

AOS 2016 - Short Statement

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Designing a Regional Seas Arrangement for the Arctic Ocean: Legal, Scientific and Observational Support

Regional Seas arrangements (RSAs) exist for over a dozen of the world's marine regions but not yet for the Arctic.ⁱ Legally binding conventions form the basis for many of these RSAs, which rely on science input to help member states fulfill their legal obligations to monitor and assess the state of the marine environment in their region. In May 2015 the Arctic Council established a Task Force on Arctic Marine Cooperation (TFAMC). The Task Force's mandate includes assessing the need for a mechanism to "coordinate efforts to improve scientific understanding of Arctic marine areas."¹ An RSA may prove the most politically acceptable platform for such cooperation. Alternatively, an independent science coordination agreement could emerge as a more likely platform for science cooperation.

This paper proposes substantive and structural elements of a negotiating draft for a possible science coordination agreement, either related to or independent of an RSA

Designing an Arctic Ocean RSA presents a prime opportunity to better coordinate observational, monitoring and assessment science from around the Arctic, for use in policy and management decisions. A scientific advisory body to the Arctic RSA would not create a new science body but rather be a forum for existing Arctic and ocean science groups to share information and advise Arctic Council members, Permanent Participants and Observer states. The advisory body could draw on the work of IASC, the ocean science organizations ICES and PICESⁱⁱ and the Sustained Arctic Observing Network (SAON).

Other RSAs offer good models for promoting ocean science and basing decisions on it. The North-East Atlantic and the Baltic are relevant models and supported by legally binding agreements known respectively as the OSPAR and HELCOM Conventions.ⁱⁱⁱ OSPAR, to which all five of the Scandinavian Arctic States are party,^{iv} includes clear environmental conservation goals and mandates, and covers a significant portion of the Arctic Ocean.^v HELCOM activity includes monitoring and evaluating environmental indicators.

OSPAR and HELCOM cooperate on a range of scientific matters including biodiversity indicators,^{vi} Marine Spatial Planning, Marine Protected Areas,^{vii} and Ecosystem Based Management.^{viii} Monitoring protocols for marine pollution developed under OSPAR's Joint Assessment and Monitoring Program (JAMP) could serve as best practices for Arctic RSA members. Such inter-treaty cooperation offers structures with which an Arctic RSA could network and substantive areas for scientific cooperation to inform Arctic Ocean policy around the North.

¹ Arctic Council, Iqaluit Declaration, Ninth Ministerial Meeting of the Arctic Council, Iqaluit (Canada), 24 Apr. 2015, p.4, available at <http://www.arctic-council.org/index.php/en/document-archive/category/604-declaration-sao-report>, at p. 5.

A 2013 study of Europe's four regional seas conventions – HELCOM, OSPAR, the Bucharest Convention (Black Sea) and the Barcelona Convention (Mediterranean)^{ix} – identified Integrated Monitoring and Assessment, and Data Collection and Reporting as two areas in which strong mechanisms exist internally that are also prime candidates for greater governmental support to create a robust and consistent protection of the larger marine region. This focus on monitoring, assessment and reporting also provides a logical link to science bodies active in the region.

- The two scientific international organizations especially relevant to the Arctic Ocean are ICES (North Atlantic) and PICES (North Pacific). All eight members of the Arctic Council are among ICES' twenty-state membership, as are the six Arctic Council Observer states.^x
- ICES' cooperation with PICES includes their first joint working group in 2009 on the climate change impacts on fish and fisheries, and collaboration on Arctic Ocean issues, including integrated ecosystems assessments.^{xi} ICES maintains working relationships with the AMAP, CAFF and PAME Arctic Council Working Groups, as well as the decadal International Conference on Arctic Research and Planning (ICARP) and the International Arctic Science Committee (IASC).
- An Arctic RSA that coordinates national measures for protection of the marine Arctic could also work with its member states to coordinate their participation *as Arctic States* in each of these scientific forums. An eventual role for an Arctic RSA could be to serve as a similar science cooperation body for the Arctic Ocean; an Arctic ICES, so to speak. This would provide geographic coverage not only of the Arctic Ocean but also, by linking with PICES and ICES, of the two oceans that connect it to the world ocean. In addition, ICES already uses strategic partnerships to extend its work into the Arctic, the Mediterranean Sea, the Black Sea, and the North Pacific Ocean.^{xii}
- The ongoing negotiations of a science cooperation agreement under the auspices of the Arctic Council, as mandated at the 2013 Kiruna Ministerial, will also need to inform any scientific cooperation role for an Arctic RSA.

ENDNOTES

ⁱ Tullio Treves, "Regional Approaches to the Protection of the Marine Environment", in M. H. Nordquist/J.N. Moore/ S. Mahmoudi, eds, *The Stockholm declaration and law of the marine environment* (2003), 137-154.

ⁱⁱ International Arctic Science Committee (IASC), the International Council for the Exploration of the Seas (ICES), and the North Pacific Marine Science Organization (PICES).

ⁱⁱⁱ The Oslo/Paris (OSPAR) Convention on the Protection of the Marine Environment for the North-East Atlantic, and the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea, which created the Helsinki Commission or HELCOM as its governing body. Through HELCOM all nine bordering states and the European Union work together to prevent and reduce pollution in the Baltic Sea. Six states are either Arctic Council members: Denmark, Finland, Russia and Sweden; or Arctic Council observers: Germany and Poland. The EU's membership in HELCOM indirectly encompasses five more of the Arctic Council observer states: France, Italy, The Netherlands, Spain, and the United Kingdom.

^{iv} Denmark, Finland, Iceland, Norway, and Sweden. The OSPAR Secretariat is in ongoing discussions with the Russian Federation about closer collaboration. According to Molenaar: "While no such accession has yet occurred, the OSPAR Commission has had some discussions on accession by the Russian Federation," Erik J. Molenaar, *Current and Prospective Roles of the Arctic Council System within the Context of the Law of the Sea*, in *The International Journal of Marine and Coastal Law* 27 (2012) 553-595, at 568.

^v OSPAR Region 1, Arctic Waters, encompasses the east coast of Greenland, the Russian/Norwegian boundary in the Barents Sea and all of Iceland, the Faroe Islands and Svalbard. http://www.ospar.org/content/content.asp?menu=00420211000000_000000_000000.

^{vi} ICES background paper on OSPAR/HELCOM biodiversity indicators project

<https://portal.helcom.fi/meetings/CORESET%20II%2022014%20joint/Meeting%20documents%20joint%20meeting/2-3%20ICES%20background%20information.30.09.2014.pdf>

^{vii} JOINT MINISTERIAL MEETING OF THE HELSINKI AND OSPAR COMMISSIONS (JMM), BREMEN: 25 - 26 JUNE 2003, Agenda item 6 JMM 2003/6-Rev.1-E, Joint HELCOM/OSPAR Work Programme on Marine Protected Areas.

^{viii} Milieu Law and Policy Consulting, Analysis of Regional Sea Convention needs ensuring better coherence of approaches under the Marine Strategy Framework Directive, Final Report, 8 November 2013, p. 24, available at

https://webgate.ec.europa.eu/maritimeforum/sites/maritimeforum/files/Final%20Report_RSC%20needs.pdf.

^{ix} Convention for the Protection of the Mediterranean Sea against Pollution, signed in Barcelona 16 February 1976, in force 12 February 1978, revised in Barcelona, Spain, on 10 June 1995 as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean.

^x Arctic Council Observers who are also ICES members: France, Germany, the Netherlands, Poland, Spain and the United Kingdom.

^{xi} Molenaar, Arctic Fisheries and International Law: Gaps and Options to Address Them, Carbon and Climate Law Review, CCLR 1 | 2012, 63-77, at 71 in footnote 71, adds that the two convened the "PICES/ICES Workshop on Biological Consequences of a Decrease in Sea Ice in Arctic and Sub-Arctic Seas" in May 2011. The Report of this Workshop is available via the ICES website on the Internet at <www.ices.dk> under Doc. ICES CM 2011/SSGHIE:14 (last accessed on 15 February 2012).¹⁴ See also ICES Science Plan 2009-2013, <http://ices.dk/community/Documents/SCICOM/ICES%20Science%20Plan%202009-2013%20formatted.pdf>, at 15; ICES/PICES Symposium on "Ecological basis of risk analysis for marine ecosystems" 2-4 June 2014, Porvoo, Finland (Scientific justification available at <http://www.ices.dk/news-and-events/Documents/Symposia/20113SSGSUE02%202014%20Ecological%20basis%20of%20risk%20analysis%20for%20marine%20ecosystems.pdf>).

^{xii} See <http://www.ices.dk/explore-us/who-we-are/Pages/Who-we-are.aspx>.