



## HSA STATEMENT

---

### NRDC on behalf of the High Seas Alliance, Intervention on EIAs

September 11<sup>th</sup> 2018

On behalf of NRDC and the 40 member organizations of the High Seas Alliance, please accept our congratulations on your appointment as facilitator. We are glad to see you back in the chair and look forward to working on this very important part of the package.

**With respect to 5.1**, Elaborating on the comments of the US and others, **the obligation to conduct EIA** should rest with the State exercising jurisdiction or control over the proposed activity by reason of flag, nationality, beneficial ownership, and we would add, or **in which the proposed activity is organized or from which it proceeds**. The latter is important to deter EIAs of convenience, and follows the well-established model used in the Antarctic treaty system under the Madrid Protocol.

**With respect to 5.2**, we agree with Algeria on behalf of the African Group, the European Union, Mexico, Mauritius and others that the new instrument needs to set global minimum requirements and standards governing EIA to ensure that human activities in ABNJ are assessed and managed consistently across sectors and regions.

**With respect to your question** regarding different thresholds [and standards] among regional and sectoral arrangements, and also to your question of later in the afternoon of what should happen after the EIA:

On the latter, we believe the findings of assessments must be linked to the management of human activities; otherwise they are meaningless paper exercises. *So there must be an ability to put into place measures and conditions to avoid significant adverse effects.*

On the former, we believe the agreement should build on, support and draw from existing EIA requirements applicable to BBNJ. For example, the 2006 bottom trawling resolution (61/105) set a standard for assessment of bottom fishing in ABNJ. This standard called for assessment of “whether individual bottom fishing activities would have significant adverse impact on vulnerable marine ecosystems, and to ensure that bottom fisheries be managed to prevent such impacts, or not allowed to proceed.”

We believe this standard for bottom fishing is an example of an already internationally agreed standard that should apply to all activities in ABNJ. Under this approach, all activities, and not just bottom fisheries, should be assessed to determine whether they would have significant adverse impacts, and that the activity be managed to prevent such impacts or not be allowed to proceed.

We favor this approach of adopting the most stringent standards already in place for various aspects of EIA that apply to ABNJ.

**Regarding 5.3,** We agree with most in the room that Articles 204- 206 provide the legal basis for elaborating EIA procedures, and support the suggestion by representatives of the African Group, Caricom, Brazil, Ecuador, New Zealand, Senegal, India and others in suggesting that the Antarctic Madrid protocol's threshold for preparation of an EIA (that is, as any activity having **more than a minor or transitory effect**) is an appropriate threshold for activities in ABNJ, *as a criterion for assessing significance, and, as we have heard from IUCN, the best practice standard.*

We recommend a threshold approach over a list of activities for three reasons:

1) Any list will quickly become out of date. Many issues we have in mind are new and emerging activities, so by definition are unlikely to be on a list.

2) Related to this, negotiations required to determine which activity belongs on what list is likely to be protracted process that by itself could take years, and a list may be difficult to amend..

3) As pointed out by the representative of Ecuador, Australia and others, the effect of a particular activity may differ depending on the where in ABNJ the activity takes place and in the context of multiple and cumulative impacts. A simple list does not reflect this basic tenet of impact assessment.

If a list is included, it must be supplemented by a threshold that will capture existing and new uses of ABNJ that may emerge over time.

**5.3(c) Cumulative impact assessment:** The lack of any cumulative impact assessment process for areas beyond national jurisdiction is one of the major gaps in the current legal regime governing human activities in ABNJ.

We strongly believe that the new instrument should explicitly require EIAs -- and not just SEAs - - to consider the potential impacts of the proposed activity and its alternatives, by itself and when combined with other impacts resulting from human activities that affect the same ecosystem, including climate related impacts, such as warming, acidification, deoxygenation, invasive species and other effects, regardless of whether the proposing state has jurisdiction or control over other activities that may affect the same environment.