

Talking Points on Environmental Impact Assessments for Pacific Small Island Developing States

5. Environmental impact assessments

5.1 Obligation to conduct environmental impact assessments

PREFERENCE(S):

(1) OPTION I: State parties shall assess the potential effects of planned activities under their jurisdiction or control in areas beyond national jurisdiction in accordance with their obligation under the articles 204 to 206 of the Convention

(2) OPTION I & II: States parties shall require any proponent of an activity falling within its jurisdiction or control to conduct an environmental impact assessment for an activity intended to be carried out in areas beyond national jurisdiction when that activity meets the threshold requirement for an environmental impact assessment, in line with article 206 of the Convention.

State parties shall require any proponent of an activity falling within its jurisdiction or control to conduct an EIA for an activity intended to be carried out in ABNJ when that activity meets the threshold requirement for an EIA, in line with article 206 of the Convention

(a) For the purposes of this instrument, planned activities under a State's jurisdiction or control shall be those activities over which it has effective control or exercises jurisdiction in the form of licensing or funding of the activities.

(3) OPTION II: The requirement in this instrument to conduct an environmental impact assessment applies to all activities with impacts in areas beyond national jurisdiction.

With regards to section 5.1 paragraph 1 on the obligation to conduct environmental impact assessments; the PSIDS is of the view that an EIA should be carried out on any activity that affects in ABNJ. We view that it is important that the instrument has a specific paragraph that explicitly states this. As such PSIDS sees option I covers this position. The PSIDS also sees that the operationalization of article 206 specifically to the ABNJ is what we are seeking in this instrument under this sub-section. Furthermore, we believe that Option I clearly specifies that the EIA should be carried out in within national jurisdiction where it could potentially impact the ABNJ as well as planned activities in ABNJ.

On section 5.1 paragraph 2, we can merge OPTIONS I and II, in the sense that we support language that obligates States Parties to take legal, administrative or other measures to implement this Part on EIAs, including, but not limited to, by requiring the sort of action by proponents as outlined in OPTION II

On paragraph 3 under section 5.1 the PSIDS view that under this instrument, the obligation to conduct an EIA should apply to all activities with the potential to have impacts in ABNJ as outlined in Option II.

Thank you, Mr. Facilitator

5.2 Relationship to EIA processes under relevant instruments, frameworks and bodies

PREFERENCE(S):

(2) OPTION I: The environmental impact assessment process set out in this Part shall not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

(3) OPTION I: The bodies set forth in Part [...] shall consult and/or coordinate with relevant global, regional and sectoral bodies with a mandate to regulate activities in areas beyond national jurisdiction or to protect the marine environment in accordance with the following procedures: [...]

(a) Such procedures shall include the establishment of an ad hoc interagency working group or the participation of representatives of those organizations' scientific and technical bodies in meetings of the scientific/technical body set forth in Part [...]

(4) OPTION I: Option A: Minimum global standards and/or guidelines for the conduct of environmental impact assessments shall be developed through the scientific/technical body set forth in Part [...] and/or through consultation or collaboration with relevant global, regional and sectoral bodies.

(5) OPTION III: Where an activity in areas beyond national jurisdiction is already covered by existing obligations and agreements, it is not necessary to conduct another environmental impact assessment for this activity under this instrument,

(a) Option C: provided that the threshold for the conduct of environmental impact assessments meets or exceeds the threshold set out in paragraph [...]

(b) if it is determined that the minimum standard as set out in this instrument has been met by the environmental impact assessment process in another relevant global, regional and sectoral body with a mandate in relation to marine biodiversity of areas beyond national jurisdiction through the consultation mechanism with the relevant global, regional or sectoral bodies set out in paragraph [...]

Thank you, Mr. Facilitator, and again I'll be speaking on behalf of the Pacific SIDS and we align ourselves with the views made in the statement by Palestine on behalf of G77 and China

In Section 5.2 on the relationship to environmental impact assessment processes under relevant instruments and frameworks and bodies; in paragraph 2, the PSIDS is of the view that where competent regional and sectoral bodies exist and whose mandate supports the intended work under this instrument, we should not undermine their effectiveness. We believe that Option I under paragraph 2 speaks best to this although we could be flexible and be willing to consider some formulation of Option I and II provided that the elements in Option I are fully captured in the formulation

On paragraph 3 the PSIDS supports the only option that is stated here.

With regards to paragraph 4 the PSIDS prefer OPTION I Option A and again in particular we support the consultation with relevant global, regional and sectoral bodies.

On paragraph 5, the PSIDS supports that where existing frameworks cover the obligation to conduct an EIA need not be duplicated as long as the threshold as outlined in sub-paragraph (a) Option C are met and that the EIA already conducted is comparably comprehensive including with regard to elements such as assessment of cumulative impacts as well as climate change and ocean acidification impacts

5.3 Activities for which an EIA is required

[The thresholds and criteria for EIAs]

PREFERENCE(S):

OPTION II:

(1) When States parties have reasonable grounds for believing that planned activities under their jurisdiction or control are likely to have more than a minor or transitory effect on the marine environment, they shall assess the potential effects of such activities on the marine environment.

(2) When States have 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, they shall conduct a full environmental impact assessment on the potential effects of such activities on the marine environment and shall communicate the results of such assessments in the manner provided in this Part.

[List of activities that require or not require an EIA]

(1) OPTION I: An indicative non-exhaustive list of activities that require or do not require an environmental impact assessment

Option A: is contained in annex [...].

(2) OPTION I: The list shall be regularly updated.

[Cumulative Impacts]

PREFERENCES

(1) OPTION I, Option A

[Transboundary Impacts]

[Specific provision for environmental impact assessment in areas identified as ecologically or biologically significant or vulnerable]

PREFERENCES

(1) Option A (a)

Thank you, Mr. Facilitator. The Pacific SIDS aligns with the views expressed by Palestine on behalf of the Group of 77 and China

PSIDS prefers option II as we believe that it speaks to a two tiered approach on in order to ensure a robust mechanism for conducting an EIA. So the way we read OPTION II is that sub-paragraph (1) speaks to an initial assessment of potential impacts on the marine environment. Then sub-paragraph (2) then puts forth that if the initial assessment finds that the potential impacts on the environment would be significant then it would then trigger a full EIA. This is the two-tiered approach that we would be very much in favor of and we believe the language could be sharpened to reflect this.

On sub-section on List of Activities that require or do not require an EIA on paragraph 1, PSIDS view that any list of activities whether it requires or does not require an EIA should be contained in the annex (as given in OPTION I, sub-option A) and must be indicative, non-exhaustive and open to amendment as outlined in sub-paragraph OPTION I so as to take into account any changes in types of activities that may take place in the future.

On the sub-section under 5.3 regarding cumulative impacts, paragraph 1, PSIDS supports OPTION I, Option A. PSIDS views that it is important that the instrument outlines the process for assessing cumulative impacts in the ABNJ. PSIDS is of the view that having this part clearly stipulated in the instrument as outlined in Option A ensures that cumulative impacts are captured in the EIA at the outset once the instrument enters into force. We would also be supportive of having the effects of climate change and ocean acidification as a cumulative impact.

With regards to the sub-section on Transboundary impacts the PSIDS is supportive of paragraphs 1 and 2 and in particular taking into account the possible impacts in adjacent areas.

On the sub-section on Specific provision for environmental impact assessment in areas identified as ecologically or biologically significant or vulnerable, PSIDS Prefer Option I in that we would like to see text on this. With regards to sub-paragraph (2) Option A (a) especially “regardless of whether the impacts are expected to be minimal or not, an environment impact assessment shall be required” if a planned activity will take place in or adjacent to an area identified for its significance or vulnerability. There should be a lower threshold to trigger an EIA for these areas.

Thank you

5.4 Environmental Impact Assessment process

PREFERENCES

GAP(S): N/A

PREFERENCE(S):

OPTION III: 1) The process for conducting an environmental impact assessment shall include the steps set out below.

- (a) Screening to determine whether an environmental impact assessment is required
Option B: States parties shall be responsible for determining whether an environmental impact assessment is required in accordance with the requirements in this instrument. If the State party determines that an environmental impact assessment is not required for the planned activity, the approval of the scientific/technical body set forth in Part [...] must be obtained.

(b) Scoping: Option A - D:

(c) Option B: Impact prediction and evaluation, using the best available scientific information, including traditional knowledge and an examination of alternatives;

(i) Option B: The proponent of the planned activity is responsible for conducting the environmental impact assessment.

a. and may contract with a third party to conduct the environmental impact assessment.

Option C: The environmental impact assessment shall be conducted by an independent consultant appointed by a panel of experts designated by the scientific/technical body set forth in Part [...].

(ii) States parties, in particular small island developing States, are not precluded from submitting joint environmental impact assessments.

(iii) A pool of experts shall be created under the scientific/technical body set forth in Part [...]. States parties with capacity constraints may commission those experts to conduct and evaluate environmental impact assessments for planned activities.

(d) Mitigation and impact management and reporting

(e) Identification of alternatives for mitigation, prevention and compensation for potential adverse effects

(f) Public notification and consultation

(i) Public notification and consultation shall take place with:

a. Adjacent coastal States

Option A: that would be impacted by the planned activity

Option B: when the planned activity may have significant environmental impacts on marine areas within their national jurisdiction

Option C: in particular, small island developing States

b. Other States

i. in particular, potentially affected States, where those can be identified.

c. Indigenous peoples and local communities with relevant traditional knowledge in adjacent coastal States

d. Relevant global, regional and sectoral bodies

i. including the International Seabed Authority and the International Maritime Organization

e. Non-governmental organizations

f. The general public

g. Academia

h. Scientific experts

- i. Affected parties
- j. Adjacent communities and organizations that have special expertise or jurisdiction
- k. Interested and relevant stakeholders
- l. Those with existing interests in an area

(ii) Option A: Public notification and consultation shall be required at each stage of the environmental impact assessment process.

a. The type and frequency of public notification and consultation shall reflect the activity's level of risk and its anticipated impacts.

b. Stakeholders shall be given an opportunity to provide inputs before decisions are made.

Option B: A time-bound opportunity shall be provided for the public, States and international organizations to submit comments during scoping and on draft environmental impact assessment documents.

Option C: An opportunity shall be provided for adjacent coastal States, other States, in particular potentially affected States where those can be identified, and, where appropriate, competent international organizations and civil society to provide relevant information during the scoping stage of the environmental impact assessment process.

(iii) Public notification and consultation shall be:

a. Transparent and inclusive.

b. Targeted and proactive when consulting with adjacent small island developing States.

(iv) a. Substantive comments received during the consultation process shall be considered and responded to.

b. The comments made by adjacent coastal States and a description of how those comments have been addressed should be made publicly available.

c. The consultation process shall address the specific concerns of coastal States where those concerns arise.

d. States parties shall have regard to the comments received during the consultation process when considering, in particular, transboundary impacts.

(v) Procedures may be developed to facilitate the consultation process at the international level.

(g) Publication of reports and public availability of reports

(i) States parties shall publish and communicate the reports of the results of the assessments in accordance with articles 204 to 206 of the Convention.

(h) Consideration and review of reports

Option A: The review shall be

Option 1: carried out by the body set forth in Part [...]

(i) Decision-making

(i) Option B: The body set forth in Part [...] shall be responsible for determining whether an activity may proceed in accordance with the following procedural requirements:

Option 2: The complete environmental impact assessment shall first be submitted to the scientific/technical body set forth in Part [...] for review, which shall, having regard to the inputs received during public consultation, review the environmental impact assessment and recommend to the decision-making body/forum set forth in Part [...] whether the planned activity should proceed.

b. Option 1: A revised environmental impact assessment may be submitted to the panel of experts for reconsideration.

c. Option 1: The decision-making body/forum may delegate its decision-making function to a relevant regional body in accordance with the conditions and requirements set out below[...]

(ii) Option A: No decision allowing the planned activity to proceed shall be made where the environmental impact assessment indicates that the planned activity would have severe adverse impacts on the environment.

(j) Option A: Publication of decision-making

(l) Option A: Monitoring and review

(4) Option A: Further details regarding the process for conducting an environmental impact assessment shall be developed

(a) by the body set forth in Part [...].

(b) in the form of

Option 1: recommendations or guidelines.

(c) These guidelines shall be reviewed regularly.

Thank you, Facilitator, for giving me the floor, we are happy to see you once again facilitate us for the discussion for this particular section on Environmental impact assessments and rest assured you have our full support. I will be speaking on behalf the Pacific Small Island Developing States and at the outset we are delighted to note that Algeria has aligned with the PSIDS position and removed his tie.

With regards to the question you posed earlier on where certain elements within this section should be placed, we are still considering the placement of elements as we consider the text.

With regards to sub-section 5.4 on the Environmental Impact Assessment process we align ourselves with the position made Palestine on behalf of the Group of 77 plus China and are not in favour of OPTION I.

PSIDS is in favour of OPTION III as we believe that a process for an EIA should be fleshed out in the treaty and it should at the very least contain the steps for the process of conducting an EIA

With regards to screening to determining whether an EIA is required, PSIDS believes that Option B is preferable, as it provides the level of checks and balance that the Pacific SIDS would prefer. We do not see Option A as having a provision for checks and balance where as Option C provides a lower level of checks and balance through verification only.

With regards to the scoping, the PSIDS like all the options under Scoping from A to D and we would also like to highlight in this list; identified cumulative impacts, best available scientific information and traditional knowledge must be included in the scoping

*On impact prediction and evaluation on sub-paragraph C, the PSIDS believes that elements of Option B best supports the PSIDS position as we would want to ensure that such predictions should not only use the best available scientific information but also include traditional knowledge as well as an examination of the alternatives. For the sake of consistency, we would slightly amend the language here so that it reads “Impact prediction and evaluation using the best available scientific information **and knowledge**, including traditional knowledge and an examination of alternatives.”*

With regards to who is responsible for conducting EIAs, The PSIDS like elements that are outlined in both Options B and C. Pacific SIDS supports state party may require “the proponent to conduct the EIA as outlined Option 1 under Option B, we are also supportive of having further discussion on a provision that allows a “third party” to be contracted to conduct the EIA provided that they are accredited to the scientific and technical body.

PSIDS would definitely support that SIDS be allowed to submit joint EIAs. This speaks to our position of pooling capacities in order to be able to carry out an EIA as mentioned in sub-paragraph (ii)

PSIDS would support pool of experts created under the scientific body that can assist states with capacity constraints and may commission those experts to conduct and evaluate the EIAs at outlined in sub-paragraph (iii)

The PSIDS supports that all the elements mentioned from d-f on mitigation and impact management and reporting, identification of alternatives for mitigation prevention and compensation for potential adverse effects and public consultation must take place.

Further to this on sub-paragraph (f) (i) the PSIDS believe that public notification and consultation shall take place with adjacent coastal states that would be impacted by the planned activity, or when the planned activity may have significant environmental impacts on marine areas within their national jurisdiction and in particular small island developing states as mentioned in a. Further to the list under sub-paragraph (f)(i), the PSIDS fully supports that public notification and consultation must take place with indigenous peoples and local communities with relevant traditional knowledge and adjacent coastal states as well as relevant global, regional and sectoral bodies as mentioned in sub-paragraph (f)(i) c. and d.

With regards to sub-paragraph (f)(ii) the Pacific SIDS supports that notification and consultation shall be required at each stage of the EIA process. The PSIDS agrees that time-bound opportunity to submit comments during the scoping and on draft EIA documents in Option B as is common practice and in particular we would support that adjacent coastal states are consulted as outlined in Option C.

With regards to Public Notification and consultation. The PSIDS agrees that it should be transparent and inclusive and targeted and proactive consulting with adjacent small island developing states as mentioned in part (iii) under sub-paragraph (f). Furthermore, state parties shall have regard to the comments received during the consultation process when considering in particular transboundary impacts as outlined in part d. under (iv) under sub-paragraph (f). Finally, in part (h) under sub-paragraph (f), the Pacific SIDS supports that the consideration and review of the reports should be carried out by the body as set out in Option 1 under Option A.

With regards to decision-making, the Pacific SIDS supports Option 2 under Option B under (i) in that the body set forth in the agreement shall be responsible for determining whether an activity may proceed in accordance with the following procedure that the EIA shall first be submitted to the scientific and technical body for review which shall, having regard to the inputs received during received during public consultation, review the environmental impact assessment and recommend to the decision-making body/forum set forth in the instrument whether the planned activity should proceed.

The Pacific SIDS support that no decision allowing the planned activity to proceed shall be made where the EIA indicates that planned activity would have severe adverse impacts on the environment.

With regards to points (j) – (q) the PSIDS supports that decision making documents are published as mentioned in point (j) Option A and that for (l) Option A that monitoring and review is also included.

With regards to sub-paragraph (4) the Pacific SIDS would support Option A in that Further details regarding the process for conducting an environmental impact assessment shall be developed by the body set forth in in the instrument in the form of recommendations and guidelines in Option 1 and we also support that these guidelines shall be reviewed regularly.

5.5 Content of environmental impact assessment reports

OPTION II:

(1) Where an environmental impact assessment is required in accordance with this instrument, the environmental impact assessment shall include:

(a) **Option A:** A description of the planned activities;

(b) **Option A:** A description of reasonable alternatives to the planned activities, including non-action alternatives;

(d) **Option A:** A description of the potential effects of the planned activities on the marine environment, including cumulative impacts and any transboundary impacts;

(f) **Option A:** A description of any socioeconomic impacts;

(h) **Option E:** A description of the measures for avoiding, preventing, mitigating and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment.

(3) **Option A:** Further details regarding the required content of an environmental impact assessment report shall be developed

(a) by the body set forth in Part [...]

(b) in the form of an annex to this instrument.

(c) and shall be based on science.

(d) This guidance shall be regularly reviewed.

Thank you, facilitator, I will respond the question to posed earlier last week when we went through 5.4 on the EIA process with regards to the placement of text on monitoring and review as well as compliance under the EIA process. We would support at this point that text is not moved.

Thank you facilitator, and once again I will be speaking on behalf of PSIDS and we align ourselves with the views expressed made by Palestine on behalf of G77+China

With regards to sub-section 5.5 on the Content of EIA reports. The Pacific SIDS support OPTION II part (i). Under (a) support Option A in that it includes a description of the planned activities. Under (b) we support Option A: A description of reasonable alternatives to the planned activities, including non-action alternatives, under (d) support Option A: A description of the potential effects of the planned activities on the marine environment, including cumulative impacts and any transboundary impacts and we would be flexible and go along with the views expressed by Trinidad and Tobago and also have cultural impacts also included;

under (f) support Option A: A description of any socioeconomic impacts and would also like to fold in cultural impacts for instance the impact the planned activity would have on forms of navigation and the connectivity of species. And finally on sub-paragraph (h) we prefer Option E: A description of the measures for avoiding, preventing, mitigating and, where necessary and possible, redressing any substantial pollution of or significant and harmful changes to the marine environment. With regards to (3), the Pacific SIDS would support Option A where Further details regarding the required content of an environmental impact assessment report shall be developed and agree on points (a) – (d)

*and I would just like to make a specific point with regards to (c) we would like to suggest a language edit so as to achieve language consistency and we would also like to include traditional knowledge so then our suggestion then is that point (c) reads “and shall be based on the best available scientific information **and knowledge**, including traditional knowledge.*

5.6 Monitoring, reporting and review

OPTION I:

(1) **Option A:** Based on and consistent with articles 204 to 206 of the Convention, States parties shall ensure that the impacts of authorized activities in areas beyond national jurisdiction are monitored, reported and reviewed.

(2) **Option A:** States parties shall submit periodic reports of monitoring and review of planned activities conducted under their jurisdiction or control to the scientific/technical body set forth in Part [...]

(b) and competent regional organizations and other States, which may analyse the reports and highlight cases of non-compliance, the lack of information or other shortcomings.

(4) Option B: No text

[Compliance]

OPTION II:

(1) The compliance committee set forth in Part [...] shall review reports under this section to ensure implementation of relevant provisions.

(2) The compliance committee set forth in Part [...] shall report to the decision-making body/forum set forth in Part [...]

(3) In the case of non-compliance, the decision-making body/forum set forth in Part [...] shall take adequate measures.

[Involvement of other states]

OPTION III: Adjacent coastal States and small island developing States shall be consulted actively in the monitoring, reporting and review processes in respect of activities in areas beyond national jurisdiction.

Thank you once again Mr. Facilitator and once again I will be speaking on behalf of the Pacific SIDS and we align with the views expressed by Palestine on behalf of G77 and China

With regards to the question you posed, we support adaptive management in line with what we already undertake within our region and would support that it is mentioned in the instrument.

With regards to sub-section 5.6 on Monitoring, reporting and review, the Pacific SIDS supports that there be a standard process for monitoring, reporting and reviewing of EIAs and that it should be a process that is carried out by the relevant body. This in our view will ensure uniformity in the quality of the EIAs on activities that will impact the ABNJ. As such we would support OPTION I and under sub-paragraph (1) would support Option A: Based on and consistent with articles 204 to 206 of the Convention, States parties shall ensure that the impacts of authorized activities in areas beyond national jurisdiction are monitored, reported and reviewed.

Under sub-paragraph (2) we support Option A: States parties shall submit periodic reports of monitoring and review of planned activities conducted under their jurisdiction or control to the scientific/technical body set forth in Part [...] and in particular support elements of part (b) that allows for competent regional organizations, which may analyse the reports and highlight cases of non-compliance, the lack of information or other shortcomings as we support the utilization of competent regional organizations that can also carry out this work.

With regards to Compliance, the PSIDS supports option II in which reports shall be reviewed by a compliance committee, shall report to the decision-making body and in the case of non-compliance the decision-making body/forum shall take adequate measures. In our view, this option provides a more robust means of maintaining compliance and the effectiveness of this instrument largely rests on ensuring that the compliance mechanism is comprehensive enough and is included in the text of the instrument

With regards to the Involvement of other states the Pacific SIDS supports that the process should include adjacent coastal states and small island developing states and support that they be actively consulted in the monitoring, reporting and review processes in respect of activities in areas beyond national jurisdiction as mentioned in OPTION III.

Thank you

5.7 Strategic environmental assessments

OPTION I: Each party shall ensure that a strategic environmental assessment is carried out for plans and programmes under their jurisdiction or control, affecting areas beyond national jurisdiction, which meet the threshold/criteria established in paragraph [...]

With regards to sub-section 5.7 on Strategic Environmental Assessments the Pacific SIDS align with G77 in that we would support text on SEAs

We see SEAs as complementing EIAs as such the Pacific SIDS would prefer option 1 in line with our position that if the effect of an activity falls within or beyond national jurisdiction affects ABNJ an SEA should be carried out for plans and programmes under their jurisdiction provided they meet the threshold/criteria established in the instrument