



HSA BRIEFING

High Seas Alliance recommendations for environmental impact assessment under the new legally binding instrument

March 2018

The High Seas Alliance recommends that the new legally binding instrument under UNCLOS for the conservation and sustainable development of marine biological diversity in areas beyond national jurisdiction (“BBNJ”) includes the following elements regarding environmental impact assessment (EIA). These initial recommendations will be expanded upon throughout the BBNJ treaty process.

1. Obligation to conduct EIAs

An obligation to ensure that EIAs are prepared consistent with the treaty that rests with the State exercising jurisdiction or control over the proposed activity by reason of flag, nationality or beneficial ownership, or in which the proposed activity is organized or from which it proceeds.

2. Threshold

A threshold specifying that activities that have more than a minor or transitory effect are considered to have significant adverse effects, and are thus subject to an EIA. “Proposed activities” include new activities and significant changes to existing activities.

3. EIA content

Minimum content for EIAs including: (i) descriptions of the proposed activity and reasonable alternatives, including a no-action alternative; (ii) baseline information on the environment that may be affected by the proposed activity and its alternatives; (iii) the potential environmental impact of the proposed activity and its alternatives, both by itself and when combined with other impacts such as climate change, ocean acidification and other human activities affecting the same ecosystem; (iv) a description of measures that could be taken to avoid and mitigate impacts; (v) the “worst case scenario” that could be expected to occur as a result of the project; (vi) predictive methods, underlying assumptions and data used in the assessment, along with gaps in knowledge and uncertainties; and (vii) proposed monitoring and management measures, plans for post-activity analysis and remediation, and enforcement and compliance provisions.

4. Public participation

A requirement for public participation at each stage of the EIA process. All proposals, comments and reviews of EIAs should be made publicly available on a website and taken into account.

5. Scientific/technical body

A Committee established under the new instrument for scientific/technical review and charged with establishing guidelines for EIAs; reviewing EIAs and strategic environmental assessments (SEAs) for compliance with the provisions of the treaty; providing recommendations to the Conference of the Parties (CoP) regarding conditions needed to prevent significant adverse effects of proposed activities; and developing and managing a pool of experts capable of conducting and reviewing EIAs for States seeking assistance.

6. Decision-making

A process for making decisions regarding the conditions under which a proposed activity can take place. If it is assessed that a proposed activity may have significant adverse effects, such activities should be required to be managed to prevent such impacts or not authorized to proceed. All activities should be conducted consistent with the decisions of the CoP, which should be based on the recommendations of the committee established under the instrument for scientific/technical review. At the request of a State Party, an EIA for a proposed activity may be reviewed by that committee and, based on its recommendations, the CoP would decide whether and under what conditions the activity should proceed.

7. Complementarity

A complementary relationship to existing EIA measures, in which cooperation and information sharing with competent regional and sectoral organizations is facilitated. At the request of a State, the committee established under the instrument for scientific/technical review may review an EIA prepared under existing instruments, frameworks and bodies, and make recommendations to the CoP subject to the procedure described in 6, above.

8. A clearing-house mechanism

A mechanism that can hold and distribute EIAs and facilitate access to assistance and advice.

9. Monitoring and review procedures

Applying monitoring and review procedures to ensure compliance.

10. Capacity building

Capacity building measures to ensure that the special needs of developing countries are taken into account, including necessary technical assistance, knowledge and financial assistance.

11. Strategic environmental assessments (SEAs)

A process for developing, coordinating and reviewing SEAs before new policies, plans or programs are introduced.

Through the United Nations, States from around the world are now entering into formal negotiations for a treaty to protect the biodiversity in areas beyond national jurisdiction – the high seas. As set out in UN Resolution 72/249, the Intergovernmental Conference will convene four meetings from September 2018 through early 2020.