

Environmental Impact Assessment in Areas Beyond National Jurisdiction

Protecting at least 30% of the ocean by 2030 and
Conservation & sustainable use of marine biodiversity in areas beyond national jurisdiction

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Glen Wright

1. Environmental impact assessment (EIA)
 2. Existing provisions
 3. Potential contribution of a new agreement
 4. The President's Draft Text
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1. Environmental Impact Assessment (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”*



- **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)
- **Decisionmaking**

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

- Mainstreaming environmental issues
- Awareness and dialogue
- Changing decisions?



- Focus on the environment, impacts, biodiversity
- Ensure transparency
- Include a review mechanism
- Involve stakeholders/consider their interests
- Include the ability to:
 - Impose conditions to mitigate adverse impacts; or
 - Disallow the activity where there is the potential for substantial harm

- EIA in the marine environment
 - Lack of knowledge/need for precaution
 - Technical challenges/cost
- Good practice vs. Status quo
- Pragmatism vs. Ambition
- Negotiation challenges

2. Existing provisions

A photograph of a sea turtle resting on a rock at sunset. The turtle is dark with white stripes on its shell and flippers. The sun is low on the horizon, casting a warm orange glow over the water and sky. The water is dark blue with white foam from a wave washing onto the shore.

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

- UNCLOS, Art. 192

UNCLOS Art. 204

- “States shall... endeavour... to observe, measure, evaluate and analyse... the risks or effects of pollution of the marine environment.”
- “States shall keep under surveillance the effects of any activities which they permit or in which they engage”

UNCLOS Art. 205

- “States shall publish reports of the results... or provide such reports at appropriate intervals to the competent international organizations...”

UNCLOS Art. 206

- “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”

International Seabed Authority/Part XI Agreement (1994)

- EIA and broader seabed management plans for seabed mining activities

London Convention/Protocol (1972)

- Dumping, ocean fertilization

Fish Stocks Agreement (1995), UNGA res.61/105, 64/72

- Bottom fisheries (RFMOs)

Also: World Heritage Convention; Convention on Migratory Species, Agreement on the Conservation of Cetaceans of the Black Sea; Mediterranean Sea and Contiguous Atlantic Area...

Seabed activities other than mining

- cable and pipelines
- seabed installations
- marine scientific research
- bioprospecting



High seas activities other than dumping and some fishing

- shipping
- marine scientific research
- floating installations
- impacts of high seas fishing on continental shelves of coastal nations
- impacts of continental shelf activities on high seas
- military activities
- new or emerging uses of the seas

Convention for the Conservation of Antarctic Marine Living Resources Madrid Protocol (1981)

Three level screening process:

- **Preliminary assessment**
 - Less than a minor or transitory impact
- **Initial environmental evaluation**
 - No more than a minor or transitory impact
- **Comprehensive environmental evaluation**
 - More than a minor or transitory impact



Espoo Convention (1991)

- Convention on EIA in a Transboundary Context
- The only specific international instrument on EIA

- Parties required to implement EIA for activities listed in Appendix I that are likely to cause significant adverse transboundary impact
 - This includes large pipelines and offshore hydrocarbon facilities

- Protocol on Strategic Environmental Assessment (Kiev Protocol)

3. Potential contribution of a new agreement

- Reaffirm obligations; renew focus & impetus
- Bring coherence to global EIA system
- Set out a clear & uniform process
- Cover activities outside sectoral regimes
- Cumulative assessment
- Transboundary EIA
- Strategic Environmental Assessment
- Support other aspects of the agreement
- Technical support & capacity

4. The President's Draft Text

- **Threshold**
 - Significant adverse effects? More than a minor or transitory effect?
 - Always in certain areas?
- **Coverage**: All activities? A list?
- **Who** carries out the EIA? States? Proponent?
- How can **stakeholders** be involved?
- **Decision making**: What powers? Who? Criteria? Review
- **Reporting**: To who? Publically available?
- **Institutional arrangements**: Role of existing regional & sectoral organisations, new institutions

- “as far as practicable” – not in line with the precautionary principle
- Should apply to all activities with a potential impact in ABNJ
 - Protects adjacent coastal States
 - Ensures conservation and sustainable use

- Can both coordinate with existing instruments and encourage States to implement through them (3. Alt. 1 & 2 are not mutually exclusive)
- Can set out minimum standards in treaty, to be further elaborated later (4. Alt. 1 & 2 could be combined)
- EIA conducted under existing frameworks should meet an agreed global standard

Important for consultation, thresholds, review etc.

Undermining vs. complementing

- Strong threshold desirable in order to ensure:
 - Effective assessment
 - Conservation/sustainable use
 - Implementation of a precautionary approach

- “likely to have more than a minor or transitory effect” vs. “substantial pollution” and “significant harmful changes”
 - Tiered approach (as in CCAMLR) could strike a balance

- Cumulative impacts (Article 25), Transboundary impacts (Article 26) and significant/vulnerable areas (Article 27)
 - Crucial to include these

- Further detail needed in order to be useful
- Could be proposed by Sci/Tech body for the consideration of States
- Collaborative regional/global scientific process – e.g. EBSAs

- Who should conduct assessment?
 - As long as it meets criteria, the outcome will be the same
 - State could have responsibility, but be free to choose method
 - Review by sci/tech body

- Pool of experts to assist developing States

- Best practice = all stakeholders involved in notification/consultation
 - Adjacent coastal states
 - States involved in activities in the affected region
 - IGOs with responsibilities in the affected region
 - General public, including local communities
- Treaty should set mandatory minimum standards
 - Ensures coherence and effective EIA

- Best practice = decision making responsibility lies with an authority, not the proponent

- Strike a balance between State sovereignty and review by the Parties to the agreement (Art 38.1. Alt. 2 s)
 Transparency and dispute resolution are crucial here

- Review provisions could mirror those for decision making – sci/tech body reviews and recommends, while ultimate responsibility is with the State

- Strong obligation and threshold - in line with international law and precautionary principle
- Apply to all activities with a potential impact in ABNJ
- Agreed global standard to complement existing frameworks
- Broad notification and consultation
- Inclusion of "non-action" alternatives
- Transparent decisionmaking processes and reporting
- Laying a foundation for strategic assessments

CONTACT

Glen Wright – glen.wright@iddri.org

IDDRI.ORG