



IUCN Briefing for BBNJ negotiators

Environmental Impact Assessment and Strategic Environmental Assessment, Part IV

Key Messages: Environmental Impact Assessment (EIA) is an essential tool for conservation and sustainable use of biodiversity in areas beyond national jurisdiction. To be effective, it must be thorough, transparent, consultative, and allow for changes to the proposed activity to prevent harm. Additionally, the EIA process should be accountable, impartial, independent, precautionary, collaborative and learning oriented. Provisions in the draft text can be chosen to ensure that EIAs do their job to prevent environmental harm and are complemented by wide use of strategic environmental assessments.

1. Require minimum international standards for conducting EIA

Why? Uniform EIA requirements are lacking for ABNJ. For example, some national EIA measures allow project proponents to control the EIA content, rather than requiring an ‘arm’s length’ relationship. Also some processes do not allow for stakeholder consultation or for independent external review.

How? The objectives of this section could clearly state that EIAs for activities with the potential for harmful effects on BBNJ should meet minimum international standards. The revised draft text includes a list of general steps that are required for EIA in Article 35, which may themselves be considered a partial statement of such minimum standards.

Article 21bis The objectives of this Part are to: [(d) Achieve a coherent environmental impact assessment framework for activities **that may have an impact in** areas beyond national jurisdiction.]

Article 23 [~~2. Alt. 2.~~ State Parties shall cooperate in promoting the use of environmental impact assessments in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies for planned activities that meet or exceed the threshold contained in this Agreement.]

2. Conduct EIA for activities that *affect* ABNJ

Why? Some governments are reluctant to subject activities that occur within their national jurisdiction to the EIA requirement. Because the ocean is highly connected physically (e.g., currents) and biologically (e.g., migratory species), activities can be harmful whether they occur in national or international waters. UNCLOS, Art. 206, requires assessment when there are ‘reasonable grounds for believing that planned activities under [the State’s] jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment’ without specifying where the activities take place. More importantly, perhaps, EIA is also a necessary process to ensure a State will be able to comply with its other obligations to prevent harm to the marine environment, for example, Article 194. Requiring EIA for all activities, wherever they are located, is consistent with the customary international law rule – and practice respectful of other States – that prohibits States from knowingly allowing their territory to be used for acts contrary to the rights of other States.

How? The draft text offers the alternatives that EIA is required for activities in ABNJ or activities that affect ABNJ, wherever they occur. The second alternative ensures that the obligation is consistent with customary international law and with UNCLOS.

Article 22(3) 'The requirement in this Part to conduct an environmental impact **assessment** applies ~~[only to activities conducted in areas beyond national jurisdiction]~~ **[to all activities that have an impact in areas beyond national jurisdiction].**'

3. Analyze cumulative effects, including climate change

Why? Human activities affecting ABNJ can either exacerbate or remediate climate change and its impacts on biodiversity. For this reason it is critical that climate is considered in all aspects of the BBNJ Agreement. Rigorous, integrated, independent, science-based assessment, management and monitoring of the individual and cumulative effects of human activities, including climate change, on marine biological diversity in ABNJ is necessary to future proof the BBNJ agreement's EIA provisions.

How? Require cumulative impact analysis in EIA by adopting the proposed language:

Article 35(2)(d) Where an environmental impact assessment is required in accordance with this Part, the environmental impact assessment report ~~[shall]~~ ~~[may]~~ include ~~[, as a minimum, the following information]: ... [reasonably foreseeable potential direct, indirect,] cumulative and transboundary impacts~~ **and whether the activity helps or hinders global efforts to address climate change through other instruments ...**

4. Prevent adverse effects on the marine environment

Why? An affirmative obligation to mitigate harmful impacts on the marine environment in ABNJ is a logical, sensible, and legally required step in the assessment process. EIA is intended to probe alternatives to proposed activities early enough in the planning that changes can be made. The objectives of the BBNJ Agreement, customary international law, and respect for other nations require that activities that will have significant adverse effects on the marine environment should be modified to prevent the adverse effects, or should not proceed.

How? To make EIA truly an assessment process (and not merely providing notice of a State's unilateral decisions), an alternatives analysis and mitigation of adverse impacts should be required.

Article 35(2) Where an environmental impact assessment is required in accordance with this Part, the environmental impact assessment report ~~[shall]~~ ~~[may]~~ include ~~[, as a minimum, the following information]:~~

(e) A description ~~[, where appropriate,]~~ of reasonable alternatives to the planned activity under the jurisdiction or control of a State Party, including the no-action alternative;

(g) A description of any measures for avoiding, preventing ~~[, minimizing]~~ and mitigating impacts ~~[and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment] [and other adverse social, economic, cultural and relevant impacts];~~

Article 38 [2. No decision allowing the planned activity under the jurisdiction or control of a State Party to proceed shall be made where the environmental impact assessment indicates that the planned activity under the jurisdiction or control of a State Party would have ~~severe~~ **significant** adverse impacts on the environment.]

5. Authorize strategic environmental assessments (SEAs)

Why: SEAs can help to build common interests in implementing the BBNJ Agreement through three types of collective assessments: 1) potential impacts of a proposed policy, plan or programme by an international organization or State party; 2) possible effects of a new type of activity or technology to determine potential cumulative effects and compatibility with existing uses and biodiversity conservation, and 3) regional-scale assessment of present stressors, drivers and pressures, to explore a range of planning options compatible with ecosystem health and resilience.

How: The COP should be given the authority in Article 28 to commission SEAs at the request of a State Party or group of States Parties, and the ability to invite other international organizations and stakeholders to participate.

- 1. The Conference of, individually or in cooperation with other States Parties, shall establish processes for the conduct and review of -ensure that a strategic environmental assessments is carried out for plans and programmes, -or proposed new-relating to activities or technologies [under their jurisdiction or control,][conducted][with impacts], or to assess ocean health and trends in areas beyond national jurisdiction, which meet the threshold/criteria established in article 24.**
- 2. Strategic environmental assessment processes shall ensure effective consultation, transparency and application of the best available scientific information. Where scientific information is inadequate to enable an informed decision, further scientific research shall be conducted.**

For more information, see:

[IUCN WCC 2020 resolution 128](#)

[BBNJ IGC4 Knowledge Series | IUCN](#) (all resources are compiled here)

[WCC Resolution 128](#) "Acting for the conservation and sustainable use of marine biological diversity in the ocean beyond national jurisdiction" 2021 IUCN Congress in Marseille, France.

[IUCN comments on revised draft text February 2020](#)

Gjerde, Wright and Durussel, 2021. [Strengthening high seas governance through enhanced environmental assessment processes: mesopelagic fisheries case study](#)

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