

ACOPS

Advisory Committee on
Protection of the Sea

EIAs under the BBNJ Agreement: Implications for Shipping

**CIL-NCLOS Workshop: Protection of the Marine Environment and Shipping:
Contemporary Challenges and New Approaches (Session 4 – EIAs)
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Starting point

1. EIA under the BBNJA: Framing and approach
2. EIA under the BBNJA: main elements
3. EIA under the BBNJA: Process
4. Pending implementation guidance (STB)
5. Does the IMO conduct equivalent EIAs?

Parting questions

Starting Point



→ Not undermining under Art.5

This Agreement shall be interpreted and applied in the context of and **in a manner consistent with** the Convention [BBNJA Art.5(1)] & in a manner that **does not undermine relevant [IFBs]** and that **promotes coherence and coordination** with those [IFBs] [BBNJA Art.5(2)]

→ Enhancement of cooperation under Art.8

Including among relevant IFBs and through the promotion of the BBNJA under other IFBs [BBNJA Art.8(1) and(2)]

→ The IMO is a relevant IFB

→ BBNJA Part IV



1. EIA under the BBNJ Agreement: Framing and Approach

What is an EIA?

→ EIA =

A process to identify and **evaluate the potential impacts** of an activity to inform decision-making [Art.1(7)]

[NOTE: no emphasis on ecological elements. YET in the context of EIA scoping and monitoring –reference is made to environmental impacts and any associated impacts such as economic, social, cultural and human health impacts, Art.31(1)(b) and 35]

→ Cumulative impacts are included and defined as =

the **combined and incremental** impacts resulting from **different activities**, including known past and present and reasonably forceable activities, or from the repetitions of similar activities over time, and the consequences of of climate change, ocean acidification and related impacts [Art.1(6)]



1. EIA under the BBNJ Agreement: Framing and Approach

Framing provisions

- BBNJA to **operationalise the provisions of UNCLOS on EIA** for ABNJ by establishing processes, thresholds and other requirements [BBNJA Art.27(a)]
- Prevent, mitigate and manage significant adverse impacts (substantial pollution of /significant and harmful change to the ME)
- Shall consider conducting strategic environmental assessments (SEA) for plans and programmes relating to activities (...) to consider potential effects and alternatives [Art.27(d) and 39] Also tool for the COP to identify potential future impacts and identify gaps and research priorities
- Achieve a **coherent EIA framework for activities in ABNJ** [BBNJA Art.27(e)]
- Assessment of **planned activities prior** to their authorisation [BBNJA Art.28(1)]
- Obligation to conduct an EIA rests with States with jurisdiction and control but according to a set of criteria and parameters

2. EIA under the BBNJ Agreement: Main Elements



Obligation to

- conduct a comprehensive assessment of impacts (whether screening or full EIA) including cumulative impacts (minimum list)
- consult widely throughout the different steps of the process and timely
- Take into account comments
- Respond to substantive comments from other States and the STB
- Take into account situation/comments from most affected /adjacent coastal states
- Monitor activities, review authorisation if needed and report
- Publish information, reports, etc generated throughout the process through the Clearing- House Mechanism

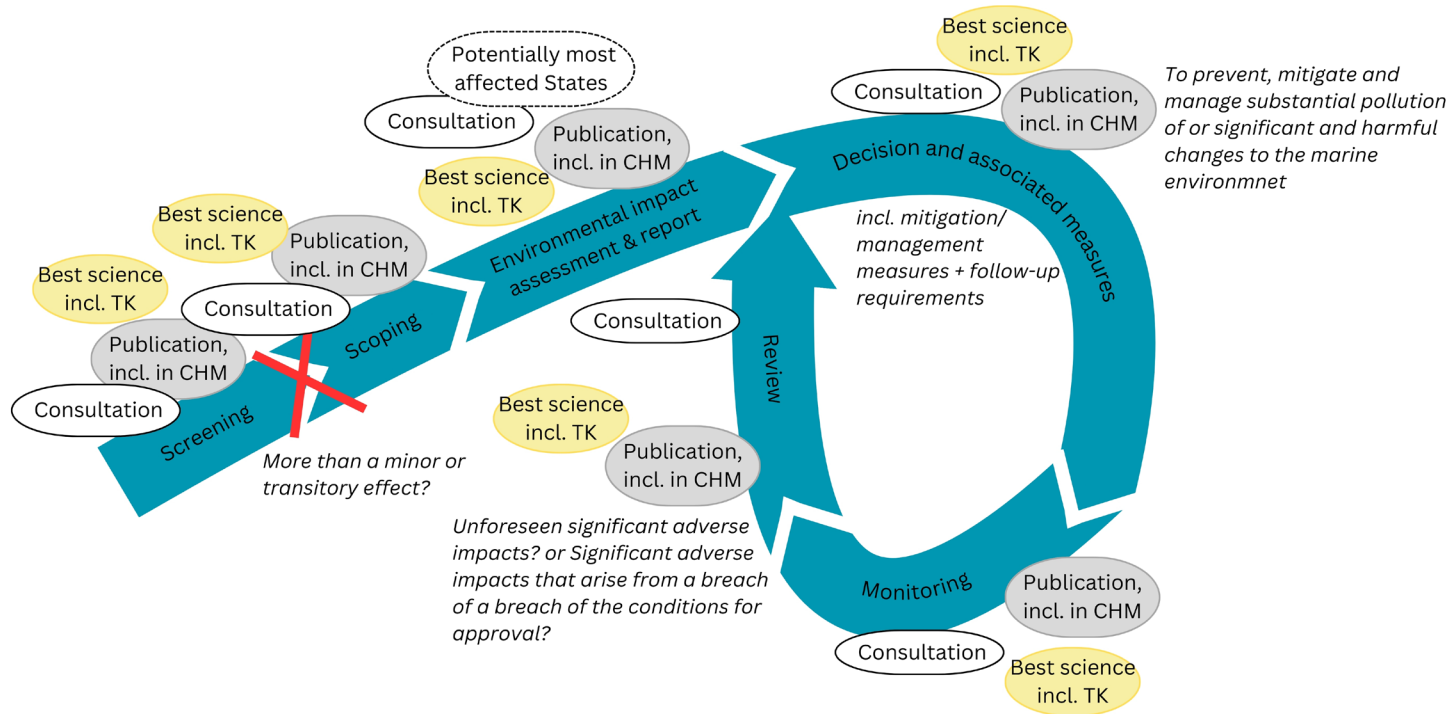


2. EIA under the BBNJ Agreement: Main Elements

Expected information (Screening (S)/EIA and follow-up)

- ✓ Purpose
- ✓ Location, including characteristics and ecosystem
- ✓ Duration, intensity and potential impacts including cumulative impacts
- ✓ Baseline assessment
- ✓ Best available science and scientific information
- ✓ Type and technology (for the activity) and manner in which it is to be conducted
- ✓ Alternatives to the planned activity
- ✓ Extent to which effects are unknown or poorly known
- ✓ Impact assessment and evaluation
- ✓ Mitigation/management measures & environmental management plan
- ✓ Public information process

3. EIA under the BBNJA: The Process



4. Pending Implementation Guidance



Scientific and Technical Body

- ✓ Thresholds for the conduct of screening
- ✓ Assessment of cumulative impacts
- ✓ Public notification and consultation process
- ✓ Required content of EIA reports
- ✓ Monitoring and reporting on the impacts from authorised activities
- ✓ Conduct of SEA
- ✓ Indicative list of activities that do/dot require an EIA
- ✓ Conduct of EIAs in areas identified as requiring protection of special attention

...

5. Does the IMO conduct equivalent EIAs?



- Unnecessary to carry out a screening / EIA of a planned activity if
- The assessment conducted according to the requirements under an IFB is equivalent and the results have been taken into account,

OR

- The applicable regulations or standards of the IFB were designed to prevent, mitigate or manage potential impacts below the threshold for EIAs and has been complied with
- Consultation and publication throughout the process? Review?

Parting Questions



- ? Application to activities authorised before? Do they have priority?
- ? Can IMO regulations be considered as being designed to manage the activity below the threshold? What if they failed? Are EIAs embedded? Even if without cumulative impacts?
- ? New technology (eg scrubbers) as an entry point?
- ? Consideration of response to underwater noise
- ? Application of BBNJA as interpretation of UNCLOS (100+ signatories)
- ? Scope and balancing of elements in EIA (ecological vs social vs economics)



EIAs @IMO: implicitly imbedded?

Acceptability thresholds adopted in existing IMO treaties

- MARPOL Annexes I to VI: set limits of discharges/emissions of different substances in different areas (proximity to the coast or offshore installation, polar seas, PSSA, etc.)
- Ballast Water Management Convention: Less than 10 viable organisms \geq to 50 microm /cm³ and less than 10 viable organisms \leq 50 microm /ml Maximum of Treatment systems have to be endorsed by the IMO
- Anti-Fouling System Convention: first developed to reduce pollution caused by organotin compounds (TBT) used in anti-fouling systems, and later amended to ban or limit other toxic substances used in AFS (e.g. cybutryne) + adoption of guidelines for the removal of AFS
- etc.

EIAs @IMO: implicitly imbedded?



Challenges in relation to other IMO mechanisms

- **Biofouling Guidelines and Underwater Radiated Noise Guidelines:**
 - acknowledgement of the need for measures
 - amendments to guidelines to improve the guidance and better address the issue
 - but resistance to the development of binding regulations
- **EIA in PSSAs** to guide decision on Associated Protected Measure?
- **IMO Impact Assessments** approach focused on the industry and/or on member states: e.g. IMO GHG strategy for shipping – see also PSSA (see MEPC81/7)
- Emerging issues (e.g. light)
- Cumulative impacts

New technological developments as entry-points?



E.g.

- **Use of scrubbers** - *an option to comply with the low sulphur fuel requirements of MARPOL Annex VI :*
 - 2015 Guidelines for exhaust gas cleaning systems (EGCS or scrubbers – which to ‘clean’ ships’ fumes by washing out acidifying sulphur oxide with a fine spray of sea water), revised and tightened in 2021 (**MEPC.340(77)**)
 - 2019 Guidance on indication of ongoing compliance in the case of the failure of a single monitoring instrument, and recommended actions to take if the EGCS fails to meet the provisions of the 2015 EGCS Guidelines (resolution **MEPC.259(68)**)
- **Onboard CO2 capture**: the development of a work plan on developing a regulatory framework for its use was considered by MEPC81 in April 2024 and send for further work to an ICG. Report requested to MEPC83 (Q2 2025).