



**NRDC on behalf of the High Seas Alliance**

**Agenda Item 6**

**Intervention Day 6**

**IGC2 1 April 2019**

**Environmental Impact Assessments**

**5.4 Process**

Thank you Mr. Facilitator

This intervention is by NRDC on behalf of the High Seas Alliance.

After listening to the interventions on Friday, I would like to briefly reflect on why global EIA standards are important. EIAs are a critical tool to understand and manage high seas activities and their associated impacts. At present there is a fragmented, inconsistent approach to EIAs among different sectors and regions, and even within sectors and regions. Where EIA standards do exist, their procedures differ widely. Some require public notification, others do not. Some require consultation with potentially affected States, others do not. Some have monitoring and review requirements, most don't .....you get the picture.

In contrast, most countries in this room have basic EIA procedural requirements that apply to all sectors, regardless of the type or of activity or region where it is proposed. Uniform EIA procedures provide predictability to businesses, ensure a basic level of rigor, consistency and fairness across sectors and regions, and avoid forum shopping or "EIAs of convenience."

EIAs for activities in ABNJ should be at least as robust as it is for waters within national jurisdiction. With this in mind we have a number of suggestions on section 5.4.

Moving on to the text, we join the African Group, the European Union and its Member States, CARICOM, the Pacific SIDS, the Latin American Like Minded Countries, China, the United States, New Zealand, Cameroon, Canada, Norway, Australia, Indonesia, and the Philippines in supporting Option III of the text.

*Screening:* (a) We agree with the Pacific SIDS, Cameroon and the Philippines that OPTION B is preferable.

*Scoping:* (b) We agree with the suggestion made by the Pacific SIDS, Indonesia and Cameroon to combine options A-D.

*Impact Prediction (c):* We support Option B(i), with a combination of Option B and a modified Option C, so that a State with jurisdiction or control over the activity can request the scientific body to prepare an assessment. We support the PSIDs suggestions on traditional knowledge.

Regarding capacity, which is addressed in part in (c): we suggest that Option C should not be an option but a separate section. We support all elements of Option C in the new section with the additions proposed by the Pacific SIDs.

*Mitigation, Management and Alternatives (d and e):* we support the suggestion by Philippines and others to combine sections d and e, and we **suggest** adding language requiring identification of alternative measures to mitigate, monitor, prevent and compensate for potential adverse effects.

We concur with the United States that failure to monitor impacts of assessed activities may undermine the integrity of EIA process, and we concur with Canada and the US that it is important to include monitoring, as well as review of monitoring results, as a *procedural* requirement in addition to a *content* requirement. The first ensures that monitoring and review of the assessed activity takes place as part of the EIA process; the second requires inclusion of proposed alternative monitoring and review plans in an EIA. We would add that monitoring by the Instrument bodies may also be necessary.

*Public notice and consultation (f):*

With respect to who is to be consulted (i) we suggest combining the 16 options and suboptions in this section into one sentence : “notification and consultation shall take place with States, international organizations and the public.”

With respect to which stages should be subject to public notification and consultation, we support combining (ii), Option B and C, so that the opportunity to submit comments is provided at all major stages of the process.

Under iv) we recommend combining options a and b, modified as suggested by the European Union, New Zealand, the United States and CARICOM so that substantive comments received during the consultation process are taken into account, and that the final EIA contain a description of how comments have been addressed.

*Publication:* (g): We support the suggestion by New Zealand and Indonesia that (g) and (j) be merged. We note that a Clearing House Mechanism as a repository for documents related to EIAs should prioritize transparency and accessibility to all stakeholders, including the public. This repository may take form as part of a Clearinghouse Mechanism, if practicable.

*Review:* (h): we support Option A: combining Options 1 and 2, but suggested replacing “approved scientific methods” with “best available science”.

*Decision making (i):*

We agree with CARICOM, the Pacific SIDs, Philippines and Indonesia that Option B, part a, Option 2 presents the best way forward, and further agree with CARICOM's point regarding review of a revised EIA by the scientific body.

We note with interest New Zealand's remarks on this topic. If we understood correctly, New Zealand suggested that while the sponsoring State is responsible for deciding whether or not an activity goes forward, if the proposed activity is expected to exceed the threshold, New Zealand would support some sort of review and recommendation from a scientific/technical body prior to State's decision. Singapore had a different but somewhat similar suggestion along these lines, as did Norway. These proposals are quite useful suggestions to consider as possible ways forward. We do believe there needs to be a role for the Scientific Committee, including where asked by the Conference of the Parties in a specific situation, to future proof the Instrument

Standard for decision making: We further propose that a standard for decision making is critically important, and suggest an alternative to the one proposed in the text, drawing on UN Resolution 61/105 and Paragraph 73 of the UN FAO guidelines on bottom fisheries in ABNJ: "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."

*Monitoring and review (l):* it is important to include monitoring and review in this section as well as in 5.5 and 5.6. As we have previously noted, monitoring of an assessed activity is essential to determine whether management measures are effective in preventing significant adverse effects, and to detect any unanticipated effects either in nature or severity. Review of monitoring results is essential to inform any needed adjustments to management measures. As stated earlier, we suggest there may be a role for the Instrument in monitoring directly.

*Unanticipated impacts/emergency measures: NEW PROVISION:* We propose that the text should elaborate a mechanism in this part for notifying States and the public if monitoring identifies any unanticipated adverse effects, either in nature or severity, and if monitoring reveals unanticipated significant adverse effects, the sponsoring State is required to take emergency measures, which may include the suspension of the activity.

Thank you Mr. Facilitator

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