

EXPLANATORY NOTES

Biodiversity Beyond National Jurisdiction Act 2026

Chapter 6

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THE BIODIVERSITY BEYOND NATIONAL JURISDICTION ACT 2026

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Biodiversity Beyond National Jurisdiction Act 2026, which received Royal Assent on 12 February 2026 (c. 6).

- These Explanatory Notes have been prepared by the Foreign, Commonwealth and Development Office ("FCDO"), Department for Food, Environment and Rural Affairs ("Defra") and the Department for Transport ("DfT") to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes need to be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Overview of the Act 4

Policy Background 4

Part 1 and Part 2 – Introduction and Marine Genetic Resources 5

Part 1: Introduction 5

Part 2: Marine Genetic Resources 5

Part 3 - Area-Based Management Tools (ABMTs) 6

Part 4 – Marine licensing etc. 7

Part 5 – General 7

Legal Background 8

Territorial extent and application 9

Commentary on provisions of the Act 9

Part 1 – Introduction 9

Section 1: The Agreement 9

Part 2 – Marine Genetic Resources 10

Section 2: Collection 10

Section 3: Utilisation 12

Section 4: Onward disclosure 13

Section 5: Repositories 13

Section 6: Databases 15

Section 7: Supplementary Provision 16

Section 8: Exceptions 17

Section 9: Power to make regulations 19

Section 10: Power to make regulations: Scotland and Northern Ireland 20

Section 11: Procedure for regulations under section 10 20

Section 12: Consultation: Scotland and Northern Ireland 20

Section 13: Guidance 20

Part 3 – Area-Based Management Tools (ABMT) 21

Section 14: Power to make regulations 21

Section 15: Procedure for regulations under section 14 22

Section 16: Power to make regulations: Scotland and Northern Ireland 23

Section 17: Procedure for regulations under Section 16 23

Section 18: Consultation: Scotland and Northern Ireland 23

Section 19: Directions 23

Part 4 – Environmental Impact Assessments 24

Section 20: Marine Licensing 24

Section 21: Screening and procedure 25
Section 22: Power to make regulations: Secretary of State 27
Section 23: Licensable marine activities 27
Section 24: Screening and Procedure (Scotland) 28
Section 25: Power to make regulations: Scottish Ministers 30
Section 26: Environmental Outcome Reports 31
Part 5 - General 31
Section 27: Interpretation 31
Section 28: Power to make consequential provision 32
Section 29: Regulations under this Act 32
Section 30: Crown Application 33
Section 31: Extent 33
Section 32: Commencement 33
Section 33: Short title 33
Schedule: Utilisation Information 34
Related documents **36**
Annex A - Territorial extent and application in the United Kingdom **37**
Annex B – Outline of existing ocean research processes **39**
Annex C – Hansard References **41**
Annex D – Progress of the Bill Table **42**

Overview of the Act

1 This legislation, along with subsequent secondary legislation, enables the United Kingdom (UK) 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* (the BBNJ Agreement) UN Text of BBNJ Agreement[1]. Before it can ratify the Agreement, the UK must be able to implement its international obligations in full.

2 The Act contains 33 sections 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 Act as they do not require new legislation for the UK to meet its obligations under the Agreement. An explanation of the contents of the other parts is included in the Explanatory Memorandum provided in Command Paper no. 942[2].

Policy Background

3 The BBNJ Agreement was adopted by consensus at the United Nations (UN) on 19 June 2023 and the UK signed the Agreement when it opened for signature on 20 September 2023. The Agreement cements the UN Convention on the Law of the Sea (UNCLOS) as the key legal framework for 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 – that includes the target to effectively conserve and manage at least 30% of the ocean by 2030. Primary legislation, and subsequent secondary legislation, is required before the UK can ratify the Agreement to ensure compliance with its obligations.

4 The BBNJ Agreement:

- establishes new obligations to share the benefits of research into, and utilisation of, marine genetic resources (MGR) from areas beyond national jurisdiction (ABNJ) and digital sequence information (DSI) on those MGR;
- establishes a mechanism to designate area-based management tools (ABMTs), including marine protected areas (MPA), in ABNJ;
- builds upon provisions in UNCLOS requiring environmental impact assessments for planned activities in ABNJ;
- strengthens capacity-building for developing states, along with broader marine technology transfer;

[1] https://www.un.org/bbnjagreement/sites/default/files/2024-08/Text%20of%20the%20Agreement%20in%20English.pdf

[2] 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 [MS No.9/2023] - GOV.UK https://www.gov.uk/government/publications/agreement-under-the-united-nations-convention-on-the-law-of-the-sea-on-the-conservation-and-sustainable-use-of-marine-biological-diversity-of-areas-be

- makes clear that the BBNJ Conference of the Parties should work with and alongside existing bodies such as the International Maritime Organization (IMO) and its work must be consistent with the provisions of UNCLOS.

5 The following paragraphs provide further detail on the structure and the content of the Act.

Part 1 and Part 2 – Introduction and Marine Genetic Resources

Part 1: Introduction

6 The introduction of the Act outlines the meaning of 'the Agreement' – being 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* which opened for signature at New York on 20 September 2023.

Part 2: Marine Genetic Resources

7 Part 2 of the Act establishes the UK's domestic regime for implementing Part II of the BBNJ Agreement, which concerns the marine genetic resources (MGR) of areas beyond national jurisdiction (ABNJ) and digital sequence information which is generated on these MGR (referred to as "DSI on MGR") and the equitable sharing of benefits from their collection and use.

8 Part 2 of the Act specifies the requirements that apply to persons involved in the collection, storage and utilisation of MGR of ABNJ, and in the storage and utilisation of DSI on these MGR. The policy objective of Part II of the Agreement, which is reflected in the provisions of Part 2 of the Act, is to enhance the transparency of, and share the benefits of, research undertaken on such MGR and DSI.

9 MGR are defined in the BBNJ Agreement as "any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value".

10 DSI is not defined in the BBNJ Agreement. At the time of the adoption of the BBNJ Agreement, the definition of DSI was still under discussion in the context of negotiations under the Convention on Biological Diversity (CBD) on the sharing of benefits from the use of DSI on genetic resources from within national jurisdictions – both terrestrial and marine. At the 16th Conference of the Parties to the CBD, in Cali, Colombia, on 1 November 2024, the Conference adopted a Decision operationalising a multilateral mechanism for the fair and equitable sharing of benefits from the use of DSI, including the establishment of a global fund known as the Cali Fund3. That decision did not define DSI, and discussions to define DSI are ongoing at the CBD. Section 27(1) of the Act therefore provides the Secretary of State with a regulation-making power to define DSI (under the negative procedure). Regulations will be made under that power following Royal Assent and prior to ratification. Stakeholder engagement on the definition of DSI was conducted in Autumn/Winter 2025. The definition set out in the Regulations will serve as a provisional, domestically agreed definition, which may be revised and aligned with any future internationally agreed definition by way of future regulations under the power in Section 27(1).

3 cop-16-dec-02-en.docx https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.cbd.int%2Fdoc%2Fdecisions%2Fcop-16%2Fcop-16-dec-02-en.docx&wdOrigin=BROWSELINK

11 Part 2 of the Act sets out requirements on persons using UK craft to collect MGR in ABNJ. The relevant person in charge of the collection project has a duty to inform the BBNJ national focal point within FCDO pre-and post-collection of MGR, setting out specific information that is required to be provided under the BBNJ Agreement. The BBNJ national focal point, acting on behalf of the Secretary of State, is responsible for submitting these notifications to the Clearing-House Mechanism established under the BBNJ Agreement.

12 Where research on MGR results in the generation of DSI on those MGR, that DSI must be uploaded into a publicly accessible database. MGR collected from ABNJ must be held in a publicly accessible repository following utilisation.

13 Part 2 of the Act also places a requirement on repositories and databases to ensure access to MGR of ABNJ and DSI on such MGR, subject to reasonable conditions. Repositories include collections such as those maintained by the Natural History Museum and the Discovery Collections maintained by the National Oceanography Centre. Reasonable conditions will be set out in guidance and could include biosecurity considerations, or a requirement that a certificate under the Convention on International Trade in Endangered Species is obtained before a specimen can be released. The Natural History Museum's policy on outgoing research loans illustrates the kind of restrictions that were contemplated during the negotiation of the Agreement.4

14 The Act also places a requirement for repositories holding MGR of ABNJ to produce an aggregate report on access to those MGR every two years. It also requires databases that contain DSI on MGR to produce an aggregate report on access every two years which will contain information on the number of times DSI has been downloaded from the database or viewed programmatically for any purpose.

15 Part 2 of the Act provides for the Secretary of State to make regulations which may be necessary for implementing the UK's obligations under Part II of the BBNJ Agreement relating to MGR.

16 The Act also provides Scottish Ministers and the Northern Ireland Department of Agriculture, Environment and Rural Affairs with concurrent powers to make regulations within devolved competence corresponding to the power to make provision granted to the Secretary of State. In addition, it places an obligation on the Secretary of State to consult Scottish Ministers and the Northern Ireland Department of Agriculture, Environment and Rural Affairs before exercising their powers where regulations contain provision that fall within their respective legislative competence.

Part 3 - Area-Based Management Tools (ABMTs)

17 Part 3 of the Act relates to the implementation of Part III of the BBNJ Agreement. Part III of the Agreement establishes a regime by which ABMTs can be established and managed for the purpose of protecting the marine environment in ABNJ. ABMTs are defined in the BBNJ Agreement as "a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives in accordance with this Agreement".

4 Loans for research https://www.nhm.ac.uk/content/dam/nhm-www/our-science/services/collections/access/loans/loans-for-research.pdf

18 Although not specified in the Agreement, measures to implement ABMTs are likely to require control or restriction of activities within a geographic area for the purposes of meeting conservation or sustainable use objectives (for example, restrictions on high seas energy generation infrastructure to conserve an MPA feature). The Act enables the Secretary of State to make regulations to restrict or control an activity as required in ABNJ. This includes emergency measures, which may be adopted under Article 24 of the Agreement. These measures are to be applied on an emergency basis when a natural phenomenon or human-caused disaster has caused, or is likely to cause, serious or irreversible harm to marine biological diversity to ensure that the serious or irreversible harm is not exacerbated.

19 In addition, the Act includes a power for the Secretary of State to issue a direction, without the need for secondary legislation, where emergency measures adopted under Article 24 of the Agreement require an immediate intervention to control or restrict activities of UK craft.

20 The Act also provides Scottish Ministers and the Northern Ireland Department of Agriculture, Environment and Rural Affairs with concurrent powers to make regulations within devolved competence corresponding to the power to make provision granted to the Secretary of Stage under section 14 of the Act. In addition, it places an obligation on the Secretary of State to consult Scottish Ministers and the Northern Ireland Department of Agriculture, Environment and Rural Affairs before exercising powers under section 14 where regulations contain provision that fall within their respective legislative competence, except for the purposes of implementing emergency measures adopted under Article 24(1) of the BBNJ Agreement.

Part 4 – Marine licensing etc.

21 Part 4 of the Act provides for legislative changes necessary to implement provisions in Part IV of the BBNJ Agreement regarding environmental impact assessments (EIAs) as they apply to activities within the remit of the domestic marine licensing regime. Part IV builds upon existing UNCLOS provisions by outlining a detailed framework for assessing the potential impacts to the marine environment of planned human activities in ABNJ. EIA is defined in the Agreement as "a process to identify and evaluate the potential impacts of an activity to inform decision-making".

22 The Act amends the Marine and Coastal Access Act 2009 and the Marine Works (Environmental Impact Assessment) Regulations 2007 to align that marine licensing regime with the BBNJ EIA process in respect of activities in ABNJ. This includes technical changes to the existing powers under the Marine and Coastal Access Act 2009 to amend the list of licensable marine activities. The Act also amends the Marine (Scotland) Act 2010 and The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 to align the marine licensing regime in Scotland in an equivalent manner.

23 The Act also amends the Levelling-up and Regeneration Act 2023 to ensure that Environmental Outcome Reports (EORs) can apply to activities in ABNJ. This ensures that EIA requirements arising from the BBNJ Agreement can be implemented through any future EOR framework that may be adopted.

Part 5 – General

24 Part 5 of the Act makes general provision concerned with interpretation, powers to make consequential provision, the procedure for making regulations under the Act, extent and commencement provisions.

Legal Background

25 The following notes give a brief overview of significant legislation referenced by the Act.

26 Part 4 of the Marine and Coastal Access Act 2009[5] establishes a system for licensing the carrying on of activities in the marine environment. Anyone carrying on or causing or permitting any other person to carry on, an activity mentioned in section 66 will need to obtain a licence from the appropriate licensing authority, subject to any exemption provided for in the Act. The 2009 Act is amended by Part 4 of this Act to ensure alignment with the BBNJ EIA requirements in respect of activities in ABNJ.

27 The Marine Works (EIA) Regulations 2007[6] make provision requiring EIAs to be carried out prior to the granting of consent for certain regulated activities. These Regulations apply, among other activities, to activities requiring a marine licence, or variation of a marine licence, under Part 4 of the Marine and Coastal Access Act 2009. The 2007 Regulations are amended by Part 4 of this Act to ensure alignment with the BBNJ EIA requirements in respect of activities in ABNJ.

28 Part 4 of the Marine (Scotland) Act 2010[7] establishes a system for the licensing of certain marine activities by the Scottish Ministers. Anyone carrying on or causing or permitting any other person to carry on, an activity mentioned in section 21 must obtain a licence from the Scottish Ministers, subject to any exemptions or special cases provided for by virtue of sections 32 to 37. The 2010 Act is amended by Part 4 of this Act to ensure alignment with the BBNJ EIA requirements in respect of activities in ABNJ.

29 The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017[8] make provision requiring EIAs to be carried out prior to the granting of consent for certain regulated activities. These Regulations apply, among other activities, to activities requiring a marine licence, or variation of a marine licence, under Part 4 of the Marine (Scotland) Act 2010. The 2017 Regulations are amended by Part 4 of this Act to ensure alignment with the BBNJ EIA requirements in respect of activities in ABNJ.

30 The Levelling Up and Regeneration Act 2023[9] makes a number of changes to existing legislation including in the areas of local government, planning and compulsory purchase. Amongst a range of other provisions, Part 6 of the 2023 Act allows for the replacement of the EU environmental assessment system with a new framework for Environmental Outcome Reports (EORs). Section 26 of the BBNJ Act amends the Levelling-up and Regeneration Act 2023 to ensure that EORs can apply to planned marine activities in ABNJ. This ensures that the BBNJ Agreement can be implemented through any future EOR framework.

31 The Merchant Shipping Act 1995[10] provides the principal legal framework governing the registration, safety and regulation of ships in the UK. The Act defines key terms such as "British ship", a term which is used in the BBNJ Act as part of its definition of "UK craft". This term has a wider scope in the BBNJ Act, however, to encompass and impose obligations also on innovative marine craft, which may not come within the definition of "ship" but may be

[5] https://www.legislation.gov.uk/ukpga/2009/23/contents

[6] https://www.legislation.gov.uk/uksi/2007/1518/contents

[7] https://www.legislation.gov.uk/asp/2010/5/contents

[8] https://www.legislation.gov.uk/ssi/2017/115/contents

[9] https://www.legislation.gov.uk/ukpga/2023/55

[10] https://www.legislation.gov.uk/ukpga/1995/21/contents

used to gather MGR. The Merchant Shipping Act 1995 also provides the framework for enforcement powers at sea, including those set out in Part 10 relating to the powers of enforcement officers to board, inspect and detain ships, which may be applied by regulations made under Section 14 of the BBNJ Act in the context of ABMTs. The BBNJ Act draws on the 1995 Merchant Shipping Act's definitions and enforcement structures to ensure consistency with existing maritime legislation.

Territorial extent and application

32 Section 31 sets out the territorial extent of the Act, which describes the jurisdictions in which the Act will form part of the law. The extent of an Act can be different to its application. Application is about where the Act produces a practical effect rather than where it forms part of the law.

33 The Act extends and applies to England, Wales, Scotland and Northern Ireland.

34 There is a convention that Westminster will not normally legislate regarding matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. Legislative consent was sought and obtained from the Scottish Parliament and the Northern Ireland Assembly.

35 The table in Annex A provides an overview of the territorial extent and application of the Act's Sections.

36 A permissive extent clause is included in the Act which would enable part or all the Act to be extended to any of the British Overseas Territories in the future.

37 The UK Government engaged the Crown Dependencies (the Isle of Man, Bailiwick of Jersey and the Bailiwick of Guernsey) regarding the inclusion of a permissive extent clause which would enable all or part of the Act to be extended to those jurisdictions in the future. The Isle of Man consented to the inclusion of this Section, and this is reflected in Section 31of the Act.

Commentary on provisions of the Act

Part 1 – Introduction

Section 1: The Agreement

38 Section 1 subsection (1) sets out the full name of the BBNJ Agreement.

39 Section 1 subsection (2) establishes that for the purposes of the Act two terms have the meaning that they have in Article 1 of the Agreement:

- "Areas beyond national jurisdiction" means the high seas and the Area.[11]
- "Marine genetic resources" means any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.

[11] The Area is defined in UNCLOS as "the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction". The high seas are defined in UNCLOS as "all parts of the seas that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State".

Part 2 – Marine Genetic Resources

Section 2: Collection

40 Section 2 of the BBNJ Act gives effect to the provisions in Article 12(2) to (5) of the BBNJ Agreement regarding the collection of MGR from ABNJ.

41 Section 2 subsection (1) applies the obligations in these provisions of the BBNJ Agreement to a project in which a UK craft is used to collect MGR in an ABNJ. "UK craft" is defined in Section 27 subsection (1) of the Act.

42 Section 2 subsection (1) introduces the term "collection project" to refer to the projects to which the notification obligations in subsection (2) apply.

43 Section 2 subsection (2) sets out the requirement for the "relevant person" in relation to a collection project that intends to collect MGR in ABNJ to ensure that no such collection takes place unless a notification has been submitted to the Secretary of State.

44 Section 2 subsection (2)(a) specifies that the notification provided to the Secretary of State must set out the information required by paragraphs (a) to (j) of Article 12(2) of the BBNJ Agreement which are:

a. The nature and objectives under which the collection is carried out, including, as appropriate, any programme(s) of which it forms part;

b. The subject matter of the research or, if known, the marine genetic resources to be targeted or collected, and the purposes for which such resources will be collected;

c. The geographical areas in which the collection is to be undertaken;

d. A summary of the method and means to be used for collection, including the name, tonnage, type and class of vessels, scientific equipment and/or study methods employed;

e. Information concerning any other contributions to proposed major programmes;

f. The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;

g. The name(s) of the sponsoring institution(s) and the person in charge of the project;

h. Opportunities for scientists of all States, in particular scientists from developing States, to be involved in or associated with the project;

i. The extent to which it is considered that States that may need and request technical assistance, in particular developing States, should be able to participate or to be represented in the project;

j. A data management plan prepared according to open and responsible data governance, taking into account current international practice.

45 Section 2 subsection (2)(b) specifies that this information must be provided to the Secretary of State at least 7 months prior to the collection project taking place. The BBNJ Agreement requires that the pre-collection notification be sent to the Clearing-House Mechanism established under Article 51 of the Agreement 6 months before the collection starts. The 7-month timeline in the Act is intended to ensure that the BBNJ national focal point has sufficient time to check the notification and clarify information provided or request any

missing information before the notification is sent to the Clearing-House Mechanism. The BBNJ national focal point will be specified in guidance and is intended to be the FCDO Ocean Policy Unit.

46 Section 2 subsection (3) provides that the Secretary of State may reduce the 7-month period for the provision of the pre-collection notification where they consider there is a compelling reason to do so. An example of a compelling reason would be where there is a natural or man-made disaster necessitating the urgent collection of MGR from ABNJ to ascertain the impact of the disaster on marine biodiversity. It is anticipated that the requirement for notice in writing from the Secretary of State will be fulfilled by means of email correspondence from the BBNJ national focal point.

47 Section 2 subsection (4) provides that the relevant person must provide a notification to the Secretary of State setting out the information described in paragraphs (a) to (d) of Article 12(5) of the BBNJ Agreement which are:

a. The repository or database where digital sequence information on marine genetic resources is or will be deposited;

b. Where all marine genetic resources collected in situ are or will be deposited or held;

c. A report detailing the geographical area from which marine genetic resources were collected, including information on the latitude, longitude and depth of collection, and, to the extent available, the findings from the activity undertaken;

d. Any necessary updates to the data management plan provided under paragraph (2)(j) above.

48 Section 2 subsection (4) provides that the notification must be provided to the Secretary of State as soon as all the information is available (Section 2 subsection 4(a)) and in any case before the end of 11 months beginning with the last day on which MGR were collected in an ABNJ as part of the relevant project (Section 2 subsection 4(b)).

49 Section 2 subsection (5) defines the term "collect" in relation to MGR. The definition refers to "collecting" or "sampling" and therefore follows the definition of "collection in situ" in Article 1 of the BBNJ Agreement:

- ""Collection in situ", in relation to marine genetic resources, means the collection or sampling of marine genetic resources in areas beyond national jurisdiction."

50 The term "sampling" was included in the definition under the BBNJ Agreement to anticipate a situation in which MGR are not removed from ABNJ but are the subject of research on board a craft or equipment to extract data, or where data related to MGR are extracted from the marine environment through the sampling of e-DNA.

51 The definition is intended to make clear that the obligation to provide pre- and post-collection notifications under the Act do not apply where the purpose of the activity is not the collection of MGR, but MGR may be collected incidentally while collecting other physical samples such as sediment cores or water samples. For example, a research project to collect MGR from ABNJ in order to study specific traits of the organisms collected would require pre- and post-collection notifications, whereas a research project focused on the chemical composition of deep sea sediment which involves the collection of sediment cores that may contain microbes would not be required to notify as the collection of MGR in this situation would be incidental and not the focus of the research project. It is unlikely that MGR of ABNJ collected unintentionally during the collection of other physical samples such as sediment cores will be subject to utilisation as these samples are generally not stored over the long term.

52 Section 2 subsection (5) also defines "the relevant person" in charge of a collection project as the person with principal responsibility for the scientific or technical aspects of the project so far as it concerns marine genetic resources. For the UK's national research vessels, which are currently the main UK craft used for the collection of MGR from ABNJ, this would be the Chief Scientist in charge of a research cruise. The relevant person would be the principal researcher on any other craft whether commercial or academic. Annex B provides an outline of how the existing research cruise process works in the UK and how this would interact with the MGR provisions.

Section 3: Utilisation

53 Section 3 subsection (1) sets out the application of the provisions of Section 3 on utilisation. The obligations in relation to utilisation apply to a project, named a "utilisation project", which involves the utilisation in the UK of (a) MGR of ABNJ or (b) DSI on such MGR.

54 Section 3 subsection (2) defines the "relevant person" for the purposes of the provisions of Section 3 as "the person who controls the utilisation project". This terminology has been selected to address the fact that a utilisation project includes academic research on, or commercial use of, MGR or DSI in the UK. The "relevant person" may be the senior researcher responsible for an academic project or a compliance officer within a commercial entity. Further examples will be set out in guidance. Subsection (2) sets out the obligation on the relevant person to ensure that information is provided to the Secretary of State in accordance with the Schedule (see paragraphs 217-230 below).

55 Section 3 subsection (3) provides that the relevant person must ensure that samples of any MGR whose utilisation falls within subsection (1)(a) are deposited in a suitable repository.

56 Section 3 subsection (4) provides that the relevant person must ensure that any DSI on MGR whose utilisation falls within subsection (1)(b) is recorded in a suitable database.

57 Section 3 subsection (5) provides that the timeframe for completing the requirements in subsections (3) and (4) is within 3 years beginning with the day on which the utilisation project begins.

58 Section 3 subsection (6) provides that the relevant person must ensure that the MGR samples or DSI on MGR about which utilisation information is provided should be identifiable by reference to any Article 12(3) identifier relating to the MGR concerned. The term "Article 12(3) identifier" is defined in Section 27.

59 Section 3 subsection (7) sets out the factors that determine whether a repository or database is suitable. The first factor in Section 3 subsection (7)(a) is that the repository or database is publicly accessible. This reflects the provisions of Article 14(2) of the BBNJ Agreement which sets out a list of non-monetary benefits arising from activities related to MGR of ABNJ and DSI on such MGR. These include:

a. Access to samples and sample collections in accordance with current international practice;

b. Access to digital sequence information in accordance with current international practice.

60 The second factor in subsection (7)(b) is that the repository or database, regardless of where it is in the world, is operated in accordance with current international practice. "Current international practice" encompasses scientific practice in terms of storage and access to samples or information. The possibility that an MGR or DSI on MGR may be stored in a repository or deposited in a database outside the UK reflects the international nature of

scientific research and research and development. Work undertaken by a person in the UK which would trigger the obligation to submit a utilisation notification to the Secretary of State may be part of a broader international scientific programme in which the decision has been taken to use repositories and databases outside the UK for storage. It may also be the case that samples are deposited with a repository outside the UK as a form of benefit sharing.

61 Depositing genetic data in open access databases prior to publication is well-established in the scientific community and required by peer-reviewed scientific journals. UK Research and Innovation's (UKRI) open access policy[12] mandates that recipients of funding from any of the UK research councils must provide open access to research articles and publications resulting from publicly-funded research, and UKRI's policy states that "research data should be made openly available with as few restrictions as possible".

Section 4: Onward disclosure

62 Section 4 applies to information provided to the Secretary of State under Sections 2 or 3 of the Act. Section 4 subsection (2) provides that the Secretary of State may give information to the Clearing-House Mechanism established under the BBNJ Agreement.

63 Section 4 subsection (3) provides that the Secretary of State may not give information to the Clearing House Mechanism where (a) that information is protected information within the meaning given by section 1(2) of National Security Act 2023 or (b) in the opinion of the Secretary of State, Article 51(6) of the Agreement does not require such information to be shared. Article 51(6) of the Agreement provides that "The confidentiality of information provided under this Agreement and rights thereto shall be respected. Nothing under this Agreement shall be interpreted as requiring the sharing of information that is protected from disclosure under the domestic law of a Party or other applicable law". By placing the decision on the Secretary of State as to whether information is (a) protected information under the National Security Act 2023 or (b) not required to be shared by virtue of Article 51(6), the UK can satisfy itself that its obligations to provide information under Part II of the Agreement are not undermined by an overly broad interpretation of what is protected from disclosure.

Section 5: Repositories

64 Sections 5 and 6 of the Act give effect to obligations related to repositories and databases in Part II of the BBNJ Agreement. These obligations are designed to ensure the sharing of benefits through access to MGR of ABNJ and DSI on such MGR. The collection of MGR in ABNJ is mostly undertaken from research vessels and is a very costly undertaking. Enhancing access to MGR of ABNJ and DSI generated on those MGR is an important element of benefit sharing.

65 Section 5 subsection (1) confirms that the provisions of Section 5 apply to repositories in the UK in which samples of MGR of ABNJ are stored. The main repositories of MGR of ABNJ in the UK are the Natural History Museum (NHM) and the National Oceanography Centre's (NOC) Discovery Collection. Museums are common repositories of MGR including the National Museum Scotland, National Museum Cardiff, University of Cambridge Museums, and the Oxford University Museum of Natural History. The Scottish Association of Marine Science is a major repository of MGR in Scotland. Universities with a focus on marine biology are also repositories of MGR from ABNJ, such as Aberdeen, Bangor, Edinburgh, Essex, Liverpool (although most is sent to the NOC Discovery Collection), Newcastle, Oban (although most goes to National Museum Scotland), Plymouth, and Strathclyde.

[12] https://www.ukri.org/publications/ukri-open-access-policy/uk-research-and-innovation-open-access-policy/

66 Section 5 subsection (2) places obligations on the person who controls the repository with respect to the management of the samples of MGR of ABNJ and implements the provisions of Articles 12(6) and (7) and Article 14 (2)(a) of the BBNJ Agreement.

67 Section 5 subsection (2)(a) requires the person who controls the repository to ensure that so far as reasonably practicable (i) the samples can be identified as originating from ABNJ and (ii) they can be identified by reference to an Article 12(3) identifier if one has been generated that applies to that sample. The term "Article 12(3) identifier" is defined in Section 27. It is considered best practice by the international scientific community for researchers to deposit MGR collected during marine scientific research in repositories such as the collections of museums or other scientific, research, and educational institutions with adequate infrastructure and funding to manage and curate them long-term. New samples being deposited in the largest repositories in the UK of MGR from ABNJ, the Discovery Collection at NOC and the NHM, are geolocated and labelled as part of current best practice. This requirement ensures that repositories can comply with the obligation to report on access to MGR in accordance with Article 12(7) as set out in Section 5 subsection (2)(c).

68 Section 5 subsection (2)(b) requires the person with control over the repository to ensure access to the samples for the purposes of utilisation. "Access" in the context of repositories of MGR from ABNJ means making a sample physically available to another natural or juridical person for the purposes of utilisation as defined in Section 27 subsection (1). Reasonable conditions can be placed on access as set out in Section 7(1). Repositories such as the NOC Discovery Collection and the NHM already make samples accessible to researchers through in-person visits to the repositories or loan agreements, subject to reasonable conditions.

69 Section 5 subsection (2)(c) implements the obligation set out in Article 12(7) with respect to repositories. Article 12(7) states:

- "Parties shall ensure that repositories, to the extent practicable, and databases under their jurisdiction prepare, on a biennial basis, an aggregate report on access to marine genetic resources and digital sequence information linked to their "BBNJ" standardized identifier, and make the report available to the access and benefit-sharing committee established under article 15."

70 The policy intention behind this reporting requirement in the BBNJ Agreement is to provide the access and benefit-sharing committee with information on which to base their recommendations to the Conference of the Parties on the operation of the benefit sharing obligations in the Agreement.

71 Section 5 subsection (2)(c) requires that every two years the person who controls the repository provides the Secretary of State with a report setting out, so far as reasonably practicable, the number of times access to samples has been provided for the purpose of utilisation. Section 7 subsections (2) and (3) expand on the timing of these reports. The obligation on repositories is limited to requests for access for utilisation within the definition provided in Section 27 subsection (1). This is because repositories record the reasons for loans from their collections, which can include utilisation but also could be for purposes such as display in an exhibition, which would not fall within this reporting requirement.

72 Section 5 subsection (3) implements the obligation in Article 12(7) that the report must identify the samples by reference to their BBNJ batch identifier.

Section 6: Databases

73 Section 6 implements the obligation set out in Article 12(7) with respect to databases.

74 Section 6 subsection (1) applies the provisions of this Section in relation to a UK database in which DSI on MGR is stored, which is defined in subsection (2).

75 Section 6 subsection (2) defines a UK database as a database controlled by a person in the UK (subsection (2)(a)) and accessible by members of the public (subsection (2)(b)). The test for whether a database is controlled by a person in the UK is set out in subsection (5). The requirement that the database be accessible by members of the public follows from the requirement in Section 3 subsection (7) that DSI generated on MGR of ABNJ during utilisation as defined by Section 27 subsection (1) must be deposited in a publicly accessible database.

76 Section 6 subsection (3) sets out the obligations on the person who controls a UK database. As with samples in Section 5 above, Section 6 subsection (3)(a) requires that as far as reasonably practicable they must ensure that the DSI (i) can be identified as relating to MGR originating from ABNJ and (ii) in particular can be identified by reference to an Article 12(3) identifier if one has been generated that applies to the MGR on which the DSI has been generated. With respect to the geographical requirement, the largest publicly-accessible database, the International Nucleotide Sequence Database Collaboration (INSDC) which consists of three organisations, based in the UK (the European Nucleotide Archive operated by the European Molecular Biology Laboratory European Bioinformatics Institute based in Cambridge) the US and Japan, has recently introduced the requirement for geospatial data on the origin of the organism on which the sequence has been generated to be submitted when the sequence is uploaded.

77 Section 6 subsection 3(b) requires that access is provided to the DSI, subject to the provisions of Section 7 subsection (1) on reasonable conditions. "Access" in the context of databases containing DSI means DSI can be downloaded from the database or can be viewed programmatically.

78 Section 6 subsection (3)(c) implements the reporting requirements of Article 12(7) with respect to databases. The requirement for databases to report on access refers to the number of times such DSI has been viewed or downloaded. There is no reference to the purpose for which the DSI was viewed or downloaded because databases do not require their users to inform them of the reasons why they are accessing the data.

79 Section 6 subsection (4) requires that the report provided under Section 6 subsection (3)(c) should identify the DSI with reference to any BBNJ batch identifier relating to the MGR on which the DSI was generated.

80 Section 6 subsection (5) deems that the person responsible for a database is in the UK and therefore required to comply with the provisions in Section 6 if they are an individual who is habitually resident in the UK (subsection 5(a)), or an entity incorporated or formed under the law of any part of the UK (subsection 5(b)). This is to ensure that there is a genuine link between the database and the UK, rather than for example, it being controlled remotely from overseas.

Section 7: Supplementary Provision

81 Section 7 of the BBNJ Act sets out details on provisions that are common to Sections 5 and 6.

82 Section 7 subsection (1) gives effect to Article 14(4) of the BBNJ Agreement, regarding reasonable conditions that may be placed on access to MGR of ABNJ and DSI generated on such MGR. Such reasonable conditions will be set out in guidance. Article 14(4) provides:

- "Access to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction in the repositories and databases under a Party's jurisdiction may be subject to reasonable conditions, as follows:
- (a) The need to preserve the physical integrity of marine genetic resources;
- (b) The reasonable costs associated with maintaining the relevant gene bank, biorepository or database in which the sample, data or information is held;
- (c) The reasonable costs associated with providing access to the marine genetic resource, data or information;
- (d) Other reasonable conditions in line with the objectives of this Agreement; and opportunities for such access on fair and most favourable terms, including on concessional and preferential terms, may be provided to researchers and research institutions from developing States."

83 The conditions set out in the BBNJ Agreement reflect conditions that institutions such as NOC and the NHM already implement. With respect to Article 14(4)(d), examples of other reasonable conditions within the meaning of Article 14(4) that UK institutions already implement include:

- restrictions placed on access by other international agreements such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- if the entire sample is to be used or destroyed as part of the scientific study process proposed in the loan agreement;
- if the sample is required to be sent to another country where the sample weight, fragility and rarity or uniqueness in a collection might preclude this or where the postal, customs, or policy procedures in the country to which the sample would be sent are not sufficient to ensure access;
- if access is requested by individuals who are known to have badly damaged specimens, taken them without authorisation, or failed to comply with the institutional loan requirements.

84 Section 7 subsection (2) clarifies the "relevant 2-year period" for the purpose of the reports required under Sections 5 and 6. The first 2-year period will begin either from the date on which the BBNJ Agreement enters into force (subsection (2)(a)(i)) or when the BBNJ Agreement enters into force for the UK (subsection (a)(ii)) whichever is later and thereafter will be each subsequent period of 2 years (subsection 2(b)).

85 Section 7 subsection (3)(a) confirms that the reports under Sections 5(2)(c) and 6(3)(c) will be due before the end of the period of 2 months beginning with the day immediately after the relevant 2-year period in question.

86 Section 7 subsection (3)(b) enables the Secretary of State to provide directions varying the time specified under subsection 3(a) if it is required to comply with any timetable set by the access and benefit-sharing committee established under Article 15 of the BBNJ Agreement. This reflects the policy intention behind the requirement to provide the reports in the BBNJ Agreement, which is to support the access and benefit-sharing committee to discharge its role under Article 15 and provide advice to the Conference of the Parties.

87 Section 7 subsection (4) provides that the directions referred to in subsection (3)(b) may be general or specific. This reflects the possibility that the access and benefit-sharing committee may set different timetables for reports from repositories or databases.

Section 8: Exceptions

88 Section 8 sets out exceptions from the requirements of Part 2 of the BBNJ Act with respect to fishing and fishing related activities, military activities and military vessels and aircraft, anything done in Antarctica and the MGR and DSI on the MGR of Antarctica.

89 Section 8 subsection (1)(a) and (b) implement the provisions of Article 10(2) of the BBNJ Agreement:

- "The provisions of this Part shall not apply to:
- (a) Fishing regulated under relevant international law and fishing-related activities; or
- (b) Fish or other living marine resources known to have been taken in fishing and fishing-related activities from areas beyond national jurisdiction, except where such fish or other living marine resources are regulated as utilization under this Part."

90 The intention behind Article 10(2) is to exempt commercial fishing as well as activities related to fishing, such as fish stock assessments, from the provisions of Part II of the Agreement. The approach taken in the Agreement is somewhat complicated as it excludes in Article 10(2)(b) "fish or other living marine resources known to have been taken in fishing-related activities" from the provisions of Part II except where they are "regulated as utilisation under this Part". The intention is to (a) exclude activities that would count as "utilisation" within the meaning of the BBNJ Agreement where the research is related to fishing, while (b) capturing instances where fish or other marine resources that were originally taken during fishing or fishing-related activities are later subject to utilisation that is not related to fishing-related activities. The approach in the BBNJ Act is to set up the regime under Part 2 and then specifically exclude fishing and fishing-related activities including utilisation for fishing-related activities.

91 Section 8 subsection (1)(a)(i) and (ii) exclude fishing using a UK craft by reference to the provisions of the Fisheries Act 2020.

92 Section 8 subsection (1)(b) excludes fishing-related activities. It does so by reference to activities undertaken in accordance with the joint fisheries statement or any document or plan issued by the fisheries policy authorities or the Marine Management Organisation for the purposes of the Fisheries Act 2020, which are undertaken to give effect to the scientific evidence objective as set out in section 1(5) of the Fisheries Act 2020. The provision is clear that research that will otherwise count as utilisation within the meaning of the Act is excluded

from the provisions of the Act if it uses fish taken in fishing or fishing-related activities and if the research is undertaken to give effect to the scientific evidence objective set out in the Fisheries Act. This would exclude fish or other marine living resources taken during research cruises on the MV Endeavour, a research vessel owned and operated by the Centre for Environmental, Aquaculture and Fisheries Science (CEFAS), or the MV Scotia which is owned and operated by Marine Scotland, where the cruise and the research is undertaken to give effect to the scientific evidence objective. Section 8 subsection (2) defines "the fisheries policy authorities" and "joint fisheries statement" by reference to the Fisheries Act 2020.

93 Section 8 subsection 1(c) exempts warships, aircraft or naval auxiliary ships from the provisions of Part 2 of the Act. This is consistent with Article 4 of the Agreement which states:

- "This Agreement does not apply to any warship, military aircraft or naval auxiliary. Except for Part II, this Agreement does not apply to other vessels or aircraft owned or operated by a Party and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Agreement."

94 Section 8 subsection 1(d) gives effect to the exemption in Part II of the Agreement for military activities. Article 10(2) of the Agreement states:

- "The obligations in this Part shall not apply to a Party's military activities, including military activities by government vessels and aircraft engaged in non-commercial service. The obligations in this Part with respect to the utilization of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction shall apply to a Party's non-military activities."

95 The exceptions are intended to ensure that research activities conducted from State owned or operated research vessels – for example the Royal Research Ships – are captured by the provisions of Part II of the Agreement, while excluding military ships, aircraft and activities from the obligations in that Part.

96 Section 8 subsection (1)(e) excludes from the provisions of Part 2 of the BBNJ Act anything done in Antarctica, and Section 8 subsection (1)(f) excludes the MGR of Antarctica, including DSI generated on such MGR. Article 5(2) of the BBNJ Agreement provides:

- "This Agreement shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that promotes coherence and coordination with those instruments, frameworks and bodies."

97 In its Declaration on signature of the BBNJ Agreement the UK noted that "the Antarctic Treaty system comprehensively addresses the legal, political and environmental consideration unique to that region and provides a comprehensive framework for the international management of the Antarctic". The exceptions in Section 8 subsection 1(e) and (f) reflect the UK's position that the Antarctic Treaty system is competent with respect to the MGR and DSI generated on such MGR of Antarctica. Section 8 subsection (2) confirms the meaning of "Antarctica" by reference to the Antarctic Act 1994.

Section 9: Power to make regulations

98 Section 9 provides for the Secretary of State to make regulations which may be necessary for implementing the UK's obligations under Part II of the BBNJ Agreement relating to MGR (subsection (1)).

99 Section 9 subsection (2) sets out the subject matter of regulations that may be made under the power set out in subsection (1). Those are:

a. to ensure that the UK complies with Part II of the BBNJ Agreement in a way that is consistent with Article 5(2) of the Agreement (which is about interaction between the BBNJ Agreement and other instruments) by avoiding conflict between the UK's obligations under the BBNJ Agreement and those under any other international agreement or arrangement to which the UK is a party;

b. to give effect to any decision of the Conference of the Parties to the BBNJ Agreement in relation to the sharing of monetary benefits from the utilisation of MGR of ABNJ or the DSI generated on such MGR. This could include imposing requirements to disclose information relevant to the calculation of any payment required or to make payments;

c. to make any changes to the regime set out in Part 2 of the Act that are required to give effect to decisions of the Conference of the Parties related to the operation of the BBNJ Clearing-House Mechanism established under Article 51 of the BBNJ Agreement;

d. to limit the application of Part 2 of the Act in accordance with Article 51(6) of the Agreement which would include amending the listed categories of protected information in Section 4(3);

e. to ensure that no person is subject to overlapping obligations by virtue of Part 2 of the BBNJ Act and corresponding provision of the law of another State Party to the BBNJ Agreement;

f. to make provision about the enforcement of requirements in respect of Part 2 of the BBNJ Act.

100 Section 9 subsection (3) sets out that a "corresponding provision" for the purposes of Section 9 subsection (2)(e) is a provision that has substantially the same effect as a provision in Part 2 of the BBNJ Act.

101 Section 9 subsection (4) confirms that regulations made under Section 9 may apply in ABNJ or otherwise outside the UK.

102 Section 9 subsection (5) provides further details on how the power to make regulations relating to enforcement set out in Section 9 subsection (2)(f) may be exercised. The regulations may include provision:

a. for civil sanctions to be imposed;

b. for an undertaking to be enforceable;

c. about monitoring compliance with requirements;

d. about requirements for the making and keeping of records and documents;

e. about requirements to provide information.

103 Section 9 subsection (6) provides that regulations made under Section 9 may amend or otherwise modify Part 2 of the Act apart from Sections 9 and 27.

104 Section 9 subsection (7) provides that the consequential provisions that may be made by regulations under Section 9 in reliance on the power in Section 29(2)(b) of the Act to make consequential provisions can include a provision to amend or repeal a provision of an Act of Parliament.

105 Section 9 subsection (8) applies the draft affirmative procedure to any regulations made under Section 9 that (a) amend or repeal an Act of Parliament, (b) introduce a monetary benefit sharing regime in accordance with Section 9 subsection 2(b) or (c) create a civil sanction or vary the maximum amount of any monetary penalty.

106 Section 9 subsection (9) applies the negative procedure to all other regulations made under Section 9.

Section 10: Power to make regulations: Scotland and Northern Ireland

107 Section 10 provides for Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland a power to by regulations make provision within devolved legislative competence corresponding to the power to make provision granted to the Secretary of State under Section 9 subsection (2) (read with Section 9 subsections (3) to (6)).

108 Section 10 subsection (1) provides for the making of regulations under the Act in Scotland and Northern Ireland. The subsequent subsections make provision relating to those regulations.

Section 11: Procedure for regulations under section 10

109 Section 11 makes provision for the procedure relating to regulations under Section 10. The procedures for these regulations are equivalent to those set out in Section 9, for regulations made by the Secretary of State.

Section 12: Consultation: Scotland and Northern Ireland

110 Section 12 places a duty on the Secretary of State to consult Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland before making regulations under Section 9 that contain provision within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly, respectively.

Section 13: Guidance

111 Section 13 subsection (1) sets out the requirement for the Secretary of State to publish guidance about the requirements imposed by or under Part 2 of the Act. The guidance will be prepared and published by the BBNJ national focal point. In preparing the guidance, particular attention will be paid to illustrative examples that support individuals and organisations in understanding how and when the obligations may apply to them.

112 Section 13 subsection (2)(a) requires the Secretary of State to keep the guidance under review. Section 13 subsection (2)(b) confirms that the Secretary of State may revise the guidance, and Section 13 subsection (2)(c) obliges the Secretary of State to publish any revised guidance.

113 Section 13 subsection (3) requires the Secretary of State to have regard to the importance of giving effect to the Agreement in preparing and revising any guidance. This provision will be particularly important once the BBNJ Agreement enters into force and the access and benefit-sharing committee established under Article 15 starts its work. One of the issues on which the access and benefit-sharing committee may provide recommendations to the Conference of the Parties under Article 15(3)(a) is:

- "Guidelines or a code of conduct for activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction in accordance with this Part;".

114 Should the access and benefit-sharing committee not make recommendations in accordance with Article 15(3)(a), there are still a number of issues, including how the Clearing-House Mechanism will operate in practice, that have yet to be settled at the international level. Decisions taken by the Conference of the Parties in putting the Agreement into operation may lead to a need to revise the guidance published in accordance with Section 13.

115 Section 13 subsection (4) requires the Secretary of State to lay the guidance and any revised guidance before Parliament.

Part 3 – Area-Based Management Tools (ABMT)

Section 14: Power to make regulations

116 Section 14 provides the Secretary of State with the power to make regulations to implement ABMT and related measures.

117 Section 14 subsection (1) provides that the section applies where the Conference of the Parties take a decision under one of the listed Articles of the BBNJ Agreement. This includes Article 22(1)(a) of the BBNJ Agreement, referred to in subsection (1)(a), where the Conference of the Parties can take decisions on the establishment of ABMT, including marine protected areas, and related measures. An example of this could be a new marine protected area designated to protect a certain feature like a spawning ground for a migratory species at a particular time of year. Subsection (1)(b) refers to Article 22(1)(b), which covers decisions by the Conference of the Parties on measures compatible with other legal instruments and frameworks, and certain other matters. This could include measures that would work alongside and contribute to the outcomes of a measure of another body, such as building on an existing fisheries-related measure (for example a closed area) by protecting other species at the same time, therefore achieving greater ecological outcomes. Subsection (1)(c) refers to Article 24(1) of the BBNJ Agreement, which covers measures that are adopted by the Conference of the Parties on an emergency basis, when a natural phenomenon or human-caused disaster has caused, or is likely to cause, serious or irreversible harm to marine biological diversity of ABNJ, to ensure that the serious or irreversible harm is not exacerbated. An example of an emergency measure could be to divert shipping traffic in the event of a disaster.

118 Section 14 subsection (2) provides for the Secretary of State to make regulations for the purpose of meeting the UK obligation under Article 25(1) of the BBNJ Agreement as it applies in relation to such a decision of the Conference of Parties. Article 25(1) requires Parties to the BBNJ Agreement to ensure that activities under their jurisdiction or control that take place in ABNJ are conducted consistently with decisions taken under Part III of the Agreement.

119 Section 14 subsection (3) describes provision that may (among others) be made using this power. This includes provision which may apply in ABNJ or otherwise outside of the UK (subsection (3)(a)). It may also include provision relating to enforcement (subsection (3)(b)), for which further details are provided in subsection (4). Subsection (3)(c) provides that fees may be charged in relation to carrying out functions under the regulations (including enforcement functions). This could include, for example, fees associated with an application to carry out a licensable activity under the Marine and Coastal Access Act 2009. Subsection (3)(d) allows provision to be made by reference to other documents as updated from time to time. This allows for regulations to stay up-to-date as those documents which are referenced are updated over time.

120 Section 14 subsections (4)(a) to (g) expand on subsection (3)(b) and provides an outline of what enforcement provisions may be made under these regulations. Subsection (4)(g) provides that provision may be made that is similar to, or applies, any provisions under Part 10 of the Merchant Shipping Act 1995 (enforcement officers and powers) or Part 8 of the Marine and Coastal Access Act 2009 (enforcement). The provisions in these Acts relate to the appointment of enforcement officers and their corresponding powers to carry out enforcement actions under that legislation. This, therefore, provides for regulations made under Section 14 to include similar common enforcement powers which may include, for example, the power to board and inspect vessels and marine installations or the power to direct a vessel or marine installation to port.

121 Section 14 subsection (5) explains the limitations to any criminal offences created by regulations made using this power. An offence may not be punishable on summary conviction by imprisonment (subsection (5)(a)). An offence may not be punishable on indictment with imprisonment exceeding 2 years (subsection (5)(c)). In relation to Scotland or Northern Ireland, for an offence triable only summarily, fines cannot exceed level 5 on the standard scale as set out in the Criminal Procedure (Scotland) Act 1995[13] and the Fines and Penalties (Northern Ireland) Order 1984[14] (subsection (5)(b)(i)). For an offence triable summarily or on indictment, fines on summary conviction cannot exceed the statutory maximum (subsection (5)(b)(ii)).

122 Section 14 subsection (6) provides that any consequential provisions that may be made by regulations under Section 14 in reliance on the power in Section 29 subsection (2)(b) of the Act to make consequential provisions includes provision to amend or repeal a provision of an Act of Parliament whenever passed (as well as provision made under such an Act). This may include consequential amendment to allow for cases where the restriction or control of an activity, provided for by regulation, conflicts with other provisions relating to that activity.

Section 15: Procedure for regulations under section 14

123 Section 15 describes the Parliamentary procedures under which regulations made using this power will be made.

124 Subject to subsection (3), Section 15 subsection (1) applies the draft affirmative procedure to any regulations made under Section 14 that: (a) amend an Act of Parliament; (b) create a civil sanction or vary the maximum amount of any monetary penalty; or (c) create a criminal offence. Subsection (3) (together with subsection (2)) instead applies the made affirmative

[13] https://www.legislation.gov.uk/ukpga/1995/46/section/225

[14] https://www.legislation.gov.uk/nisi/1984/703/article/5

procedure to regulations containing provision in subsection (1) that relates to a decision of the Conference of Parties under Article 24(1) of the BBNJ Agreement where the regulations need to be made urgently.

125 Section 15 subsection (4) applies the negative procedure to all other regulations made under Section 11.

Section 16: Power to make regulations: Scotland and Northern Ireland

126 Section 16 gives Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland a power to make provision within devolved legislative competence corresponding to the provision that the Secretary of State can make under Section 14.

127 Section 16 provides additional provisions regarding the making of regulations under the Act in Scotland and Northern Ireland.

Section 17: Procedure for regulations under Section 16

128 Section 17 makes provision for procedures relating to regulations under Section 16. The procedures for these regulations are equivalent to those set out in Section 15 for regulations made by the Secretary of State under Section 14.

Section 18: Consultation: Scotland and Northern Ireland

129 Section 18 places a duty on the Secretary of State to consult Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland before making regulations under Section 14 that contain provision within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly, respectively.

130 Section 18 subsection (3) provides that the duty to consult Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland does not apply where the Secretary of State considers regulations need to be made urgently for the purposes of implementing emergency measures adopted under Article 24(1) of the BBNJ Agreement.

Section 19: Directions

131 Section 19 provides a power for the Secretary of State to issue directions to UK craft for the purpose of implementing emergency measures adopted under Article 24 of the BBNJ Agreement. These measures may be adopted by the Conference of Parties where a natural phenomenon or human-caused disaster has caused, or is likely to cause, serious or irreversible harm to marine biological diversity in ABNJ.

132 Section 19 subsection (2) enables the Secretary of State to impose requirements by direction, without the need for secondary legislation, where immediate action is required to give effect to such emergency measures. Section 19 subsection (3) provides that directions must be issued in writing and Section 19 subsection (4) requires directions to be laid before Parliament.

133 Section 19 subsection (5) provides that the Secretary of State may vary or revoke a direction.

134 Section 19 subsection (6) confirms that directions cease to have effect upon termination of the measure adopted under Article 24 to which they relate.

135 Section 19 subsection (7) creates a criminal offence for failure to comply with a direction without reasonable excuse. Subsection (8) sets out the penalties for this offence, being a fine on summary conviction and on conviction on indictment, a fine, imprisonment for up to 2 years, or both. Section 19 subsection (9) provides that proceedings for an offence committed outside the UK may be taken in the UK and the offence treated as if committed in the UK.

136 Directions under Section 19 are distinct from the regulations made under Section 14 and are not subject to the procedures set out in Section 15. Section 19 provides a separate emergency mechanism designed to enable immediate compliance of UK craft with urgent international obligations, whereas Sections 14 and 15 govern the making of regulations to implement broader or longer-term measures or to implement emergency measures for other activities.

137 This power is modelled on existing direction-making powers available to the Secretary of State's Representative (SOSREP) under Schedule 3A of the Merchant Shipping Act 1995, which are used to respond to maritime emergencies. Section 19 adopts a similar approach for implementing international emergency measures, ensuring consistency with established UK practice in maritime emergency response.

Part 4 – Environmental Impact Assessments

Section 20: Marine Licensing

138 Section 20 subsection (1) provides that Part 4 of the Marine and Coastal Access Act 2009 is amended as set out in Section 20.

139 Section 20 subsection (2) makes technical amendments to the Marine and Coastal Access Act 2009 to ensure that relevant planned UK activities in ABNJ can be brought within scope of the 2009 Act (and the Marine Works (Environmental Impact Assessment) Regulations 2007) as required to ensure compliance with Parts III and IV of the BBNJ Agreement. Part III concerns Area-Based Management Tools, and Part IV requires Parties to ensure that the potential impacts on the marine environment of planned activities under their jurisdiction or control that take place in ABNJ are assessed as set out in Part IV of the BBNJ Agreement. The purpose of these technical amendments is to ensure that the existing power in section 66 of the 2009 Act to add activities to the marine licensing regime can be used effectively in relation to ABNJ where required to comply with Part III and IV requirements. The amendments made to the 2009 Act by the BBNJ Act are as follows:

a. Inserting section 66(3A), which sets out that an order under section 66(3) that adds to the list of licensable marine activities may designate that activity as activity added in contemplation of the UK's obligations under (a) Part III of the BBNJ Agreement or (b) in respect of an activity that takes place in ABNJ, Part IV of the BBNJ Agreement.

b. Inserting section 66(3B), which specifies that the consequential and other related provision that may be made under section 316(1)(b) in respect of an order made under the existing power in section 66(3) adding a new licensable marine activity can include provision amending primary or secondary legislation if the new activity has been designated under section 66(3A).

c. Inserting section 66(3C), which contains associated definitions of "*area beyond national jurisdiction*" and "*the Biodiversity Beyond National Jurisdiction Agreement*".

140 Section 20 subsection (3) makes a technical amendment to Section 74 of the Marine and Coastal Access Act 2009 to specify that, where an order under section 74 applies to an activity that has been designated under section 66(3A), the consequential and other related provision

that can be made under section 316(1)(b) can include provision amending primary or secondary legislation. Section 74 is the existing power to specify by order exemptions to the requirement for a marine licence.

141 Section 20 subsection (4) adds a provision that the usual exemption for submarine cables does not prevent the application of Part 4 of the Marine and Coastal Access Act 2009 to activity designated under section 66(3A) of the Marine and Coastal Access Act 2009. This would allow activities done while laying or maintaining an offshore stretch of exempt submarine cable to be regulated as licensable marine activities if designated under section 66(3A).

142 Section 20 subsection (4) also amends the heading of section 81 of the Marine and Coastal Access Act 2009 to remove "on the continental shelf" so that it more accurately reflects the content of the section, including as that section is amended by the current provisions in Section 20 subsection (4)(b) and (c) of the Act.

Section 21: Screening and procedure

143 Section 21 subsection (1) provides that the Marine Works (EIA) Regulations 2007 are amended as set out in Section 21. The amendments are to align those regulations (insofar as they apply to activities in ABNJ requiring a marine licence (or licence variation)) with the EIA processes for activities in ABNJ set out in Part IV of the BBNJ Agreement.

144 Section 21 subsection (2)(a) inserts definitions of "area beyond national jurisdiction", "BBNJ activity" and "the Biodiversity Beyond National Jurisdiction Agreement" into Regulation 2(1) of the Marine Works (EIA) Regulations 2007. The definition of "BBNJ activity" means a regulated activity:

a. that engages the UK's obligations under Part IV of the Biodiversity Beyond National Jurisdiction Agreement (environmental impact assessments) in respect of an ABNJ, and

b. which requires a marine licence or the variation of a licence under Part 4 of the Marine and Coastal Access Act 2009.

145 Section 21 subsection (2)(b) updates the definition of "regulated activity" in regulation 2(1) to include reference to new paragraph (1ZA). Section 21 subsection 2(c) then inserts paragraph (1ZA) after regulation 2(1) of the Marine Works (EIA) Regulations 2007. Paragraph (1ZA) 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 variation of a licence depends on the application of the Regulations, the Regulations apply until and unless applying the Regulations would lead to a different outcome. Regulations could be used in future under the Marine and Coastal Access Act 2009 to establish that an activity is exempt from requiring a marine licence if it does not require an EIA under the Marine Works (EIA) Regulations 2007. In this circumstance, Section 21 subsections (2)(b) and (c) would mean that a screening under the Marine Works (EIA) Regulations 2007 could still take place to determine if an EIA is required and consequently if a marine licence is required.

146 Section 21 subsection (3) has the effect that an EIA is required under the Marine Works (EIA) Regulations 2007 in relation to a regulated activity if the appropriate authority so determines under the new regulation 8A.

147 Section 21 subsection (4) inserts regulation 8A into the Marine Works (EIA) Regulations 2007. Regulation 8A sets out how the appropriate authority, the decision-maker, determines if an EIA is required in relation to a BBNJ activity. An EIA is required in relation to a BBNJ activity if the authority concludes that there are reasonable grounds for believing that the activity may

cause substantial pollution of, or significant and harmful changes to, the marine environment. Regard must be had to the criteria set out in Schedule 1 of the Marine Works (EIA) Regulations 2007 and any other matter necessary to give effect to Article 30(1)(b) of the BBNJ Agreement. The terms described in regulation 8A(1)(a) and (b) are as described in the BBNJ Agreement and in particular set out in Article 30(1)(b). The provisions in regulation 8A are also subject to regulations 9 and 9A of the Marine Works (EIA) Regulations 2007 which set out where an EIA is not needed for projects related to national defence and projects carried out in response of a civil emergency.

148 Section 21 subsection (5) amends regulation 10 of the Marine Works (EIA) Regulations 2007 which sets out when an appropriate authority, the decision-maker, can defer to another EIA rather than carrying out a new separate assessment. The amendment enables the decision maker to decide that an EIA under regulation 8A is not required where they are satisfied that another person or authority has carried out, is carrying out or will carry out an equivalent assessment in relation to the activity that is subject to regulation 8A. This regulation can be used only where the assessment that has been, is being or will be carried out is sufficient to meet the requirements of the BBNJ Agreement. Regulation 10 is also amended to include the term "or person" when describing who may undertake an equivalent assessment. This is intended to ensure that, where relevant, the decision-maker can defer to authorities or persons in other countries or organisations that may have undertaken an assessment equivalent to the requirements of the BBNJ Agreement. The decision-maker is not obliged to make use of regulation 10(1A) if they are not satisfied that the assessment meets the requirements of the BBNJ Agreement.

149 Section 21 subsection (6) amends regulation 11 of the Marine Works (EIA) Regulations 2007 in relation to screening opinions. The amendment ensures a screening opinion is required if the decision-maker considers 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 the effects of the activity are unknown or poorly understood. This threshold for requiring a screening is set out in new paragraph (3A) inserted by Section 21 subsection (6). Currently a screening opinion is only required under the Regulations if the regulator considers that the regulated activity is or may be one in relation to which an EIA is required under regulation 7 or 8.

150 Section 21 subsection (6)(b) further amends regulation 11 of the Marine Works (EIA) Regulations 2007 by inserting paragraph (3B) which sets out that where the decision-maker does not believe the conditions in paragraph (3A) are met, meaning an EIA screening is not required, then the decision-maker must notify the applicant of this conclusion.

151 Section 21 subsection (6) also inserts paragraph (3C) into the Marine Works (EIA) Regulations 2007 to explain that the terms used in regulation 11(3A) (a) and (b) have the same meaning that they have in the BBNJ Agreement (in particular Article 30(1) in the BBNJ Agreement).

152 Section 21 subsection (7) amends regulation 21A of the Marine Works (EIA) Regulations 2007 to add additional factors for the decision-maker to consider when assessing environmental impact if an application relates to a BBNJ activity. This addition captures the requirements set out in Article 31(1)(b) and (c) of the BBNJ Agreement where these are not already covered in the Marine Works (EIA) Regulations 2007. For example, this will include, where appropriate, any considerations to traditional communities or local populations that may be affected by a planned activity.

153 Section 21 subsection (8) amends Schedule 2 (screening opinions) of the Marine Works (EIA) Regulations 2007 to set out additional requirements on the decision-maker when giving a screening opinion which relates to a BBNJ activity.

154 Section 21 subsection (9) amends Schedule 3 (information to include in the environmental statement) of the Marine Works (EIA) Regulations 2007 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. This could include, for example, the need to consider the best scientific information and relevant knowledge of traditional communities and local populations.

Section 22: Power to make regulations: Secretary of State

155 Section 22 subsection (1) enables the Secretary of State 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 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.

156 Section 22 subsection (2) defines "licensable marine activity" as an activity listed in section 66(1) of the Marine and Coastal Access Act 2009 (as that section has effect from time to time) and defines "Article 38 standards or guidelines" as those adopted from time to time under Article 38 of the BBNJ Agreement.

157 Regulations under Section 22 may include, for example, amendments or modifications to Part 4 of the Marine and Coastal Access Act 2009 (Section 22 subsection (3)).

158 Section 22 subsection (4) provides that any consequential provision that may be made by regulations under Section 22 in reliance on the power in Section 29(2)(b) of the Act to make consequential provisions can include provision to amend or repeal a provision of an Act of Parliament whenever passed (as well as provision made under such an Act).

159 Section 22 subsections (5) and (6) outline the Parliamentary procedures that take effect when regulations are made using this power. Subsection (5) establishes that regulations under this section that amend an Act of Parliament are subject to the draft affirmative procedure, and Subsection (6) establishes that all other regulations under this section are subject to the negative procedure.

Section 23: Licensable marine activities

160 Section 23 subsection (1) provides that Part 4 of the Marine (Scotland) Act 2010 is amended as set out in Section 23.

161 Section 23 subsection (2) makes corresponding technical amendments to the Marine (Scotland) Act 2010 as Section 20 subsection (2) makes to the Marine and Coastal Access Act 2009, namely:

a. Inserting section 21(3A), which sets out that an order under section 21(3) that adds to the list of licensable marine activities may designate the activity as activity added in contemplation of the UK's obligations under (a) Part III of the BBNJ Agreement or (b) in respect of an activity that takes place in ABNJ, Part IV of the BBNJ Agreement.

b. Inserting section 21(3B), which specifies that the consequential and other related provision that may be made under section 165(1)(b) in respect of an order made under the existing power in section 21(3) adding a new licensable marine activity can include provision amending an enactment if the new activity has been designated under section 21(3A).

c. Inserting section 21(3C), which contains associated definitions of "*area beyond national jurisdiction*" and "*the Biodiversity Beyond National Jurisdiction Agreement*".

162 Section 23 subsection (3) makes a technical amendment to Section 32 of the Marine (Scotland) Act to specify that, where an order under Section 32 applies to an activity that has been designated under section 21(3A), the consequential and other related provision that can be made under section 165(1)(b) includes provision amending an enactment whenever passed. Section 32 is the existing power to specify by order exemptions to the requirement for a marine licence.

163 Section 23 subsection (4) adds a provision that the usual exemption for submarine cables does not prevent the application of Part 4 of the Marine (Scotland) Act 2010 to activity designated under Section 21(3A) of the Marine (Scotland) Act 2010.

Section 24: Screening and Procedure (Scotland)

164 Section 24 makes changes to the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (the 2017 Regulations) that are necessary for the purpose of implementing the United Kingdom's obligations under Part IV the BBNJ Agreement in respect of an activity in an ABNJ and in relation to a Scottish licensable marine activity.

165 Section 24 subsection (2)(a) inserts definitions of "area beyond national jurisdiction", "BBNJ works" and "the Biodiversity Beyond National Jurisdiction Agreement" into Regulation 2(1) of the 2017 Regulations.

166 Section 24 subsection (2)(b) updates the definition of an "EIA project". It inserts a new criterion to include BBNJ works in the definition of an EIA project where there are reasonable grounds for believing that the BBNJ works may cause (i) substantial pollution, or (ii) significant and harmful changes to, the marine environment.

167 Section 24 subsection (2)(c) updates the definition of "environmental information" in regulation 2 paragraph (1) of the 2017 Regulations to include a new paragraph (e). This adds, in relation to BBNJ works that are also an EIA project, any other matter necessary to give effect to Articles 31(1)(b) and (c) of the BBNJ Agreement. The effect of this is that for those works such matters will fall within the definition of "environmental information" in regulation 2 paragraph (1) of the 2017 Regulations.

168 Section 24 subsection (2)(d) inserts additional wording to make reference to paragraph (1B) to support the definition of regulated activity.

169 Section 24 subsection (2)(e) inserts new paragraphs 1A and 1B after regulation 2 paragraph (1) of the 2017 Regulations. Paragraph 1A sets out that terms used in paragraph (c)(i) and (ii) of the definition of an "EIA project" should be understood in the same way as they are understood in the BBNJ Agreement, especially Article 30(1)(b). Paragraph 1B sets out that where someone applies for a marine licence or a variation to a marine licence under the Marine (Scotland) Act 2010 for an activity in ABNJ and the requirement for a licence or variation of a licence depends on the application of the 2017 Regulations, those regulations apply unless and until applying the Regulations would lead to a different result. 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, section 24 subsections (2)(d) and (e) 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.

170 Section 24 subsection (3) amends regulation 8 of the 2017 Regulations which sets out when Scottish Ministers, as decision-makers, can defer to another EIA rather than carrying out a new separate assessment. This inserts paragraph (4A) to enable the decision maker to decide that an EIA is not required in relation to BBNJ works where they are satisfied that another person or authority has carried out, is carrying out or will carry out an equivalent assessment in relation to the activity that is subject to regulation. Paragraph (4C) provides that an equivalent assessment is one which is sufficient to meet the requirements of Part IV of the BBNJ Agreement. It also inserts paragraph (4B) which provides that Scottish Ministers may not grant a regulatory approval based on a deferral made under subsection (4A) unless they are satisfied that doing so is compatible with the UKs obligations under Part IV of the Biodiversity Beyond National Jurisdiction Agreement.

171 Section 24 subsection (4) amends regulation 9 of the 2017 regulations in relation to general provisions relating to screening.

172 Section 24 subsection (4)(c) ensures that in the case of screening BBNJ works regard must be given to any other matter necessary to ensure that the requirements of Article 30(1)(b) of the BBNJ Agreement are met.

173 Section 24 subsection (4)(d) inserts an additional paragraph (2A) to regulation 9 to ensure that, where Scottish Ministers adopt a position that a BBNJ works is not an EIA project, the screening opinion must contain information stating whether (a) the works may have more than a minor or transitory effect on the marine environment, or (b) the effects of the works are unknown or poorly understood. New paragraph (2B) confirms that the terms in paragraph (2A) (a) and (b) should be understood in the same way as in the BBNJ Agreement in particular Article 30(1).

174 Section 24 subsection (5) amends regulation 12 of the 2017 Regulations relating to application without prior screening.

175 Section 24 subsection (5)(a) adds the term "BBNJ works" to paragraph 1(a) of regulation 12. It also removes superfluous "or an application to carry out" wording in the same paragraph.

176 Section 24 subsection (5)(b) substitutes a new paragraph (2) to provide that where the application appears to relate to proposed schedule 1 or schedule 2 works, the Scottish Ministers must adopt a screening opinion in relation to the proposed works.

177 Section 24 subsection (5)(c) inserts paragraph (2A) which provides that where Scottish Ministers are of the opinion that the application relates to proposed BBNJ works they must adopt a screening option where they consider either that (a) the works may have more than a minor or transitory effect on the marine environment, or (b) the effects of the works are unknown or poorly understood. This subsection also inserts additional paragraph (2B). This provides that, where Scottish Ministers decide that the paragraph (2A) does not apply to the proposed works they must provide the applicant with a notice stating that an Environmental Impact Assessment is not required. This subsection also inserts Paragraph (2C) which provides that the terms in paragraph (2A)(a) and (b) should be understood in the same way as in the BBNJ Agreement in particular Article 30(1).

178 Section 24 subsection (5)(d) adds a reference to "BBNJ works" in regulation (12) paragraph (3) of the 2017 Regulations.

179 Section 24 subsection (6) ensures that Scottish Ministers can adopt a screening report for BBNJ works as set out in paragraph (2A) (inserted by subsection (5)).

180 Section 24 subsection (7) makes changes to Schedule 4 of the 2017 Regulations (information for inclusion in environmental impact assessment reports). This enables additional information to be required in the EIA accompanying the licensing application as needed to meet the requirements set out in Article 31(1)(c) of the BBNJ Agreement. This could include, for example, the need to consider the best scientific information and relevant knowledge of traditional communities and local populations.

Section 25: Power to make regulations: Scottish Ministers

181 Section 25 subsection (1) enables 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. The power under Section 25 can only be used to make provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament and is limited to implementing Article 38 standards or guidelines.

182 Section 25 subsection (2) defines "Scottish licensable marine activity" as an activity within section 21 of the Marine (Scotland) Act 2010 (as that section has effect from time to time) and defines "Article 38 standards or guidelines" as those adopted under Article 38 of the BBNJ Agreement from time to time.

183 Section 25 subsection (3) establishes that regulations made under that section for the purposes of implementing Article 38 standards or guidelines may amend or otherwise modify Part 4 of the Marine (Scotland) Act 2010 (marine licensing).

184 Section 25 subsection (4) outlines that the regulations could be used to confer a function on any person; make different provision for different purposes or for different areas; and make consequential, supplementary, incidental, transitional, transitory or saving provision.

185 Section 25 subsection (5) establishes that the consequential provision that may be made by regulations under that section includes provision amending an enactment with the meaning given by Schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010.

186 Section 25 subsection (6) provides that regulations under that section that contain provision amending an Act of Parliament or an Act of Scottish Parliament are subject to the affirmative procedure.

187 Section 25 subsection (7) provides that any other regulations under that section are subject to the negative procedure.

Section 26: Environmental Outcome Reports

188 Section 26 amends the Levelling-up and Regeneration Act 2023 (LURA) to ensure that Environmental Outcome Reports (EORs) can apply to planned marine activities in ABNJ. This ensures that the BBNJ Agreement can be implemented through any future EOR framework.

189 Section 26 subsection (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.

190 Section 26 subsection (b) clarifies that the amendment in Section 26 subsection (a) applies only where the activity is or involves a licensable marine activity under the Marine and Coastal Access Act 2009 or Marine (Scotland) Act 2010. It also adds the definition of "area beyond national jurisdiction", consistent in the BBNJ Agreement.

Part 5 - General

Section 27: Interpretation

191 Section 27 provides definitions for terms used in the BBNJ Act which are not defined elsewhere within the provisions of the Act.

192 Section 27 subsection (1) defines "Article 12(3) identifier". Article 12(3) of the BBNJ Agreement provides that on receipt of the pre-collection notification "the Clearing-House Mechanism shall automatically generate a "BBNJ" standardized batch identifier". The precise nature of the ""BBNJ" standardized batch identifiers" is a matter that will need to be addressed in the design of the Clearing-House Mechanism which is currently being considered by the Preparatory Commission established by UN General Assembly Resolution 78/272[15] to prepare for entry into force of the BBNJ Agreement.

193 Section 27 subsection (1) provides that the Secretary of State may make regulations to define digital sequence information in relation to MGR.

194 Section 27 subsection (1) defines "utilisation" in relation to MGR of ABNJ or DSI on such MGR as "(a) the use of those resources or that information in carrying out relevant research and development, or (b) the commercialisation of relevant research and development carried out using those resources or that information". The definition in the Act of "relevant research and development" is intended to make it clear that the obligations in Part 2 of the Act apply to academic research where there is no intention to consider product development. This reflects the purpose of Part II of the BBNJ Agreement and reflects the fact that there is little evidence currently of research on MGR of ABNJ or DSI generated on such MGR being undertaken with a view to development of a product.

195 Section 27 subsection (1) also defines "commercialisation" in relation to research and development and does so in a way intended to align the definition of "commercialisation" with that provided in the UK's guidance[16] on UK Access and Benefit Sharing Regulations used for the UK's implementation of the Nagoya Protocol. The intention is to align the regime in the BBNJ Act so far as possible, recognising the differences in the international regimes, with the UK's implementation of the Nagoya Protocol under the Convention on Biological Diversity. Section 27 subsection (1) also defines "relevant product" in relation to research and development. The product must have been developed through or as a result of utilisation in the UK. This mirrors the approach taken in the implementation of the Nagoya Protocol.

[15] https://docs.un.org/en/A/RES/78/272

[16] Regulations: Nagoya Protocol on access and benefit sharing (ABS) - GOV.UK https://www.gov.uk/guidance/abs

196 Section 27 subsection (1) defines "craft" as any "vessel, machine, structure or other item". This broad definition ensures that all vessels and machines currently used to undertake marine scientific research – including for example an autonomous underwater vehicle such as "Boaty McBoatface" – are captured as well as providing flexibility to capture future uses of new and novel equipment.

197 Section 27 subsection (1) defines "UK craft" by reference to the provisions of the Merchant Shipping Act 1995 or any other craft that has a qualifying connection.

198 Section 27 subsection (2) sets out the qualifying UK connection for the purposes of the definition of a UK craft. Section 27 subsection (2)(a) provides that a ship registered under the law of a Crown Dependency or Overseas Territory does not have a qualifying UK connection. Section 27 subsection (2)(b) provides that a craft does not have a qualifying UK connection if it is a ship that has the nationality of another State (with reference to Article 91 of UNCLOS) or if the craft has been deployed from a ship that has the nationality of another State. Section 27 subsection (2)(c) provides that a craft has a qualifying UK connection if it is (i) owned or operated by a UK person or (ii) being deployed from the UK or is being deployed from a ship within paragraph (a) or (b) of the definition of UK craft in Section 27 subsection (1).

199 Section 27 subsection (3) gives a power to the Secretary of State to make regulations to amend or otherwise modify the meaning of "qualifying UK connection".

200 Section 27 subsection (4) provides that, for the purposes of interpreting references in the BBNJ Act to ABNJ, relevant maritime zones of any of the British Overseas Territories are to be treated as if they were an exclusive economic zone within the meaning of UNCLOS Article 55. This means that they would not fall within the definition of ABNJ for the purposes of interpreting such references in this Act.

201 Section 27 subsection (5) provides that "relevant maritime zones" as referred to by Section 27 subsection (4) include exclusive fishing zones, ecological protection zones, and any other zone in relation to which the relevant territory asserts or exercises any rights or jurisdiction of the sort referred to in Article 56(1) of UNCLOS.

202 Section 27 subsection (6) provides that regulations made under subsection (1) for the purposes of defining DSI are subject to the negative procedure.

203 Section 27 subsection (7) provides that Regulations made under subsection (3) that amend section 27are subject to the affirmative procedure. Section 27 subsection (8) provides that any other Regulations made under subsection (3) are subject to the negative procedure.

Section 28: Power to make consequential provision

204 Section 28 provides a power which allows the Secretary of State, by regulations, to make provision that is consequential on the provisions in the Act. The power may be used to amend, repeal or revoke any provision made by or under primary legislation passed before this Act or later in the Parliamentary session. Regulations for this purpose must be made by statutory instrument following the negative procedure, unless they are amending primary legislation in which case the draft affirmative procedure applies.

Section 29: Regulations under this Act

205 Section 29 provides additional provisions regarding the making of regulations under the Act.

206 Section 29 subsection (11) provides that the provisions of Section 29 do not apply to the making of regulations under Sections 10, 16, 25 or 32.

Section 30: Crown Application

207 Section 30 subsection (1) provides that the Act binds the Crown but draws attention to Section 8 and Article 4 of the Agreement. Section 8 provides that nothing in Part 2 of the Act applies to military activities or to a warship, military aircraft or naval auxiliary. Article 4 of the Agreement provides that nothing in the Agreement applies to any warship, military aircraft or naval auxiliary, and except for Part II (marine genetic resources) the Agreement does not apply to any other vessel or aircraft owned or operated by a Party and used, for the time being, on government non-commercial service. Article 4 states that Parties will ensure that such vessels or aircraft owned or used by it will act in a manner consistent with the Agreement so far as is reasonable and practicable.

208 Section 30 subsection (2) provides that the Crown is not criminally liable as a result of anything in the Act. Section 30 subsection (3) sets out that, notwithstanding subsection (2), the Act applies to persons in the service of the Crown as it applies to other persons, and therefore a Crown servant could be criminally liable.

Section 31: Extent

209 Section 31 subsections (1) and (2) set out the territorial extent of the Act which extends to England and Wales, Scotland and Northern Ireland except for sections 23 and 25, which extend to Scotland only.

210 Section 31 subsection (3) is a permissive extent clause which provides for any of the provisions of the Act to be extended, with or without modifications, to the Isle of Man or to any British overseas territory.

Section 32: Commencement

211 Section 32 outlines the details for the commencement of the provisions in the Act. Section 32 subsection (1) provides that, except as provided for in subsection (2), the Act will come into force on the day on which it is passed.

212 Section 32 subsection (2) provides that Sections 2-8 (which set out the duties to provide information in relation to the collection and utilisation of MGR of ABNJ and DSI generated on such MGR), Section 13 (which requires the Secretary of State to publish Guidance related to Part 2 of the Act), Section 21 and Section 24 (relating to related to screening and procedure under Part 4 of the Act), will come into force on the days appointed by the Secretary of State by regulations.

213 Section 32 subsection (3) provides a power for the Secretary of State to commence provisions on different days for different purposes.

214 Section 32 subsection (4) provides a power for the Secretary of State to make transitional or saving provision in relation to commencement. Section 32 subsection (5) provides that different provisions under subsection (4) may be made for different purposes.

215 Section 32 subsection (6) provides that regulations under this section are to be made by statutory instrument.

Section 33: Short title

216 Section 33 confirms the short title of this legislation, when enacted, as the "Biodiversity Beyond National Jurisdiction Act 2026".

Schedule: Utilisation Information

217 The Schedule on utilisation information provides further detail about the requirements for information which must be provided by the person who controls a utilisation project, as set out in Section 3 subsection (2).

218 Article 12(8) of the BBNJ Agreement sets out that information about the following should be provided to the Clearing-House Mechanism in addition to the "BBNJ" standardised batch identifier if available:

a. Where the results of the utilization, such as publications, patents granted, if available and to the extent possible, and products developed, can be found;

b. Where available, details of the post-collection notification to the Clearing-House Mechanism related to the marine genetic resources that were the subject of utilization;

c. Where the original sample that is the subject of utilization is held;

d. The modalities envisaged for access to marine genetic resources and digital sequence information on marine genetic resources being utilized, and a data management plan for the same;

e. Once marketed, information, if available, on sales of relevant products and any further development.

219 As with pre- and post-collection notifications, the utilisation notifications will be submitted to the BBNJ national focal point. With respect to information related to patents required under paragraph (a) of Article 12(8), the intention is that the form which will be produced for use by those required to provide utilisation notifications under the Act will include a link to the UK patent database. The term "relevant product" is defined in Section 27 subsection (1) of the Act.

220 Article 12(8)(b) provides that the details of the post-collection notification are to be provided "where available" in recognition of the fact that such a notification may not be available for a variety of reasons. For example, the MGR of ABNJ may have been collected under the jurisdiction of a non-party to the BBNJ Agreement and therefore no pre- or post-collection notifications will have been provided to the BBNJ Clearing-House Mechanism, or the original collecting entity or individual may not have complied with the obligation to provide a pre- and post-collection notification to the BBNJ Clearing-House Mechanism.

221 The obligation to provide a notification of utilisation of MGR of ABNJ under the Act will relate to MGR collected after entry into force of the Agreement for the UK. It is likely that MGR of ABNJ will be collected by entities under the jurisdiction of non-parties to the BBNJ Agreement after entry into force of the Agreement for the UK, and such MGR may subsequently be utilised in the UK. It is likely to be possible to identify from location and date data associated with such MGR that they are from ABNJ and as such they trigger obligations for relevant persons in the UK to provide utilisation notifications. Given the international nature of scientific research, it is important to ensure that those utilising MGR or DSI on those MGR are not penalised in these circumstances.

222 Paragraph 1 of the Schedule sets out the usual time limit of within 1 month, beginning on the day on which the result of the utilisation is achieved, by which a utilisation notification must be sent to the Secretary of State (in practice to the BBNJ national focal point).

223 To meet the requirements of Article 12(8)(e) of the Agreement, paragraph 2 of the Schedule sets out that where utilisation involves commercialisation, the required utilisation notification must be given within 1 month, beginning with the day on which the product in question is made available, and then once a year while the product remains available. The term "commercialisation" is defined in Section 20 subsection (1) of the BBNJ Act.

224 Paragraph 3 provides that information does not have to be given where the relevant person does not have, and could not without reasonable effort obtain, the information, or where the utilisation is of DSI, it is, for any other reason not reasonably practicable to give the information. This provision operationalises the obligations in Article 12(8) of the BBNJ Agreement.

225 Most research into, development and commercialisation of DSI is non-linear. It may be that several research threads are pursued in parallel and that the intended objective of the research is completely changed between the start and end of the process.

226 At the start of this process, DSI on MGR is queried against DSI databases containing millions of sequences returning tens to hundreds of sequences from different organisms. These sequences are combined with the original DSI on MGR used in the query leading to a hybrid sequence that may be subject to further modification. After a research process taking months to years, a final sequence is arrived at which will be used in a final product that may be patented and commercialised. Further modifications will take the modified sequence far away from the original sequence so that it bears little resemblance to the original and it may even be impossible to trace it back to the original DSI on an MGR used at the start. In the case of large-scale screening of a sequence against a database of millions of sequences, some of which may be of MGR of ABNJ, the BBNJ Act should not require a notification of utilisation as it would not be practicable for the researcher to identify and geolocate each sequence that their research has queried. The intention of the language "reasonably practicable" is to avoid those utilising DSI needing to expend a significant amount of effort, time and/or expense to ascertain whether they have utilised DSI on MGR from ABNJ and are therefore required to submit a utilisation notification. Examples to assist those utilising DSI in assessing whether they are required to submit a utilisation notification will be set out in guidance.

227 The time limits set out in paragraphs 1 and 2 of the Schedule recognise that research and research and development projects take place over a number of years, but some results from such projects may be made publicly available before the formal end of the project.

228 For example, the NERC-funded Seabed Mining and Resilience to Experimental Impact (SMARTEX)[17] project is a five-year multidisciplinary project. Some elements of the research undertaken under SMARTEX involve the collection of and research on MGR of ABNJ. Although the project is still ongoing, members of the SMARTEX project have already published academic papers that may meet the requirements to provide a utilisation notification under paragraph 1 of the Schedule. Examples of how the timelines set out in paragraphs 1 and 2 are intended to work in practice will be set out in guidance, but the FCDO would not expect an individual utilisation notification to be sent to the UK BBNJ national focal point each time DSI is generated on an individual MGR within a research project, given that a research project may be dealing with a large number of MGR. The aim is to ensure that no unreasonable administrative burdens are placed on those conducting research while ensuring transparency in the results of that research.

[17] https://smartexccz.org/

229 Paragraph 4 of the Schedule provides that the Secretary of State may by written notice extend the timelines set out in paragraphs 1 and 2, allowing a longer timeline for the submission of a utilisation notification. It is anticipated that the requirement for agreement in writing will be satisfied by an email from the BBNJ national focal point.

230 Paragraph 5 provides that for the purposes of the Schedule, "the utilisation" means the utilisation which forms part of the utilisation project concerned and falls within the scope of Section 3 subsection (1).

Related documents

231 None.

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1	Yes	Yes	Yes	Yes
Section 2	Yes	Yes	Yes	Yes
Section 3	Yes	Yes	Yes	Yes
Section 4	Yes	Yes	Yes	Yes
Section 5	Yes	Yes	Yes	Yes
Section 6	Yes	Yes	Yes	Yes
Section 7	Yes	Yes	Yes	Yes
Section 8	Yes	Yes	Yes	Yes
Section 9	Yes	Yes	Yes	Yes
Section 10	Yes	Yes	Yes	Yes
Section 11	Yes	Yes	Yes	Yes
Section 12	Yes	Yes	Yes	Yes
Section 13	Yes	Yes	Yes	Yes
Section 14	Yes	Yes	Yes	Yes
Section 15	Yes	Yes	Yes	Yes
Section 16	Yes	Yes	Yes	Yes
Section 17	Yes	Yes	Yes	Yes
Section 18	Yes	Yes	Yes	Yes
Section 19	Yes	Yes	Yes	Yes
Section 20	Yes	Yes	Yes	Yes
Section 21	Yes	Yes	Yes	Yes
Section 22	Yes	Yes	Yes	Yes
Section 23	No	No	Yes	No
Section 24	Yes	Yes	Yes	Yes
Section 25	No	No	Yes	No
Section 26	Yes	Yes	Yes	Yes

Section 27	Yes	Yes	Yes	Yes
Section 28	Yes	Yes	Yes	Yes
Section 29	Yes	Yes	Yes	Yes
Section 30	Yes	Yes	Yes	Yes
Section 31	Yes	Yes	Yes	Yes
Section 32	Yes	Yes	Yes	Yes
Section 33	Yes	Yes	Yes	Yes

Annex B – Outline of existing ocean research processes

232 The most common process by which collection of MGR from ABNJ is undertaken from UK craft is from a planned research cruise using a national research vessel, such as the Natural Environment Research Council (NERC)-owned Royal Research Ship (RRS) James Cook and RRS Discovery. These vessels are managed on behalf of NERC by the National Oceanography Centre (NOC). The process to apply to use marine facilities, including the RRS, can be found on the NERC website[18]. Research cruises are awarded by NERC on a competitive basis using an application procedure involving many of the details that will be included in the eventual cruise plan if the application is successful. To enable efficient use of valuable cruise time, many research cruises have multiple project teams on board, often from different countries, carrying out several different research projects each with their own leader, aims and objectives. The cruise will operate under the overall supervision of a Chief Scientist. This approach requires careful planning of the research cruise path, use of equipment and on-board facilities.

233 An application for cruise time is required to contain:

- Common elements such as background, aims and objectives;
- A work programme including intended sampling locations and equipment to be used;
- The technical capability of the vessel that will carry out the work;
- Plans for sample and data collection and utilisation;
- Data management plans;
- Letters of support from collaborators at national, international, and private sector level;
- A plan for the training of early stage and early career researchers and public engagement activities;
- A plan for the incorporation of researchers from developing countries is encouraged as a form of capacity-building;
- A budget covering travel of researchers to join the cruise as well as consumables needed and sample shipment.

234 An application is evaluated by reviewers and discussed by a panel that decides which bid will be allocated research cruise time and provides feedback to successful and unsuccessful bids. If the bid is unsuccessful the proposer may wish to redraft based on reviewer comments and resubmit. This entire process can be lengthy, and it can take many months, even years, between the initial submission for cruise time, the eventual award, and the actual research cruise.

[18] https://nerc.marinefacilitiesplanning.com/

235 Once a research cruise is awarded, the next stage of planning begins including checking the technical feasibility of the proposed work on the vessel to be used and the sampling and on-board facilities available. It may be necessary to check whether the cruise path enters marine protected areas or other sensitive areas, and an environmental impact assessment may be required, or permits needed to enter certain areas. Materials needed for research (e.g. equipment, consumables) will need to be loaded onto the vessel/shipped to the location where the cruise team will join the vessel.

236 During the research cruise the intended cruise path may change due to weather conditions and sampling activity may be altered depending on these conditions, or the functionality of sampling gear and discoveries made while on the cruise that alter the research aims and objectives. Samples will be preserved on board using different procedures (cooling, freezing, preservation in alcohol or other liquids etc.) or they may be analysed immediately, and data generated.

237 Once the cruise returns to port, samples will be shipped to the institutions of respective project teams, often in different countries, meaning the same MGR may end up in multiple collections.

238 In summary, the information required to be provided in the pre-collection notification under Article 12(2)(a)-(d), (f), (g), and (j) of the BBNJ Agreement is currently included in cruise plans or is available from the vessel operator, and scientists are familiar with these processes. Information under Article 12(2)(e) ("Information concerning any other contributions to proposed major programmes") is available dependent on the funder and research programme, and information under Article 12(2)(h) and (i) ("Opportunities for scientists of all States, in particular scientists from developing States, to be involved in or associated with the project" and "The extent to which it is considered that States that may need and request technical assistance, in particular developing States, should be able to participate or to be represented in the project"), is available on some cruises, but is not currently consistently required.

239 The information to be provided in the post-collection notification under Article 12(5)(a)-(c) is all currently included in the cruise plan or cruise report. Article 12(5)(d) ("Any necessary updates to the data management plan provided under paragraph (2) (j) above") will be a new requirement for scientists but stakeholders advised that this will not be an onerous obligation.

Annex C – Hansard References

240 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
First Reading	10 September 2025	Vol. 772
Second Reading	16 October 2025	Vol. 773 Col. 550
Committee of the Whole House	17 November 2025	Vol. 775 Col. 554
House of Lords		
First Reading	18 November 2025	Vol. 850
Second Reading	2 December 2025	Vol. 850 Col. 1699
Committee	16 December 2025	Vol. 851 Col. 72GC
Report	12 January 2026	Vol. 851 Col. 1556
Third Reading	19 January 2026	Vol. 852 Col. 21
Ping Pong and Royal Assent		
Consideration of Lords Amendments	2 February 2026	Vol. 780 Col. 66
Royal Assent	12 February 2026	Vol. 853

Annex D – Progress of the Bill Table

241 The following table shows how each section was numbered during the passage of the Bill through Parliament.

Section of the Act	Act as introduced in the Commons	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords
1	1	1	1	1
2	2	2	2	2
3	3	3	3	3
4	4	4	4	4
5	5	5	5	5
6	6	6	6	6
7	7	7	7	7
8	8	8	8	8
9	9	9	9	9
10	-	-	-	10
11	-	-	-	11
12	-	-	-	12
13	10	10	10	13
14	11	11	11	14
15	12	12	12	15
16	-	-	-	16
17	-	-	-	17
18	-	-	-	18
19	13	13	13	19
20	14	14	14	20
21	15	15	15	21
22	16	16	16	22
23	17	17	17	23
24	-	-	18	24
25	18	18	19	25
26	19	19	20	26
27	20	20	21	27
28	21	21	22	28
28	22	22	23	28
30	23	23	24	30
31	24	24	25	31

Section of the Act	Act as introduced in the Commons	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords
32	25	25	26	32
33	26	26	27	33

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E-mail: customer.services@tso.co.uk
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