

PREPCOM 3 HIGHLIGHTS: THURSDAY, 30 MARCH 2017

On Thursday, 30 March, the informal working group on environmental impact assessments (EIAs) continued its deliberations throughout the day.

INFORMAL WORKING GROUP ON EIAs

GEOGRAPHIC SCOPE: FIJI recommended addressing, under the ILBI, activities in the high seas with potential impacts within national jurisdiction. The FSM, with NORWAY, argued that activities within national jurisdiction that have an impact in ABNJ should be governed by national legislation. IUCN cautioned against conflicting and duplicative processes, if EIA triggers do not include activities within national jurisdiction with potential impacts on ABNJ and do not use the threshold of significant adverse impacts.

TRIGGERS: JAPAN, supported by NEW ZEALAND and NORWAY, suggested further elaborating EIA criteria in UNCLOS Article 206 (Assessment of potential effects of activities) as guidelines for decision-making regarding potential thresholds. Several considered UNCLOS Article 206 as a departure point for discussion on thresholds, with the EU stressing the need to operationalize the generic formula through the establishment of specific criteria.

Opposing, with JAPAN, a list of activities requiring EIAs because of the likely burdens on states, the AFRICAN GROUP preferred a threshold and suggested discussing whether the ILBI's scientific committee or other criteria-setting organizations would be responsible for identifying significant areas where thresholds should apply. FIJI supported a hybrid between a list of activities and a threshold, calling for further discussion on the activities the list could contain.

CARICOM favored: EIAs for areas designated for protection under the ILBI, especially for ecologically sensitive areas; and, supported by NEW ZEALAND and NORWAY, a non-exhaustive list of activities triggering an EIA. AUSTRALIA supported an illustrative, non-exhaustive list, noting that no activity should be exempt from threshold requirements. SINGAPORE recommended transparent and timely updating of any list. CHILE proposed evaluating, revising and regularly updating the list, stressing compatibility and cooperation with adjacent coastal states.

MEXICO suggested: supported by the DOMINICAN REPUBLIC, relying on general principles rather than an indicative list; developing flexible minimum standard for triggering EIAs; and including transboundary impacts in all stages of EIAs, rather than in a separate evaluation. The FSM called for a robust EIA procedure, allowing for inputs by adjacent coastal states.

NEW ZEALAND pointed to the FAO Deep-sea Fisheries Guidelines and the need for a holistic approach, covering also potential impacts from climate change. CHINA requested: considering EIA regulations for ABNJ that already exist in different fora, cautioning, with NORWAY, JAPAN and the RUSSIAN FEDERATION, against duplication; and, supported by NRDC, a case-by-case evaluation of activities requiring EIAs, emphasizing that a potential list of activities is not sufficient as, in addition to the type of activities, their scale, location, and environmental impacts should also be taken into account.

CANADA, supported by NRDC, favored establishing criteria that could evolve over time. The US preferred elaborating non-binding guidance on EIAs. The REPUBLIC OF KOREA proposed requiring, in case of: less than a minor impact, no EIA; minor impacts, a preliminary procedure without reviewing or monitoring modalities; and significant harm, a comprehensive EIA. INDIA emphasized that due to limited scientific understanding of deep sea resources, every activity in ABNJ should require an EIA study.

The REPUBLIC OF KOREA, PSIDS and the ISA noted the need for baseline data. IUCN opined that EIA and strategic environmental assessment (SEA) decision-making processes need to ensure the protection of the ecosystem services of ABNJ that may be altered by climate change, including ocean acidification. OCEANCARE called for addressing underwater noise.

PROCESS: AOSIS requested conducting EIAs in a fair, consultative and inclusive manner, taking into account SIDS' capacity constraints and allowing submission of joint proposals by states. The EU suggested including in assessment reports: a description of the assessed activities, the likelihood to cause harm to the marine environment and its biodiversity, and measures to avoid, mitigate and redress harmful effects. NEW ZEALAND suggested drawing on the experiences of existing bodies and industries on the scope of information to be included in an EIA, as well as guidelines on conducting EIAs. AUSTRALIA proposed a staged approach, noting that EIAs may warrant different levels of complexity, focusing on potential direct, indirect or cumulative impacts.

GOVERNANCE: PSIDS proposed a global decision-making body and reliance on the CBD Akwé: Kon Guidelines to integrate traditional knowledge in the EIA process. CARICOM suggested that a scientific committee make recommendations on EIAs to the COP, which would then decide whether an activity should be permitted, including public consultations, and fast-track and appeals procedures. VENEZUELA added that an intergovernmental, science-based, technical and scientific committee should mitigate

potential damages, including socioeconomic impacts, through reparation activities. IRAN proposed drawing on the Antarctic Treaty.

The RUSSIAN FEDERATION expressed skepticism regarding a centralized body conducting EIAs, cautioning against duplication of mandates, bureaucratization and delays. The US, JAPAN, NORWAY and NEW ZEALAND preferred that states make decisions on EIAs, with the ILBI setting standards consistent with UNCLOS to guide states in conducting EIAs. The EU proposed that: a state party decides, based on a threshold, whether an EIA is required and ensures monitoring of the effects of activities; and the ILBI provides a follow-up procedure. CHINA favored states conducting EIAs, which was supported by INDIA, and authorizing activities requiring EIAs. AUSTRALIA noted that the final decision rests with the state under whose jurisdiction the activity is taking place. SINGAPORE said states should conduct EIAs in an open and transparent manner, taking the results into account in decision-making.

Calling for further collaboration, the NORTH PACIFIC FISHERIES COMMISSION (NPFC), supported by the RUSSIAN FEDERATION, noted that RFMOs have been following the FAO Deep-sea Fisheries Guidelines, adhering to standards for establishing ABMTs and conducting EIAs.

Transparency: Calling for public notification, access to information and public consultation, the EU noted that the process should be as inclusive as possible. NEW ZEALAND, JAPAN and NORWAY suggested a transparent process that allows inputs and comments on the outcome by relevant organizations. The G-77/CHINA, the US, AUSTRALIA and CANADA favored making EIA information publicly available, including on online platforms, with NORWAY suggesting that UNDOALOS take on this role.

AUSTRALIA favored public comment and consultation on EIAs. The FSM, NEW ZEALAND and NORWAY highlighted the need for additional notification of adjacent coastal states in case of transboundary impacts. The US called for public involvement at the national or subnational level. PSIDS suggested that a panel of experts consider EIAs with inputs from independent consultants, and in consultation with adjacent coastal states, relevant organizations and stakeholders, including traditional knowledge holders.

NRDC, GREENPEACE, PEW CHARITABLE TRUSTS and the HIGH SEAS ALLIANCE called for a transparent EIA process including: public notification and comment periods; opportunities for independent scientific input; and a transparent, independent and accessible review process.

Costs: Calling for support to developing countries, the AFRICAN GROUP, with CARICOM, VENEZUELA, CANADA and NORWAY, recommended that the proponent of an activity bear the costs related to the EIA, with PSIDS suggesting that proponents also bear the costs of consultation. The EU noted the decision on the costs of an EIA falls within state parties' national competence. URUGUAY called for a financial mechanism for EIAs for countries that lack necessary capacities.

Monitoring and review: PSIDS, opposed by the RUSSIAN FEDERATION, proposed EIA oversight by a scientific and expert committee; as well as a compliance, monitoring and reporting mechanism, and a potential rehabilitation fund, with FIJI adding that the proponent should foresee rehabilitation needs. INDIA noted that EIA activities should be reviewed by a competent body, drawing on the ISA experience. WWF highlighted the need for a global decision-making and oversight process through the ILBI COP and its subsidiary bodies, for both EIAs and SEAs.

The AFRICAN GROUP supported a compliance and liability clause in the ILBI, and called for a dispute settlement mechanism. CARICOM suggested mandatory monitoring and review, and a self-reporting element to reduce burdens on the evaluating body. MEXICO highlighted monitoring, compliance, enforcement, and environmental auditing, underscoring that monitoring obligations should address medium- and long-term impacts and not be limited to sponsoring states, with other states flagging instances of non-compliance.

NEW ZEALAND supported: a common set of reporting and monitoring requirements, noting that the proponent should prepare a monitoring plan, reporting to the sponsor state to ensure compliance; a central repository of information, to ensure cumulative impacts are taken into account; and adaptive management to strike a balance between the best short-term outcome and the need to improve limited scientific knowledge. IUCN called for: supplementary EIAs, if an activity is expanded in scale; and a global review, especially in cases of significant harm or high uncertainty, adding that the process should be subject to consideration by a scientific body.

Clearinghouse: AOSIS supported an EIA information registry for publishing EIA reports. PSIDS proposed that a central repository for EIA information be hosted by the ILBI secretariat, which could be used for, *inter alia*, baseline data on ABMTs, including MPAs. The REPUBLIC OF KOREA supported an information-sharing system, where states voluntarily share information on, *inter alia*, baseline studies.

SEAs: WWF highlighted that bio-regional SEAs considering cumulative and cross-sectoral impacts would provide a broad information framework, within which individual EIAs could be conducted in a faster, cheaper and easier manner. CANADA, AUSTRALIA and IUCN supported the inclusion of SEAs, with the EU highlighting a role for the ILBI in promoting cooperation between states at the regional level conducting SEAs in ABNJ. CHINA stated that SEAs are outside UNCLOS scope. PSIDS asserted that SEAs are complementary to EIAs, and expressed openness to linking them to marine spatial planning.

CAPACITY BUILDING: The EU suggested the establishment of voluntary peer-review mechanisms, and twinning arrangements to build developing countries' capacity. The G-77/CHINA stressed the need for financial assistance and capacity building for developing countries. The FSM noted that building capacity makes it easier for developing countries to participate in EIAs, and to apply learning to activities within national jurisdiction.

IN THE CORRIDORS

As EIAs took center stage, delegates debated a wide range of possible roles for a new international instrument, both in terms of the nature and specifics of additional guidance, as well as the degree of internationalization of decision-making, oversight and review. While NGOs sounded alarm bells about "EIAs of convenience," which might not have biodiversity concerns at their heart, RFMOs underscored progress at the regional level. On the sidelines, some participants wondered about the mandate and capacity of regional seas conventions to support cooperation in assessing cumulative or transboundary impacts.

By the end of the day, the optimists welcomed growing convergence on the need for transparency, including the sharing of information arising from EIAs, which could also be used for area-based management. The skeptics, however, mused that common ground is still elusive, not to mention the pressing need for capacity building to put any future rules into practice.