

### **New Zealand intervention in EIA informal working group covering items 5.1-5.3**

In relation to 5.1, New Zealand considers that states, including through regional and sectoral bodies, should remain responsible for EIA decisions, consistent with UNCLOS article 206.

In relation to 5.2, New Zealand agrees with the EU and others that the BBNJ agreement should respect EIA obligations under other frameworks, and with Canada and others that a single EIA should be required for any proposed activity, rather than a second EIA under the BBNJ Agreement when an existing framework already requires an EIA. We consider further discussion is needed on how to achieve this in drafting the agreement.

In relation to 5.3(a), NZ expects the threshold to be based on that set out in UNCLOS article 206 (i.e. "reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment"). To ensure a precautionary approach, an assessment of the likelihood of meeting the threshold could be incorporated (for example, the Madrid Protocol to the Antarctic Treaty provides different procedures for impacts that are assessed to be likely versus those that are not). This goes to the "reasonable grounds" requirement and would allow states to tailor the process to the expected level of environmental impact of an activity, so that the most harmful activities receive the most scrutiny while those not expected to change the marine environment could proceed efficiently. Provision of guidance for how to apply threshold / criteria would also be useful, and we agree with the Pacific SIDS that the SPREP EIA Guidelines and the CBD EIA guidelines could be considered in developing such guidance.

In relation to 5.3(b), the implementing agreement will need to clarify which activities in ABNJ trigger the need for an EIA. NZ is open to ideas on how this could be done including the possibility of an indicative, non-exhaustive list of those activities that require an EIA. We consider that such a list would essentially be a form of guidance to states, and could be elaborated by a COP rather than included in the agreement.

In relation to 5.3(c), New Zealand welcomes the consideration of cumulative impacts in EIAs. We are interested in others' views on how to achieve this through the agreement. One option would be to define what an impact or effect is in the agreement, and to state that an effect includes any cumulative effect that arises over time or in combination with other effects. This is the approach that is taken in New Zealand's legislation applying to EIA for the EEZ and continental shelf.

In relation to 5.3(d) regarding EIA requirements in EBSAs and other vulnerable areas, New Zealand considers that EIA should be undertaken for all activities in ABNJ meeting the threshold, including such areas. We agree with the US and Singapore that impacts meeting the threshold may occur more quickly in more vulnerable areas, and that this issue could be covered in more detailed guidance to states on EIA that the COP could develop.