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# Environmental Impact Assessment (and Strategic Environmental Assessment)

ambition for part of the Package for an International  
Legally Binding Instrument (ILBI) on the Conservation and  
Sustainable Use of Biodiversity in Areas Beyond National Jurisdiction  
(BBNJ)

WWF Brief to governments

This briefing paper assesses the applicability of the Environmental Impact Assessment (EIA) regime for assessing impacts on biodiversity beyond national jurisdiction (BBNJ), supplementing our previous submissions to BBNJ PrepCom 2 and PrepCom 3. It focuses on the applicable regime for any and all

I. Proposed process for assessing environmental impacts and respective decision-making procedures

As in the previous submission, all activities should be subject to an EIA regime. I.e., there should be no exemptions to the EIA requirements for different uses/activities/places/situations, however, would differ depending on the potential/likelihood of impacts by the respective activity determined by threshold testing. This flexibility in choice of assessment procedures needs to be codified in relevant guidelines developed by the LBI subsidiary body for scientific and technical advice (SBSTA) and adopted by the Conference of Parties to the ILBCOP. We would expect such guidance to be adopted as an Annex to the Agreement

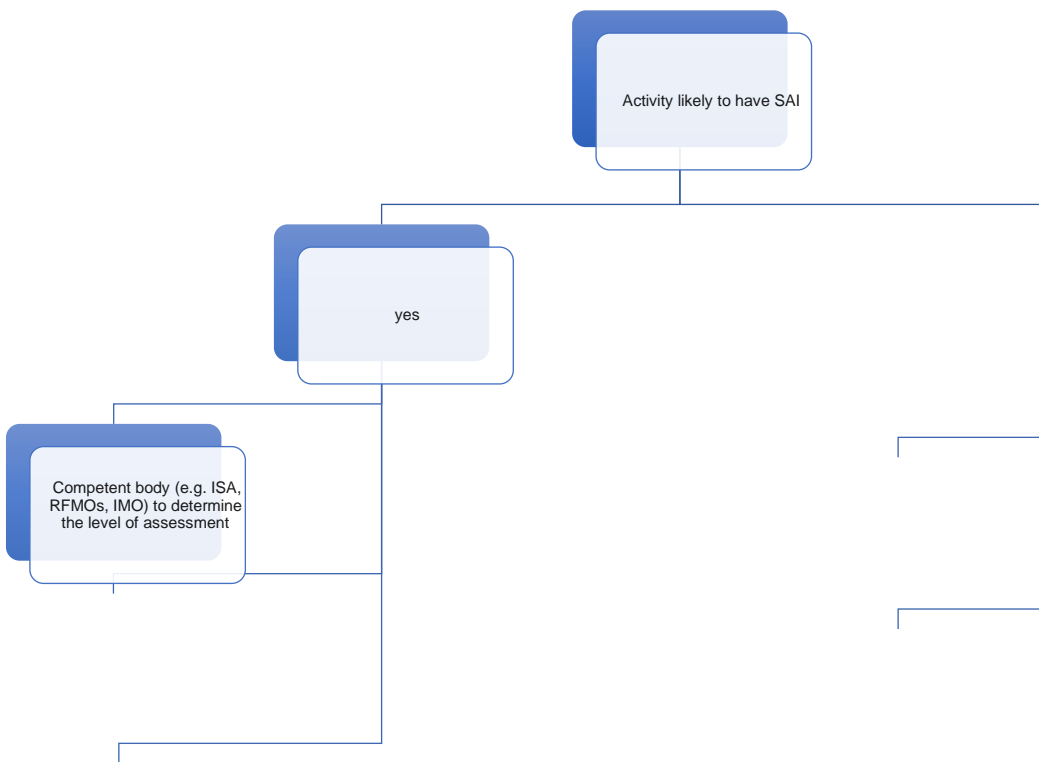
To determine the level of assessment required for any assessment, WWF proposes that all activities in ABNJ are to be assessed against a threshold approach. This would be based on the likelihood of significant adverse impacts (individually or combined) to occur on marine ecosystems, marine biodiversity and ecosystem services and on other users/uses. The geographical area and ecological relevance, considering presence of for instance ecologically or biologically significant marine areas (BSAs), vulnerable marine ecosystems (VME), where the effects of the proposed activity are likely to occur, should also play a role in determining the appropriate level of assessment. The vulnerability of specific ecological/biological features in these areas to the activity in question should be given due consideration in the threshold test in determining the level of assessment, as well as in assessing the risk of impacts

The Convention on Biological Diversity (CBD) Revised Voluntary Guidelines for the consideration of Biodiversity in Environmental Impact Assessments and Strategic Environmental Assessments in Marine and Coastal Areas could be incorporated by reference to the Agreement. It would be worth considering whether there are any other generally accepted minimum standards and EIA criteria that might be similarly referred to. Any LBI guidelines annexed to the Agreement would then be expected to be consistent with such specified guidance.

In light of the above, the following steps are proposed for determining the appropriate level of assessment required to determine whether a significant adverse impact is likely to occur on BBNJ (see also schematic diagram in Figure 1 below) and respective decision-making process

1. Responsible State(s) with the jurisdiction or control over a certain activity conducts a preliminary assessment (screening) to determine whether the respective activity is likely to cause significant adverse impact on BBNJ. In all likelihood, however, there would be more than one responsible state with nationals, either vessels, companies or persons, involved and it would be up to relevant responsible states to arrange among themselves how to conduct that preliminary assessment.
2. Responsible State notifies the relevant competent sectoral body and the Secretariat/COP and shares through the LBI

3. If the activity is deemed not likely to cause significant adverse impact a consultation period should then start for objections by any State, relevant organisations and relevant stakeholders with provision for that decision to be reviewed if warranted
4. If the activity is likely to cause significant adverse impact the State also submits the preliminary study to the competent sectoral body, if there is one. This body would determine the appropriate level of assessment required and make a corresponding decision. The competent body may challenge the preliminary findings from the responsible State if it finds that significant adverse impact either is or is not likely to occur should it form a contrary view
5. The competent sectoral body notifies the LBI Secretariat (i) that it has received the preliminary assessment (ii) the level of assessment it has decided is required



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Annex I:

Proposed Environmental Impact Assessment and Strategic Environmental Assessment processes under the new UNCLOS ILBI on the Conservation and Sustainable Use of Biodiversity of Areas beyond National Jurisdiction

**States have an obligation under UNCLOS and under international customary law to conduct EIAs for activities that are likely to cause significant adverse impacts in areas in and beyond national jurisdiction.<sup>8</sup> With respect to ABNJ, a global comprehensive procedure<sup>8</sup>**



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Furthermore, like the provisions of the ISA Sulphides Regulation, the ISA could also have similar (but adapted) measures to prevent, minimize and control any potential damage or other hazards to marine biodiversity in ABNJ arising from its activities applying the precautionary approach and the

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conducting the threshold testor, if

Thirdly, the referral body must decide what level of assessment is appropriate. This is the second threshold test. There are two significance tests to be made: (i) does the responsible state consider that any impact is warranted and; (ii) further assessment by the relevant body is warranted i.e., what level of further assessment is warranted.

regarding EIA are not fulfilled, the COP or delegated subsidiary regional committee (working closely with SBSTA and scientific bodies of competent organisations) could have the authority to supersede an authorisation by another body or national authority in exercise of its oversight powers<sup>1</sup>.

(C) The Role of Strategic Environmental Assessments (SEAs) in the Conservation and Sustainable Use of BBNJ

The role of SEAs as a risk aversion tool under the BBNJ has been addressed by WWF in previous submissions<sup>2</sup>. This section aims to complement the previous submissions by further elaborating on the relationship between SEAs and EIAs, as well as on ecosystem-based management tools such as MSP.

EIAs are well-known tools to assess the impact of a particular activity or project, while SEAs are better-known (and increasingly used) tools for assessment of policies, plans and programmes of categories of activities (e.g., a minerals province, a shipping route, a fishery). Complementing EIAs by the choice of activities undertaken and limit[ing] the range of alternatives considered, and thus have important environmental consequences that cannot be fully captured at

<sup>23</sup>

It is important to note that even though cumulative impacts by different activities are best assessed by SEAs, project/activity proponents need to assess the cumulative and cross-sectoral impacts of their proposed activities to avoid circumvention of significant adverse impact threshold. Obviously, any relevant prior SEAs make any EIA quicker, cheaper and easier to be done regardless. This is consistent with existing EIA requirements for assessing cumulative impacts with regards to bottom fishing<sup>34</sup> activities, UNEP

This choice of scope and scale is a key factor in identifying relevant interests and stakeholders that need to be included in the process as well as to understanding the respective ecosystem carrying capacity

Whereas EIA is project based, SEA aims to provide a broader, overarching, view of the potential impact of activities in relation to the full suite of social, economic and environmental impacts, including special consideration of cumulative and cross sectoral impacts on biodiversity and ecosystem services. In conducting SEA, the subsidiary regional committee should provide for the preparation of a report that includes identifying strategic level alternatives. SEAs would then provide a backdrop against which individual EIAs can be effectively conducted, always remembering that the existence of SEAs should not be a condition for the obligation to conduct EIAs at the appropriate threshold level. Crucially, however, the prior existence of pertinent SEAs is likely to result in choosing a lower level of threshold for EIA than would be the case in the absence of any such SEAs.

WWF recommends that any SEAs conducted by a subsidiary regional committee be conducted under the guidance of the









This decision and rationale would then be shared with the COP/Secretariat/CHM and addressed by the relevant competent body (if existent). In case no competent body is responsible for regulating the activity in question, the COP (or delegated regional committees if in place) would assume this role.

The screening process of an activity deemed likely to have a significant impact could then subject the activity to a second threshold test to determine the appropriate level of assessment based on the seriousness of the potential impacts. WWF suggests four levels of assessment might be warranted:

1. a full and comprehensive EIA is required by a sectoral body
2. a limited EIA is required by a sectoral body for smaller scale impact activities and if pre defined environmental standards can be met (as discussed in the Summary supra and in Annex I, Section B);
3. a cross sectoral and/or cross jurisdictional EIA conducted by the COP is required for major activities with likely significant impacts beyond the competency of the sectoral body initially involved and
4. further study is necessary to determine the level of EIA required (see Summary supra, and Annex I, Section B)

According to the CBD guidelines screening process, t(B)-3(D)1 BDC 72( )94r94.96 84he 1 453.914.96 1s A-3(n)MCI

## Scoping

The purpose of scoping is to identify:

- x the important issues to be considered in making threshold decisions and thence choosing levels of assessment and determining information needs of such assessments
- x the appropriate time and space boundaries of studies required, especially baseline studies and consideration of other uses and users and of cumulative impacts
- x the information necessary for decision-making at each point along the assessment process and
- x the significant effects and factors to be studied in detail.

The scoping should be done by the proponent of a project in consultation with the relevant competent body, including activities specific guidelines consistent with any relevant general guidelines. It should entail substantial consideration of alternatives and ensure conformity and compatibility with any MSP arrangements in place, especially MPAs, including marine reserves.

## Impact analysis pursuant to an EIS

As seen above, the level of assessment may vary depending on how serious the potential significant adverse impact may be and what the likelihood of occurrence might be. The greater the risk, the higher the level of assessment. The aim, in the case where an EIS is required, is to take account of all of the important environmental/project impacts and interactions, making sure that indirect and cumulative effects, which may be potentially significant, are not inadvertently omitted, this already starts in the initial screening phase, and can be elaborated in greater detail in the impact analysis phase.

- x Identification: to specify the impacts associated with each phase of the project and the activities undertaken;
- x Prediction: to forecast the nature, magnitude, extent and duration of the main impacts;
- x Evaluation: to determine the significance of residual impacts i.e. after taking account how mitigation will reduce a predicted impact.

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- x reductions in species diversity;
- x depletion or fragmentation on plant and animal habitat;
- x loss of threatened, rare or endangered species;
- x impairment of ecological integrity, resilience or health e.g.
  - o disruption of food chains;
  - o