

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





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



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

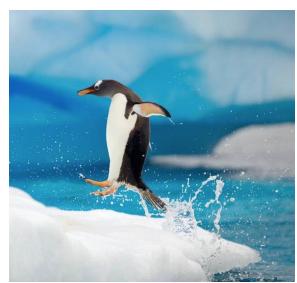
- shipping
- marine scientific research
- floating installations
- impacts of high seas fishing on continental shelves of coastal nations
- impacts of continental shelf activities on high seas
- military activities
- new or emerging uses of the seas



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

 SciencesP



- "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



Summary – Incorporating EIA best practice into the treaty

- 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