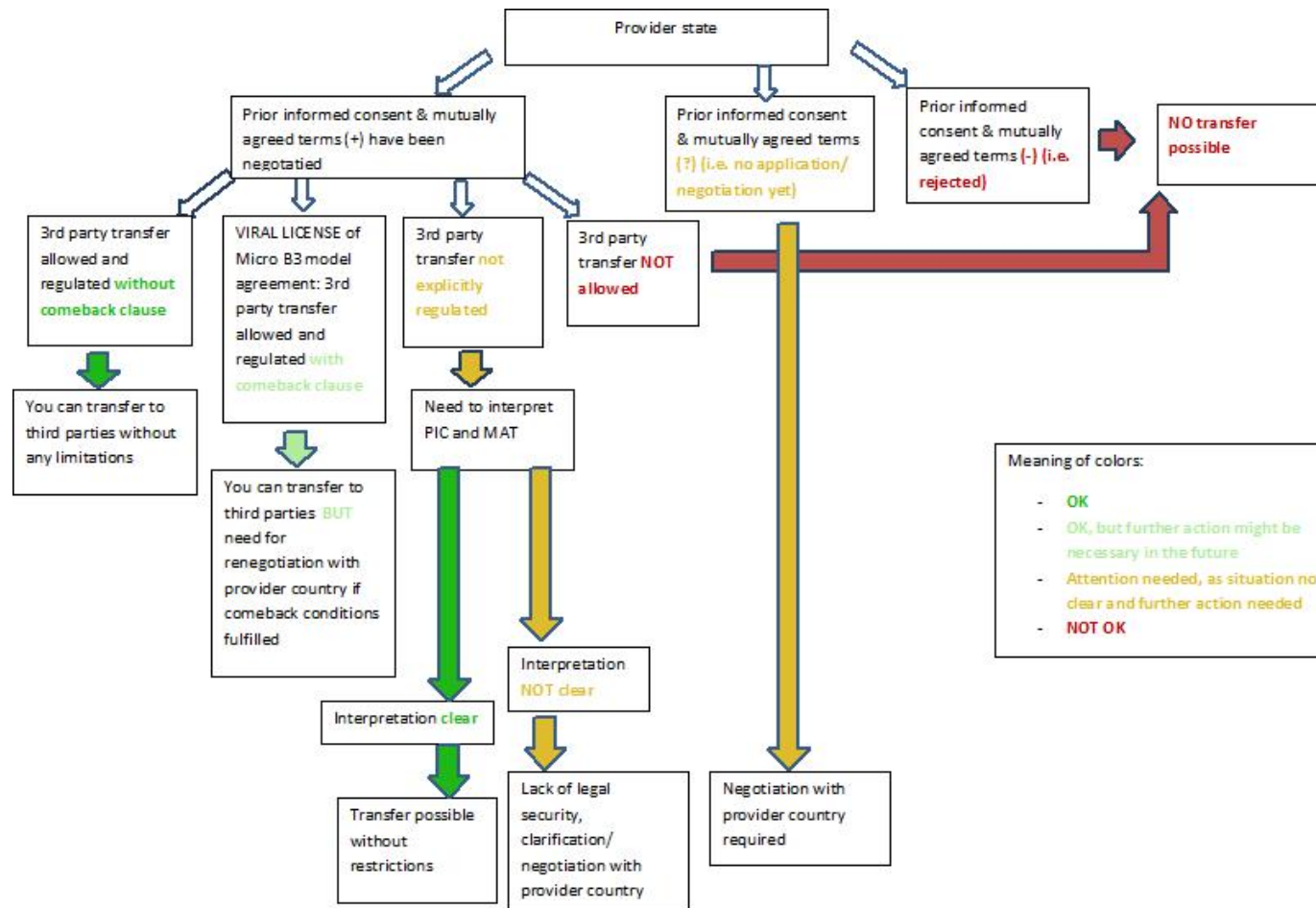


Figure 2: Overview of different scenarios regarding the right to transfer material to third parties



Case B: sampling in the areas beyond national jurisdiction

No permit required.

Case C: sampling in the Antarctic Treaty Area

Any activity undertaken in the Antarctic Treaty area (south of 60° latitude) is subject to prior notification. Moreover the national legislation of the country undertaking the research might require applying and obtaining a permit.

Note: if you wish to enter and sample in a "Special Protected Area" you need a special permit: basic information can be found here http://www.ats.aq/e/ep_protected.htm

FOR ANY QUESTIONS, please contact HCMR: osd-contact@embrc.eu