

Supplementary 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 9B.3.1(c) of the Parliament's Standing Orders. It should be read in conjunction with the [Scottish Government's previous memorandum on the Bill](#).
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 via this link: [Biodiversity Beyond National Jurisdiction Bill - Parliamentary Bills - UK Parliament](#). The Bill is currently at the House of Lords Committee Stage, having completed second reading.
3. The first Scottish Government Legislative Consent Memorandum ("LCM") for the Bill was lodged on 25 September 2025 (LCM-S6-64). This initial LCM recommended consent to Clauses 15-19 of the Bill and did not take a position on the remaining clauses. It was noted that a supplementary LCM outlining the Scottish Government's position on consent for remaining clauses would be lodged in due course.
4. This memorandum concerns amendments to the Bill tabled on 8 December 2025 for the House of Lords committee relating to changes to the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115) ("2017 Regulations") and powers for the Scottish Ministers to make regulations contained in Clause 18 of the Bill. These amendments were tabled by the UK Government with the agreement of the Scottish Government. Discussions with the UK Government on the remaining clauses are ongoing and a further supplementary LCM will be lodged in relation to remaining Bill clauses requiring a consent position once negotiations with the UK Government have concluded.

Content of the Bill

5. The Bill makes provision to implement 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"). The BBNJ Agreement aims to ensure the conservation and sustainable use of marine resources in areas beyond national jurisdiction ("ABNJ") (i.e., beyond 200 nautical miles ("nm")).
6. The Bill contains 26 clauses and one schedule, addressing three of the four substantive parts of the BBNJ Agreement, namely: Part II: Marine Genetic Resources,

including the fair and equitable sharing of benefits (implemented in Part 2 of the Bill); Part III: Measures such as Area-based Management Tools, including Marine Protected Areas (implemented in Part 3 of the Bill); and, insofar as it relates to marine licensing, Part IV: Environmental Impact Assessments (implemented in Part 4 of the Bill).

7. The amendments which are the subject of this LCM relate to Part 4 of the Bill. Part 4 of the Bill is entitled “Marine Licensing etc”, and it includes provision for legislative changes necessary to implement provisions in Part IV of the BBNJ Agreement regarding environmental impact assessments (“EIAs”) as they apply to the remit of the domestic marine licensing regime. Part IV of the BBNJ Agreement builds upon existing protections within the UN Convention on the Law of the Sea 1982 (known as “UNCLOS”) by outlining a detailed framework for assessing the potential impacts to the marine environment of planned human activities in or upon ABNJ. To implement certain obligations within Part IV of the BBNJ Agreement, the Bill makes legislative changes to align the EIA processes within the marine licensing regime with requirements in the BBNJ Agreement.

8. A full copy of the three amendments under consideration in this LCM can be found on pages 6 to 9 in the [Running List of All Amendments in Grand Committee up to and including 8 December.](#)

Content of the amendments which require the consent of the Scottish Parliament

New Clause (“Screening and procedure”) to be inserted after Clause 17

9. With the agreement of the Scottish Government, the UK Government has tabled an amendment inserting a new Clause following Clause 17 (referred to in this LCM as “the new Clause”) in order to make changes to the 2017 Regulations directly on the face of the Bill (in equivalent terms to the changes made to the UK’s Marine Works (Environmental Impact Assessment) Regulations 2007 (SI 2007/1518) within Clause 15 of the Bill). The 2017 Regulations were made by the Scottish Ministers in 2017, and they provide an EIA process for marine licences issued by the Scottish Ministers under the Marine (Scotland) Act 2010. The purpose of the changes to be made to the 2017 Regulations by the new Clause is to align these Regulations with the EIA processes applicable to activities in ABNJ under Part IV of the BBNJ Agreement, insofar as such activities require a marine licence. The UK Government and Scottish Government are in agreement that the new Clause engages the legislative consent process, as it makes provision to amend the Scottish 2017 Regulations which are within the legislative competence of the Scottish Parliament.

10. Subsection (2) of the new Clause makes a number of amendments to regulation 2 (interpretation) of the 2017 Regulations:

- Subsection (2)(a) inserts definitions of “area beyond national jurisdiction”, “BBNJ works” and “the Biodiversity Beyond National Jurisdiction Agreement”. The term “BBNJ works” is defined as meaning the carrying out of a regulated activity that

engages the UK's obligations under Part IV of the BBNJ Agreement in respect of an activity in an ABNJ;

- Subsection (2)(b) updates the definition of "EIA project" to include BBNJ works where there are reasonable grounds for believing that the works may cause (i) substantial pollution, or (ii) significant harmful changes to the marine environment;
- Subsection (2)(c) updates the definition of "environmental information" to include in relation to BBNJ works that are an EIA project, any other matter necessary to give effect to Article 31(1)(b) and (c) of the BBNJ Agreement;
- Subsection (2)(d) updates the definition of "regulated activity" to insert a cross-reference to paragraph (1B), which is discussed further directly below; and
- Finally, subsection (2)(e) inserts paragraphs (1A) and (1B). Paragraph (1A) provides that the terms used in the definition of "EIA project" have the same meaning that they have in the BBNJ Agreement (referring in particular to Article 30(1)(b) of the BBNJ Agreement concerning thresholds and factors for conducting EIAs). Paragraph (1B) sets out that where someone applies for a marine licence or a variation to a marine licence for an activity in an ABNJ and the requirement for a licence or licence variation depends on the application of the 2017 Regulations, the 2017 Regulations apply until and unless their application would lead to a different outcome. Regulations could be used in future under the Marine (Scotland) Act 2010 to establish that an activity is exempt from requiring a marine licence, if it does not require an EIA under the 2017 Regulations. In this circumstance, subsections (2)(d) and (e) of the new Clause would mean that a screening under the 2017 Regulations could still take place to determine if an EIA is required and consequently if a marine licence is required.

11. Subsection (3) of the new Clause amends the exemptions in regulation 8(4) of the 2017 Regulations to give the Scottish Ministers the ability to exempt certain BBNJ works from EIA requirements. This amendment enables the Scottish Ministers to decide that an EIA under regulation 8(4) is not required for BBNJ works where they are satisfied that an equivalent assessment has been carried out, is being carried out, or will be carried out. This regulation can be used only where the equivalent assessment is sufficient to meet the requirements of the BBNJ Agreement.

12. Subsection (4) of the new Clause extends regulation 9 (general provisions relating to screening) of the 2017 Regulations to cover BBNJ works. The effect of the amendment is that provision is made about the matters that the Scottish Ministers must take into account when considering whether BBNJ works should be screened in as an EIA project, which includes any matter necessary to give effect to Article 30(1)(b) of the BBNJ Agreement (which, as noted above, relates to thresholds and factors for conducting EIAs). If the Scottish Ministers conclude that any BBNJ works are not an EIA project, the screening opinion that they issue must set out whether they consider that the works may have more than a minor or transitory effect on the marine environment, or that the effects of the works are unknown or poorly understood.

13. Subsection (5) of the new Clause amends regulation 12 (application without prior screening) of the 2017 Regulations. The amendment ensures that a screening opinion is required if the Scottish Ministers consider that the planned activity meets the threshold for a screening in the BBNJ Agreement. The BBNJ Agreement requires a screening to be conducted if the activity being considered has more than a minor or transitory effect on the marine environment, or if the effects of the activity are unknown or poorly understood.

14. Subsection (6) of the new Clause makes a consequential change to regulation 13(3)(b) (EIA application made without an EIA report) in light of the amendments made to regulation 12 by subsection (5) of the new Clause.

15. Subsection (7) of the new Clause amends Schedule 4 (information for inclusion in environmental impact assessment reports) of the 2017 Regulations to enable additional information to be required in the licensing application as needed to meet the requirements set out in Article 31(1)(c) of the BBNJ Agreement, which concerns impact assessment and evaluation. This could include, for example, the need to consider the best scientific information and relevant traditional knowledge of local communities.

Amendments to Clause 18 (“Power to make regulations: Scottish Ministers”)

16. The inclusion of the new Clause to be inserted after Clause 17 also necessitates two consequential amendments to Clause 18. These amendments remove the general power previously contained in Clause 18 for the Scottish Ministers to make regulations for the purpose of implementing Part IV of the BBNJ Agreement, as the specific changes required to the 2017 Regulations to implement the EIA process for BBNJ works are now included directly within the new Clause (as set out above). Accordingly, these consequential amendments limit the power conferred on the Scottish Ministers by Clause 18(1) to implementing standards and guidance under Article 38 of the BBNJ Agreement (rendering this power of equivalent scope to the corresponding power conferred on the Secretary of State by Clause 16(1)). Clause 18(3) is amended in a manner consequential to this amendment. The UK Government and Scottish Government are in agreement that the amendments to Clause 18 engage the legislative consent process, as this Clause is within the legislative competence of the Scottish Parliament.

17. The amended Clause 18 now provides for equivalent regulation-making powers for the Scottish Ministers to those held by the Secretary of State in Clause 16. The amended Clause 18 now provides for the following.

18. Clause 18, subsection (1) enables the Scottish Ministers to make regulations as necessary to implement standards and guidelines adopted by the Conference of the Parties under Article 38 of the BBNJ Agreement. These regulations can be made in relation to a Scottish licensable marine activity. Article 38 outlines that the Scientific and Technical Body, established by Article 49 of the BBNJ Agreement, can develop standards and guidelines on the conduct of EIAs under the agreement for consideration and adoption by the Conference of Parties, including on an indicative non-exhaustive

list of activities that require an EIA and those that do not. It can also suggest any specific criteria for activities that it considers do or do not need EIAs.

19. Clause 18, subsection (2) defines “Scottish licensable marine activity” as an activity listed in section 21(1) of the Marine Scotland Act 2010 (as that section has effect from time to time). Activities include: depositing substances or objects in the sea from various sources such as vehicles, vessels or floating containers; constructing, altering or improving works in or over the sea or on or under the seabed; or using vehicles, vessels or aircraft to remove substances from the seabed. Clause 18, subsection (2) also defines “Article 38 standards or guidelines” as those adopted from time to time under Article 38 of the BBNJ Agreement.

20. Regulations under Clause 18 may include, for example, amendments or modifications to Part 4 of the Marine (Scotland) Act 2010 (Clause 18, subsection (3)).

21. Clause 18, subsection (4) provides that regulations under Clause 18 may confer a function on any person; make different provisions for different purposes or for different areas; make consequential, supplementary, incidental, transitional, transitory or saving provision. Subsection (5) provides that the consequential provision that may be made by regulations includes provisions amending an enactment with the meaning of Schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 (whenever passed or made).

22. Clause 18, subsection (6) and (7) outline the parliamentary procedures that take effect when regulations are made using this power. Subsection (6) establishes that regulations under this section that amend an Act of Parliament or an Act of the Scottish Parliament are subject to the draft affirmative procedure, while subsection (7) establishes that all other regulations under this section are subject to the negative procedure.

Requirement for a supplementary LCM

23. The amendments to the Bill tabled on 8 December 2025 in the House of Lords and addressed in this LCM constitute relevant provisions under Rule 9B.1.1 of Standing Orders, as the amendments make provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament. As contemplated by Rule 9B.3(b)(i) of Standing Orders, the amendments make provision for purposes within the legislative competence of the Parliament, as they make provision in relation to marine environmental protection as regards Scotland and the implementation of international obligations in relation to devolved matters.

24. Specifically, the new Clause to be inserted after Clause 17 makes changes to the 2017 Regulations to make EIA processes applicable to Scottish licensable marine activities in ABNJ as required under Part IV of the BBNJ Agreement. The Scottish Parliament has legislative competence over marine environment matters in ABNJ insofar as there is a nexus to Scotland (i.e., provided that the matters being implemented are “in or as regards Scotland” in accordance with section 29(2)(a) of the Scotland Act 1998), including in relation to marine licensing and EIA.

25. Similarly, the consequential amendments to Clause 18 relate to the inclusion of a regulation-making power for Scottish Ministers concerning the implementation of EIA requirements under the BBNJ Agreement, a matter that is within the legislative competence of the Scottish Parliament insofar as there is a nexus with Scotland, as set out in more detail in the Scottish Government's initial LCM at paragraphs 24-25.

26. The Scottish Government recommends that the Scottish Parliament consent to the new Clause and to Clause 18 as amended.

Reasons for recommending legislative consent

27. A complete draft version of the Bill was shared with the Scottish Government for the first time on 21 August 2025 before it was introduced in the UK Parliament on 10 September 2025. Within the short timeframe, the Scottish Government secured some rapid changes to key provisions of the Bill ahead of its introduction, but there was not sufficient time to prepare detailed amendments to the 2017 Regulations pre-introduction which were equivalent to what the UK Government provided for in Clause 15 for amending the Marine Works (Environmental Impact Assessment) Regulations 2007. Instead, at that juncture, a version of Clause 18 was included which provided for a power of the Scottish Ministers to make regulations required to implement Part IV of the BBNJ Agreement in relation to EIAs.

28. The need to include powers in Clause 18 for the Scottish Ministers to amend EIA requirements was due to the fact that the 2017 Regulations were made in exercise of the powers conferred by 2(2) of the European Communities Act 1972. Regrettably, these powers were lost with UK's exit from the European Union. The 2017 Regulations can therefore only be amended through either providing a new enabling power in primary legislation (which the Scottish Ministers have been looking to do through Part 2 of the [Natural Environment Bill](#)) or by amending the 2017 Regulations directly in primary legislation.

29. The changes to the 2017 Regulations enable UK ratification of the BBNJ Agreement. The Scottish Government supports ratification of the BBNJ Agreement. The amendments were prepared collaboratively between UK Government and Scottish Government officials, and were tabled by the UK Government at the request of the Scottish Government.

30. The UK faces a tight timeline to pass the necessary legislation and ratify the BBNJ Agreement in order to meet anticipated timescales in relation to the BBNJ Agreement and to participate in the first BBNJ Conference of Parties. The BBNJ Agreement will enter into force on 17 January 2026, and the first Conference of Parties must take place within a year of the BBNJ Agreement coming into force. While the power in the unamended Clause 18 could be used to make the required changes to the 2017 Regulations, the Scottish Parliament would have to pass a Scottish Statutory Instrument following Royal Assent of the Bill, which is expected by early February 2026, and before the dissolution of the Scottish Parliament.

31. The Scottish Government is of the view that using the Bill to directly amend the 2017 Regulations will ensure that the necessary changes are in place to support timely ratification of the BBNJ Agreement by the UK.

Consultation

32. The UK Government did not consult on the amendments to the Bill. [The UK Government jointly with the Scottish Government have launched a consultation on 21 November 2025](#) relating to the implementation of Part IV of the BBNJ Agreement concerning changes to the marine licensing regime. The consultation will close on 19 December 2025.

Post EU scrutiny

33. 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.

34. 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.¹ The first reading of the proposal in the European Parliament was completed in November 2025. The BBNJ Agreement reached the required threshold of ratification on 19 September 2025 and will enter into force on 17 January 2026.

Conclusion

35. The Scottish Government continues to be supportive of the BBNJ Agreement and is committed to timely implementation and ratification.

36. Therefore, the Scottish Government recommends that the Scottish Parliament consent to the relevant new amendments tabled to the Bill. As highlighted in paragraph 4 above, discussions with the UK Government on the remaining clauses are ongoing and a further supplementary LCM will be lodged in relation to remaining Bill clauses requiring a consent position once negotiations with the UK Government have concluded.

Draft motion on legislative consent

37. It should be noted that the motion covers the provisions discussed in this supplementary LCM and the provisions that the Scottish Government previously recommended consent to in the original LCM. It remains the Scottish Government's intention to lodge a motion on legislative consent covering all of the relevant provisions in the Bill in due course.

¹ [EUR-Lex - 52025PC0173 - EN - EUR-Lex](#)

38. The draft motion, which will be lodged by the Cabinet Secretary for Climate Action and Energy, is as follows.

“That the Parliament agrees that the relevant provisions of the Biodiversity Beyond National Jurisdiction Bill, introduced in the House of Commons on 10 September 2025, and subsequently amended, relating to Clause 15 (screening and procedure), Clause 16 (power to make regulations: Secretary of State), Clause 17 (licensable marine activities), new Clause to be inserted following Clause 17 (screening and procedure), 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
December 2025

This Supplementary Legislative Consent Memorandum relates to the Biodiversity Beyond National Jurisdiction Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 22 December 2025

Biodiversity Beyond National Jurisdiction Bill – Supplementary Legislative Consent Memorandum

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
www.parliament.scot/documents