

The BBNJ Agreement Activated: A Critical Appraisal of the Significance of the Global Treaty to Ocean Governance

Kariuki Muigua

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Kariuki Muigua*

Abstract

This paper critically appraises the BBNJ Agreement. The paper argues that adoption of the BBNJ Agreement is historic moment towards enhancing efforts to conserve marine biodiversity in Areas beyond National Jurisdiction (ABNJ). The paper observes that for many decades, the global community has faced challenges in protecting biodiversity in ABNJ undermining the health of the ocean. It discusses some of the threats facing biodiversity in ABNJ. In light of these concerns, the paper argues that adoption of the BBNJ Agreement is vital in strengthening efforts to protect marine biodiversity in ABNJ for people and planet. It examines the salient features of the BBNJ Agreement and discusses its efficacy in protecting marine biodiversity in ABNJ. Further, the paper suggests how the BBNJ Agreement can be effectively implemented in order to strengthen ocean governance for people and planet.

1.0 Introduction

It has been observed that healthy oceans and seas are essential to human existence and life on Earth¹. The world's oceans, their temperature, chemistry, currents and life drive global systems that make the Earth habitable for both humanity and nature². The ocean covers more than 70 percent of the planet's surface and produces at least 50 percent of

* PhD in Law (Nrb),SC, FCIArb (Chartered Arbitrator),OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [January, 2026].

¹ United Nations., 'Goal 14: Conserve and sustainably use the oceans, seas and marine resources' Available at <https://www.un.org/sustainabledevelopment/oceans/> (Accessed on 22/01/2026)

² United Nations., 'Why Oceans Matter' Available at <https://www.un.org/en/observances/oceans-day/background> (Accessed on 22/01/2026)

Earth's oxygen making it a valuable resource for both humanity and nature³. It has been observed that the ocean supports lives and livelihoods all over the world by regulating the climate, providing food for billions of people, supporting key economic activities including tourism and connecting global economies through maritime transport⁴.

In particular, the ocean is a major biodiversity hotspot. It is estimated that the ocean constitutes over 90 percent of the habitable space on the planet and contains nearly 250,000 known species, with many more remaining to be discovered⁵. It has been observed that the ocean is intrinsically linked to biodiversity and enrichment of its marine life and ecosystems⁶. Marine biodiversity refers to the variety of life in our ocean⁷. It includes all animals, plants and microorganisms living in the world's oceans and seas⁸. Marine biodiversity has also been defined as the variety of species and genetic structures present in marine/coastal ecosystems⁹. These ecosystems include those near terrestrial environments such as coral reefs, mangrove forests, seagrass beds and estuaries, to those deep below the surface, such as open ocean, hydrothermal vents, seamounts and soft sediments on the ocean floor¹⁰.

³ United Nations University., '6 Facts on Oceans, Life, and Livelihoods' Available at <https://unu.edu/series/6-facts-oceans-life-and-livelihoods> (Accessed on 22/01/2026)

⁴ Ibid

⁵ United Nations., 'Marine Biodiversity and Ecosystems Underpin a Healthy Planet and Social Well-Being' Available at <https://www.un.org/en/chronicle/article/marine-biodiversity-and-ecosystems-underpin-healthy-planet-and-social-well-being> (Accessed on 22/01/2026)

⁶ Secretariat of the Convention on Biological Diversity., 'Exploring the Linkages between the Ocean and Biodiversity' Available at <https://www.cbd.int/article/exploring-linkages-between-ocean-biodiversity-8June2022> (Accessed on 22/01/2026)

⁷ Marine Stewardship Council., 'Marine Biodiversity' Available at <https://www.msc.org/en-au/what-we-are-doing/oceans-at-risk/marine-biodiversity> (Accessed on 22/01/2026)

⁸ Ibid

⁹ Neeman. N., Servis. J.A., & Naro-Maciel. E., 'Conservation Issues: Oceanic Ecosystems' *Encyclopedia of the Anthropocene* ., Volume 2, 2018, pp 193-201

¹⁰ Secretariat of the Convention on Biological Diversity., 'Oceans Contain a Wealth of Biodiversity' Available at <https://www.cbd.int/article/biodiversityforwater-1#:~:text=Deep%2Dseabed%20habitats%20host%20between,sustainable%20fishery%20and%20mariculture%20management>. (Accessed on 22/01/2026)

Marine biodiversity provides crucial ecosystem services for both people and planet. It has been observed that marine biodiversity supports billions of people all over the world by providing food, coastal protection, and economic opportunities¹¹. For example, seafood is a vital source of animal protein for billions of people all over the world thus supporting global food security¹². Further, the ocean hosts important blue carbon ecosystems including mangroves, saltmarshes and seagrasses¹³. Blue carbon ecosystems are effective carbon sinks and have been described as carbon removal powerhouses, storing more carbon per area than tropical forests and absorbing it from the atmosphere about 3 times as quickly as tropical forests¹⁴. Further, it has been observed that coastal ecosystems including mangroves, seagrass beds, and coral reefs act as natural shields, guarding coastal communities and their property from adverse climatic events such as sea level rises, storm surges, and erosion¹⁵. The ocean therefore plays an important role in strengthening the global response against climate change. In addition, the ocean supports global, regional, national and local economies in areas such as fisheries, tourism and transport¹⁶.

By supporting marine biodiversity, the ocean plays an important role in sustaining life on the planet. However, it has been observed that human activities including excessive

¹¹ United Nations Environment Programme., 'Biodiversity and Ecosystems' Available at <https://www.unep.org/topics/ocean-seas-and-coasts/regional-seas-programme/biodiversity-and-ecosystems> (Accessed on 22/01/2026)

¹² Food Security., Available at <https://marine.copernicus.eu/explainers/why-ocean-important/food-security#:~:text=Ensuring%20the%20health%20and%20resilience,for%20over%203%20billion%20people> (Accessed on 22/01/2026)

¹³ World Bank Group., 'What You Need to Know About Blue Carbon' Available at <https://www.worldbank.org/en/news/feature/2023/11/21/what-you-need-to-know-about-blue-carbon> (Accessed on 22/01/2026)

¹⁴ Wood. K., Ashford. O., 'How Blue Carbon Can Tackle the Climate, Biodiversity and Development Crises' Available at <https://www.wri.org/insights/what-is-blue-carbon-benefits-for-people-planet> (Accessed on 22/01/2026)

¹⁵ The Ocean and Climate Change: A Story of Evolution and Urgency., Available at <https://www.agnesafrika.org/the-ocean-and-climate-change/#:~:text=Ocean%20Adaptation%20in%20Focus,surges%20while%20soaking%20up%20carbon> (Accessed on 22/01/2026)

¹⁶

extraction of natural resources from the ocean through deep sea mining and drilling, marine pollution, destruction of marine/coastal ecosystems and habitats, rapid urbanization, and climate change are posing significant threats to marine biodiversity¹⁷. These factors are fueling the loss of marine biodiversity undermining the healthy functioning of the ocean and its ability to provide the services that we need to survive and thrive¹⁸. In particular, marine biodiversity in Areas beyond National Jurisdiction (ABNJ) is facing mounting and unprecedented threats due to difficulties in governing this region¹⁹. It has been observed that ABNJ also referred to as high seas are usually far from coasts, making the sustainable management of the fisheries resources and biodiversity conservation in those areas extremely challenging²⁰. In light of these concerns, the *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement)*²¹ was recently adopted and entered into force on 17th January 2026 in order to strengthen the conservation of marine biodiversity in ABNJ/high seas.

This paper critically appraises the BBNJ Agreement. The paper argues that adoption of the BBNJ Agreement is historic moment towards enhancing efforts to conserve marine biodiversity in Areas beyond National Jurisdiction (ABNJ). The paper observes that for many decades, the global community has faced challenges in protecting biodiversity in ABNJ undermining the health of the ocean. It discusses some of the threats facing

¹⁷ United Nations Educational, Scientific and Cultural Organization., 'What is Ocean Biodiversity' Available at <https://oceanliteracy.unesco.org/ocean-biodiversity/> (Accessed on 22/01/2026)

¹⁸ United Nations., 'Marine Biodiversity and Ecosystems Underpin a Healthy Planet and Social Well-Being' Op Cit

¹⁹ Global Environment Facility., 'Areas Beyond National Jurisdiction' Available at <https://www.thegef.org/what-we-do/topics/areas-beyond-national-jurisdiction> (Accessed on 22/01/2026)

²⁰ Ibid

²¹ 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., New York, 19 June 2023

biodiversity in ABNJ. In light of these concerns, the paper argues that adoption of the BBNJ Agreement is vital in strengthening efforts to protect marine biodiversity in ABNJ for people and planet. It examines the salient features of the BBNJ Agreement and discusses its efficacy in protecting marine biodiversity in ABNJ. Further, the paper suggests how the BBNJ Agreement can be effectively implemented in order to strengthen ocean governance for people and planet.

2.0 Appraising the BBNJ Agreement

Conserving marine biodiversity in ABNJ has proven to be a difficult task for the global community. According to the International Union for Conservation of Nature (IUCN), nearly two-thirds of the ocean lies in ABNJ which are home to rich marine biodiversity including unique species and ecosystems²². It has been observed that this region reaches depths of over 10 kilometres and represents nearly 95 percent of the planet's total habitat by volume²³. ABNJ comprise those areas of the oceans for which no one nation has the specific or sole responsibility for management²⁴. It has been observed that ABNJ include the high seas and the seabed beyond the (extended) continental shelf of coastal states²⁵. ABNJ host some of the planet's most unique species which have evolved to survive extreme heat, cold, salinity, pressure and darkness²⁶.

Since ABNJ are located far beyond Exclusive Economic Zones (EEZs) of coastal states, governing this region has proven to be extremely difficult²⁷. For many decades, the ABNJ management framework has largely been sectoral and implemented by different global

²² International Union for Conservation of Nature., 'Governing areas beyond national jurisdiction' Available at <https://iucn.org/resources/issues-brief/governing-areas-beyond-national-jurisdiction> (Accessed on 22/01/2026)

²³ Ibid

²⁴ Food and Agriculture Organization of the United Nations., 'Common Oceans- ABNJ' Available at <https://openknowledge.fao.org/server/api/core/bitstreams/6127ef9f-7cd6-44c3-a5f4-bf017157a1eb/content> (Accessed on 22/01/2026)

²⁵ Ibid

²⁶ International Union for Conservation of Nature., 'Governing areas beyond national jurisdiction' Op Cit

²⁷ Food and Agriculture Organization of the United Nations., 'Common Oceans- ABNJ' Op Cit

and regional institutions²⁸. It has been argued that such fragmented legal, policy and institutional frameworks have exposed biodiversity in ABNJ vulnerable to growing threats²⁹. Biodiversity in ABNJ is facing mounting threats including pollution, destructive fishing practices, and irresponsible scientific research practices³⁰. It has been observed that threats to biodiversity in ABNJ include the intensification and expansion of human activities into previously inaccessible locations as well as the growing impacts of climate change and ocean acidification³¹. ABNJ ecosystems and habitats are subject to negative impacts from human activities in many sectors including shipping, marine pollution, deep sea fishing and mining³². These activities affect the health and resilience of the ocean with severe impacts on people and planet³³.

In light of the growing threats to ABNJ, the global community has adopted the BBNJ Agreement in order to strengthen ocean governance for people and planet. The BBNJ Agreement provides a harmonised global legal framework on the conservation and sustainable use of marine biodiversity of ABNJ³⁴. It recognises the urgent need to address, in a coherent and cooperative manner, biodiversity loss and degradation of ecosystems in ABNJ, due, in particular, to climate change impacts on marine ecosystems, such as warming and ocean deoxygenation, as well as ocean acidification, pollution, including plastic pollution, and unsustainable use of marine biodiversity and resources³⁵.

²⁸ Global Ocean Forum., 'Areas Beyond National Jurisdiction' Available at <https://globaloceanforum.com/areas-of-focus/areas-beyond-national-jurisdiction/> (Accessed on 22/01/2026)

²⁹ International Union for Conservation of Nature., 'Governing areas beyond national jurisdiction' Op Cit

³⁰ Global Ocean Forum., 'Areas Beyond National Jurisdiction' Op Cit

³¹ Rochette. J et al., 'Advancing governance of marine areas beyond national jurisdiction' Available at https://sustainabledevelopment.un.org/content/documents/5774Brief%20ABNJ%20GSDR_rev.pdf (Accessed on 22/01/2026)

³² Global Environment Facility., 'Areas Beyond National Jurisdiction' Op Cit

³³ Ibid

³⁴ 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., Op Cit

³⁵ Ibid

In order to ensure the conservation and sustainable use of marine biodiversity of ABNJ, the BBNJ Agreement requires the global community to be guided by the principles of Sustainable Development. These principles include polluter-pays principle, principle of the common heritage of humankind, principle of equity and the fair and equitable sharing of benefits arising from marine biodiversity in ABNJ, precautionary principle, an ecosystem approach, an integrated approach to ocean management, and the use of relevant traditional knowledge of indigenous peoples and local communities, where available³⁶. Further, it requires all states to embrace and strengthen international cooperation on key issues including marine scientific research, development and transfer of marine technology, knowledge exchange and institutional collaboration at the global, regional and sub-regional levels in order to bolster the conservation of biodiversity in ABNJ³⁷. The BBNJ Agreement also envisages the fair and equitable sharing of benefits accruing from marine genetic resources³⁸. It urges states to ensure the fair and equitable sharing of benefits arising from activities with respect to marine genetic resources and digital sequence information on marine genetic resources of ABNJ in order to ensure the conservation and sustainable use of marine biological diversity in these areas³⁹. Further, it urges all states to ensure that traditional knowledge associated with marine genetic resources in ABNJ that is held by indigenous peoples and local communities is only accessed with the Free, Prior and Informed Consent (FPIC) or approval and involvement of the indigenous peoples and local communities concerned⁴⁰.

In addition, the BBNJ Agreement sets out various tools and approaches to guide the global community on the conservation and sustainable use of marine biodiversity in ABNJ. These include establishment of area-based management tools such as marine

³⁶ Ibid, article 7

³⁷ Ibid, article 8 (1)

³⁸ Ibid, Part II

³⁹ Ibid article 9 (a)

⁴⁰ Ibid, article 13

protected areas; protecting, preserving, restoring and maintaining biological diversity and ecosystems in ABNJ; protection of cultural values; and supporting developing countries through capacity-building and the development and transfer of marine technology in order to enhance their ability in implementing the Agreement⁴¹. It also recognises the value of Environmental Impact Assessments as a valuable approach towards ensuring that activities in the ABNJ are assessed and conducted to prevent, mitigate and manage significant adverse impacts for the purpose of protecting and preserving the marine environment⁴². The Agreement establishes an Implementation and Compliance Committee for purposes of ensuring that its provisions are effected globally⁴³. In addition, the BBNJ Agreement envisages peaceful settlement of disputes related to its implementation. It urges parties to utilise negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice for purposes of managing disputes⁴⁴.

Adoption of the BBNJ Agreement is therefore a significant milestone for the global community in its efforts towards ensuring the conservation and sustainable use of marine biodiversity in ABNJ. According to the United Nations Environment Programme (UNEP), the BBNJ Agreement is well-poised to tackle the growing biodiversity crisis for ocean life outside EEZs⁴⁵. UNEP notes that ABNJ are rich in marine life but face increasing threats from climate change, pollution, deep sea mining and overfishing among other threats⁴⁶. Due to these concerns, it has been argued that if well implemented, the BBNJ Agreement can fill the gaps left by United Nations Convention on the Law of the Sea (UNCLOS) and foster sustainable management of biodiversity in high seas and the deep

⁴¹ Ibid

⁴² Ibid, Part IV

⁴³ Ibid, article 55

⁴⁴ Ibid, article 57

⁴⁵ United Nations Environment Programme., 'Agreement on Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement)' Available at <https://www.unep.org/resources/agreement-marine-biological-diversity-areas-beyond-national-jurisdiction-bbnj-agreement> (Accessed on 22/01/2026)

⁴⁶ Ibid

sea bed⁴⁷. The BBNJ Agreement establishes a coordinated and integrated legal framework that is crucial in strengthen ocean governance in ABNJ⁴⁸. It has been argued that a coordinated and integrated approach towards managing biodiversity in ABNJ has been elusive for many decades since these areas fall beyond the jurisdiction of any particular state thus exposing this region to unsustainable and unregulated practices⁴⁹. The United Nations notes that the BBNJ Agreement marks a vital step towards reversing destructive trends facing the ocean and restoring ocean health and biodiversity in ABNJ⁵⁰. The United Nations further points out that implementing the BBNJ Agreement is vital towards addressing the triple planetary crisis of climate change, biodiversity loss and pollution, and meeting various ocean-related global goals, including Sustainable Development Goal 14 which seeks to conserve and sustainably use the oceans, seas and marine resources for Sustainable Development⁵¹.

With the BBNJ Agreement coming into force on 17th January 2026, there is hope for the global community in ensuring the conservation and sustainable use of marine biodiversity in ABNJ. It has been observed that with its entry into force, the international community has for the first time, a legally binding and harmonised framework to conserve and sustainably use marine biodiversity in the high seas, areas that cover nearly

⁴⁷ Ibid

⁴⁸ World Economic Forum., 'Governing Marine Biodiversity Beyond National Jurisdiction: Roles and Opportunities for the Private Sector' Available at https://www3.weforum.org/docs/WEF_Governing_Marine_Biodiversity_Beyond_National_Jurisdiction_2024.pdf (Accessed on 22/01/2026)

⁴⁹ Ibid

⁵⁰ United Nations., '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' Available at <https://www.un.org/bbnjagreement/en> (Accessed on 22/01/2026)

⁵¹ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 22/01/2026)

half the planet but have long remained largely unregulated⁵². The BBNJ Agreement signals a collective commitment by all nations to restore the health, resilience, and productivity of the ocean and marine ecosystems, which are vital for biodiversity, climate regulation, food security, and human well-being⁵³. It is therefore imperative for all countries to ratify and strengthen efforts to ensure effective implementation of the BBNJ Agreement. In particular, it has been argued that there is need to ensure effective implementation of provisions on equitable sharing of benefits and transfer of marine technology which can pose challenges to accession, cooperation and compliance with the BBNJ Agreement⁵⁴.

3.0 Conclusion

With the BBNJ Agreement being activated, the global community has, for the first time, a legally binding and harmonised framework that can strengthen ocean governance in ABNJ. It is therefore necessary for all countries to ratify the BBNJ Agreement in order to bolster the conservation and sustainable use of marine biodiversity in ABNJ. It is also necessary to bolster international and regional cooperation in order to ensure effective implementation of the BBNJ Agreement including through tackling common challenges such as climate change, pollution, habitat degradation, overfishing and deep sea mining⁵⁵. There is also need to support the capacity of developing countries to implement the BBNJ Agreement through marine technology development and transfer and enhanced access to biodiversity finance⁵⁶. Strengthening monitoring and enforcement of the BBNJ Agreement can also enhance its efficacy by identifying opportunities, gaps and

⁵² United Nations Educational, Scientific and Cultural Organization., 'BBNJ Agreement Successfully Ratified' Available at <https://www.ioc.unesco.org/en/bbnj-agreement-successfully-ratified> (Accessed on 22/01/2026)

⁵³ Ibid

⁵⁴ Friedman. S., 'The BBNJ Agreement - new treaty, old challenges' Available at <https://cil.nus.edu.sg/blogs/the-bbnj-agreement-new-treaty-old-challenges/> (Accessed on 22/01/2026)

⁵⁵ United Nations., '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' Op Cit

⁵⁶ Ibid

challenges⁵⁷. Implementation of the BBNJ Agreement is therefore a significant milestone towards strengthening ocean governance for people and planet.

⁵⁷ Ibid

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