

# Legislative Consent Memorandum

## Biodiversity Beyond National Jurisdiction Bill

### Background

1. This memorandum has been lodged by Gillian Martin MSP, Cabinet Secretary for Climate Action and Energy, in accordance with Rule 9 B.3.1(a) of the Parliament's Standing Orders.
2. The Biodiversity Beyond National Jurisdiction (BBNJ) Bill ("the Bill") was introduced by the UK Government in the House of Commons on 10 September 2025. The Bill is available on the UK Parliament website: [Biodiversity Beyond National Jurisdiction Bill - Parliamentary Bills - UK Parliament](#).

### Content of the Bill

3. The *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction* (BBNJ Agreement)<sup>1</sup> is a multilateral environmental treaty agreed in accordance with the framework of the UN Convention on the Law of the Sea 1982 (UNCLOS). It aims to ensure the conservation and sustainable use of marine resources in areas beyond national jurisdiction (ABNJ) (i.e. beyond 200 nautical miles (nm)). The Bill, together with subsequent secondary legislation, will implement obligations under the BBNJ Agreement into domestic law. This will enable the UK to ratify the BBNJ Agreement. The Bill extends across the UK, including Scotland, Wales, and Northern Ireland, and the UK Government has requested legislative consent for the relevant provisions.
4. The Bill contains 26 clauses and one schedule, addressing three of the four substantive parts of the BBNJ Agreement: *Part II: Marine Genetic Resources, including the fair and equitable sharing of benefits*; *Part III: Measures such as Area-Based Management Tools, including Marine Protected Areas*; and, insofar as it relates to marine licensing, *Part IV: Environmental Impact Assessments*. The other parts of the BBNJ Agreement are not specifically covered in this Bill as they do not require legislation for the UK to meet its obligations under the BBNJ Agreement. The Explanatory Notes for the Bill can be found at the UK Parliament publication pages.<sup>2</sup>
5. In summary, the BBNJ Bill covers the following matters:
6. **Part 1 (Clause 1) – Introduction** defines "the Agreement" (referred to in this memorandum as the BBNJ Agreement), which was adopted by the UN on 19 June 2023.

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<sup>1</sup> [Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction](#)

<sup>2</sup> [The BBNJ Bill Explanatory Notes](#)

Part 1 also defines the terms “areas beyond national jurisdiction” and “marine genetic resources” with reference to the BBNJ Agreement.

7. **Part 2 (Clauses 2 to 10) and Schedule – Marine Genetic Resources (MGR)**

relates to the implementation of Part II of the BBNJ Agreement. Part 2 of the Bill establishes new obligations to share the benefits of research into, and utilisation of, MGR and associated Digital Sequence Information (DSI) from ABNJ. These obligations include:

- Pre- and post-collection reporting requirements to the national focal point, acting on behalf of the Secretary of State.<sup>3</sup> The national focal point will be responsible for submitting these notifications to the Clearing-House Mechanism established under the BBNJ Agreement;
- Requirements relating to the storage of MGR samples and DSI in accessible repositories and databases; and
- Regular reporting requirements on access and usage of MGR and DSI.

8. Part 2 also includes provisions on:

- Onward disclosure, allowing the national focal point to pass on information given to them under reporting requirements contained in clauses 2 and 3 of the Bill to the Clearing-House Mechanism;<sup>4</sup>
- Explicit exceptions for fishing vessels, military operations, and activities in or involving Antarctica;
- Powers for the Secretary of State to make regulations to implement obligations under Part II of the BBNJ Agreement; and
- Obligations for the Secretary of State to publish guidance about requirements imposed by Part 2 of the Bill.

9. **Part 3 (Clauses 11 to 13) – Area-Based Management Tools (ABMTs)** relates to the implementation of Part III of the BBNJ Agreement. Part 3 of the Bill grants powers to the Secretary of State to make regulations to implement decisions by the BBNJ Conference of the Parties (CoP) to establish, manage and enforce ABMTs for the purpose of protecting the marine environment in ABNJ. This includes regulation-making powers to implement emergency measures or to issue direction without the need for secondary legislation (for example, to restrict activities of a UK craft in connection with a human-caused disaster).

10. **Part 4 (Clauses 14 to 19) – Marine Licensing etc.** relates to the implementation of Part IV of the BBNJ Agreement and builds upon provisions in UNCLOS requiring Environmental Impact Assessments (EIAs) for planned activities in ABNJ. The Bill amends the Marine and Coastal Access Act 2009 (the 2009 Act) and the Marine Works (Environmental Impact Assessment) Regulations 2007 (SI 2007/1518) to align that marine licensing regime with the BBNJ EIA process in respect of activities in ABNJ. The Bill also amends the Marine (Scotland) Act 2010 (the 2010 Act) and provides powers for the

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<sup>3</sup> The BBNJ national focal point, acting on behalf of the Secretary of State, will be specified in guidance and is intended to be within the Ocean Policy Unit of the Foreign, Commonwealth and Development Office.

<sup>4</sup> See article 51 of the BBNJ Agreement, which provides details of the Clearing-House Mechanism.

Scottish Ministers to make regulations relating to Scottish licensable marine activities for the purpose of implementing Part IV of the BBNJ Agreement. Part 4 of the Bill also amends the Levelling-up and Regeneration Act 2023 to ensure that Environmental Outcome Reports (EORs), if implemented in the future, can apply to activities in ABNJ. This means that EIA requirements arising from the BBNJ Agreement can be implemented through any future EOR framework that may be adopted.

11. **Part 5 (Clauses 20 to 26) – General** contains provisions concerning interpretation, regulation-making powers for consequential provision, the procedure for making regulations under the Bill, extent, Crown application and commencement provisions.

## Overview of devolved competences in relation to the BBNJ Agreement implementation

12. Various aspects of the implementation of the BBNJ Agreement are within the legislative competence of the Scottish Parliament. These can be explained as follows:

- a. The BBNJ Agreement covers matters in the high seas, which comprise the waters beyond the exclusive economic zone (i.e. beyond 200 nm, also referred to as the ABNJ). The marine environment in the ABNJ (which is the main focus of the BBNJ Agreement) is a devolved matter. The observation and implementation of international obligations is also devolved to the Scottish Ministers (Scotland Act 1998, schedule 5, part I, paragraph 7(2)(a)). Therefore, provided that the matters being implemented are “in or as regards Scotland” in accordance with section 29(2)(a) of the Scotland Act 1998, they fall within the legislative competence of the Scottish Parliament.
- b. “Scotland” is defined as including the UK’s internal waters and territorial sea adjacent to Scotland (as set out in the Scotland Act 1998, section 126(1)). This would cover various aspects of BBNJ activities to the extent that they take place on land “in Scotland” (e.g. before and after collection of MGR in the high seas) or involve activities from Scottish ports.
- c. The term “*as regards* Scotland” (emphasis added) is a broad one. As set out in the Explanatory Notes to the Scotland Act 1998, it encompasses activities with “some connection or nexus with Scotland”. The term “as regards Scotland” necessarily includes an extra-territorial element. The term covers Scottish actors (e.g. Scottish companies, Scottish vessels or other users of Scottish ports) in relation to BBNJ activities in the ABNJ.

13. In addition to the overarching legislative competence of the Scottish Parliament “in or as regards Scotland” for marine environmental matters, the Scottish Ministers also exercise various specific executive functions in relation to marine environmental protection within what is commonly known as the Scottish offshore region, and these powers are also impacted by the Bill. The “Scottish offshore region” (as defined in the 2009 Act, section 322(1)) includes the Scottish part of the UK’s exclusive economic zone (i.e. from 12 to 200 nm), plus the seabed and subsoil of the UK’s claimed extended continental shelf (ECS) out to the west beyond Rockall, in the Hatton-Rockall area. Within the Scottish offshore region, the Scottish Ministers exercise various executive functions under the 2009 Act in relation to marine licensing, marine planning and marine protection. Notably, this includes

functions over the area of ECS in the Scottish offshore region, where the water column above forms part of the high seas and is subject to the BBNJ Agreement.

## Provisions which require the consent of the Scottish Parliament

14. The following provisions of the Bill make provision for purposes within the legislative competence of the Scottish Parliament and/or which alter the executive competence of the Scottish Ministers. A Legislative Consent Memorandum is therefore required under Rule 9B.3.3(b) of the Standing Orders.

15. Within the Explanatory Notes accompanying the Bill,<sup>5</sup> the UK Government provided its view on the extent to which the legislative consent process would be engaged by the clauses accompanying the Bill. The UK Government considers that the entire Bill extends to Scotland, but that legislative consent is required for Clauses 2-9, 11 and 13-19, as they impact on devolved competences.

16. The Scottish Government agrees with the UK Government's assessment that Clauses 2-9, 11 and 13-19 require legislative consent. In summary, they make provision for devolved purposes, particularly in relation to the marine environment. The provisions directly affect devolved marine licensing and EIA frameworks. The provisions impact on marine licensing and marine protection within ABNJ, which are within the legislative competence of the Scottish Parliament, and on functions within the Scottish offshore region, which are executively devolved to the Scottish Ministers. In addition to these clauses, the Scottish Government considers that Clause 10 (Guidance) also requires legislative consent, as discussed further below.

17. **Clauses 2 – 10 and Schedule (MGR):** these clauses impose obligations relating to the collection and utilisation of MGR and associated DSI from ABNJ. They include requirements for notification pre- and post-collection, storage, access, and reporting. The clauses provide regulation-making powers for the Secretary of State to implement obligations under Part II of the BBNJ Agreement and an obligation upon the Secretary of State to publish guidance about requirements imposed by Part 2 of the Bill.

18. The Scottish Government agrees with the UK Government's assessment that the legislative consent process is engaged, as these provisions place obligations on Scottish actors, apply to utilisation in Scotland (including the storage of MGR in repositories in Scotland and DSI held in databases controlled in Scotland) and intersect with devolved competences for the marine environment and scientific research.

19. Clause 10 places an obligation on the Secretary of State to publish guidance, approved by the UK Parliament, relating to Part 2 (MGR) of the Bill. The Scottish Government considers that this provision also engages legislative consent as the guidance could include devolved content, apply to Scottish actors and requirements in Scotland. The

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<sup>5</sup> [P49, Annex A, the BBNJ Bill Explanatory Notes](#)

Scottish Government will work with the UK Government to understand why it considers that consent is not required for this provision.

20. **Clauses 11 and 13 (ABMTs):** these clauses provide powers for the Secretary of State to make regulations to implement decisions by the CoP to establish, manage and enforce ABMTs for the purpose of protecting the marine environment in the ABNJ. This includes regulation-making powers to implement emergency measures or to issue direction without the need for secondary legislation.

21. The Scottish Government agrees with the UK Government's assessment that the legislative consent process is engaged, as the future implementation of measures using those powers relates to marine environmental matters and could involve devolved content. These clauses concern the key obligation for states to implement in national legislation under Part III of the BBNJ Agreement, which is the requirement to ensure that activities under their jurisdiction or control that take place in the ABNJ are conducted consistently with the decisions adopted by the CoP. While some of the activities in the ABNJ are reserved and, as such, under the control of the UK Government, other activities are devolved if there is a nexus to Scotland, including marine environmental protection, marine licensing, seabed mining or the regulation of sea fishing in relation to Scottish vessels, including related enforcement powers.

22. **Clauses 14 – 16 (Marine licensing under the Marine and Coastal Access Act 2009):** these clauses amend the 2009 Act to provide for powers to align the marine licensing regime with the BBNJ EIA process in respect of activities in or impacting ABNJ. The clauses amend the Marine Works (Environmental Impact Assessment) Regulations 2007 to amend the EIA regime in respect of those activities. Furthermore, the clauses provide for a regulation-making power for the Secretary of State in relation to licensable marine activities for the purpose of implementing any standards or guidelines adopted under article 38 of the BBNJ Agreement.

23. The Scottish Government agrees with the UK Government's assessment that the legislative consent process is engaged for these clauses as they impact on executive devolved functions of the Scottish Ministers. The Scottish Ministers have executive functions under the 2009 Act in relation to marine licensing in the Scottish offshore region and are the competent authority under the Marine Works (Environmental Impact Assessment) Regulations 2007 for regulated activities in the Scottish offshore region in relation to EIA processes.

24. **Clauses 17 – 18 (Marine licensing under the Marine (Scotland) Act 2010):** these clauses amend the 2010 Act to provide the Scottish Ministers with powers to amend the Scottish marine licensing regime as required to align with the BBNJ requirements in respect of activities in or impacting ABNJ with a nexus to Scotland. The clauses also provide for a regulation-making power for the Scottish Ministers for the purpose of implementing Part IV of the BBNJ Agreement in respect of Scottish licensable marine activities, including amendments to the EIA regime applicable in relation to those activities. The regulation-making power can also be exercised in relation to licensable marine activities for the purpose of implementing any standard or guidelines adopted under article 38 of the BBNJ Agreement for the purposes of making provision that would be within the legislative competence of the Scottish Parliament.

25. The Scottish Government agrees with the UK Government's assessment that the legislative consent process is engaged, as these clauses relate to marine licensing and environment protection in Scotland, including the territorial sea adjacent to Scotland (0-12 nm), and matters of marine licensing and marine protection in the ABNJ with a nexus to Scotland, which are within the legislative competence of the Scottish Parliament.

26. **Clause 19 (EORs):** this clause amends the Levelling-up and Regeneration Act 2023 ("LURA") to ensure that EORs, if implemented in the future, have sufficient territorial scope to apply to planned marine activities in ABNJ. This means that environmental assessment requirements arising from the BBNJ Agreement could be implemented through any future EOR framework that may be adopted. Clause 19(a) expands the definition of "project" in section 154 of LURA to include a project in ABNJ, in addition to the UK and relevant offshore areas. Clause 19(b) clarifies that the amendment in Clause 19(a) applies only where the activity is or involves a licensable marine activity under the 2009 or 2010 Acts. It also adds the definition of "area beyond national jurisdiction", consistent in the BBNJ Agreement.

27. The Scottish Government agrees with the UK Government's assessment that the legislative consent process is engaged for this clause as the clause relates to marine environmental protection and marine licensing which is within the legislative competence of the Scottish Parliament (where in or as regards Scotland) and in relation to which the Scottish Ministers also exercise executive competence in the Scottish offshore region.

## Reasons for seeking or not seeking legislative consent

28. A complete draft version of the Bill was shared with the Scottish Government for the first time on 21 August 2025. The Bill contains a complex mix of legislatively devolved, executively devolved and reserved competences. Given the compressed timeline between the Scottish Government first seeing the complete draft bill and the introduction of the Bill on 10 September (noting that the current draft of the Bill was seen by the Scottish Government for the first time when it was shared on 9 September, on the eve of publication), there has not been sufficient time for effective scrutiny of its clauses to consider both policy and legal implications, as well as the need for any amendments to safeguard the integrity of the devolution settlement. The Scottish Government has secured changes to key provisions in the Bill (Clauses 14 to 19) ahead of its introduction.

29. While the Scottish Government is content to recommend legislative consent for most of these clauses (namely, Clauses 15 to 19), the remaining clauses that engage legislative consent require a longer timeframe to work through to assess their implications and refine policy options. The Scottish Government will continue to work with the UK Government to fully assess the devolved aspects of the Bill and identify any necessary amendments during the passage of the Bill.

## Clauses 15 and 16

30. The Scottish Government recommends that the Parliament consents to Clauses 15 and 16. These are UK-specific clauses, which impact on executively devolved competences of the Scottish Ministers in relation to marine licensing and EIA in the

Scottish offshore region. Clause 15 provides for amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007 to ensure consistency with the EIA requirements in Part IV of the BBNJ Agreement. Clause 16 provides for a regulation-making power for the Secretary of State in relation to licensable marine activities for the purpose of implementing any standards or guidelines adopted under article 38 of the BBNJ Agreement. By comparison, in Clause 18, Scottish Ministers are given equivalent powers to make regulations to ensure compatibility of Scottish licensable marine activities with BBNJ requirements, including the implementation of any standards or guidelines adopted under article 38 of the BBNJ Agreement. The Scottish Government is content to recommend consent to Clauses 15 and 16, as they provide a means to ensure that marine licensable activities conducted under the 2009 Act, in relation to which Scottish Ministers have executive competences, are consistent with BBNJ requirements.

## Clauses 17 and 18

31. The Scottish Government recommends that the Parliament consents to Clauses 17 and 18. These clauses incorporate changes that the Scottish Government had requested pre-introduction in order to take account of devolved aspects, ensuring effective and coherent implementation of these provisions of the Bill in a Scottish context. In particular, these provisions allow for the Scottish Ministers to amend the marine licensing system under the 2010 Act to align with the BBNJ requirements in respect of activities in ABNJ with a nexus to Scotland. The clauses also provide for a regulation-making power for the Scottish Ministers for the purpose of implementing Part IV of the BBNJ Agreement (EIAs) in respect of an activity in or impacting on an ABNJ in relation to Scottish licensable marine activity. This includes powers to amend the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115) and to make equivalent changes to those regulations as are made to the Marine Works (Environmental Impact Assessment) Regulations 2007 (SI 2007/1518) on the face of the Bill through a Scottish Statutory Instrument (SSI).

## Clause 19

32. The Scottish Government recommends that the Parliament consents to Clause 19. This clause amends the LURA to ensure that EORs, if implemented in the future, could apply to planned marine activities in ABNJ. This ensures that environmental assessment requirements arising from the BBNJ Agreement could be implemented through any future EOR framework that may be adopted. The clause was amended pre-introduction to include a reference to the 2010 Act to ensure that any EOR regime would be applicable to licensable marine activity under the 2010 Act which extend to the ABNJ, should the Scottish Government so desire in the future.

## Clauses 2 to 11, 13, 14 and Schedule

33. The Scottish Government has not reached a position on legislative consent at this point for Clauses 2 to 11, 13, 14 and the Schedule. These provisions require further analysis and engagement with the UK Government and may require amendments, following consideration of implications for legislatively devolved and executively devolved matters. Due to the compressed timeline between the UK Government sharing a full draft Bill with the Scottish Government and introduction of the Bill to the UK Parliament, there

has not been adequate time for the Scottish Government to fully analyse all clauses of the Bill to ensure that it is fully compatible and effective from a devolved policy perspective. This remaining work must now be undertaken during the passage of the Bill as the UK Government was unable to change the date of introduction in view of the overarching timeline to ratify the BBNJ Agreement in advance of the planned CoP in summer 2026.

34. Clause 14 was part of the initial update to the draft Bill undertaken by the UK Government, working in partnership with the Scottish Government, between first sharing the draft Bill on 21 August and its introduction on 10 September. While in principle the Scottish Government is content with this clause, further work is required between the governments to ensure that the split of licensing responsibilities agreed between them will operate effectively in relation to BBNJ activities and in a manner that reflects the devolution settlement. It is for this reason that the Scottish Government cannot, at this stage, recommend that the Parliament consents to this clause, until this ongoing dialogue is completed and appropriate arrangements have been put in place.

35. A supplementary Legislative Consent Memorandum (LCM) will be required to update this recommendation when the Scottish Government has reached a position on seeking or not seeking consent to the remaining clauses. The UK Government has committed to working towards this objective with the Scottish Government within the overarching timeline to ensure timely ratification of this important international agreement for our world's ocean.

## Consultation

36. There has been no formal consultation on the Bill. In addition to the Bill, there are aspects of the BBNJ Agreement which will require to be implemented through secondary legislation, and it is expected, at this stage, that there will be a public consultation as part of this process. The Scottish Government is currently assessing implications for Scottish secondary legislation and is working with the UK Government to update the requirements in this respect.

## Financial implications

37. There are no financial implications for the Scottish Government arising directly from the draft Bill as introduced, based on initial analysis.

## Other relevant considerations

38. The BBNJ Agreement was formally adopted by consensus at the UN on 19 June 2023, and the UK signed it on 20 September 2023. The BBNJ Agreement reached the required threshold of ratification on 19 September 2025 and will enter into force on 17 January 2026. The BBNJ Agreement augments UNCLOS as the key legal framework of ocean governance. It aims to enable greater conservation of the two-thirds of the ocean that lies beyond national jurisdiction and will support the delivery of the Kunming-Montreal Global Biodiversity Framework, which includes the target to effectively conserve and manage at least 30% of the ocean by 2030. The CoP, which must take place within a year of entry into force, is expected to take place in August 2026. Only parties to the BBNJ



Agreement will be able to participate in CoP decision-making. This means the UK must ratify at least 30 days before the CoP to participate, allowing six weeks post-legislation for treaty ratification. To enable this, UK legislation must be finalised by the end of April 2026. The UK Government's BBNJ Bill is expected to have its second reading in mid-October 2025, with the reporting stage likely between December 2025 and January 2026.

39. The BBNJ Agreement has been a topic of increasing global interest in recent months and there is growing momentum around its ratification. The Scottish Ministers are supportive of the aims and ambitions of the BBNJ Agreement and wish to progress towards ratification in a timely manner.

40. The Scottish Government is taking part in ongoing negotiations with the UK Government on appropriate amendments to the Bill to ensure effective UK ratification that takes account of the devolution settlement.

41. At the introduction of the Bill, the lead UK Government minister acknowledged to the Cabinet Secretary for Climate Action and Energy that the introduction of the Bill has been progressed at speed, that further work is required to fully assess devolved aspects, and that they are committed to working together during the passage of the Bill to ensure that devolution considerations are addressed.

## Post-EU scrutiny

42. The EU has been an active and prominent participant in the development of the BBNJ Agreement, as the BBNJ Agreement furthers EU aims in relation to the protection of biodiversity. The EU signed the BBNJ Agreement on 20 September 2023 and approved it on 28 May 2025, thereby becoming a party to the BBNJ Agreement.

43. In April 2025, the EU Commission brought forward a proposed directive to incorporate the BBNJ Agreement into EU law aimed at helping Member States with implementation of all parts of the BBNJ Agreement into national systems.<sup>6</sup> The BBNJ Agreement enters into force 120 days after the date of deposit of the 60th instrument of ratification, approval, acceptance or accession. Fifteen EU Member States have already ratified, accepted, accessioned or approved the BBNJ Agreement.<sup>7</sup> Other EU Member States have signed the BBNJ Agreement and are in the process of implementing it. The details of this can be monitored at the official depositary, the UN Treaty Collection.<sup>8</sup>

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<sup>6</sup> [Directive of the European Parliament and of the Council: on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction](#)

<sup>7</sup> Namely (as at 16 September 2025): Belgium (9 June 2025), Croatia (9 June 2025), Cyprus (28 May 2025), Denmark (9 June 2025), Finland (28 May 2025), France (5 February 2025), Greece (9 June 2025), Hungary (28 May 2025), Latvia (28 May 2025), Luxembourg (29 July 2025), Malta (9 June 2025), Portugal (28 May 2025), Romania (4 June 2025), Slovenia (28 May 2025), and Spain (4 February 2025).

<sup>8</sup> See [United Nations Treaty Collection, Chapter XXI Law of the Sea](#)

## Conclusion

44. The Scottish Government currently recommends that the Scottish Parliament consents to clauses 15 to 19 of the Bill. At this point, the Scottish Government takes no position on the remaining relevant clauses, while work with the UK Government continues. The Scottish Government anticipates that a supplementary LCM covering the remaining relevant provisions will be lodged in due course.

## Draft motion on legislative consent

45. The draft motion, which will be lodged by the Cabinet Secretary for Climate Action and Energy is:

“That the Parliament agrees, in relation to the Biodiversity Beyond National Jurisdiction Bill, introduced in the House of Commons on 10 September 2025, that Clause 15 (screening and procedure), Clause 16 (power to make regulations: Secretary of State), Clause 17 (licensable marine activities), Clause 18 (power to make regulations: Scottish Ministers), and Clause 19 (amendments to the Levelling-up and Regeneration Act 2023), so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government  
September 2025



This Legislative Consent Memorandum relates to the Biodiversity Beyond National Jurisdiction Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 25 September 2025

# Biodiversity Beyond National Jurisdiction Bill – Legislative Consent Memorandum

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