



EIA and Overarching Provisions

**Side Event: High seas fisheries in a new international legally binding instrument
PrepCom 2 (26 August-9 September 2016)**

**New York
7 September 2016**

Glen Wright

*“a process of evaluating
the likely environmental impacts,
including cumulative impacts,
of a proposed project or development”*



Existing obligations - General

- **UNCLOS**
 - “States have the obligation to protect and preserve the marine environment” (art. 192)
 - “States shall... endeavour... to observe, measure, evaluate and analyse... the risks or effects of pollution of the marine environment.” (art. 204)
 - “States shall keep under surveillance the effects of any activities which they permit or in which they engage” (art. 204)
 - “States shall publish reports of the results... or provide such reports at appropriate intervals to the competent international organizations...” (art. 205)

*“When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, **assess the potential effects of such activities on the marine environment** and shall communicate reports of the results of such assessments”*

- UNCLOS, Art. 206



Existing obligations – Fisheries (1)

- **UNFSA** (arts. 5c, 5d, 6.6, 10.d)
 - RFMOs must apply precautionary approach in conservation & management of straddling & highly migratory fish stocks
 - Includes assessing the impacts of fishing & other human activities, as well as environmental factors, on target & non-target species.
 - Parties must adopt cautious conservation & management measures for new/exploratory fisheries until long-term impacts can be assessed



Existing obligations – Fisheries (2)

- **UNGA 61/105 (2006)**
 - States and RFMOs must conduct impact assessments to determine whether significant adverse impacts (SAIs) will occur to vulnerable marine ecosystems (VMEs); and
 - Ensure proper management/prohibition where SAIs are likely
- **UNGA 64/72 (2009)**
 - Reaffirmed commitments and requested all flag States to regulate bottom fisheries and to ensure that vessels do not conduct bottom fishing until impact assessments have been carried out
- **FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas (2009)**

Gaps in EIA Obligations

- **UNCLOS** EIA obligations are general in nature and have not been implemented.
- **UNFSA** only directly applies to:
 - Straddling and highly migratory fish stocks; and
 - States who are party to the Agreement.
- **UNGA** resolutions are:
 - Soft law;
 - Specifically designed to limit SAIs to VMEs;
 - Not designed to account for cumulative impacts or the impacts of overfishing and human activities; and
 - Not aimed at the conservation and sustainable use of marine biodiversity in ABNJ in general
- **Implementation gaps**

What can a new instrument do? (1)

- Strengthen existing obligations under international law by:
 1. Requiring EIA when fishing can cause harm to marine biodiversity, taking into account both conservation & sustainable use.
 2. Stipulating that new fishing activities in ABNJ (in both the water column & on the seafloor) only take place following EIA.
 3. Requiring EIA establish that fishing can be managed in a way that:
 - Prevents and minimises future environmental impacts;
 - Ensures long-term sustainability (target & non-target); and
 - Will have minimal incidental impacts on surrounding marine ecosystems/marine biodiversity.

What can a new instrument do? (2)

4. Provide for assessment of current fishing activity (with a timeline).
5. Introduce formal reporting & monitoring mechanism (either at the global or regional level).
6. Provide a detailed follow-up procedure.
7. Require continuous monitoring & regular review.
8. Institute a process to review the assessment where specific new scientific knowledge has become available (and/or require assessment upon introduction of new technologies or gear, or an increase in fishing effort).
9. Develop an information-sharing mechanism to ensure that assessments are based on the best scientific data available.

What can a new instrument do? (3)

10. Establish a legal framework for EIAs and strategic environmental assessments (SEAs) to assess cumulative impacts, and allow for impact assessments across sectors.



Overarching provisions (1) - general

- New instrument could:
 - Enable regular global review & reporting.
 - Provide default regime for precautionary fisheries management in ABNJ where gaps remain in geographical coverage by RFMOs.

Overarching provisions (2) – fostering integration

- Effective cooperation/interplay depends on (Mahon et al., TWAP 2016) :
 - Geographical coherence (spatial overlap and fit);
 - Good governance structure & practice;
 - Functional linkages (interplay) among institutions/arrangements; and
 - A common purpose & set of principles allowing institutions to deal with one another as equals.
- New instrument could, in particular, provide:
 - Obligations/framework/mechanisms for cooperation;
 - Guidance on good practice; sharing of good practice;
 - A common purpose (e.g. “the conservation of marine biodiversity in ABNJ is the common concern of humanity”); and
 - A set of governance and conservation principles to guide decision making to assist in integrating biodiversity considerations.

Overarching provisions (3) – guiding principles

- The “fundamental principles [that] could lead to sustainable fisheries management, are contained in many of the binding and non-binding fisheries agreements, and in the UNFSA in particular. What is needed is effective and uniform application of these principles and obligations in practice”
 - Global Ocean Commission, Policy Options Paper #9, 2013
- New instrument could outline the guiding principles of international law for conservation & sustainable use of marine biodiversity in ABNJ.
- E.g. precaution, science-based management, the ecosystem approach, transparency, accountability, public participation, and intra- and inter-generational equity.

Overarching provisions (4) – complementary obligations

- A new instrument could place specific complementary obligations on States.
- E.g.:
 - Requiring flag States to cooperate with other States and/or relevant sectoral and regional organisations to adopt measures;
 - An obligation for States & competent international organisations to promote in-situ conservation, including the protection of ecosystems, natural habitats & maintenance of populations in natural surroundings (as in CBD, Art. 8).



Overarching provisions (5) – development of international law

- A new instrument could:
 - Urge States to engage with international agreements relevant to fisheries (e.g. UNCLOS, UNFSA, Port State Measures Agreement (PSMA), RFMOs, relevant regional agreements).
 - Directly strengthen & formalise certain provisions of existing agreements & guidelines by restating them as concrete obligations, e.g.:
 - Art. 20(3) of the PSMA - encourages parties to develop procedures for identifying States that may not be acting in accordance with the PSMA;
 - Art. 50 of the FAO Guidelines, which states that RFMOs should develop appropriate review mechanisms.



Thank you!



Glen Wright

Institute for Sustainable Development and International Relations (IDDDRI)

Glen.Wright@iddri.org