



NRDC on behalf of the High Seas Alliance
Agenda Item 6
Intervention Day 6
IGC2 2 April 2019
Environmental Impact Assessments
5.3 threshold

Thank you Mr Facilitator

First, with respect to a threshold vs a list, we support a threshold and join the African Group, In supporting option III, the Madrid Protocol threshold. We also recognize the value of option II. For both options we support CARICOM's suggestion regarding submission of threshold determinations to the scientific body for technical review.

Second, like others we are concerned that negotiating even a non-exhaustive list could take a very long time. We believe a threshold is more flexible and efficient, more effectively deals with potential new activities that may emerge in the future, and takes into account not only the effects of an activity but the environment in which that activity takes place.

Third, Consistent with modern practice, we agree with the EU, US , the African Group, PSIDs, New Zealand, Papua New Guinea, Canada, Japan, the Latin American Like Minded Group, India, Switzerland, Singapore, Philippines, Australia, and FSM, that all EIAs must include an assessment of cumulative effects.

We are submitting to papersmart a table that contains a rather lengthy list of various instruments and arrangements that specify that cumulative effects are to be assessed in all EIAs.

In terms of where cumulative effects should be addressed in the text, it isn't clear why this issue is included in this section as opposed to 5.5, other than the important point made by the EU that cumulative impacts should be considered when determining whether an activity meets the threshold.

As we have earlier suggested, we suggest including a definition of cumulative effects at the beginning of the agreement so that, in the words of New Zealand, cumulative effects can be threaded consistently through the agreement.

"Cumulative effects mean the effects of an activity when added to the effects of other past, present and reasonably foreseeable future activities and effects, including climate change,

ocean acidification and related effects, regardless of whether a State Party exercises jurisdiction or control over those activities or effects.”

Using the terms “activities and effects” is important, as there are those who maintain that climate change, ocean acidification, deoxygenation and other climate related impacts are not the result of human activities.

Finally, On whether there should be separate EIA requirements for areas that have been identified as biologically or ecologically vulnerable or significant, we agree with the African Group, New Zealand, Canada, the EU, Norway, Russia, China and others that no text (Option II) is the preferable option. Given how little is known about the area beyond national jurisdiction, it is prudent to require the same rigor to EIAs in areas not known to be especially vulnerable or significant as to those areas that are known to be so.

We also note the comments on this point by the Group of Like-Minded Latin American States, that figuring out which areas of the ocean are not vulnerable or significant, who decides that question, and negotiating two different sets of EIA standards that apply to each, may not be the best use of time.

Thank you Mr. Facilitator

Recommendations on President’s Aid to Negotiations Environmental Impact Assessments

ISSUE	Relevant text from PRESIDENT’S AID TO NEGOTIATIONS (PAN)	PROPOSED EDITS	RATIONALE	SUPPORT (where applicable)
<p>1. Definitions a. Cumulative impacts</p>	<p>II. 1. 17 Option 1: “Cumulative impacts” means impacts on the same ecosystems resulting from different activities or from the repetition of similar activities over time.</p>	<p>II. 1. 17 Option 1: “Cumulative impacts” means the effects of an activity when added to the effects of other past, present and reasonably foreseeable future activities and effects, including climate change, ocean acidification and related impacts, regardless of whether a State Party exercises jurisdiction or control over those activities and effects.</p>	<p>The term “cumulative impacts” or “cumulative effects” appears in many places in the PAN, and the term is defined in different ways. Having one definition up front avoids having to define the term each time it is used.</p> <p>There is wide agreement that cumulative effects assessment must include climate change, acidification and other impacts related to greenhouse gas emissions, in addition to impacts from sectoral activities.</p> <p>The definition includes assessing “activities and effects,” as some countries take the position that climate change is not caused by human activities.</p>	<p><u>US National Environmental Policy Act (NEPA), CEQ (40 CFR 1508.7)</u> A cumulative impact “results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”</p> <p><u>UN Fish Stocks Agreement: Art. 5(d):</u> States shall “assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon, the target stocks.”</p> <p><u>UNEP Goals and Principles of Environmental Impact Assessment, Principle 4 :</u> “An EIA should include, at a minimum... (d) An assessment of the likely or potential environmental impacts of the proposed activity and alternatives, including the direct, indirect, cumulative, short-term and long-term effects; “</p> <p><u>Protocol on Environmental Protection in the Antarctic Treaty, Annex 1:</u> “(f) consideration of cumulative impacts of the proposed activity in the light of existing activities and other known planned activities;”</p> <p><u>Convention of the Protection of the Marine Environment of the Baltic Sea Area, Article 7 “ 3:</u> The Contracting Parties concerned shall jointly take appropriate measures in order to prevent and eliminate pollution including cumulative deleterious effects.”</p> <p><u>UNFCCC Article 7 (e):</u> “Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the Parties, the overall effects of the measures taken pursuant to the Convention, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is</p>

*HOW TO READ THE PROPOSED EDITS: our recommended text is **in bold**, and replaces original text (~~stricken through~~)

				<p>being achieved;" Article 4 (f) "Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions...."</p> <p>European EIA Directive Annex IV; Guidelines on the Assessment of Indirect and Cumulative Impacts as well as Impact interactions; Study on the Assessment of Indirect and Cumulative Impacts as well as Impact interactions.</p>
b. Strategic environmental assessment (SEA)	<p>II. 1. 18 Option 1: "SEA means [...]"</p>	<p>II. 1. 18 Option 1: "SEA means the evaluation of the known or likely effects of plans, programs on ABNJ, taking into account inter-related socioeconomic, cultural and human health impacts."</p>	<p>This definition is taken from the Kiev protocol, which applies to domestic EIA. It may need to be 'internationalized' to reflect the fact that not all sectoral or regional bodies prepare plans or programs, e.g., RFMOs.</p>	
c. Environmental impact assessment (EIA)	<p>II. 1. 19 : "EIA means a process to evaluate the environmental impacts of an activity to be carried out in ABNJ, with an effect on areas within or beyond national jurisdiction, taking into account interrelated socioeconomic, cultural and human health impacts, both beneficial and adverse."</p>	<p>II. 1.19: "EIA means a process to evaluate the environmental impacts, including cumulative impacts, of a proposed activity."</p>	<p>Need to clarify that all EIAs must assess cumulative impacts of the proposed activity together with other effects that impact the same ecosystem or species.</p>	<p>See instruments requiring cumulative effects to be analyzed as part of environmental impact assessments, above under "Definitions: cumulative effects," pages 1 and 2 of this table.</p>
<p>2. Obligation to prepare an EIA: when the activity will have effects on ABNJ vs. when the activity is conducted in ABNJ.</p>	<p>III. 5.1 Obligation to conduct environmental impact assessments:</p> <p>(1) OPTION I: States Parties shall assess the potential effects of planned activities under their jurisdiction or control in areas beyond national jurisdiction in accordance with their obligation under articles</p>	<p>III. 5.1 Obligation to conduct environmental impact assessments:</p> <p>(1) OPTION I: States Parties shall assess the potential effects of planned activities under their jurisdiction or control in, or with effects in, areas beyond national jurisdiction in accordance with their obligation under articles 204 to 206 of the Convention.</p>	<p>a. States are obligated to assess transboundary impacts of proposed activities conducted within their waters, including activities that affect ABNJ. Indeed, the obligation may even be heightened due to potential impacts on shared resources.</p>	<p><u>Rio Declaration on Environment and Development 1992</u>, Principle 2: "States have . . . the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."</p> <p><u>ICJ, Nuclear Weapons Advisory Opinion 1996</u>: "The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."</p>

	<p>204 to 206 of the Convention. (3) OPTION II: The requirement in this instrument to conduct an environmental impact assessment applies to all activities with impacts in areas beyond national jurisdiction.</p>		<p>b. Many of the most important impacts in ABNJ may originate from national jurisdictions.</p> <p>c. States should not be permitted to cause harm to ABNJ by carrying out activities at or near their jurisdictional boundaries.</p>	<p><u>UNCLOS Article 194, 2:</u> “States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.”</p> <p><u>Espoo Convention, Article 2, (1):</u> “ The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities. (2) Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.”</p> <p><u>North American Agreement on Environmental Cooperation, Article 10, 7:</u> “ Recognizing the significant bilateral nature of many transboundary environmental issues, the Council shall ... consider and develop recommendations with respect to: (a) assessing the environmental impact of proposed projects subject to decisions by a competent government authority and likely to cause significant adverse transboundary effects, including a full evaluation of comments provided by other Parties and persons of other Parties;”</p> <p><u>Protocol on Environmental Protection in the Antarctic Treaty, Article 6, :</u> “The Parties shall co-operate with those Parties which may exercise jurisdiction in areas adjacent to the Antarctic Treaty area with a view to ensuring that activities in the Antarctic Treaty area do not have adverse environmental impacts on those areas.”</p> <p><u>UN Fish Stocks Agreement, Article 7, 1. (b):</u> with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.” “ Article 7, 2: Conservation and</p>
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				management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety...”
<p>3. Relationship to other instruments, frameworks and bodies</p>	<p>III.5.2 Relationship to EIA processes under relevant instruments, frameworks and bodies.</p> <p>4) Option II: (a) the provisions of this Part constitute global standards and minimum requirements for environmental impact assessments for ABNJ. (b) all other instruments and frameworks and relevant global, regional and sectoral bodies with a mandate in relation to marine biodiversity of [ABNJ] shall conform to the strict environmental impact assessment standards set forth in paragraph...</p>	<p>III.5.2 Relationship to EIA processes under relevant instruments, frameworks and bodies.</p> <p>4) Option II: (a) the provisions of this Part constitute global standards and minimum requirements for environmental impact assessments for ABNJ. (b) all other instruments and frameworks and relevant global, regional and sectoral bodies with a mandate in relation to marine biodiversity of [ABNJ] shall conform to the strict environmental impact assessment standards set forth in paragraph...</p>	<p>The instrument should set out baseline requirements for all EIAs prepared for activities in or affecting ABNJ in order to ensure a basic level of consistency and rigor across regional and sectoral bodies.</p> <p>Precedent for establishing baseline requirements that apply across bodies include the UN Fish Stocks Agreement, which sets out baseline assessment and management requirements across RFMOs, UN resolution 61/105, which sets out baseline requirements for bottom trawling activities everywhere, etc.</p>	
<p>4. Threshold vs List</p> <p><i>Threshold</i></p>	<p>III.5.3 Activities for which an EIA is required</p> <p>OPTION III: When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control are likely to have more than a minor or transitory effect on the marine environment, they shall assess the potential effects of such activities on the marine environment.</p>	<p>III.5.3 Activities for which an EIA is required</p> <p>OPTION III: When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control are likely to have more than a minor or transitory effect on the marine environment, they shall assess the potential effects of such activities on the marine environment, in accordance with Part.....</p>	<p>Clarifies that assessment must be done in accordance with the EIA provisions in the instrument.</p>	<p><u>Madrid Protocol (Protocol on Environmental Protection in the Antarctic Treaty); Article 8</u> “1. Proposed activities referred to in paragraph 2 below shall be subject to the procedures set out in Annex I for prior assessment of the impacts of those activities on the Antarctic environment or on dependent or associated ecosystems according to whether those activities are identified as having: (a) less than a minor or transitory impact; (b) a minor or transitory impact; or (c) more than a minor or transitory impact.”</p> <p>Annex 1 “1. Unless it has been determined that an activity will have less than a minor or transitory impact, or unless a Comprehensive Environmental Evaluation is being prepared in accordance with Article 3, an Initial Environmental Evaluation shall be prepared...2. If an Initial Environmental Evaluation indicates that a proposed activity is likely to have no more than a</p>

<p><i>List</i></p>	<p>List of activities that require or do not require an environmental impact assessment</p>	<p>OPTION IV: No text</p>	<p>A list will take time to negotiate and would be difficult to update. A threshold approach is appropriate, particularly for new and emerging activities.</p>	<p>minor or transitory impact, the activity may proceed, provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the activity.” Article 3 Comprehensive Environmental Evaluation 1. If an Initial Environmental Evaluation indicates or if it is otherwise determined that a proposed activity is likely to have more than a minor or transitory impact, a Comprehensive Environmental Evaluation shall be prepared.”</p> <p>World Charter for Nature (GA Res 3717)(1982): “11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular: (c) Activities which may disturb nature shall be preceded by assessment of their consequences....”</p>
<p>5. Cumulative effects assessment</p>	<p>III.5.3 Cumulative impacts</p> <p>1. OPTION I: Cumulative impacts shall be taken into account in the conduct of EIAs.</p> <p>2. In determining cumulative impacts, the incremental effect of an activity when added to the effects of past, present and reasonably foreseeable future activities shall be examined regardless of whether the State party exercises jurisdiction or control over those other activities.</p>	<p>III.5.3 Cumulative impacts</p> <p>1.OPTION I: No text</p> <p>2. No text</p>	<p>The proposed revised definition of EIA above specifies that cumulative effects must be assessed in all EIAs, and the proposed revised definition of cumulative effects above specifies what the cumulative effects analysis should contain.</p>	<p>See instruments requiring cumulative effects to be analyzed as part of environmental impact assessments, above under “Definitions: cumulative effects,” pages 1 and 2 of this table.</p>

<p>6. Separate EIA requirements for ecologically or biologically significant or vulnerable areas?</p>	<p>III.5.3 EIAs in vulnerable or significant areas</p> <p>OPTION I: (1): A lower threshold, as set out below, shall apply to the conduct of EIAs for activities undertaken in areas identified as ecologically or biologically significant or vulnerable.</p>	<p>III.5.3 EIAs in vulnerable or significant areas</p> <p>No text</p>	<p>Given how little is known about the ocean beyond national jurisdiction, it is prudent to require the same rigor to EIAs in areas not known to be vulnerable or significant to ensure that fragile or vulnerable habitats or species are protected. Special areas will be considered in the course of any EIA.</p>	<p><u>UNCLOS Art. 194(5)</u> The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.</p> <p><u>UNGA resolution 61/105 para 83 (a)</u> To assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on vulnerable marine ecosystems, and to ensure that if it is assessed that these activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorized to proceed.</p>
<p>7. EIA Process</p> <p>a. Screening</p>	<p>III.5.4 EIA process</p> <p><i>a. Screening</i> OPTION III 1. a. OPTION C: The proponent of the planned activity is responsible for determining whether an EIA is required. If the proponent determines that an EIA is not required for the planned activity, the proponent must provide information to support that conclusion. The body set forth in Part [...] shall verify that the information provided by the proponent of the activity satisfies the requirements of this instrument.</p>	<p>III.5.4 EIA process</p> <p><i>a. Screening</i> OPTION III 1. a. OPTION C: The proponent of the planned activity is responsible for determining whether an EIA is required. If the proponent determines that an EIA is not required for the planned activity, the proponent must provide information to support that conclusion. The State Party under whose jurisdiction or control the proponent operates or the body set forth in Part [...] shall verify that the information provided by the proponent of the activity satisfies the requirements of this instrument. At the request of any State, a decision not to undertake an EIA may be reviewed by the body set forth in Part [...], which shall make recommendations to the State with jurisdiction or control and to the COP.</p>	<p>The responsibility for decisions regarding whether or not to prepare an EIA should reside with the proponent State, except when the scientific committee has assumed responsibility for screening at the sponsoring State's request.</p>	<p>a. Screening <u>Protocol on Environmental Protection in the Antarctic Treaty, Annex 1, Article 2: "1. Unless it has been determined that an activity will have less than a minor or transitory impact, or unless a Comprehensive Environmental Evaluation is being prepared in accordance with Article 3, an Initial Environmental Evaluation shall be prepared. It shall contain sufficient detail to assess whether a proposed activity may have more than a minor or transitory impact and shall include: (a) a description of the proposed activity, including its purpose, location, duration and intensity; and (b) consideration of alternatives to the proposed activity and any impacts that the activity may have, including consideration of cumulative impacts in the light of existing and known planned activities. 2. If an Initial Environmental Evaluation indicates that a proposed activity is likely to have no more than a minor or transitory impact, the activity may proceed, provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the activity."</u> <u>UNCLOS Article 206:</u> "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 in the manner provided in article 205."</p>

b.Scoping	<p><i>b. Scoping</i> Option B: to identify impacts and alternatives for analysis.</p>	<p><i>b Scoping</i> Option B: Parties shall to identify the area that may be affected, evaluate potential individual and cumulative impacts and alternatives for analysis, including a no-action alternative.</p>	See “Content of EIAs,” below.	See “Content of EIAs,” below.
c. Assessment process	<p><i>c. Assessment process</i> OPTION A: Impact prediction and evaluation, using the best available scientific information, including traditional knowledge.</p>	<p><i>c. Assessment process</i> OPTION A: Impact prediction and evaluation, based on the results of site specific surveys of the area that could be affected, and using the best available scientific information, including traditional knowledge and including an assessment of alternatives including a no-action alternative.</p>	<p>The impacts of an activity depend in large part on the vulnerability of the environment affected. For most areas of ABNJ there is little or no scientific information available, necessitating data collection and analysis to determine the presence or absence of unique or vulnerable habitats or species.</p>	<p><u>UN Fish Stocks Agreement</u>, Art 14 (1)(b): States shall “ensure that data are collected in sufficient detail to facilitate effective stock assessment....”</p> <p>6(2): “The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.”</p> <p><u>FAO Deep Sea Fisheries Guidelines</u>, para 21(iii): States should “develop data collection and research programmes to assess the impact of fishing on target and non-target species and their environment.”</p>
d. Capacity	<p>li. OPTION C : The environmental impact assessment shall be conducted by an independent consultant appointed by a panel of experts designated by the scientific/technical body set forth in Part [...]. (ii): States parties, in particular small island developing States, are not precluded from submitting joint environmental impact assessments. (iii): A pool of experts shall be created under the scientific/technical body set forth in Part [...]. States parties with capacity constraints may commission those experts to conduct and evaluate</p>	<p>Recommend that this option, which addresses capacity issues, become a new section, not an alternative option:</p> <p>At the request of a State, the environmental impact assessment shall be conducted by an independent consultant appointed by a panel of experts designated by the scientific/technical body set forth in Part [...]. (ii): States parties, in particular small island developing States, are not precluded from submitting joint environmental impact assessments. (iii): A pool of experts shall be created under the scientific/technical body set forth in Part [...]. States parties with capacity constraints may</p>	Assisting states that lack capacity should be a requirement, not an option.	See “Content of EIAs,” below.

	environmental impact assessments for planned activities.	commission those experts to conduct and evaluate environmental impact assessments for planned activities.		
e. Management measures	e. Management Measures Identification of alternatives for mitigation, prevention and compensation for potential adverse effects.	e. Management measures: Identification of alternatives measures to mitigation, prevention and compensation mitigate, monitor , prevent and compensate for potential adverse effects.		<p><u>Protocol on Environmental Protection in the Antarctic Treaty, Annex I, Article 3</u>: “2. A Comprehensive Environmental Evaluation shall include (g) identification of measures, including monitoring programs, that could be taken to minimise or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents.”</p> <p><u>UNCLOS Article 204: 2</u>. In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.”</p>
f. Public notice and consultation	<p>f. Public notice and consultation(i) Public notification and consultation shall take place with: [followed by 16 options and suboptions]</p> <p>(ii) OPTION B: A time-bound opportunity shall be provided for the public, States and international organizations to submit comments during scoping and on draft environmental impact assessment documents.</p>	<p>f. Public notice and consultation</p> <p>(i) Public notification and consultation shall take place with: States, international organizations and the public.</p> <p>(ii) OPTION B: A time-bound opportunity shall be provided for the States, international organizations and the public to submit comments during scoping and on draft environmental impact assessment documents all subsequent stages of the EIA process.</p> <p>iv) a. All substantive comments received during the consultation process shall be considered, and responded to taken into account, and a description of how comments</p>	<p>Simplified language covers/includes everything in the 16 options and suboptions in the PAN</p> <p>The duty to notify and consult with affected parties is an integral component of environmental impact processes in both the national and transboundary arenas.</p> <p>“Taken into account,” is a more robust term than “considered.”</p>	<p><u>Espoo Convention, Article 3</u>:“... the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed Activity.” Article 4, 2: “The Party of origin shall furnish the affected Party, as appropriate through a joint body where one exists, with the environmental impact assessment documentation. The concerned Parties shall arrange for distribution of the documentation to the authorities and the public of the affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin within a reasonable time before the final decision is taken on the proposed activity.” Article 5: “The Party of origin shall, after completion of the environmental impact assessment documentation, without undue delay enter into consultations with the affected Party concerning, inter alia, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact.”</p> <p><u>UNEP Goals and Principles of Environmental Impact Assessment</u>, Principle 7 “Before a decision is made on an activity, government agencies, members of the public, experts in relevant disciplines and interested groups should be allowed appropriate opportunity to comment on the IA.”</p>

		<p>have been addressed shall be made publicly available.</p>	<p>Requiring a description of how comments have been addressed helps ensure those comments have been taken into account.</p>	<p><u>Espoo, Article 6:</u> “1. The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to Article 3, paragraph 8 and Article 4, paragraph 2, and the outcome of the consultations as referred to in Article 5. 2. The Party of origin shall provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based.</p> <p><u>Protocol on Environmental Protection in the Antarctic Treaty, Annex II, Article 2</u>“A final Comprehensive Environmental Evaluation shall address and shall include or summarise comments received on the draft Comprehensive Environmental Evaluation.” Annex I, Article 3:” The draft Comprehensive Environmental Evaluation shall be made publicly available and shall be circulated to all Parties, which shall also make it publicly available, for comment. A period of 90 days shall be allowed for the receipt of comments.”</p>
g. Publication	<p>g. Publication of assessment States parties shall publish and communicate the reports of the results of the assessments in accordance with articles 204-206 of the Convention.</p>	<p>g. Publication of assessment States parties shall publish and communicate the reports of the results of the assessments in accordance with articles 204-206 of the Convention to States, international organizations and the public.</p>		
h. Review	<p>5.4: Option III (h) Review of assessments Option A: the review shall be: Option 1: carried out by the body set forth in Part [...] Option 2: based on approved scientific methods Option B: no text</p>	<p>h. Review of assessments New Option C: Any State may request the body set forth in Part [...] to review an EIA and provide recommendations on revisions needed to ensure the EIA comports with the requirements of this instrument. The review and recommendations of the body set forth in Part [...] shall be transmitted to the relevant State, the COP and the public.</p>	<p>The additional language proposed will help ensure the rigor and consistency of EIAs throughout ABNJ and avoid forum shopping that results in “EIAs of convenience.”</p>	

i. Decision making	i. Decision making i. OPTION A: Where a planned activity is under the jurisdiction and control of a State Party, that State shall be responsible for determining whether the planned activity may proceed	i. OPTION A: Where a planned activity is under the jurisdiction and control of a State Party, that State shall be responsible for determining whether the planned activity may proceed; provided that any other State may request the scientific committee established under Part [...] to review the decision to proceed with the project and provide recommendations on whether and under what conditions the project may proceed in a manner consistent with the terms and objectives of this agreement. The review and any recommendations made by the scientific committee shall be made publicly available immediately.	The additional language proposed provides a “backstop” against proposals that could cause significant deleterious effects to the marine environment in ABNJ or that are otherwise not consistent with the objectives of the agreement.	
<i>Standard for Decisions</i>	None	NEW PROVISION Standard for decision making: If it is assessed that a proposed activity would have significant adverse effects on the marine environment, that activity must be managed to prevent such impacts or not authorized to proceed.	The new agreement should establish a standard for post-assessment decision making, such as that in Resolution 61/105 and FAO’s Guidelines on bottom fishing: that if it is assessed that proposed activities will have significant adverse effects, the activity will be managed to avoid such effects or not allowed to proceed.	<u>UN Resolution 61/105 (2006) Para 83 (a)</u> : RFMOs should “assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on vulnerable marine ecosystems, and to ensure that if it is assessed that these activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorized to proceed;” <u>FAO, International Guidelines for the Management of Deep-Sea Fisheries in the High Seas para 73</u> : “States and RFMO/As should assess...whether DSFs activities would have significant adverse impacts on VMEs. They should ensure that these activities are managed to prevent such impacts or not authorized to proceed...”
8. Content of EIAs	III.5.5 Content of EIAs OPTION II, 1. Where an EIA is required in accordance with this	III.5.5 <i>Content of EIAs</i> OPTION II, 1. Where an EIA is required in accordance with	Captures the important options and suboptions in simplified terms.	<u>UNEP Goals and Principles of Environmental Impact Assessment</u> , Principle 4 (b) “A description of the potentially affected environment, including specific information necessary for identifying and assessing the environmental effects of the proposed activity; (c) A description of practical alternatives, as

	<p>instrument, the EIA shall include: [followed by 32 options and sub-options]</p>	<p>this instrument, the EIA shall include: OPTION II, 1, d, Option A: A description of the potential effects of planned activities on the marine environment including reasonably foreseeable potential direct, indirect, cumulative and transboundary impacts of the proposed activity and reasonable alternatives, including a no-action alternative, along with a description of the worst-case scenario that could be expected to occur as a result of the planned activity, a description of the methodology and sources of information used in the assessment, and alternative measures to prevent, mitigate, monitor, manage and compensate for adverse effects.</p>	<p>appropriate; (d) An assessment of the likely or potential environmental impacts of the proposed activity and alternatives, including the direct, indirect, cumulative, short-term and long-term effects.” <u>Espoo Convention</u>: Appendix II: “Information to be included in the environmental impact assessment documentation shall, as a minimum, contain, in accordance with Article 4: (a) A description of the proposed activity and its purpose; (b) A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative; (c) A description of the environment likely to be significantly affected by the proposed activity and its alternatives; (d) A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance; (e) A description of mitigation measures to keep adverse environmental impact to a minimum; (f) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used; (g) An identification of gaps in knowledge and uncertainties encountered in compiling the required information;” <u>Protocol on Environmental Protection in the Antarctic Treaty</u>, Annex I, Article 3: “2. A Comprehensive Environmental Evaluation shall include: (a) description of the proposed activity including its purpose, location, duration and intensity, and possible alternatives to the activity, including the alternative of not proceeding, and the consequences of those alternatives; (b) a description of the initial environmental reference state with which predicted changes are to be compared and a prediction of the future environmental reference state in the absence of the proposed activity; (c) a description of the methods and data used to forecast the impacts of the proposed activity; (d) estimation of the nature, extent, duration, and intensity of the likely direct impacts of the proposed activity; (e) consideration of possible indirect or second order impacts of the proposed activity; (f) consideration of cumulative impacts of the proposed activity in the light of existing activities and other known planned activities; (g) identification of measures, including monitoring programs, that could be taken to minimise or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents; (h) identification of unavoidable impacts of the proposed activity; (i) consideration of the effects of the proposed activity on the conduct of scientific research and on other existing uses and values; (j) an identification of gaps in knowledge and</p>
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				uncertainties encountered in compiling the information required under this paragraph;”
9. Monitoring, reporting and review	<p>III.5.6 Monitoring, reporting and review</p> <p>2) Option A: States parties shall submit periodic reports of monitoring and review of planned activities conducted under their jurisdiction or control to the scientific/technical body set forth in Part [...] a. which may request independent consultants or an expert panel to review reports submitted to it under paragraph [...] b. and competent regional organizations and other States, which may analyse the reports and highlight cases of non-compliance, the lack of information or other shortcomings.</p>	<p>III.5.6 Monitoring, reporting and review</p> <p>2) Option A: States parties and relevant regional or sectoral organizations shall submit periodic reports of monitoring and review of planned activities conducted under their jurisdiction or control to the scientific/technical body set forth in Part [...] a. which may request independent consultants or an expert panel to review reports submitted to it under paragraph [...] b. and competent regional organizations and other States, which may analyse the reports and highlight cases of non-compliance, the lack of information or other shortcomings. All reports, analyses and responses shall be made publicly available without delay.</p>		<p><u>Espoo Convention, Appendix II:</u> “(h) Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis; and”</p> <p><u>Protocol on Environmental Protection in the Antarctic Treaty, Annex II, Article 2“(g)</u> identification of measures, including monitoring programs, that could be taken to minimise or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents;”</p> <p><u>UNCLOS Article 204:</u> 2. In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.”</p>
10. Unanticipated impacts/emergency measures	None	<p>NEW PROVISION</p> <p>If monitoring identifies any unanticipated adverse effect, either in nature or severity, the State with jurisdiction or control over the activity will immediately notify the Secretariat, which will notify States and the public. If monitoring identifies any unanticipated significant adverse effects, the State with jurisdiction or control over the activity will take emergency measures, which</p>		<p><u>Espoo Article 6:</u> 3. If additional information on the significant transboundary impact of a proposed activity, which was not available at the time a decision was made with respect to that activity and which could have materially affected the decision, becomes available to a concerned Party before work on that activity commences, that Party shall immediately inform the other concerned Party or parties. If one of the concerned Parties so requests, consultations shall be held as to whether the decision needs to be revised.”</p> <p><u>UN Fish Stocks Agreement Art 6 (7):</u>”If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact.”</p>

		may include the suspension of the activity.		
11. Supplemental assessment	None	NEW PROVISION Prior to approving any significant changes to an assessed activity, a supplemental EIA shall be prepared.		FAO Deep Sea Fisheries Guidelines, para 53: “Where an assessment concludes that ... significant adverse impacts are not likely, such assessments should be repeated when there have been significant changes to the fishery or other activities in the area, or when natural processes are thought to have undergone significant changes.”
12. Strategic Environmental Assessment	5.7 Strategic Environmental Assessments OPTION I: Each Party shall ensure that a strategic environmental assessment is carried out for plans and programmes under their jurisdiction or control, affecting areas beyond national jurisdiction, which meet the threshold/criteria established in paragraph...	5.7 Strategic Environmental Assessments Option I: Each Party shall ensure that a strategic environmental assessment is carried out for plans and programmes under their jurisdiction or control, which may affect areas beyond national jurisdiction, which meet the threshold/criteria established in paragraph... The Conference of the Parties may carry out a strategic environmental assessment where necessary to achieve the objectives of the agreement.	The instrument should provide a general obligation to conduct SEAs where plans and programmes may affect ABNJ, and provide a mechanism whereby the COP or its scientific body may conduct SEAs where necessary.	<u>Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (“Kiev Protocol”)</u> : Article 3, 5: “Each Party shall promote the objectives of this Protocol in relevant international decision-making processes and within the framework of relevant international organizations” Article 4, 1: Each Party shall ensure that a strategic environmental assessment is carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are likely to have significant environmental, including health, effects.” Article 5: “1. Each Party shall determine whether plans and programmes referred to in article 4, paragraphs 3 and 4, are likely to have significant environmental, including health, effects either through a case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose each Party shall in all cases take into account the criteria set out in annex III. 3. To the extent appropriate, each Party shall endeavour to provide opportunities for the participation of the public concerned in the screening of plans and programmes under this article. 4. Each Party shall ensure timely public availability of the conclusions pursuant to paragraph 1, including the reasons for not requiring a strategic environmental assessment, whether by public notices or by other appropriate means, such as electronic media.”