



Environmental Impact Assessment in areas beyond national jurisdiction

Workshop on high seas governance and fisheries management

Paris

17 May 2018

Glen Wright

Institut du développement durable et des relations internationales (Iddri)

27 rue Saint-Guillaume, 75337 Paris Cedex 07, France

www.iddri.org

What is EIA?

*“**appropriate procedures** requiring environmental impact assessment of its **proposed projects** that are likely to have **significant adverse effects** on biological diversity with a view to **avoiding or minimizing such effects** and, where appropriate, allow for **public participation** in such procedures”*



Process

- **Screening:** Determines whether particular activities or projects will be subject to an EIA
- **Scoping:** Determines the focus, depth and terms of reference for the EIA
- **Assessment/evaluation of impacts**
- **Notification:** Stakeholders are notified/consulted
- **Reporting:** Statement of effects and supporting documentation (Environmental Impact Statement or EIS)
- **Decision making**

Trends

- Use of EIA widespread and growing
- Many barriers to good EIA; poor quality EIA common
- EIA threatened by economic imperatives
- Development of marine-specific processes
- Strategic Environmental Assessment (SEA)

Outcomes

- Mainstreaming the environment



- Awareness and dialogue



- Changing decisions?



Good practice

- Focus on the environment, impacts, biodiversity
- Transparency
- Review mechanism
- Stakeholder engagement/interests
- Ability to:
 - Impose conditions to mitigate impacts;
 - Disallow activity with potential for substantial harm.

A photograph of a sea turtle resting on a rock at sunset. The turtle is dark with light-colored stripes on its shell and flippers. It is positioned in the lower center of the frame. The background shows a calm sea with a bright sunset sky reflecting on the water's surface. The text is overlaid on the upper half of the image.

*“States have the **obligation to protect and preserve** the marine environment.”*

- UNCLOS, Art. 192

Current status of EIA in ABNJ (i)

- Obligation under UNCLOS Article 206:
 - “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”
- 2010 UNGA res on Oceans asked for Secretary-General to provide info on EIA in ABNJ

Current status of EIA in ABNJ (ii)

- **Sectoral provisions**

- Part XI Agreement 1994 - seabed mining
- London Convention/Protocol 1972 - waste/dumping

- **Regional provisions**

- **Possible models**

- ATS - Madrid Protocol (1991)
- Espoo Convention (1991)



EIA & fisheries - provisions (i)

Fish Stocks Agreement (1995)

- *“assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks” (Parties)*
- *“assess the impact of fishing on non-target and associated or dependent species” (RFMOs)*

FAO Code of Conduct for Responsible Fisheries (1995)

- *“adverse environmental impacts on the resources from human activities are assessed and, where appropriate, corrected”*
- *“States should collect reliable and accurate data which are required to assess the status of fisheries and ecosystems, including data on bycatch, discards and waste.”*

EIA & fisheries - provisions (ii)

UNGA res. 61/105 (2006)

- *“assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on vulnerable marine ecosystems, and to ensure that if it is assessed that these activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorized to proceed”*

FAO Guidelines for the Management of Deep-Sea Fisheries (2008)

- *“Flag States and RFMO/As should conduct assessments to establish if deep-sea fishing activities are likely to produce significant adverse impacts in a given area.”*

EIA & fisheries – outcomes to date

- Bottom fishing impact assessments often do not meet FAO Guidelines
- Assessments are often incomplete or subject to considerable scientific uncertainties
- Sectoral - no holistic/cumulative/transboundary assessments
- VMEs still open
- Limited EIA beyond managed stocks, little will to broaden scope

Fisheries & EIA in ABNJ: food for thought

- Sectoral regulation vs. broader biodiversity issues
- Integrating fisheries EIA into other sectors/AMBTs, cumulative/integrated assessments
- Strengthen existing obligations? Impose more stringent obligations?
- EIA for new and/or existing fisheries?
- Allow for *interested* parties to be involved in EIA, not just parties to RFMOs
- Overcoming substandard EIA, “representative” VME closures etc.
- Review and oversight?





Institut du Développement Durable et des Relations Internationales (Iddri)
Institute for Sustainable Development and International Relations (IDDDRI)

Glen Wright

Glen.Wright@iddri.org

References

- Blasiak et al. (2016) “Negotiating the Use of Biodiversity in Marine Areas beyond National Jurisdiction” 3 *Frontiers in Marine Science*
- Cashmore et al. (2004) “The interminable issue of effectiveness: substantive purposes, outcomes and research challenges in the advancement of environmental impact assessment theory” 22(4) *Impact Assessment and Project Appraisal*
- Morgan (2012) “Environmental impact assessment: the state of the art” 30(1) *Impact Assessment and Project Appraisal*
- IUCN (2015) “An International Instrument on Conservation and Sustainable Use of Biodiversity in Marine Areas beyond National Jurisdiction Matrix of Suggestions”
- UNEP/CBD (2009) “Report of the Expert Workshop on Scientific and Technical Aspects Relevant to Environmental Impact Assessment in Marine Areas Beyond National Jurisdiction”
- Warner (2015) “Environmental Impact Assessment in Marine Areas Beyond National Jurisdiction” in Rayfuse (ed.) *Research Handbook on International Marine Environmental Law*