



High Seas Alliance recommendations on environmental impact assessment provisions of the President's draft text of Nov. 27, 2019

January 2020

I. Relationship to other agreements (Art 23)

At present, environmental impact assessment (EIA) requirements applicable to activities in ABNJ differ substantially among sectors (and even within sectors), some lacking them altogether. The EIA provisions in the Agreement should establish *global minimum standards* that apply to all EIAs to ensure a basic level of consistency and rigor across sectors and regions. For activities that have already undergone EIA in a sector with existing EIA requirements, there is no need to conduct a new EIA as long as the existing EIA is substantively equivalent to an EIA conducted under the new agreement.

II. Decision making (Arts 38, 41)

The High Seas Alliance supports that the CoP have the ultimate authority for determining whether a proposed activity affecting ABNJ may proceed; however, the President's draft text grants that authority to States. If States Parties do retain this authority in the Agreement, a backstop is essential to prevent substandard or "flag of convenience" EIAs. Under such a backstop, a State Party could request the CoP to review (i) a decision not to conduct an EIA; (ii) whether the EIA was conducted in accordance with the requirements of the Agreement; and/or (iii) the decision by a State to authorize a proposed activity and if so under what conditions.

III. Standard for decisions (Art 38)

A planned activity should not be allowed to proceed where the EIA indicates that the activity would have SIGNIFICANT adverse effects. The use of "severe" as a standard is inconsistent with both UNCLOS and modern practice.

IV. Threshold (Art 24)

The threshold for undertaking an EIA should be when States Parties have reasonable grounds for believing that planned activities under their jurisdiction and control are likely to have *more than a minor or transitory effect*. This is well accepted practice under the Antarctic treaty system.

There should be a backstop provision whereby a State Party can request that the CoP review a determination made by another State Party that the planned activities have not met the threshold for undertaking an EIA.

V. Cumulative effects (Art 1.6, 1.7, 25)

It is essential that all EIAs identify and take into account cumulative effects, including transboundary and climate change-related effects. The requirement for assessing cumulative effects must not be put off to some indeterminate future process, but come into effect as soon as the Agreement comes into force.

VI. Conduct of EIA (Art 35)

As noted above, if the State Party is responsible for the preparation of an EIA, it is essential to have a backstop as described above (Arts 38, 41) to prevent substandard and inadequate EIAs, forum shopping, or other cases where an EIA clearly merits review.

In addition, the Agreement needs sufficient detail on the EIA process to ensure a basic level of consistency and rigor across sectors and regions. The requirements in Article 35(2) should come into effect as soon as the Agreement comes into force, and not be put off to some future guidelines development process, which could take many years.

VII. Strategic Environmental Assessments (Art 28)

The Agreement should include a provision to allow the CoP to carry out a Strategic Environmental Assessment.

VIII. Proprietary Information (Art 34(5))

It is crucial that “non-public information or information that would undermine intellectual property rights *or other interests*” be clearly defined in standards and guidelines and subject to a process to establish whether information is proprietary or not. The current bracketed language in the draft provides a huge loophole through which a State Party could determine in its sole discretion to withhold essentially any information it determines is in its interest.