

## Indonesia's Role in Protecting High Seas Biodiversity: Challenges and Opportunities in Light of the Biodiversity Beyond National Jurisdiction Treaty

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**Abstract.** This research paper is a product of a doctrinal legal study that examines Indonesia's role in addressing challenges and opportunities related to marine biodiversity protection in international waters. As a leading maritime nation, Indonesia plays a crucial role in global efforts to protect ocean health, especially in the face of increasing threats such as overfishing, pollution, and climate change. These issues are regulated in international legal frameworks such as the United Nations Convention on the Law of the Sea (UNCLOS) and the Biodiversity Beyond National Jurisdiction (BBNJ) Treaty of 2023. By using a normative legal study approach, this study analyses international treaties, conventions, and academic literature to evaluate the application of the "Common Concern of Humankind" (CCH) doctrine in addressing biodiversity decline. Recognizing the degradation of high seas as CCH is essential to establishing an inclusive and effective legal framework, as it emphasizes shared global responsibilities in improving ocean governance. Leveraging its strategic position, Indonesia actively promotes the CCH principle through participation in BBNJ negotiations and regional initiatives such as the AIS Forum. While challenges remain, particularly in balancing economic interests with conservation efforts, Indonesia's unyielding commitment and leadership continue to push for sustainable ocean governance and high seas conservation.

**Keywords:** BBNJ Agreement, Common Concern of Humankind, Marine Biodiversity, Sustainable Ocean Management.

**Abstrak.** Artikel penelitian ini merupakan penelitian hukum doktrinal yang mengkaji peran Indonesia dalam menghadapi tantangan dan peluang terkait perlindungan keanekaragaman hayati laut di perairan internasional. Sebagai negara maritim terkemuka, Indonesia berperan penting dalam upaya global untuk melindungi kesehatan laut, terutama menghadapi ancaman yang semakin meningkat seperti penangkapan ikan berlebih, polusi, dan perubahan iklim. Isu-isu ini diatur dalam kerangka hukum internasional seperti Konvensi Perserikatan Bangsa-Bangsa tentang Hukum Laut (UNCLOS) dan Perjanjian Keanekaragaman Hayati di Luar Yurisdiksi Nasional (BBNJ) 2023. Dengan pendekatan kajian hukum normatif, penelitian ini menganalisis perjanjian internasional, konvensi, dan literatur akademik untuk mengevaluasi penerapan doktrin "Kepedulian Bersama bagi Umat Manusia" (Common Concern of Humankind/CCH) dalam mengatasi penurunan keanekaragaman hayati. Mengakui degradasi laut lepas sebagai CCH penting untuk membentuk kerangka hukum yang inklusif dan efektif, karena hal ini menekankan tanggung jawab bersama secara global dalam meningkatkan tata kelola laut. Dengan memanfaatkan posisinya yang strategis, Indonesia secara aktif mempromosikan prinsip CCH melalui partisipasi dalam negosiasi BBNJ dan inisiatif regional seperti Forum AIS. Meski tantangan tetap ada, terutama dalam menyeimbangkan kepentingan ekonomi dengan upaya konservasi, komitmen kuat dan kepemimpinan Indonesia terus mendorong tata kelola laut yang berkelanjutan dan pelestarian laut lepas.

**Kata kunci:** Common Concern of Humankind, Keanekaragaman Hayati Laut, Pengelolaan Laut Berkelanjutan, Perjanjian BBNJ.

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## INTRODUCTION

Indonesia, the world's largest archipelagic state with over 17,000 islands, a 54,000-kilometer coastline, and an Exclusive Economic Zone spanning approximately 6 million square kilometres, holds a critical role in global ocean governance and marine biodiversity conservation.<sup>1</sup> Its vast maritime domain, rich in resources, supports both national and global economies, positioning Indonesia as a key player in addressing environmental threats to the high seas, areas beyond national jurisdiction that cover two-thirds of the world's oceans.<sup>2</sup> These regions face significant challenges such as overfishing, pollution, and climate change,<sup>3</sup> which threaten global biodiversity and vital ecosystems crucial for food security and climate regulation. As a leading advocate for marine conservation,<sup>4</sup> notably in its own archipelagic setting and in regional and international debates concerning the oceans, Indonesia's engagement with the Common Concern of Humanity (CCH) principle is most clear in its advocacy and policy stances on marine resources and biodiversity.<sup>5</sup> Additionally, during the negotiations for the Biodiversity Beyond National Jurisdiction (BBNJ) agreement under the United Nations Convention on the Law of the Sea (UNCLOS), to strengthen legal frameworks for the protection of high seas biodiversity.<sup>6</sup>

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<sup>1</sup> Robert Cribb and Michele Ford, "Indonesia Beyond the Water's Edge: Managing an Archipelagic State," in *Indonesia as an Archipelago: Managing Islands, Managing the Seas* (Singapore: ISEAS-Yusof Ishak Institute, n.d.).

<sup>2</sup> Mariamalia Rodríguez Chaves and Kristina M. Gjerde, "Ocean Governance," in *The Ocean and Us*, ed. Farah Obaidullah (Cham: Springer International Publishing, 2023), 215–27, [https://doi.org/10.1007/978-3-031-10812-9\\_20](https://doi.org/10.1007/978-3-031-10812-9_20); Rebecca M. Jarvis and Tim Young, "Pressing Questions for Science, Policy, And Governance in The High Seas," *Environmental Science & Policy* 139 (January 2023): 177–84, <https://doi.org/10.1016/j.envsci.2022.11.001>.

<sup>3</sup> "From Decline to Recovery - A Rescue Package for the Global Ocean" (Oxford, United Kingdom: Global Ocean Commission, 2014), [https://www.some.ox.ac.uk/wp-content/uploads/2016/03/GOC\\_report\\_2015.July\\_2.pdf](https://www.some.ox.ac.uk/wp-content/uploads/2016/03/GOC_report_2015.July_2.pdf).

<sup>4</sup> Simon Foale et al., "Food Security and the Coral Triangle Initiative," *Marine Policy* 38 (March 2013): 174–83, <https://doi.org/10.1016/j.marpol.2012.05.033>; Muhammad Syukri et al., "Balancing Conservation and Community Welfare: Enhancing the Management of Marine Protected Areas in Indonesia," *Éditions Agence Française de Développement* p 1, no. 308 (2024): 1–43; "Indonesia Locally-Managed Marine Area Network," *LMMA Network* (blog), accessed May 3, 2025, <https://lmanetwork.org/indonesia/>; World Bank, "Oceans for Prosperity: Reforms for a Blue Economy in Indonesia" (Washington, D.C.: The World Bank, 2021); "Indonesia Sustainable Oceans Program," *World Bank Group* (blog), n.d., <https://www.worldbank.org/en/programs/indonesia-sustainable-oceans-program/overview>; "The 5th Our Ocean Conference Report: Our Ocean, Our Legacy" (Our Ocean World Resources Institute (WRI), 2018), <https://wordpress.ouroceanconference.org/wp-content/uploads/2024/11/OOC5-Commitments-2018-Indonesia.pdf>.

<sup>5</sup> Michael Bowman, "Environmental Protection and the Concept of Common Concern of Mankind," in *Research Handbook on International Environmental Law*, ed. Malgosia Fitzmaurice, David M. Ong, and Panos Merkouris (Cheltenham UK: Edward Elgar Publishing Limited, 2010).

<sup>6</sup> Gulardi Nurbintoro and Haryo Budi Nugroho, "Biodiversity Beyond National Jurisdiction: Current Debate and Indonesia's Interest," *Indonesia Law Review* 6, no. 3 (December 29, 2016): 283, <https://doi.org/10.15742/ilrev.v6n3.213>; Nichola A. Clark, "Institutional Arrangements for the New BBNJ Agreement: Moving Beyond Global, Regional, and Hybrid," *Marine Policy* 122 (December 2020): 104143, <https://doi.org/10.1016/j.marpol.2020.104143>.

Indonesia has played a pivotal role in advocating for the recognition of high seas biodiversity conservation as a CCH during the Biodiversity Beyond National Jurisdiction (BBNJ) negotiations.<sup>7</sup> This aligns with Indonesia's broader commitment to fostering international collaboration in marine conservation and sustainable ocean management. While the CCH principle, rooted in shared global responsibility, has gained traction in international law, its implementation poses challenges, particularly in navigating international politics, economic pressures, and the limitations of current legal frameworks.<sup>8</sup> Studies, including those by Bowling, Pierson, and Ratté (2016), highlight the need for an updated legal framework to bridge governance gaps, as existing regimes, like the common but differentiated responsibilities (CBDR) principle, often impose unequal burdens on developing states.<sup>9</sup> Research by Gulardi Nurbintoro and Haryo Budi Nugroho (2016) emphasizes Indonesia's critical role in addressing these gaps, advocating for developing nations' rights and the establishment of new treaties to govern high seas biodiversity.<sup>10</sup> Meanwhile, Jingchang Li and Wangwang Xing (2024) underscore the urgency of recognizing high seas decline as a global concern, driven by human-induced challenges such as warming, acidification, and pollution.<sup>11</sup> Collectively, these perspectives highlight Indonesia's leadership potential in shaping international ocean governance to ensure sustainable management of marine resources.

This paper examines Indonesia's noteworthy legal contributions to the advancement of the CCH principle within the framework of the conservation and sustainable use of marine biodiversity in BBNJ. It begins with a review of existing literature on high seas biodiversity decline, the evolution of the CCH principle, and the specific challenges

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<sup>7</sup> "Melalui Perjanjian BBNJ, Indonesia Dorong Percepatan Perlindungan Dan Pemanfaatan Laut Global," *Kementerian Luar Negeri Republik Indonesia* (blog), 2023, <https://kemlu.go.id/portal/id/read/4872/berita/melalui-perjanjian-bbnj-indonesia-dorong-percepatan-perlindungan-dan-pemanfaatan-laut-global>.

<sup>8</sup> Adam Perri, "The 'Common Concern of Humankind': Establishing Erga Omnes Obligations for Climate Change Responsibility in the ICJ's Forthcoming Advisory Opinion," *Maryland Law Review* 83, no. 4 (n.d.): 1352; Jingchang Li and Wangwang Xing, "A Critical Appraisal of the BBNJ Agreement Not to Recognise the High Seas Decline as a Common Concern of Humankind," *Marine Policy* 163 (May 2024): 106131, <https://doi.org/10.1016/j.marpol.2024.106131>.

<sup>9</sup> Chelsea Bowling, Elizabeth Pierson, and Stephanie Ratté, "The Common Concern of Humankind: A Potential Framework for a New International Legally Binding Instrument on the Conservation and Sustainable Use of Marine Biological Diversity in the High Seas" (United Nations, 2016), [https://www.un.org/depts/los/biodiversity/prepcom\\_files/BowlingPiersonandRatte\\_Common\\_Concern.pdf](https://www.un.org/depts/los/biodiversity/prepcom_files/BowlingPiersonandRatte_Common_Concern.pdf).

<sup>10</sup> Nurbintoro and Nugroho, "Biodiversity Beyond National Jurisdiction."

<sup>11</sup> Li and Xing, "A Critical Appraisal of the BBNJ Agreement Not to Recognise the High Seas Decline as a Common Concern of Humankind."

faced by archipelagic states like Indonesia, highlighting gaps in research regarding Indonesia's efforts within the BBNJ framework. The core analysis delves into Indonesia's leadership in international negotiations, domestic and international policy initiatives, and its collaborations with nations and organizations to advance marine conservation while navigating economic pressures and legal limitations. Findings from a doctrinal analysis evaluate Indonesia's influence on key legal instruments and agreements, exploring both the theoretical and practical implications of recognizing high seas biodiversity as a CCH for fostering international cooperation in ocean governance. The paper concludes by summarizing Indonesia's significant contributions, identifying areas for improvement in integrating the CCH principle into international law, and offering recommendations for future policies. Ultimately, it underscores Indonesia's potential as a leader in sustainable ocean management and its crucial role in shaping global efforts to protect marine biodiversity.

## METHODOLOGY

This research employs a doctrinal legal research methodology with statutory and conceptual approaches, focusing on analyzing the current legal environment surrounding the conservation of high seas biodiversity and the CCH principle as it is expressed in primary legal sources, including international agreements, treaties, and conventions, such as UNCLOS and the 2023 BBNJ Agreement. One aspect of this methodology that is especially pertinent for analyzing these formal legal documents in order to comprehend state obligations and the development of legal norms is the statutory approach. In addition, a conceptual approach serves as crucial to feed defining and examining the intricate and dynamic CCH principle, as well as its theoretical foundations, normative relevance, and possible applications to biodiversity in the high seas. In order to demonstrate Indonesia's influence, assess the efficacy of policies, and offer insights for improving sustainable ocean governance, a comparative and doctrinal analysis, along with a systematic review of these primary and secondary sources, enable the evaluation of legal frameworks, the identification of gaps, and an assessment of Indonesia's role in relation to other maritime nations.

## RESULT AND DISCUSSION

### High Seas Biodiversity: Legal Frameworks and Decline

The high seas<sup>12</sup> have historically been governed by principles of freedom and open access.<sup>13</sup> This legal framework, rooted in customary international law, has allowed activities such as fishing, shipping, and resource extraction to take place with minimal regulation. However, as scientific understanding of marine ecosystems has evolved, it has become clear that this legal approach is inadequate for addressing the growing threats to marine biodiversity.<sup>14</sup> High seas biodiversity is facing significant threats from overfishing, deep-sea mining, and pollution, as well as the effects of climate change,<sup>15</sup> resulting in significant declines in fish stocks, coral reefs, and other critical marine habitats.<sup>16</sup>

The 1982 UNCLOS, remains the primary legal instrument governing the high seas,<sup>17</sup> providing a framework for maritime zones, including the high seas, and establishing obligations for the conservation and sustainable use of marine resources.<sup>18</sup> However, UNCLOS lacks specific provisions for protecting marine biodiversity beyond national jurisdiction, creating a legal gap that is only recently being addressed.<sup>19</sup> The ongoing negotiations on a new international legally binding instrument under UNCLOS, known as The Agreement under the United Nations Convention on the Law of the Sea

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<sup>12</sup> The high seas as defined in Art.86 the United Nations Convention on the Law of the Sea (UNCLOS), include all areas of the sea that are not part of a state's internal waters, territorial sea, exclusive economic zone (EEZ), or archipelagic waters. In essence, the high seas are the enormous oceanic region outside of national borders; The House of Lords, "UNCLOS: The Law of the Sea in the 21st Century," 2nd Report of Session 2021–22 (International Relations and Defence Committee, 2022).

<sup>13</sup> Dutch jurist Grotius published *Mare Liberum* in 1609, criticizing the entire idea of national dominion over the seas on a wide range of grounds. *Mare Liberum*, which gained historical significance, made a strong and sincere plea for everyone's benefit to have full freedom of the high seas. The modern theory of the freedom of the seas was established with *Mare Liberum*. It was to become established law in the early 18th century and axiomatic by the 19th century.; Commander H. E. Shear, "Freedom of the Seas," *US Naval Institute Proceedings* 84, no. 6 (1958).

<sup>14</sup> Alice Miller, Elisa Morgera, and Dorothy Wanja Nyingi, "Summary of the Fourth Meeting of the Working Group on Marine Biodiversity Beyond Areas Of National Jurisdiction: 31 May - 3 June 2011," ed. Pamela and Pamela S. Chasek, *The International Institute for Sustainable Development (IISD)* 25, no. 70 (2011).

<sup>15</sup> E.M. De Santo et al., "Protecting Biodiversity in Areas Beyond National Jurisdiction: An Earth System Governance Perspective," *Earth System Governance* 2 (April 2019): 100029, <https://doi.org/10.1016/j.esg.2019.100029>.

<sup>16</sup> Hannah Marlen Lübker et al., "Imagining Sustainable Futures for The High Seas by Combining the Power of Computation and Narrative," *Npj Ocean Sustainability* 2, no. 1 (April 29, 2023): 4, <https://doi.org/10.1038/s44183-023-00012-y>.

<sup>17</sup> The House of Lords, "UNCLOS: The Law of the Sea in the 21st Century."

<sup>18</sup> Elizabeth Mendenhall, "Making the Most of What We Already Have: Activating UNCLOS to Combat Marine Plastic Pollution," *Marine Policy* 155 (September 2023): 105786, <https://doi.org/10.1016/j.marpol.2023.105786>.

<sup>19</sup> Mendenhall.

on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement),<sup>20</sup> aim to close this gap by developing comprehensive rules for the conservation and sustainable use of high seas biodiversity.<sup>21</sup>

The literature on high seas biodiversity conservation highlights the need for stronger governance to protect these ecosystems,<sup>22</sup> as current international frameworks lack the effective enforcement mechanisms.<sup>23</sup> Moreover, the high seas are often considered a “global commons,” since the high seas are outside of national borders, governance issues are inevitable. This results from strong economic pressures to exploit marine resources as well as a variety of frequently competing national interests related to navigation, resource exploitation, and security.<sup>24</sup> Scholars also stress the importance of equitable benefit-sharing, noting that developing nations, like Indonesia, have unique interests in ensuring that resources from the high seas are utilized in a way that benefits all humanity.

### **Common Concern of Humankind and Its Application to High Seas Biodiversity**

Understanding the Common Heritage of Humankind (CHH), CCH's predecessor, is crucial before delving into it. Although both deal with issues outside of national borders, CHH suggests shared ownership, benefit-sharing, and robust international governance when it comes to resources like the deep seabed.<sup>25</sup> Without necessarily implying common ownership, CCH, which is being used more and more for environmental issues like biodiversity, stresses shared responsibility and cooperation

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<sup>20</sup> BBNJ Agreement was adopted on 19 June 2023 “Agreement on Marine Biodiversity of Areas beyond National Jurisdiction,” *United Nations* (blog), n.d., <https://www.un.org/bbnjagreement/en>.

<sup>21</sup> Li and Xing, “A Critical Appraisal of the BBNJ Agreement Not to Recognise the High Seas Decline as a Common Concern of Humankind.”

<sup>22</sup> Jarvis and Young, “Pressing Questions for Science, Policy, And Governance in The High Seas.”

<sup>23</sup> Yi-Che Shih, “Ocean Governance in Practice: A Study of the Application of Marine Science and Technology Research Techniques to Maritime Law Enforcement in Taiwan,” *Marine Policy* 163 (May 2024): 106081, <https://doi.org/10.1016/j.marpol.2024.106081>.

<sup>24</sup> “Areas Beyond National Jurisdiction,” *The Global Environment Facility* (blog), accessed October 17, 2024, <https://www.thegef.org/what-we-do/topics/areas-beyond-national-jurisdiction>.

<sup>25</sup> Zakir Thomas, “Common Heritage to Common Concern: Preserving a Heritage and Sharing Knowledge,” *The Journal of World Intellectual Property* 8, no. 3 (May 2005): 241–70, <https://doi.org/10.1111/j.1747-1796.2005.tb00249.x>.

for protection.<sup>26</sup> Compared to CHH's resource-centric and ownership-tinged approach, CCH provides a more practical and less contentious framework for analyzing high seas biodiversity conservation because it is more in line with current international environmental law's emphasis on state collaboration for shared resources.

The concept of CCH has gained prominence in international environmental law as a principle that advocates for shared responsibility in addressing global environmental challenges.<sup>27</sup> First articulated in the context of climate change and environmental protection, CCH emphasizes that certain resources, such as the atmosphere, biodiversity, and the high seas, are of common interest to all humankind and should be conserved for the benefit of present and future generations.<sup>28</sup> The concept suggests that the management and protection of these global commons require international cooperation and collective action.<sup>29</sup>

The CCH approach has been advocated by scholars and policymakers to foster international collaboration in protecting high seas biodiversity.<sup>30</sup> Proponents of this approach argue that recognizing high seas biodiversity as a CCH would shift the focus from national interests to global cooperative ocean governance. The BBNJ negotiations have provided a platform for countries like Indonesia to promote the adoption of CCH as a guiding principle for the protection of marine biodiversity beyond national jurisdiction.

The concept of CCH was formally acknowledged in the 1988 UN General Assembly Resolution 43/53, which recognized climate change as a shared concern for all humanity, emphasizing that the climate is a vital element supporting life on Earth.<sup>31</sup> This concept is now expressed into treaties on climate change and biodiversity:

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<sup>26</sup> Judith Schäli, "Intergenerational Justice and the Concept of Common Concern in Marine Resource Allocation and Ocean Governance," in *Intergenerational Equity*, ed. Thomas Cottier, Shaheez Lalani, and Clarence Siziba (Brill | Nijhoff, 2019), 67–89, [https://doi.org/10.1163/9789004388000\\_006](https://doi.org/10.1163/9789004388000_006).

<sup>27</sup> Schäli.

<sup>28</sup> Thomas, "Common Heritage to Common Concern."

<sup>29</sup> Thomas.

<sup>30</sup> Jiajia Liu et al., "Transboundary Frontiers: An Emerging Priority for Biodiversity Conservation," *Trends in Ecology & Evolution* 35, no. 8 (August 2020): 679–90, <https://doi.org/10.1016/j.tree.2020.03.004>.

<sup>31</sup> The General Assembly, "A/RES/43/53, Protection of Global Climate for Present and Future Generations of Mankind" (UN Digital library, 1988).

- a) The 1992 United Nations Framework Convention on Climate Change (UNFCCC) states that 'change in the Earth's climate and its adverse effects are a CCH';<sup>32</sup>
- b) The 1992 Convention on Biological Diversity (CBD) affirms that 'the conservation of biological diversity is a CCH';<sup>33</sup> and
- c) The 2015 Paris Agreement reiterates that 'climate change is a CCH'.<sup>34</sup>

The Rio Declaration reinforced this understanding by establishing a framework for global environmental governance that incorporates the idea of common concern.<sup>35</sup> This concept, articulated in the preambles of these treaties, not only establishes obligations for the international community but also lays the groundwork for action by individual states,<sup>36</sup> recognizing varying responsibilities for developed and developing nations.<sup>37</sup> This principle is reflected in the 2015 Paris Agreement, which links the CCH to the commitments made by its members.<sup>38</sup>

In a ground-breaking interpretation, Judge Weeramantry of the International Court of Justice argued that international law is evolving into a new phase. This evolution calls for a shift in emphasis from merely prioritizing the interests of individual states.<sup>39</sup> He highlights the necessity for international law to support the wider objectives of humanity and the health of the planet. This perspective, illustrated in the *Gabcikovo-Nagymaros* case, indicates that the concept of CCH represents a shared global challenge that demands collective action from the global community.<sup>40</sup> This principle goes beyond the interests of single states, advocating for a unified response to urgent

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<sup>32</sup> "United Nations Framework Convention on Climate Change" (United Nations, 1992).

<sup>33</sup> "Convention on Biological Diversity" (UNEP, 1992).

<sup>34</sup> "Paris Agreement to the United Nations Framework Convention on Climate Change" (UNFCCC, 2015).

<sup>35</sup> Comment By Danae Azaria, "Patricia W. Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment*, 2009," in *British Contributions to International Law, 1915-2015 (Set)*, ed. Jill Barrett and Jean-Pierre Gauci (Brill | Nijhoff, 2020), 2973–3024, [https://doi.org/10.1163/9789004386242\\_116](https://doi.org/10.1163/9789004386242_116).

<sup>36</sup> Dinah Shelton, "Common Concern of Humanity," in *Globalization and Common Responsibilities of States*, 1st ed. (Routledge, 2013).P.83-86

<sup>37</sup> Duncan French, "Developing States and International Environmental Law: The Importance of Differentiated Responsibilities," *International and Comparative Law Quarterly* 49, no. 1 (January 2000): 35–60, <https://doi.org/10.1017/S0020589300063958>; Jutta Brunnée and Charlotte Streck, "The UNFCCC as a Negotiation Forum: Towards Common but More Differentiated Responsibilities," *Climate Policy* 13, no. 5 (September 2013): 589–607, <https://doi.org/10.1080/14693062.2013.822661>.

<sup>38</sup> "Paris Agreement to the United Nations Framework Convention on Climate Change."

<sup>39</sup> Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia), Separate Opinion of Vice-President Weeramantry (ICJ 1997).

<sup>40</sup> Anirudh Shingal et al., "The Principle of Common Concern and Climate Change," *Archiv des Völkerrechts* 52, no. 3 (2014): 293, <https://doi.org/10.1628/000389214X14186502494027>.



issues. As a result, international cooperation, once seen as a privilege for states addressing environmental concerns, is reframed as a collective responsibility rooted in the notion of common concern.

The CCH principle holds potential to transform international law on high seas biodiversity, but its implementation faces challenges. Critics point to its vagueness and lack of clear legal obligations, while concerns about enforcement arise due to economic and geopolitical interests in exploiting the high seas. However, the literature suggests that with strong legal and institutional support, CCH could foster greater global cooperation in marine conservation.

### **Indonesia's Role in Promoting High Seas Biodiversity as a CCH**

Indonesia has been actively engaged in establishing comprehensive legal frameworks and regulations to safeguard its marine environment and sustainably manage its resources.<sup>41</sup> The country has implemented various laws and policies to protect biodiversity, fisheries, and seabed exploration, ensuring that these activities are conducted in harmony with the principles of environmental sustainability.<sup>42</sup> Through these efforts, Indonesia aims to strike a balance between economic development and the preservation of its rich marine ecosystems. The Indonesian Minister of Marine Affairs and Fisheries Regulation 2009 concerning the Capture and/or Transportation of Fish serves as a domestic implementation of Indonesia's commitment to regional fisheries management organizations. This regulation specifically governs Indonesian individuals, legal entities, and Indonesian-flagged fishing vessels engaged in fishing activities on the high seas.

The regulation outlines licensing requirements for high seas fishing, as well as the rights and obligations of these entities and vessels.<sup>43</sup> Several provisions in this

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<sup>41</sup> Naimah Lutfi Talib et al., "Three Centuries of Marine Governance in Indonesia: Path Dependence Impedes Sustainability," *Marine Policy* 143 (September 2022): 105171, <https://doi.org/10.1016/j.marpol.2022.105171>.

<sup>42</sup> "The Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. PER.03/MEN/2009 on the Capture and/or Transportation of Fish," Pub. L. No. PER.03/MEN/2009 (2009); "Ministerial Regulation No. PER.12/MEN/2012 on High Seas Fishing," Pub. L. No. PER.12/MEN/2012 (2012); "Law No. 32 of 2014 on Marine Affairs," Pub. L. No. 32 of 2014 (2014), 32; "Presidential Regulation Number 16 of 2017 on Indonesia's Maritime Policy," Pub. L. No. Number 16 of 2017 (2017); "Presidential Regulation Number 34 of 2022 on the Indonesia Maritime Policy Action Plan for 2021-2025," Pub. L. No. Number 34 of 2022 (2022).

<sup>43</sup> The Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. PER.03/MEN/2009 on the Capture and/or Transportation of Fish.

regulation have been aligned with ratified international instruments, including the mandatory registration of Indonesian-flagged fishing and carrier vessels with regional fisheries management organizations and the requirement for foreign-flagged fishing and carrier vessels to obtain permits from local Indonesian port authorities. These provisions are deemed essential for the conservation of high seas fisheries resources.

Ministerial Regulation 2012 on High Seas Fishing regulates all individuals or Indonesian-flagged vessels engaged in fishing or fish transportation on the high seas.<sup>44</sup> This regulation primarily governs administrative matters such as registration, licensing, procurement, and physical inspection of fishing vessels.<sup>45</sup> Furthermore, it mandates conservation measures for high seas fisheries resources. Chapter IX of this regulation outlines specific conservation actions, including prohibitions on certain fish species, mandatory conservation measures for vessels holding Fishing Permits in the Indonesian Exclusive Economic Zone, such as releasing live bycatch, recording and reporting dead bycatch to the Director General through the designated port authority as stated in the permit.<sup>46</sup>

Article 11 of Part Three, concerning the High Seas and the International Seabed Area, of the Republic of Indonesia Law Number 32 of 2014 on Marine Affairs, stipulates that the Unitary State of the Republic of Indonesia has the right to conserve and manage biological resources on the high seas. The State also has an obligation on the high seas to prevent and control marine pollution in cooperation with relevant states or international organizations.<sup>47</sup> Conservation and management of biological resources shall be carried out in accordance with the provisions of domestic laws and international law.

The Indonesia Maritime Axis, outlined in Presidential Regulation No. 16 of 2017, aims to establish Indonesia as a sovereign, advanced, and self-reliant maritime nation contributing to regional and global peace. The sustainable use of marine resources is prioritized to ensure long-term benefits, supported by policies on maritime spatial

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<sup>44</sup> Ministerial Regulation No. PER.12/MEN/2012 on High Seas Fishing.

<sup>45</sup> Ministerial Regulation No. PER.12/MEN/2012 on High Seas Fishing.

<sup>46</sup> Ministerial Regulation No. PER.12/MEN/2012 on High Seas Fishing.

<sup>47</sup> Law No. 32 of 2014 on Marine Affairs.

planning and environmental protection.<sup>48</sup> The Indonesia Marine Health Index (IKLI) is used to measure the health of marine ecosystems within specific areas and times.<sup>49</sup>

Presidential Regulation No. 34 of 2022 on the Indonesia Maritime Policy Action Plan 2021-2025 conceptualizes Indonesia's maritime development as a comprehensive approach that extends beyond the maritime sector.<sup>50</sup> This development policy is grounded in six fundamental principles: the Nusantara Concept, sustainable development, blue economy, integrated and transparent management, participation, and equity.<sup>51</sup> In 2024, the International Union for Conservation of Nature (IUCN) actively engaged in two significant events in Jakarta, Indonesia.<sup>52</sup> These events solidified IUCN's role in fostering marine conservation within the country. The Coral Bond Project Preparation Mission and the IUCN Green List Workshop highlighted the alignment between global biodiversity frameworks and local conservation initiatives, reflecting Indonesia's dedication to equitable and effective management of marine protected areas (MPAs).<sup>53</sup> Key stakeholders, including representatives from Indonesia's Directorate General of Marine Spatial Planning, BAPPENAS, the Indonesia Environment Fund, and the World Bank, convened for these events.<sup>54</sup> The mission centered on exploring the groundwork for the Coral Bond, a novel financial mechanism proposed to support marine conservation. The Coral Bond stands as a pioneering financial instrument designed to attract private investment for the preservation of coral reef ecosystems within Indonesia's marine protected areas (MPAs).

Indonesia's advocacy for high seas biodiversity as a CCH highlights its commitment to global conservation and equitable resource management. Through the BBNJ negotiations, Indonesia seeks a legal framework that balances responsibilities and

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<sup>48</sup> Presidential Regulation Number 16 of 2017 on Indonesia's Maritime Policy.

<sup>49</sup> Presidential Regulation Number 16 of 2017 on Indonesia's Maritime Policy.

<sup>50</sup> Presidential Regulation Number 34 of 2022 on the Indonesia Maritime Policy Action Plan for 2021-2025.

<sup>51</sup> Presidential Regulation Number 34 of 2022 on the Indonesia Maritime Policy Action Plan for 2021-2025.

<sup>52</sup> Siska Sihombing, "Bridging Global and Local Efforts: IUCN's Upcoming Support in Indonesia's Effective Marine Conservation Through the Coral Bond Initiative," *IUCN* (blog), September 4, 2024, <https://iucn.org/blog/202409/bridging-global-and-local-efforts-iucns-upcoming-support-indonesias-effective-marine>.

<sup>53</sup> Sihombing.

<sup>54</sup> Sihombing.

benefits, supporting both international collaboration and the needs of developing nations reliant on marine resources.

Biermann explores the legal implications of the CCH by comparing it to concepts such as shared resources and the common heritage of mankind. Shelton points out that issues categorized as common concerns surpass national borders and challenge traditional ideas of state sovereignty. Cottier suggests that the common concern concept provides a framework for international treaty negotiations concerning activities or resources that remain under the sovereign control of individual states.

Although distinct from other concepts like common resources or the common heritage of mankind, the legal framework surrounding common concern remains somewhat unclear. Biermann describes shared resources as assets that states can exploit, while certain resources, such as those in the Area, are recognized as part of the common heritage of mankind due to their location in international spaces.<sup>55</sup> Shelton further notes that common concerns are not tied to specific geographic regions but can emerge within or beyond national jurisdictions.<sup>56</sup> Currently, the legal implications of the CCH are primarily found in specific treaties and legal doctrines within international environmental law. By the end of the 20<sup>th</sup> century, the Convention on Biological Diversity (1992) and the United Nations Framework Convention on Climate Change (1992) formally recognized the conservation of biological diversity and the mitigation of climate change as shared global challenges. More recently, the Paris Agreement (2015) reaffirmed climate change as a matter of collective concern.

Recent scholarship increasingly advocates for considering ocean governance as a common concern in international law, which encompasses diverse issues, including marine conservation, fisheries management, maritime security, and resource exploitation.<sup>57</sup> The growing human population and economic activities have intensified pressure on marine ecosystems, necessitating a coordinated approach to ocean governance.<sup>58</sup> As the oceans play a vital role in climate regulation, biodiversity,

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<sup>55</sup> Thomas, "Common Heritage to Common Concern."

<sup>56</sup> Shelton, "Common Concern of Humanity."

<sup>57</sup> "From Decline to Recovery - A Rescue Package for the Global Ocean"; Chaves and Gjerde, "Ocean Governance."

<sup>58</sup> "From Decline to Recovery - A Rescue Package for the Global Ocean."

and livelihoods, international cooperation is crucial to ensure sustainable and equitable use of these shared resources.<sup>59</sup> The United Nations Convention on the Law of the Sea (UNCLOS) provides a foundational legal framework, but the challenges of ocean governance remain complex and require ongoing global collaboration.<sup>60</sup> Scovazzi argues that protecting vulnerable high seas areas aligns with the concept of common concern.<sup>61</sup> Bowling emphasizes that the CCH should be a guiding principle in efforts to conserve high seas biodiversity.<sup>62</sup> Schali asserts that ocean governance and marine environmental protection are encompassed within the concept of common concern, offering states a legal foundation to assume responsibility for protecting the marine environment beyond their territorial waters.<sup>63</sup> Singh and Ort similarly view marine environmental protection as a shared concern, advocating for the rational and sustainable use of oceans and their resources.<sup>64</sup> Additionally, Schali highlights ongoing legal efforts to address marine litter and plastic pollution as CCH.<sup>65</sup>

### **Challenges in Balancing National and Global Interests on Common Concern of Humankind during BBNJ Legislation**

One of the most significant challenges Indonesia faces is balancing its national interests with its global conservation goals. The country's economic reliance on marine resources means that it must carefully navigate the trade-offs between conservation and development. However, Indonesia's involvement in international forums

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<sup>59</sup> Tanya Brodie Rudolph et al., "A Transition to Sustainable Ocean Governance," *Nature Communications* 11, no. 1 (July 17, 2020): 3600, <https://doi.org/10.1038/s41467-020-17410-2>.

<sup>60</sup> Keyuan Zou and Anastasia Telesetsky, "UNCLOS and Its Contributions to the Development of International Law: An Editorial Note," *Marine Policy* 155 (September 2023): 105703, <https://doi.org/10.1016/j.marpol.2023.105703>.

<sup>61</sup> Tullio Scovazzi, "Marine Protected Areas on the High Seas: Some Legal and Policy Considerations," *The International Journal of Marine and Coastal Law* 19, no. 1 (2004): 1–17, <https://doi.org/10.1163/157180804773788646>.

<sup>62</sup> Bowling, Pierson, and Ratté, "The Common Concern of Humankind: A Potential Framework for a New International Legally Binding Instrument on the Conservation and Sustainable Use of Marine Biological Diversity in the High Seas."

<sup>63</sup> Schäli, "Intergenerational Justice and the Concept of Common Concern in Marine Resource Allocation and Ocean Governance."

<sup>64</sup> Pradeep A. Singh and Mara Ort, "Law and Policy Dimensions of Ocean Governance," in *YOU MARES 9 - The Oceans: Our Research, Our Future*, ed. Simon Jungblut, Viola Liebig, and Maya Bode-Dalby (Cham: Springer International Publishing, 2020), 45–56, [https://doi.org/10.1007/978-3-030-20389-4\\_3](https://doi.org/10.1007/978-3-030-20389-4_3).

<sup>65</sup> Schäli, "Intergenerational Justice and the Concept of Common Concern in Marine Resource Allocation and Ocean Governance."

suggests that it views these two objectives as complementary, rather than mutually exclusive.

In this context, the principle of CCH provides a valuable framework for addressing these challenges. By promoting shared responsibilities for high seas biodiversity, CCH allows countries like Indonesia to collaborate with other nations in conserving marine ecosystems while still benefiting from the sustainable use of these resources.

Forum	Common Concern of Humankind proposed
Fourth Meeting of the BBNJ Working Group (31, May - 3, June 2011)	South Africa: warning the Nagoya Protocol to evolve as a home for MGRs beyond national jurisdiction. <sup>66</sup>
Ninth Meeting of the BBNJ Working Group (20 - 23, January 2015)	Venezuela: noting a new instrument on BBNJ could be developed under the CBD. Switzerland: recommending referring to the CBD, including the Nagoya Protocol, and UNEP. <sup>67</sup>
Second Session of the BBNJ Preparatory Committee (26, August - 9, September 2016)	IUCN: suggesting including the common concern of humankind. <sup>68</sup>
Third Session of the BBNJ Preparatory Committee (27, March - 7, April 2017)	IUCN: emphasizing the principle of common concern of humankind,

<sup>66</sup> Miller, Morgera, and Nyngi, "Summary of the Fourth Meeting of the Working Group on Marine Biodiversity Beyond Areas Of National Jurisdiction: 31 May - 3 June 2011."

<sup>67</sup> Tallash Kantai, Alice Miller, and Elisa Morgera, "Summary of the Ninth Meeting of the Working Group on Marine Biodiversity Beyond Areas of National Jurisdiction: 20-23 January 2015," *The International Institute for Sustainable Development (IISD)* 25, no. 94 (2015).

<sup>68</sup> Elisa Morgera et al., "Summary of the Second Session of The Preparatory Committee on Marine Biodiversity Beyond Areas of National Jurisdiction: 26 August - 9 September 2016," *The International Institute for Sustainable Development (IISD)* 25, no. 118 (2016).

stressing CB&TT as aspects of the common concern of humankind.<sup>69</sup>

Fourth Session of the BBNJ Indonesia: emphasizing inter-  
Preparatory Committee (10 – generational equity, fair and equitable  
21, July 2017) benefit-sharing, and common concern  
of humankind.<sup>70</sup>

First Session of the BBNJ IUCN: suggesting developing sectoral  
Intergovernmental Conference and cross-sectoral regional biodiversity  
(4 – 17, September 2018) strategies and action plans based on  
CBD Article 6 and the UN Fish Stocks  
Agreement.<sup>71</sup>

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Table 1. The concept of "Common Concern of Humankind" was proposed during the BBNJ legislation.

The International Union for Conservation of Nature (IUCN) has consistently underscored the idea that preserving biodiversity is a shared responsibility for all of humanity.<sup>72</sup> The IUCN has pointed out several key factors related to this collective concern, including the necessity for publicly accessible information, legal clarity, capacity building and technology transfer (CB&TT), as well as enhanced transparency.<sup>73</sup> During the third session of the Preparatory Committee, IUCN argued that the principle of the CCH falls short of addressing the issue comprehensively. Indonesia echoed this

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<sup>69</sup> Elisa Morgera et al., "Summary of the Third Session of The Preparatory Committee on Marine Biodiversity Beyond Areas of National Jurisdiction: 27 March – 7 April 2017," *The International Institute for Sustainable Development (IISD)* 25, no. 129 (2017).

<sup>70</sup> Elisa Morgera et al., "Summary of the Fourth Session of The Preparatory Committee on Marine Biodiversity Beyond Areas of National Jurisdiction: 10-21 July 2017," *The International Institute for Sustainable Development (IISD)* 25, no. 141 (2017).

<sup>71</sup> Elisa Morgera et al., "Summary of the First Session of The Intergovernmental Conference on An International Legally Binding Instrument Under the UN Convention on The Law of The Sea on The Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction: 4-17 September 2018," *The International Institute for Sustainable Development (IISD)* 25, no. 179 (2018).

<sup>72</sup> Morgera et al., "Summary of the Fourth Session of The Preparatory Committee on Marine Biodiversity Beyond Areas of National Jurisdiction: 10-21 July 2017."

<sup>73</sup> Morgera et al., "Summary of the Second Session of The Preparatory Committee on Marine Biodiversity Beyond Areas of National Jurisdiction: 26 August – 9 September 2016."

sentiment in its remarks during the fourth session of the Preparatory Committee.<sup>74</sup> However, since the second session of the Intergovernmental Conference, the principle of the common heritage of humankind has gained prominence, as specified in Article 5 of the Draft BBNJ Agreement.<sup>75</sup> It is regrettable that the concept of the CCH was ultimately excluded from the final BBNJ Agreement.

### Opportunities for Future Leadership

As a major maritime state, Indonesia has the potential to play a leadership role in high seas governance. The BBNJ negotiations provide a platform for Indonesia to showcase its commitment to marine conservation, and its advocacy for the CCH principle demonstrates its ability to influence international legal frameworks. This commitment leads to a high-level meeting of the Archipelagic and Island States (AIS) Forum.<sup>76</sup> The Summit launched with the 2018 Manado Joint Declaration, unites 51 nations to address shared challenges such as ocean resources, climate change, marine pollution, and fisheries.<sup>77</sup> By hosting the AIS Summit, Indonesia reinforces its position as a maritime power, leveraging its historical contributions, such as the 1957 Djuanda Declaration and its role in establishing UNCLOS,<sup>78</sup> while advancing sustainable ocean management through collaborative programs, joint research, and economic empowerment initiatives for MSMEs and startups. Additionally, Indonesia hosted the Indian Ocean Rim Association Summit in 2017.<sup>79</sup>

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<sup>74</sup> Morgera et al., “Summary of the Third Session of The Preparatory Committee on Marine Biodiversity Beyond Areas of National Jurisdiction: 27 March – 7 April 2017.”

<sup>75</sup> Morgera et al., “Summary of the Second Session of The Preparatory Committee on Marine Biodiversity Beyond Areas of National Jurisdiction: 26 August – 9 September 2016.”

<sup>76</sup> Thomas Benmetan, “Press Release AIS Forum Summit 2023: The 2023 High Level Meeting of AIS Forum Calls for Stronger Solidarity to Address Maritime Problems,” 2023, <https://kemenparekraf.go.id/en/articles/press-release-ais-forum-summit-2023-the-2023-high-level-meeting-of-ais-forum-calls-for-stronger-solidarity-to-address-maritime-problems>.

<sup>77</sup> Benmetan; “Melalui AIS Forum, KJA Dan Rumpon Pertama Kali Dikenalkan Ke Samudera Pasifik Dan Madagaskar,” *Kementrian Koordinator Bidang Kemaritiman Dan Investasi* (blog), October 10, 2023, <https://maritim.go.id/detail/melalui-ais-forum-kja-dan-rumpon-pertama-kali-dikenalkan-ke-samudera-pasifik-dan-madagaskar>.

<sup>78</sup> Yuda B. Tangkilisan, “Sovereignty on Seas: The Making of the Declaration of Djuanda 1957,” in *Proceedings of the Fourth Asia-Pacific Research in Social Sciences and Humanities, Arts and Humanities Stream (AHS-APRISH 2019)*, ed. Shuri Mariasih Gietty Tambunan, vol. 753, Advances in Social Science, Education and Humanities Research (Paris: Atlantis Press SARL, 2023), 18–27, [https://doi.org/10.2991/978-2-38476-058-9\\_3](https://doi.org/10.2991/978-2-38476-058-9_3).

<sup>79</sup> “Indian Ocean Rim Association (IORA),” *Ministry of Foreign Affairs of The Republic of Indonesia* (blog), July 23, 2024, [https://kemlu.go.id/portal/en/read/167/halaman\\_list\\_lainnya/indian-ocean-rim-association-iora](https://kemlu.go.id/portal/en/read/167/halaman_list_lainnya/indian-ocean-rim-association-iora).



This leadership aligns with Indonesia's focus on the "blue economy," which already contributes 3.6% of its GDP, with projections to grow significantly.<sup>80</sup> The summit also highlights Indonesia's commitment to climate change mitigation, crucial given the rising sea levels threatening its archipelago, including Jakarta.<sup>81</sup> By fostering partnerships with AIS members, such as Japan, Indonesia can address regional challenges like tsunamis and extreme weather events.<sup>82</sup> Through the AIS Forum, headquartered in Indonesia, the nation continues to champion global collaboration, advocating for marine conservation, sustainable practices, and resilience against climate impacts.

By leveraging its unique perspective, expertise, and regional influence, Indonesia can play a pivotal role in promoting sustainable ocean management, addressing global challenges, and ensuring the long-term health of the marine environment. The AIS Forum, headquartered in Indonesia, has facilitated collaborative initiatives among archipelagic and island nations. Fostering solidarity and cooperation through joint research and development projects, initiatives to accelerate and empower micro, small, and medium-sized enterprises (MSMEs) and startups in archipelagic and island countries.<sup>83</sup> The AIS Forum has organized several high-level meetings to strengthen cooperation among participating nations, continues to serve as a platform for mutual support and collaboration, irrespective of the size, socioeconomic conditions, or development levels of its members.<sup>84</sup> The forum provides solid ground for Indonesia to foster regional cooperation among AIS Forum members to address shared

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<sup>80</sup> Deasy Pane, *Blue Economy: Development Framework for Indonesia's Economic Transformation* (Jakarta: Ministry of National Development Planning/National Development Planning Agency (Bappenas), 2022); D A A Sari and S Muslimah, "Blue Economy Policy for Sustainable Fisheries in Indonesia," *IOP Conference Series: Earth and Environmental Science* 423, no. 1 (January 1, 2020): 012051, <https://doi.org/10.1088/1755-1315/423/1/012051>.

<sup>81</sup> "AIS Forum Summit in 2023 to Sharpen Global Strategy on Climate Change," *Sekretariat Kabinet Republik Indonesia* (blog), June 10, 2023, <https://setkab.go.id/en/ais-forum-summit-in-2023-to-sharpen-global-strategy-on-climate-change/>; Cribb and Ford, "Indonesia Beyond the Water's Edge: Managing an Archipelagic State."

<sup>82</sup> "AIS Forum Summit in 2023 to Sharpen Global Strategy on Climate Change."

<sup>83</sup> "Melalui AIS Forum, KJA Dan Rumpon Pertama Kali Dikenalkan Ke Samudera Pasifik Dan Madagaskar"; "Indonesian President Leads AIS Forum Summit Today," *Ministry of Foreign Affairs of The Republic of Indonesia* (blog), November 10, 2023, <https://kemlu.go.id/portal/en/read/5364/berita/indonesian-president-leads-ais-forum-summit-today>; "AIS Forum Summit in 2023 to Sharpen Global Strategy on Climate Change"; "Indonesia Officially Kicks Off First-Ever AIS Forum Summit," *Sekretariat Kabinet Republik Indonesia* (blog), November 10, 2023, <https://setkab.go.id/en/indonesia-officially-kicks-off-first-ever-ais-forum-summit/>.

<sup>84</sup> Benmetan, "Press Release AIS Forum Summit 2023: The 2023 High Level Meeting of AIS Forum Calls for Stronger Solidarity to Address Maritime Problems"; "Indonesia Officially Kicks Off First-Ever AIS Forum Summit."

challenges and promote sustainable ocean management while significantly raising awareness of the impacts of climate change on the high seas.

## CONCLUSION

The Indonesian government has played a significant role in promoting the recognition of high seas biodiversity conservation as a CCH within international legal frameworks. Through its active participation in the Biodiversity Beyond National Jurisdiction (BBNJ) negotiations, Indonesia has consistently advocated for the incorporation of the CCH principle into international agreements. This advocacy reflects Indonesia's commitment to ensuring that the conservation of high seas biodiversity is recognized as a shared responsibility among all nations. Now, Indonesia has the chance to turn this advocacy into tangible action. Indonesia may leverage its significant experience in managing its own expansive archipelagic waters as a major maritime nation to support the BBNJ Treaty's actual implementation. This entails actively taking part in the development of area-based management tools, supporting programs aimed at enhancing other countries' capacity, and encouraging scientific cooperation for the purpose of monitoring and comprehending high seas ecosystems.

However, Indonesia faces several challenges in this endeavor. Legal and institutional gaps remain significant barriers to the effective conservation of high seas biodiversity. Indonesia may strategically prioritize strengthening its domestic legal frameworks to conform to the BBNJ Treaty, thereby establishing a precedent for national implementation, while cognizant of the existing legal and institutional gaps, resource limitations, and geopolitical considerations. Additionally, Indonesia may strengthen its potential to contribute a significant contribution to the global body of knowledge regarding high seas biodiversity and create novel conservation tactics by investing in marine scientific research and technology. In the end, Indonesia will need to show how a significant maritime nation can successfully support the governance and preservation of our common ocean heritage by moving from being a vocal advocate to an active implementer and a cooperative leader.

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## COMPETING INTEREST

There is no conflict of interest in the publication of this article.

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