

**EU BBNJ workshop on EIA/SEA in areas beyond
national jurisdiction
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**The centre of gravity of EIA procedures
under the new instrument:
national or international
High Seas Alliance Views**



Art 23 Relationship to Other Agreements

Existing text	Proposed
<p>[2. Alt. 1. The Scientific and Technical Body shall consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate to regulate activities [with impacts] in areas beyond national jurisdiction or to protect the marine environment. [Procedures for consultation and/or coordination shall include the establishment of an ad hoc interagency working group or the participation of representatives of the scientific and technical bodies of those organizations in meetings of the Scientific and Technical Body].]</p> <p>[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.]</p>	<p>2. Alt. 2. State Parties shall cooperate to promote adoption in promoting the use of the environmental impact assessments requirements in this part 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.]</p>

2 as amended is much stronger. (Note promoting EIA is much weaker than promoting adoption of the EIA requirements of this part, hence the amendment to Alt 2).

Art 23 Relationship to Other Agreements

Existing text	Proposed
<p>[3. Alt. 1. [Global minimum standards] [and] [guidelines] for the conduct of environmental impact assessments [under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies] shall be developed [by the Scientific and Technical Body] [through consultation or collaboration with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies]. [These [global minimum standards] [and] [guidelines] shall be set out in an annex to this Agreement and shall be updated periodically].]</p> <p>[3. Alt. 2. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.]</p>	<p>{3. Alt. 2. The provisions of this Part constitute global minimum standards for environmental impact assessments for areas beyond national jurisdiction.}</p>

The requirements of this part should apply to all sectors and regions to ensure a baseline level of consistency and rigor to EIA.

Art 23 Relationship to Other Agreements

Existing text	Proposed
<p>[4. Alt. 1. Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate in relation to marine biological diversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in this Part.]</p> <p>[4. Alt. 2. No environmental impact assessment is required under this Agreement for any activity conducted in accordance with the rules and guidelines appropriately established under relevant legal instruments and frameworks and by relevant global, regional, subregional and sectoral bodies, regardless of whether or not an environmental impact assessment is required under those rules or guidelines.]</p>	<p>{4. Alt. 1. State Parties shall ensure that relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies with a mandate in relation to marine biological diversity of areas beyond national jurisdiction shall conform to the strict environmental impact assessment standards set forth in this Part.}</p>

Alt 2 would leave the status quo, under which different regions and sectors have inconsistent EIA requirements, intact.

Existing text	Proposed
<p>[4. Alt. 4. Where a planned activity under the jurisdiction or control of a State Party [with impacts] in ABNJ is already covered by existing EIA obligations and agreements, it is not necessary to conduct another EIA of that activity under this Agreement [, provided that the [State with jurisdiction or control over the planned activity] [body set forth in Part [...]] [, following consultation with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,] determines that:</p> <p>[(a) The outcome of EIA under those obligations or agreements is effectively implemented;]</p> <p>[(b) The EIA already undertaken is [[functionally] [substantively] equivalent to the one required under this Part] [comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts];]</p> <p>[(c) The threshold for the conduct of EIAs meets or exceeds the threshold set out in this Part.]]</p>	<p>{4. Alt. 4. Where a planned activity under the jurisdiction or control of a State Party {with effects impacts} in ABNJ is already covered by existing EIA obligations and agreements, it is not necessary to conduct another EIA of that activity under this Agreement {, provided that the State with jurisdiction or control over the planned activity and the} {body set forth in Part [...]} {, following consultation with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,} determines that:</p> <p>{(a) The outcome of EIA under those obligations or agreements is effectively implemented;}</p> <p>{(b) The EIA already undertaken is {{functionally} substantively} equivalent to the one required under this Part, and is } {comparably comprehensive, including with regard to such elements as the assessment of cumulative effects impacts } } and</p> <p>{(c) The threshold for the conduct of EIAs meets or exceeds the threshold set out in this Part.}}</p>

Alt 4 should be combined with Alt 1. They are not alternatives but address different situations. It is important that this Agreement reduces, rather than increases, fragmentation, and that all EIAs reflects basic level of consistency and rigor.

Art 32 Impact Assessment and Evaluation

Existing text	Proposed
<p>1. A State Party [that has determined that a planned activity under its jurisdiction or control requires an EIA under this Agreement] shall ensure that the identification and evaluation of impacts in such an assessment is conducted in accordance with this Part, using the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities [, and an examination of alternatives].</p> <p>2. Nothing in this Part precludes States Parties, in particular [small island] developing States, from conducting joint EIAs.</p> <p>[3. A State Party may designate a third party to conduct an EIA required under this Agreement. Such third party [shall] [may] be drawn from the pool of experts created pursuant to paragraph 4 below. EIAs conducted by such third parties must be submitted to the State for review and decision-making.]</p> <p>[4. A pool of experts shall be created under the Scientific and Technical Body. States Parties with capacity constraints may commission those experts to conduct and evaluate EIAs for planned activities.]</p>	<p>1. A State Party [that has determined that a planned activity under its jurisdiction or control requires an EIA under this Agreement] shall ensure that the identification and evaluation of effects impacts in such an assessment is conducted in accordance with this Part, using the best available scientific information and relevant traditional knowledge of indigenous peoples and local communities [, and an examination of alternatives}, including an option where the activity does not proceed.</p>

Art 33 Mitigation, prevention and managements of potential adverse effects

Existing text	Proposed
<p>[States Parties shall establish procedures for the prevention, mitigation, and management of potential adverse effects of [authorized] activities under their jurisdiction or control. Such procedures shall include the identification of alternatives to the planned activity under their jurisdiction or control.]</p>	<p>States Parties The COP shall establish procedures for the to prevention, mitigation, and management of potential adverse effects of [authorized] activities under their jurisdiction or control. Pending the development of such procedures, States Parties shall prevent, mitigate and manage potential adverse effects of activities under their jurisdiction or control. Such procedures shall include the identification of alternatives to the planned activity under their jurisdiction and control.]</p>

Preferable to have COP establish the procedures.

[Article 37: Consideration and review of [assessment] reports]

Existing text	Proposed
[The environmental impact assessment reports prepared pursuant to this Agreement shall be considered and reviewed on the basis of approved scientific methods by the Scientific and Technical Body.]	{The environmental impact assessment reports prepared pursuant to this Agreement shall be considered and reviewed on the basis of approved scientific methods by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties. }

Ideally the STB would review all EIAs; if not, a process is needed under which a State may request the STB to review an EIA prepared by another State. See under Article 39.

Support CLAM CRP suggested addition of consideration and adoption by COP.

Article 38: Decision-Making

Existing text

[1. Alt. 1. Where a planned activity is under the jurisdiction or control of a State Party, that State shall be responsible for determining whether the planned activity under its jurisdiction or control may proceed.]

[1. Alt. 2. The Conference of the Parties shall be responsible for determining whether a planned activity under the jurisdiction or control of a State Party may proceed, in accordance with the following procedural requirements:

(a) The EIA report shall be submitted to the Scientific and Technical Body for review, which shall, having regard to the inputs received during public consultation, review the report and make a recommendation to the Conference of the Parties on whether the planned activity under the jurisdiction or control of a State Party should proceed[;]

[(b) A revised EIA report may be submitted to the panel of experts, appointed by the Scientific and Technical Body, for reconsideration where the Scientific and Technical Body has recommended that the planned activity under the jurisdiction or control of a State Party should not proceed.]]

[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** adverse impacts on the environment.]

±[3. Decision-making-related documents shall be made public, including through the clearing-house mechanism.]

There is no basis in existing international law or practice for a “severe” standard; such a standard would undermine UNCLoS, Rio declaration, ESA, 61/105, etc.

Proposed

~~[1. Alt. 1. Where a planned activity is under the jurisdiction or control of a State Party, that State shall be responsible for determining whether the planned activity under its jurisdiction or control may proceed.]~~

{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 **significant severe** adverse effects impacts on the environment.

Article 40: Reporting

Existing text

[1. Alt. 1. States Parties shall ensure that the [environmental impacts of the authorized activity] [the results of the monitoring required under article 39] are [periodically] reported on.]

[1. Alt. 2. [States Parties] [and] [relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies] shall periodically report on [the environmental impacts of the authorized activity] [the results of the monitoring and review required under articles 39 and 41].]

[2. Reports shall be submitted to [the clearing-house mechanism] [the Scientific and Technical Body] [relevant legal instruments or frameworks or relevant global, regional, subregional and sectoral bodies and other States].]

[(a) The Scientific and Technical Body may request independent consultants or an expert panel to undertake a further review of the reports submitted to it;]

[(b) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and other States may [analyse the reports and highlight cases of non-compliance, the lack of information or other shortcomings] [provide recommendations regarding] the environmental assessment and review.]

Proposed

[1. Alt. 1. States Parties shall ensure that the ~~environmental impacts~~ **effects impacts** of the authorized activity **and** ~~the results of the monitoring~~ **and review** required under article 39 **and 41**] are ~~periodically~~ reported on.]

~~[1. Alt. 2. [States Parties] [and] [relevant legal instruments and frameworks and relevant global, regional, subregional or sectoral bodies] shall periodically report on [the environmental impacts of the authorized activity] [the results of the monitoring and review required under articles 39 and 41].]~~

~~[2. Reports shall be submitted to {the clearing-house mechanism, }{the Scientific and Technical Body, }{relevant legal instruments or frameworks or relevant global, regional, subregional and sectoral bodies, and other States and the public}.]~~

~~{(a) The Scientific and Technical Body may request independent consultants or an expert panel to undertake a further review of the reports submitted to it;}~~

~~[(b) Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and other States may {analyse the reports and highlight cases of non-compliance, the lack of information or other shortcomings **and**} {provide recommendations regarding} the environmental assessment and review.}~~

Article 41: Review

Existing text	Proposed
<p>[1. States Parties shall ensure that the environmental impacts of the authorized activity are reviewed.]</p> <p>[(a) Should the results of the monitoring required under article 39 identify adverse impacts not foreseen in the EIA, the [State with jurisdiction or control over the activity] [Scientific and Technical Body] shall:</p> <p>[(i) Notify the [Conference of the Parties] [other States] [the public];]</p> <p>[(ii) Halt the activity;]</p> <p>[(iii) Require the proponent to propose measures to mitigate and/or prevent those impacts;]</p> <p>[(iv) Evaluate measures proposed under article [...] and decide whether the activity should continue;]</p> <p>[(b) The Conference of the Parties shall develop guidelines on the nature and severity of the impacts that would require a supplemental EIA.]</p> <p>[2. A [non-adversarial consultation] process shall be established to resolve [controversies] [differences] [disagreements] in respect of monitoring, [without recourse to judicial or non-judicial bodies].]</p> <p>[3. [All States and, in particular] Adjacent coastal States [, including small island developing States,] shall be [kept informed of] [consulted actively [, as appropriate,] in] the monitoring, reporting and review processes in respect of [an activity approved under this Agreement] [activities in ABNJ].]</p>	<p>[1. States Parties shall ensure that the environmental impacts of the authorized activity are reviewed.]</p> <p>[(a) Should the results of the monitoring required under article 39 identify adverse effects impacts not foreseen in the EIA either in nature or severity, the [State with jurisdiction or control over the activity] [Scientific and Technical Body] shall:</p> <p>{(i) Notify the {Conference of the Parties, }{other States, and the public};} {(ii) Halt the activity;} {(iii) Require the proponent to propose measures to mitigate and/or prevent those effects impacts ;}</p> <p>{(iv) Evaluate measures proposed under article [...] and decide whether the activity should continue};}</p> <p>{(b) The Conference of the Parties may shall develop guidelines on the nature and severity of the effects impacts that would require a supplemental EIA.}</p> <p>[2. A non-adversarial consultation process shall be established to resolve [controversies] [differences] [disagreements] in respect of monitoring, [without affecting recourse to judicial or non-judicial bodies.].]</p> <p>3. {All States and the public, in particular} Adjacent coastal States {[, including small island developing States,]} shall be {kept informed of} [and consulted actively {[, as appropriate,]} in} the monitoring, reporting and review processes in respect of [an activity approved under this Agreement] [activities with effects oin ABNJ].</p>

Article 41: Review

Existing text	Proposed
	<p>Add: 4. Any Party may notify the Conference of the Parties of a concern with:</p> <ul style="list-style-type: none">(a) a failure to conduct an environmental impact assessment under this Part;(b) the conduct or outcome of environmental impact assessment under this Part;(c) the decision whether to proceed with the proposed activity and the conditions under which the activity proceeds; or(d) a potential or actual breach of this Part. <p>5. Following a notification under the preceding paragraph, the Conference of the Parties may take a decision to address the notification, including:</p> <p>Recommending an evaluation by the Scientific and Technical Body of the likely effects of the proposed activity;</p> <ul style="list-style-type: none">(b) a decision that a proposed activity may not proceed if it is likely to have significant adverse effects;(c) a decision that a proposed activity may proceed with certain conditions; or(d) any other decision consistent with the objectives and principles of this Agreement.

Crucial to have a procedure whereby an EIA can be reviewed by the COP upon proposal by a Party. This does not mean all EIAs will be reviewed, and may only be used infrequently, but it is an important provision where needed, if for instance a sub-standard EIA is carried out for an activity which may have significant adverse effects on ABNJ.