



POSITION STATEMENT

EIANZ Submission on the High Seas Biodiversity Act 2026

28 September 2026

1.1 About EIANZ

The Environment Institute of Australia and New Zealand (EIANZ) is the peak not-for-profit, multidisciplinary association of environmental practitioners across Australia and New Zealand. Our members include scientists, ecologists, planners, engineers, lawyers, economists and policy specialists with practical experience in environmental impact assessment, marine planning, protected-area management and the administration of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

This submission reflects practitioner experience and draws on EIANZ's established policy position that impact assessment should be evidence-based, transparent, participatory and focused on achieving clear environmental outcomes. It has been prepared by the Policy and Standards Committee.

2. Introduction

EIANZ welcomes the High Seas Biodiversity Act 2026 (the Act) as an important step in implementing Australia's obligations under the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement). The Act establishes domestic arrangements for marine genetic resources and digital sequence information, area-based management tools, including marine protected areas, and environmental impact assessment (EIA).

The Act provides a sound starting point. In particular, EIANZ supports the use of a referral and EIA framework that is recognisable to practitioners familiar with the EPBC Act. Applying an established assessment model to activities beyond national jurisdiction should support regulatory consistency, reduce the need to develop an entirely separate assessment culture and allow existing Australian impact-assessment capability to be applied to high-seas activities.

However, project-level EIA is only one part of an effective framework. Individual assessments are not well suited to resolving the cumulative, regional and long-term effects of multiple activities, or to making the initial strategic choices about where activities should occur. The implementation of the Act should therefore be strengthened by a strategic environmental assessment (SEA) mechanism, aligned where appropriate with the establishment and management of marine protected areas (MPAs).

3. Recommendations

EIANZ recommends the following:

- Retain the Act's referral and EIA framework and align its administration, guidance and assessment standards with established EPBC Act practice wherever this can be done without reducing the specific protections required by the BBNJ Agreement.
- Introduce an SEA mechanism for policies, plans, programmes, activity classes and geographic areas beyond national jurisdiction where Australian activities or decisions may contribute to cumulative impacts.
- Use SEA to inform proposals for new MPAs and other area-based management tools, including objectives, boundaries, acceptable uses, monitoring requirements and management responses.
- Provide for multi-use zoning within MPAs where this is consistent with the conservation objectives for the area, supported by clear outcomes, precautionary limits and enforceable management plans.
- Require strategic assessments and special management plans to address cumulative impacts, climate change, connectivity, uncertainty, alternatives, monitoring, review and adaptive management.

4. Referral and environmental impact assessment

EIANZ supports the basic architecture adopted by the Act for the referral, assessment and authorisation of controlled activities. It reflects the familiar EPBC Act sequence of screening, referral, assessment, consultation and ministerial decision-making. This is a practical approach. It allows established concepts and professional capability to be carried into the new regime while retaining a separate statutory focus on impacts to marine biodiversity beyond national jurisdiction.

The value of this approach will depend on implementation. Guidance should provide a clear line of sight between the initial self-assessment, the content of a referral, the scope of an EIA, the authorisation decision and subsequent monitoring. It should also explain how uncertainty and cumulative effects are to be addressed. The assessment process should not become a narrow exercise in demonstrating compliance with prescribed information requirements. It should identify the environmental outcomes to

be achieved and show how avoidance, mitigation, monitoring and management will deliver those outcomes.

Where an activity is also subject to assessment under the EPBC Act or another Australian law, administrative integration should be pursued to avoid unnecessary duplication. Integration should not result in relevant high-seas impacts being treated as ancillary to the domestic assessment. The assessment documentation and decision should clearly identify the matters considered under the Act and the measures directed to those matters.

5. Strategic environmental assessment

The principal opportunity for improvement is the introduction of a clear SEA pathway. EIANZ has consistently supported SEA as a means of considering the environmental effects of policies, plans and programmes at the point when strategic choices remain available. SEA complements project-level EIA rather than replacing it. It can establish the environmental context, objectives, thresholds and acceptable development envelope within which subsequent project decisions are made.

This is particularly relevant to areas beyond national jurisdiction. Project referrals will ordinarily examine one activity proposed by one proponent. They may identify cumulative effects, but they cannot by themselves allocate environmental capacity, resolve competing uses or establish an integrated response across activities and sectors. These questions are better addressed at a regional, sectoral or programme level.

An SEA mechanism under the Act should be capable of being initiated by the Minister and, where appropriate, developed cooperatively with other States, international organisations and competent sectoral bodies. It should be available for:

- a proposed MPA or network of connected MPAs;
- an area likely to experience multiple or expanding uses;
- a policy or programme supporting a class of Australian high-seas activities;
- a region subject to emerging technologies or material scientific uncertainty; and
- an area in which cumulative impacts or climate-related change may reduce ecological resilience.

At a minimum, SEA should consider reasonable alternatives, baseline condition and trends, cumulative and indirect impacts, climate change, ecological connectivity, distributional effects, data gaps, thresholds, monitoring and arrangements for periodic review. The process should be transparent and participatory and should allow Indigenous Peoples, local communities, scientific experts, affected sectors and interested States to contribute in a manner consistent with the BBNJ Agreement.

Importantly, the outcome should have regulatory effect. An endorsed strategic assessment should inform subsequent referral decisions, assessment requirements and authorisation conditions. It should also be revisited where monitoring indicates that assumptions, thresholds or management measures are no longer adequate.

6. Aligning SEA with marine protected areas

SEA should be integrated with the development of proposals for MPAs and other area-based management tools. This would allow the ecological rationale for protection, management objectives, boundaries and permitted activities to be considered as part of one coherent planning process. It would also provide a basis for examining alternatives before boundaries and controls become fixed.

The assessment should identify the values requiring protection, the pressures acting on those values and the contribution of the proposed area to ecological representation, connectivity and resilience. It should then translate this analysis into measurable objectives and management settings. This would provide a stronger foundation for special management plans made under the Act and a clearer basis for evaluating future proposals within or adjacent to a managed area.

SEA would also support the establishment of networks rather than isolated protected areas. Assessment at the network or regional scale can consider whether individual areas are ecologically connected, whether important habitats or life-history stages are adequately represented, and whether pressures displaced from one area may increase impacts elsewhere.

7. Multi-use zoning for marine protected areas

EIANZ recommends that implementation of the Act expressly allow a multi-use zoning approach for MPAs where this is compatible with the conservation objectives adopted under the BBNJ Agreement. A binary choice between complete exclusion and unrestricted use is unlikely to provide the most effective response in every area. Zoning can distinguish between places requiring strict protection and places in which specified activities may continue subject to controls.

A zoning framework should remain conservation-led. Permitted uses should be determined from the environmental objectives and evidence for the area, rather than existing use being assumed to continue. Depending on the values and risks identified, a management plan could provide for core protection zones, buffer zones, seasonal or temporal controls, transit corridors and managed-use zones. The categories and controls should be tailored to the area rather than imported without assessment from domestic marine-park systems.

The benefits of multi-use zoning are that it can direct higher-risk activities away from sensitive values, provide clarity to users and allow management to respond to spatial

and temporal variation. It may also improve the practicality and durability of protected-area arrangements. These benefits will only be realised if zones are supported by enforceable controls, adequate surveillance and monitoring, transparent decision-making and periodic review.

Zoning should not be used to dilute the purpose of an MPA or to legitimise activities that are inconsistent with its objectives. The precautionary approach should apply where information is limited, and representative areas of high ecological value should receive a level of protection commensurate with the risks they face. Management plans should also contain clear triggers for tightening, relocating or suspending uses where monitoring demonstrates deterioration or an emerging risk.

8. Conclusion

The Act establishes a credible domestic framework for Australia's participation in the BBNJ regime. Its use of a referral and EIA model familiar from the EPBC Act is a practical strength and should be retained. The next step is to ensure that implementation is not confined to project-by-project assessment.

Introducing an SEA pathway would allow Australia to address cumulative impacts, alternatives and regional environmental limits before individual activities are proposed. Aligning SEA with new MPAs and providing for conservation-led multi-use zoning would create a more complete framework, linking strategic planning, protected-area design, project assessment and adaptive management.

EIANZ would welcome the opportunity to work with the Australian Government on SEA provisions, EIA guidance and the design of special management plans and zoning arrangements under the Act.

Contact Details

For further information, please contact:

Environment Institute of Australia and New Zealand

Email: office@eianz.org

Phone: +61 3 8593 4140

Web: www.eianz.org

References

Australian Government, High Seas Biodiversity Act 2026 (Cth).

Environment Institute of Australia and New Zealand, EIANZ EPBC Act Review Submission (2020), Part 3B: Strategic Environmental Assessment Working Group.

Environment Institute of Australia and New Zealand, Strategic Environmental Assessment: Information Flyer and Case Studies.

United Nations, Agreement under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (2023).