



Strategic Environmental Assessments (SEAs) under the new BBNJ Instrument

Introduction

Strategic Environmental Assessment¹ (SEA) is the early consideration of environmental issues in the development of policy, plans, and programmes, usually for a particular geographic region. It typically takes place before environmental impact assessment (EIA) of individual proposed projects so that it can guide those assessments.¹ While an EIA considers a single project with its impacts, including cumulative impacts, on the environment, a SEA considers all actual and proposed activities in the relevant region or sector, to assess the environment, activities and impacts in a proactive way, preferably before new activities take place.

SEA involves setting overarching management objectives and evaluating a broad range of alternative strategies to achieve those objectives. Alternatives are assessed against the objectives, such as sustainability, that typically incorporate applicable legal requirements and guidelines. The goal is to select the strategies that will guide policies, plans and programmes for the region.

The leading international instrument on SEA is the 2003 Protocol on Strategic Environmental Assessment in a Transboundary Context (the Kiev Protocol) to the Espoo Convention. The Kiev Protocol aims to ensure that environmental concerns are considered and integrated into the development and implementation of policies, legislation, and plans.²

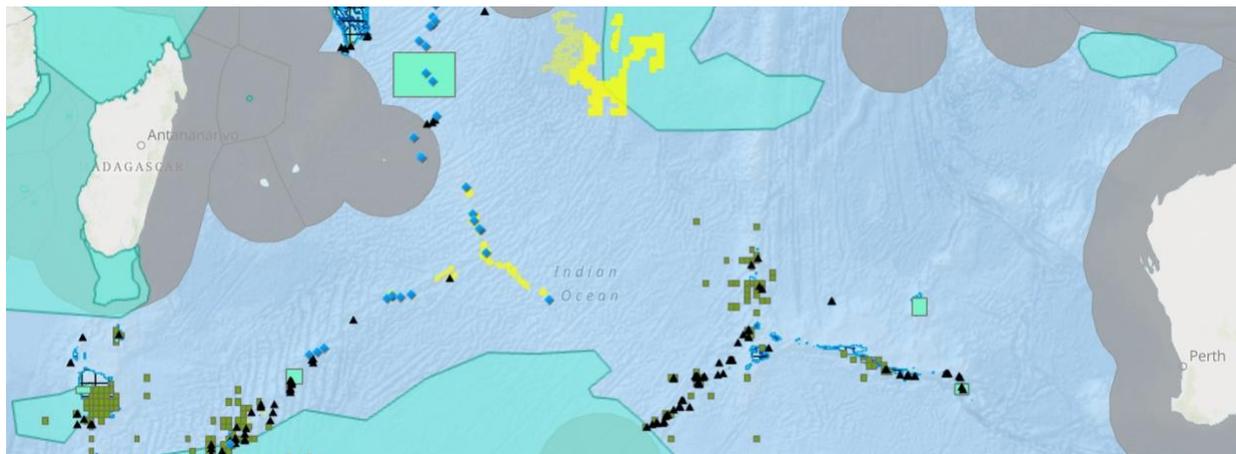
SEAs in the Ocean Context

In an increasingly busy ocean, SEAs can help avoid conflicting uses and address cumulative effects of multiple human activities in the same region. They can establish a baseline of background information, such as the location and characteristics of ecologically and biologically sensitive areas and patterns of multi- sectoral use, laying the groundwork for marine spatial planning as well as project specific EIAs, implementing the precautionary principle. For instance, SEAs may be undertaken before opening large offshore areas to oil and gas development. SEAs can pre-empt conflicts between conservation and use, such as a recent example within national jurisdiction where an application for phosphate seabed mining overlapped benthic areas protected from bottom trawling.

Similarly, SEAs could help address potential conflict and cumulative effects in areas of the Indian Ocean under contract for seabed mining exploration where bottom fishing takes place. There are areas already under exploration contract from the International Seabed Authority (ISA) which is also open to bottom trawling, regulated by the Southern Indian Ocean Fisheries

¹ Prepared by Duncan C. Currie, HSA Legal Advisor, Globelaw.

Agreement (SIOFA). The following map from the Marine Conservation Institute shows overlap between fishing and mining areas in yellow.³



The ISA is currently developing regional environmental management plans (REMPs) for the North Western Pacific cobalt-rich crusts, called the Triangle Area, and polymetallic sulphide deposits in the Mid-Atlantic Ridge. The first REMF, adopted in 2012, was for the Clarion-Clipperton Zone. While the REMFs contain elements of SEAs, they are not undertaken with a view to assessing and managing all activities in the area. REMFs are carried out only by the ISA, and are not cross-sectoral, since the ISA's mandate is limited to the mineral resources of the Area. Activities such as fishing (UNCLOS, Art.87) or general marine scientific research (UNCLOS, Art.143) are not under the mandate of the ISA. Moreover, REMFs are focused on the seabed, and as such, do not manage activities in the water column.

For new and emerging activities like seabed mining, an SEA can be helpful if conducted before they commence. The ISA is developing exploitation regulations, and current drafts would require contractors to take into account cumulative impact from activities "where known," and effects from other activities not known to the contractor at the time of application may not be assessed. Likewise, RFMOs may not account for present or potential mining when managing bottom fishing. By cutting across multiple sectors and a wide spectrum of stakeholders, an SEA could prevent scenarios like the one confronting the Lost City, a unique hydrothermal vent field of 60-metre calcium carbonate chimneys in the mid-Atlantic, where the CBD has described as being one which may require enhanced conservation and management measures, but where the mining exploration was later authorized in 2017.

SEAs in Areas Beyond National Jurisdiction

An SEA conducted under the BBNJ Agreement could assist in identifying priorities with the overall objective of its conservation and sustainable use of marine biological diversity and undertake the following activities and strategies:

- use reporting, consultation, independent science and other mechanisms to analyse the marine environment and relevant impacts due to climate change, and ocean acidification, and consequential effects such as any increased transparency to noise, and including any ecologically and biologically sensitive areas and vulnerable marine ecosystems;

- ensure that cumulative impacts of different activities are assessed including potential effects of activities as contributions to regional, cumulative and long-term environmental impacts;
- ensure that information from the CBD, fisheries management organizations and other sectoral and regional organizations, the ISA and the scientific community are all taken into account;
- undertake public consultation, access the best available science, analyse relevant environmental and socio-economic effects, including cumulative effects, such as effects of climate change, ocean acidification and regional events such as El Niño/Southern Oscillation (ENSO), and analyse and compare options and consultation and with regional and sectoral organizations particularly with respect to possible or proposed activities in the region;
- assess all current and proposed activities occurring in or impacting on the region of the area beyond national jurisdiction;
- analyse environmental and socio-economic and other issues to identify existing and emerging activities in a specific region; and
- consideration of strategic development goals, including but not limited to SDG-14 and other relevant international instruments such as Aichi targets and any future goals that may be agreed.

The outcome of the SEA could include recommendations for:

- long-term monitoring,
- EIAs including the development of templates to ensure regional consistency of EIAs;
- the development and implementation of area-based management tools such as marine protected areas and ecosystem-based management to ensure a consistent environmental assessment and implementation of environmental objectives;
- coordination and conduct of regional or sectoral activities; as well as
- improved coordination and cooperation among regional and sectoral organizations with mandates for the area.

Procedural Aspects

Because an SEA cuts across multiple activities and regions, it will be best undertaken cooperatively and collectively by the parties to the new Agreement. A trigger to initiate an SEA could be a recommendation made by a party to the Conference of Parties (COP) under the new Agreement, and referral to a relevant COP committee to undertake the SEA.

References

- 2003 Protocol on Strategic Environmental Assessment in a Transboundary Context (Kiev Protocol) At https://www.unece.org/env/eia/sea_protocol.html.
- Convention on Biological Diversity. Decision COP X/28 (2010), para. 26. At <https://www.cbd.int/decisions/cop/10/29>.
- International Seabed Authority. Draft Regulations on Exploitation of Mineral Resources in the Area. ISBA 24/LTC/WP.1/Rev.1. 9 July 2018. Annex IV 7.13.2 lists Cumulative between activities, where known in the region.
- International Seabed Authority. Decision of the Council of the International Seabed Authority relating to an application by the Government of Poland for approval of a plan of work for exploration for polymetallic Sulphides. ISBA/23/C/14 (10 August 2017). At <https://www.isa.org.jm/sessions/23rd-session-2017>.
- International Seabed Authority. Workshop on the Development of a REMP For Cobalt-Rich Ferromanganese Crusts in The Northwest Pacific Ocean. 26-29 May 2018. At <https://www.isa.org.jm/workshop/workshop-development-rem-p-cobalt-rich-ferromanganese-crusts-northwest-pacific-ocean-26-29>.
- International Seabed Authority. Workshop on the Development of a Framework for Regional Environmental Management Plans (REMPs) for Polymetallic Sulphide Deposits in Mid-Ocean Ridges. 27-29 June. At <https://www.isa.org.jm/photo-gallery/rem-p-workshop-szczecin-27-29-june-2018>.
- International Seabed Authority. Environmental Management Plan for the Clarion-Clipperton Zone. ISBA/17/LTC/7 (2011). At <https://www.isa.org.jm/documents/isba17ltc7>.
- M. Lodge et al, "Seabed mining: International Seabed Authority environmental management plan for the Clarion-Clipperton Zone. A partnership approach," *Marine Policy*, 2014, pp 66-72. At <https://www.sciencedirect.com/science/article/pii/S0308597X14001171>.
- New Zealand Environmental Protection Authority. Decision on Marine Consent Application Chatham Rock Phosphate Limited to mine phosphorite nodules on the Chatham Rise. 10 February 2015. At <https://www.epa.govt.nz/assets/Uploads/Documents/Marine-Activities-EEZ/Activities/CRP-Decision-EEZ000006.pdf>.
- Bram F. Noble, *Towards a Structured Approach to Strategic Environmental Assessment*, *Journal of Environmental Assessment Policy and Management*, 2001. Pp. 483-508. At https://www.researchgate.net/publication/263874354_Towards_a_Structured_Approach_to_Strategic_Environmental_Assessment.
- Sandor Mulsow, presentation, *Regional Environmental Management Plan Strategy: Cobalt Ferromanganese Crust*, presented a Qingdao Triangle Workshop, Qingdao, China, 2018.
- OECD. Applying Strategic Environmental Assessment: Good Practice Guide for Development Cooperation, 2006. At <https://www.oecd.org/environment/environment-development/37353858.pdf> . Page 33, and Annex C.
- Robin Warner, *Strategic Environmental Assessment (SEA) and its Application to Marine Areas beyond National Jurisdiction (ABNJ)*. At http://www.un.org/depts/los/biodiversity/prepcom_files/Warner_Strategic_Environmental_Assessment_PrepCom2.pdf.
-
- ¹ For instance, a national SEA considering electricity needs and generation may consider a broad range of alternative means to supply that electricity, whereas an EIA would assess a particular proposed power station.
- ² The European SEA Directive is an example of an international effort to implement the Kiev Protocol by requiring integration of environmental considerations into the preparation and adoption of plans and programmes within the EU.
- ³ The map from [Marine Conservation Institute](https://www.arcgis.com/apps/webappviewer/index.html?id=2be03bc639e8473983a707cab30b41c6&extent=-23668576.1958%2C-9485106.5632%2C-11536491.0663%2C-845887.8783%2C102100) shows mining claims in yellow, fishing areas in dark green, seamounts at fishable depths in black triangles and EBSAs in large green areas. At <https://www.arcgis.com/apps/webappviewer/index.html?id=2be03bc639e8473983a707cab30b41c6&extent=-23668576.1958%2C-9485106.5632%2C-11536491.0663%2C-845887.8783%2C102100>.