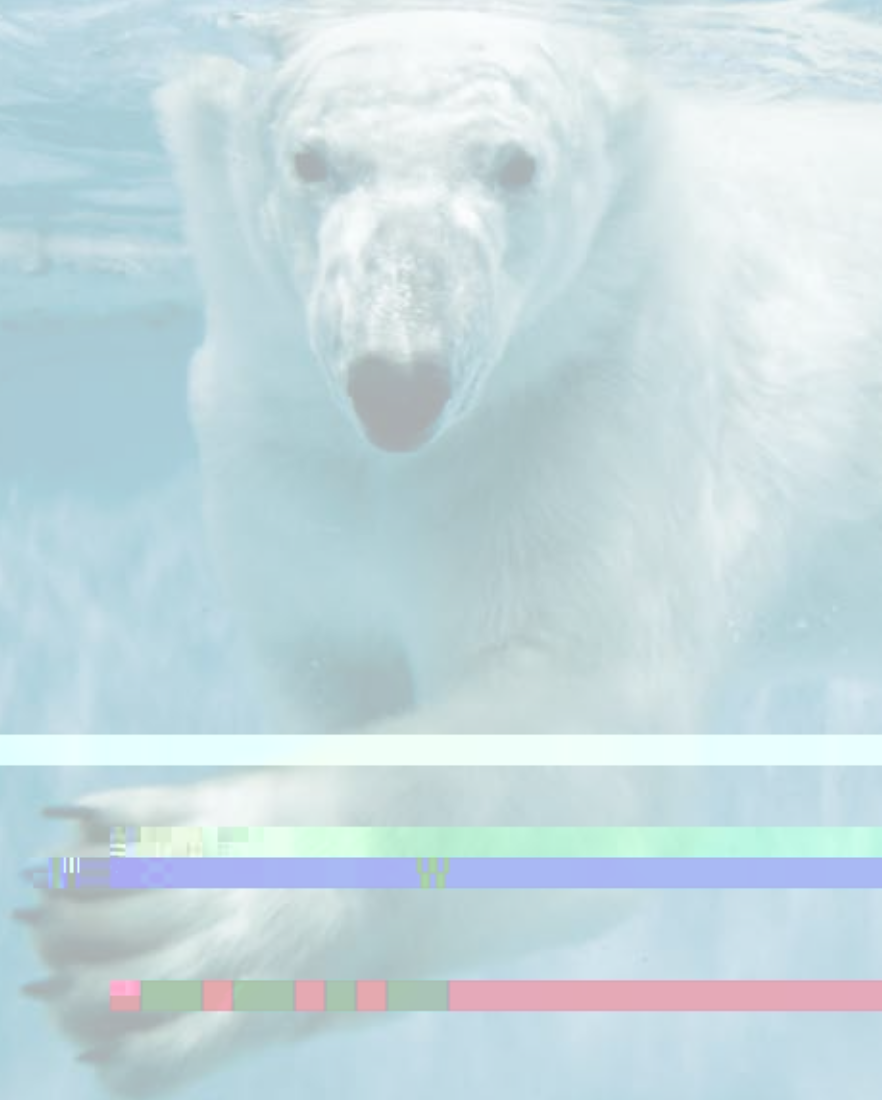


# Implementing

in the

B D a d B a . . . a d A d e Z a . . .

RIAC - Real Estate Canada



# Table C

Index / 2

References / 4

Efforts of the Arctic Council to Improve Marine Management / 4

Other International Efforts Relevant to the Arctic Ocean / 7







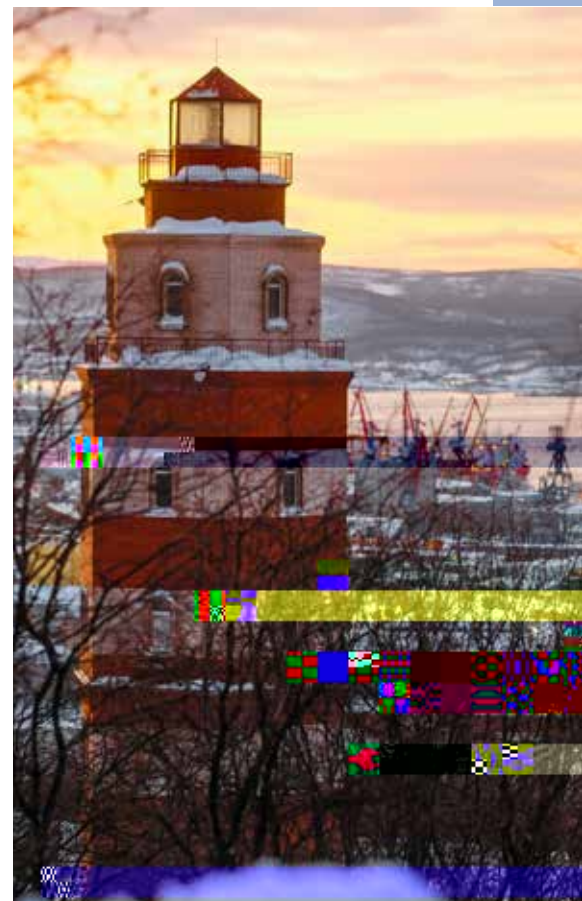
- Improve knowledge of the Arctic marine environment, and continue to monitor and assess current and future impacts on Arctic marine ecosystems.
- Conserve and protect ecosystem function and marine biodiversity to enhance resilience and the provision of ecosystem services.
- Promote safe and sustainable use of the marine environment, taking into account cumulative environmental impacts.
- Enhance the economic, social, and cultural well-being of Arctic inhabitants, including Arctic indigenous peoples, and strengthen their capacity to adapt to changes in the Arctic marine environment.

In 2015, the Arctic Council determined that efforts to address Arctic marine issues more effectively might benefit from further international cooperation and, accordingly, established the TFAMC, with a mandate to “ assess future needs for a regional seas program or other mechanism, as appropriate, for increased cooperation in Arctic marine areas.”<sup>6</sup>

**TFAMC** **2017** **Report**

- anticipated continued growth in marine issues confronting the Arctic;
- recognized that the “ecosystem approach” that underpins work on Arctic marine issues requires extensive knowledge inputs;
- sought opportunities to stretch scarce science resources further through regional cooperation;
- identified nine “ functional needs” for exercising effective stewardship of the Arctic marine environment; and
- suggested several possible mechanisms for fulfilling those needs, including through the possible creation of a new Arctic Council subsidiary body.<sup>7</sup>

The unmet needs identified in the TFAMC 2017 report included one at the heart of EBM:







The Arctic Council must now determine what this “SAO based mechanism” will really do, how it will operate, and whether it can fulfill at least some of the unmet needs identified by the TFAMC, particularly the need to enhance EBM. The effort of the Council to make these determinations comes at a particularly challenging moment, given the current geopolitical tensions, the lack of a long-term strategic plan for the Council, and other unresolved structural and financial concerns about the operations of the Council noted by auditors and commentators in recent years.<sup>10</sup>

## O e l e a . . . a E . . . R e e a . . . e A c . c O c e a

---

The past decade has seen extraordinary growth in high-level attention accorded to ocean issues. For example, in 2015 the United Nations General Assembly (UNGA) adopted Agenda 2030, which included Sustainable Development Goal (SDG) 14: *conserve and sustainably use the world’s oceans, seas and marine resources*.<sup>11</sup> Following the adoption of all 17 SDGs, the United Nations devoted its first high-level ocean conference, in June 2016, to implementing SDG 14. This gathering brought together States, international organizations, the private sector, and civil society in a spirit of partnership and commitment, resulting in a wide range of initiatives to strengthen ocean conservation and governance. A second such conference will occur in June 2020.

The United Nations has also embarked on negotiations toward a possible new implementing agreement to the 1982 United Nations Convention on the Law of the Sea to deal with biodiversity in marine areas beyond national jurisdiction (the BBNJ Agreement).<sup>12</sup> Although negotiators have not yet resolved many of the complicated



issues before them, the BBNJ Agreement could reshape and improve ocean governance in significant ways, including in the Arctic Ocean and its adjacent seas, which contain several areas beyond national jurisdiction.

Outside of the United Nations, six Our Ocean Conferences, launched by the United States and taken up by others, have also generated commitments by governments, international organizations, philanthropies, and other civil society groups. The commitments focus on sustainable fisheries, marine pollution, and climate-related impacts on the ocean. States have also used these Conferences to announce or confirm efforts to protect millions of square kilometers of ocean. Palau has announced a commitment to hold the next Conference in 2020.

Through the IMO, the Arctic States worked with the rest of the IMO's membership to develop and adopt a mandatory Code for Ships Operating in Polar Waters (Polar



Finally, nine States and the European Union signed the *Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean* (CAO Fisheries Agreement), a treaty developed through a freestanding negotiating process. The need for this Agreement stemmed from the awareness that a significant and growing part of the large high seas area in the Central Arctic Ocean is now, for the first time in human history, ice-free for several months each year. The possibility that fishing vessels, particularly those registered in non-Arctic States, might launch commercial fisheries there in the absence of adequate scientific information and without any international fishery management mechanism in place, caused serious concern among several Arctic States. The CAO Fisheries Agreement, signed in 2018 and likely to enter into force in 2020, prohibits commercial fishing in the high seas area of the Central Arctic Ocean for at least 16 years following its entry into force. It also commits the parties to create and implement a Joint Program of Scientific Research and Monitoring designed to increase understanding of the changing ecosystem(s) of the Central Arctic Ocean, particularly as those changes might relate to the possibility of future commercial fisheries.<sup>13</sup>

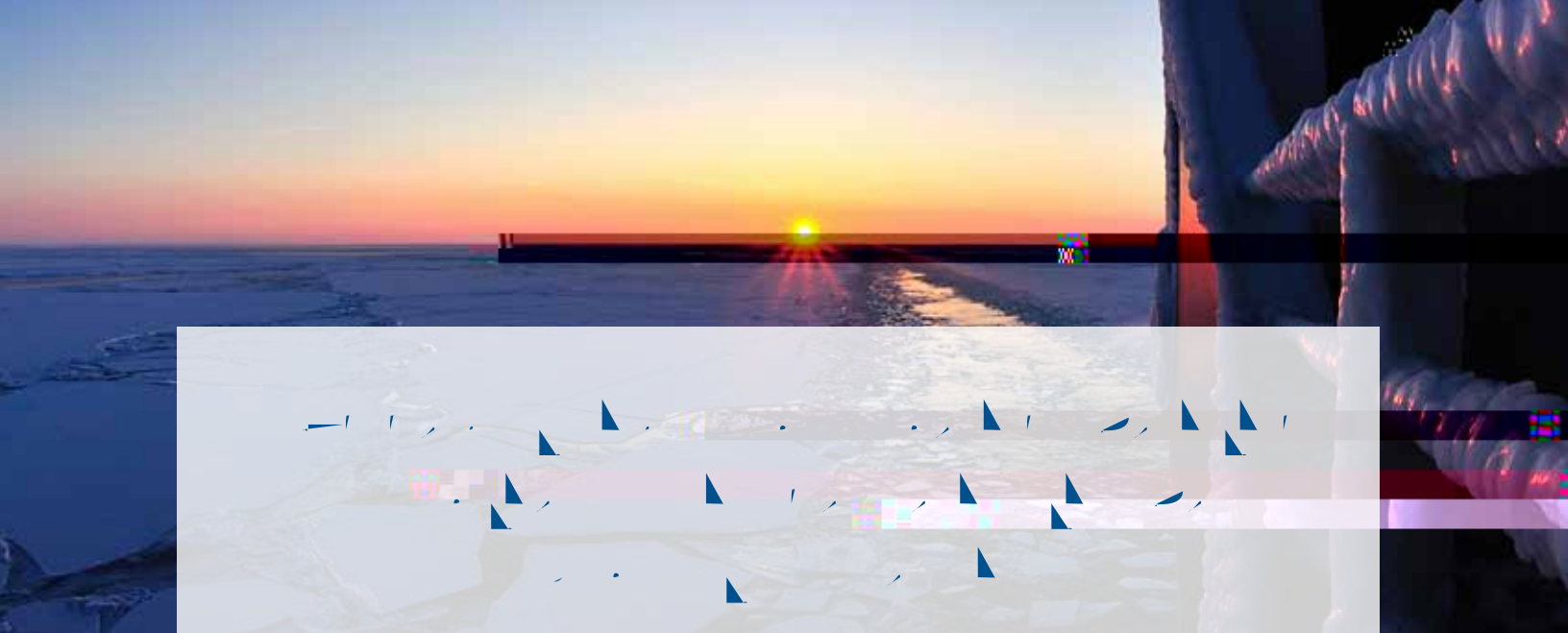
This brief summary of developments is hardly exhaustive. It nevertheless illustrates that policymakers have an increasing awareness of the need to enhance cooperation among nations and stakeholders in addressing ocean issues, as well as a determination to take action. Further efforts to strengthen marine management in the Arctic must take into account and build on these and other developments.



Although the preceding review of initiatives relating to Arctic marine management suggests a kind of momentum in favor of additional positive actions, a variety of challenges also exist that policymakers will need to overcome if effective EBM in the Arctic is to become a reality. These include the following:

- Political challenges: Current geopolitical tensions and varying attitudes among Arctic governments toward climate change have made diplomacy more problematic. The failure of the 2019 Arctic Council Ministerial Meeting to agree on a Declaration underscores the difficulty of making significant progress at this moment.
- Ecological challenges: The jurisdictional lines dividing marine areas under national jurisdiction from those areas beyond national jurisdiction generally do not align with boundaries separating one marine ecosystem from another. The Arctic is no exception to this rule (see figure 1 below). Thus, policymakers must confront the difficulty of coordinating marine spatial planning measures so that they can apply in areas with differing legal regimes.
- Legal/Diplomatic challenges: In a related vein, the fact that the Arctic contains large areas beyond national jurisdiction, particularly in the Central Arctic Ocean, raises difficulties in balancing the interests of Arctic and non-Arctic States, or in securing the necessary commitments from non-Arctic States if they remain non-members of the Arctic Council or other Arctic regional mechanisms.
- Climatic challenges: The profound and alarming changes occurring in the Arctic Ocean, including reduction of sea ice, sea surface temperature warming, and ocean5 TvArctic con





**I**n the hope that policymakers can overcome, or at least mitigate, the difficulties identified above, we offer some ideas for strengthening governance of increasing human activities in the Arctic Ocean. While the goal of these ideas is to promote EBM throughout the Arctic Ocean as a whole, we focus mainly on the Central Arctic Ocean (CAO), particularly in our suggestions concerning possible new international institutions or arrangements outlined in Section III.B. The reasons for focusing on this part of the Arctic Ocean include (1) that it is the most poorly understood marine area in the Arctic, and (2) that limiting the geographic scope of the suggested new institutions to the CAO will reduce the area of overlap with certain existing institutions. For purposes of this article, the CAO includes both the light and dark shaded areas indicated in the map on next page:

In the short-to-medium term, our suggestions largely involve building on the work



- continuously monitor the effects of management measures and generate updated recommendations for management measures.
- The Arctic Ocean also requires a mechanism to receive and act on proposals for management measures based on the best scientific information available, including the scientific information and proposals generated by the mechanism described above. This management mechanism should be an intergovernmental body that either has the authority to take decisions binding all relevant actors, or to engage effectively with a range of sectoral intergovernmental bodies that could take such decisions.

## Scientific information-mediated

---

The Arctic Council, despite its lack of legal personality, ad hoc funding arrangements, and other limitations, remains at the center of the governance architecture for the



science, shipping, and other substantive matters affecting the ocean. The mechanism may also need to engage scientific and technical experts, whose role should be to inform sound decision-making. The involvement of experts may be necessary, but is certainly not sufficient. For the mechanism to work properly it needs to have people at the table capable of making decisions—and capable of ensuring that those decisions get implemented back home.

Even if the SAO based mechanism involves officials with responsibility for addressing various ocean issues (e.g., marine pollution, marine spatial planning, ocean science), the mechanism could at best produce decisions that are politically binding on Arctic Council Members. Like the Arctic Council as a whole, the mechanism will lack the authority to adopt legally binding decisions of the sort that a marine commission with such authority could produce.<sup>16</sup>

- The Arctic Council has established a number of working groups and expert groups to address various Arctic issues. These include the Arctic Council Working Group on Marine Pollution, the Arctic Council Working Group on Marine Protected Areas, the Arctic Council Working Group on Marine Biodiversity, and the Arctic Council Working Group on Marine Ecosystems. The Arctic Council also has a number of expert groups, including the Arctic Council Expert Group on Marine Pollution, the Arctic Council Expert Group on Marine Protected Areas, the Arctic Council Expert Group on Marine Biodiversity, and the Arctic Council Expert Group on Marine Ecosystems.

In 2015, the Council developed a “Framework for a Pan-Arctic Network of Marine Protected Areas (MPAs)” to “inform the development of MPAs and networks of MPAs that are located within the national jurisdiction of Arctic States and chart a course for future collaborative planning, management and actions for the conservation and protection of the Arctic marine environment.”<sup>17</sup> The Chair’s Statement from the 2019 Rovaniemi Ministerial Meeting encouraged further cooperation in the development and effective management of such a network. To aid in this endeavor, the Council should now work—on its own and in cooperation with other relevant



bodies—to create a better scientific basis for establishing and implementing marine spatial planning measures, including MPAs.

- **Arctic Council Working Group on Integrated Ecosystem Assessment of the Central Arctic Ocean (WGICA)** is a partnership between the Arctic Council and the International Council for the Exploration of the Sea (ICES).

The Working Group on Integrated Ecosystem Assessment of the Central Arctic Ocean (WGICA)<sup>18</sup> has worked slowly since 2016, largely under the political radar screen. Its 2018 Interim Report<sup>19</sup> suggests that the ecosystem assessment that the WGICA is developing will draw together the latest scientific information concerning the portion of the Arctic Ocean that is least understood—a large area surrounding the North Pole that includes mostly “high seas” waters but also some waters under the jurisdiction of Arctic coastal States. As certain types of human activity will almost certainly expand in and into this area in the coming years, this information will prove critical for making sound management decisions, not only by the Arctic Council but also by such other groups as the Parties to the CAO Fisheries Agreement.<sup>20</sup>

- **Arctic Council Observer States** are a group of states that observe the Arctic Council's work. They include the United States, the United Kingdom, and the European Union.

As highlighted by some of the previous examples, the work of the Arctic Council on marine issues does not take place in a vacuum. The ways in which the Arctic Council has engaged with other bodies has grown since its inception. Indeed, the flexible nature of the Council allows it to establish many kinds of relationships with other entities, some of which have authority that the Council lacks to make binding decisions affecting human activity in the Arctic Ocean. Some other intergovernmental bodies—such as ICES, the IMO, and the OSPAR Commission—are Arctic Council Observers. In some cases—such as the WGICA—the Arctic Council enters into partnerships with other bodies to undertake specific projects. The Arctic Council has also facilitated the creation of yet other bodies, such as the Arctic Coast Guard Forum.

The Arctic Council can take greater advantage of these and other relationships it has formed with other intergovernmental entities in promoting effective marine management in the Arctic. For instance, Arctic States can make greater use of the Council as a venue for developing common positions they might advance together in other intergovernmental bodies, such as the IMO. The Arctic States could also take better advantage of the presence of Arctic Council Observer States to consult with them on such matters as appropriate.

In particular, the Arctic Council could more actively engage its Observer States, many of whom have experience in implementing EBM in waters over which they exercise

jurisdiction, in planning and conducting the relevant scientific research, as well as in designing relevant measures to be recommended. Some Observer States might be willing to contribute, financially or otherwise, to the implementation of an agreed scientific program in the Arctic Ocean. Indirectly, engaging the Observer States could help raise broader awareness of the needs for certain measures, and promote such measures, whenever necessary, in broader international institutions, such as the IMO. Although Observer States are not eligible to join any of the binding agreements previously negotiated under Arctic Council auspices (on search and rescue, on marine oil pollution, and on scientific cooperation), future Arctic regional agreements and less formal arrangements should not necessarily exclude non-Arctic States, particularly those addressing the problems of conservation of biological diversity in



The Arctic Ocean, particularly the CAO, needs a scientific body of its own that would study the ecosystems, do the risk assessments, produce recommendations for management measures, undertake continuous monitoring, and submit further proposals. This scientific body would need to have a formal relationship with a separate but complementary marine management body that would receive and act on such proposals (see Section 2, below).

It may be possible to build a marine science body under the umbrella of the Arctic Council, possibly by transforming the Working Group on Protection of the Arctic Marine Environment into such a body. However, in order to provide such a body with international legal personality and dedicated funding, policymakers would need to develop some kind of legally binding foundational document, separate from the Ottawa Declaration, which establishes the body and creates a formal organizational link to the Arctic Council. If established in this way, the body could potentially coordinate with other existing national and international scientific and technical entities whose work touches on the Arctic region, but would also need the capacity to integrate findings.

This approach raises a number of questions, the solutions to which would require careful consideration. For example, the creation of the operational links between the existing Arctic Council structure and the new marine science organization under a single umbrella could pose certain challenges, including the likely need to adjust the way in which the Council currently deals with marine science issues.

Another approach—at once more ambitious but possibly cleaner in concept—would be to create a new marine science body for the Arctic Ocean based on a new international agreement and existing outside the formal ambit of the Arctic Council. One could think of the new body as an ICES or PICES for the CAO.

A third possibility would be to transform another existing entity—possibly the International Arctic Science Committee (IASC)<sup>26</sup>—into the sort of marine science body that the Arctic Ocean needs. IASC, currently configured as a non-governmental body, would have to undergo significant change in order to meet the requirements.

of IASC would have a broad membership.

Whether policymakers decided to establish such a new body within the framework of the Arctic Council or as a separate organization, they would need to resolve a set of questions about what the body would do and how it would operate. A short summary follows:

- 

If the body were to perform functions similar to those currently performed by ICES and PICES for the North Atlantic and North Pacific Oceans, respectively, its mandate could draw inspiration from the mandates of those bodies, adapted to the circumstances of the CAO. Those functions could include the following:

- promoting and coordinating marine scientific research in order to advance scientific knowledge of the area concerned and of its living resources, including but not necessarily limited to research with respect to the ocean environment and its interactions with land and atmosphere, its role in and response to global weather and climate change, its flora, fauna and ecosystems, its uses and resources, and impacts upon it from human activities; and

- promoting the collection and exchange of information and data related to ps JTJO -lespect to the

ence body. One idea might be to use a test for membership of non-Arctic States that borrows from the approach of the Antarctic Treaty System: non-Arctic States would be eligible for membership if they have demonstrated their interest in the CAO by conducting substantial scientific research relating to that area. If governments chose to transform IASC into the marine science body, presumably its member States would reflect the current nationalities that participate in IASC.

The inclusion of non-Arctic States might complicate decision-making within the new marine science body, however. If, for example, the body were to develop recommendations for management actions relating solely to areas within national jurisdiction, coastal States might well argue that only they are entitled to decide upon such recommendations.

- **Establishing a New Marine Science Body**

If policymakers decide to establish the new marine science body under the umbrella of the Arctic Council, one presumes that the rules and practices of the Council concerning the participation of Arctic indigenous peoples would apply. That might be one good reason to establish such a body in that way.

A marine science organization established outside the Arctic Council could, however, adopt many of the same rules and practices concerning Arctic indigenous peoples. Indeed, certain Arctic States might not join such an organization unless it allowed for participation by Arctic indigenous peoples in some reasonable fashion. Those Arctic States would also likely seek a commitment to incorporate indigenous and local knowledge into the work and activities of the new organization. That said, some novel questions concerning the participation of States and representatives of Arctic indigenous peoples in a formal international organization would require resolution.<sup>27</sup>

- **Establishing a New Marine Science Body Outside the Arctic Council**

If the marine science body existed under the Arctic Council



umbrella, it could interact easily with the SAOs, Arctic Council working groups, and other subsidiary bodies. It might also receive administrative support from the Arctic Council Secretariat (or it could have its own secretariat). The body would also need the authority to enter into working arrangements, reflected in memoranda of understanding or similar instruments, with other relevant entities, including but not limited to ICES and PICES.

If policymakers created the marine science body outside the Arctic Council, the body would, in addition, need to develop strong working relationships with the Arctic Council and its subsidiary bodies.

In either case, though, the most vital relationship for the new marine science body would be with a new marine management body, discussed in more detail in Section 2 below.

## 2. Create a marine management body for the Central Arctic Ocean



As noted above, increasing human activity in the Arctic Ocean, particularly the CAO, will necessitate a new piece of governance architecture, a marine management body capable of receiving scientific advice and recommendations and of acting decisively on such advice by adopting management measures. In the short-to-medium term, the Arctic Council might move toward this model if it creates a robust “SAO based mechanism,” as envisioned in the Chair’s Statement from the Rovaniemi Ministerial Meeting. In the longer term, however, a new entity with a clear mandate and dedicated funding would perform these functions more reliably and effectively.

Once again, it might be possible to establish a new management body under the umbrella of the Arctic Council or outside the Arctic Council. Each approach has its benefits and problems.

The primary advantages of building a marine management body under the umbrella of the Arctic Council—or of giving the Arctic Council itself the authority to perform the functions of a marine management body—would be that the Council is a known entity with an established membership and modes of practice. Since its inception, the Council has evolved in some impressive ways to take on new functions, including by serving as the venue for the negotiation of three binding agreements.



As currently constituted, however, the Arctic Council does not serve the functions of a marine management body—and arguably cannot do so based on the mandate pro-

GNP and other factors. The current annual budget for the OSPAR Commission is approximately 2 million USD.

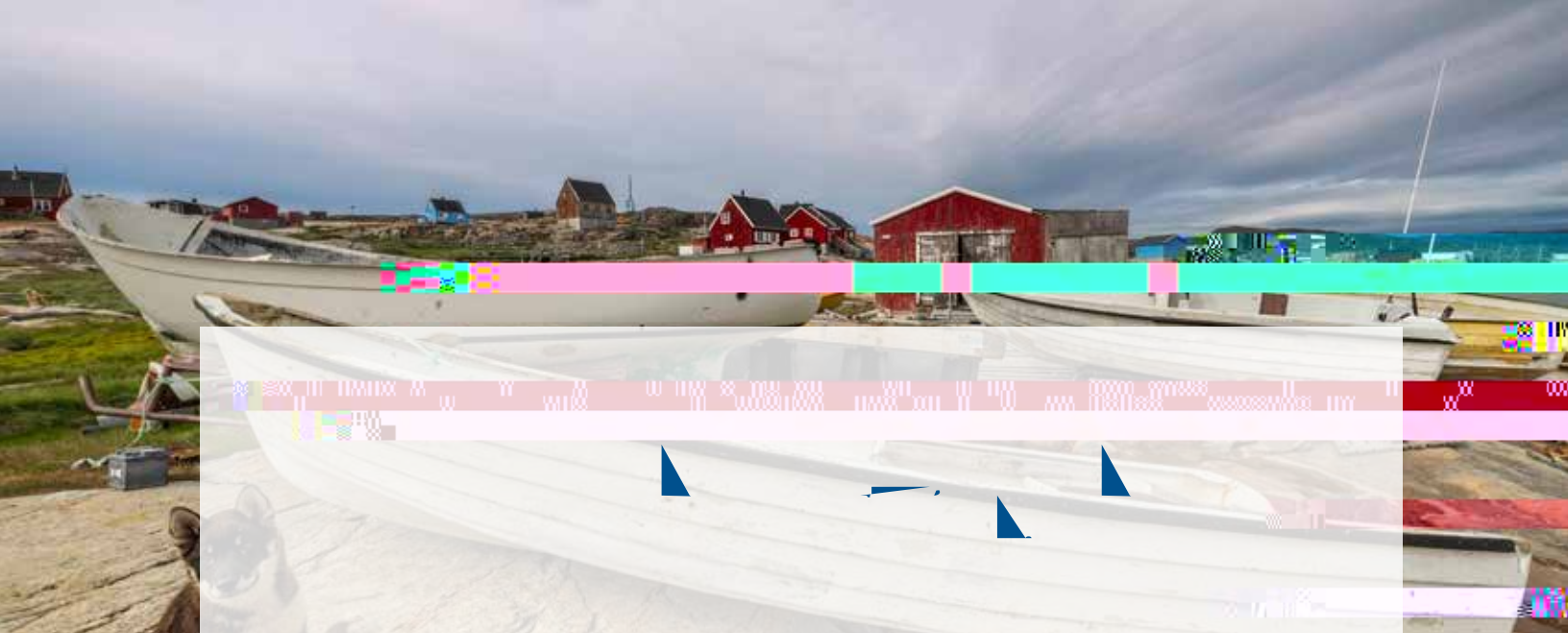
Drawing on the OSPAR Commission model,<sup>29</sup> policymakers could create a similar entity tailored to the circumstances and the needs of the CAO. To do so successfully would mean resolving some of the same issues discussed above concerning the establishment of a new marine science body (e.g., mandate, geographic scope, membership and decision-making, etc.).

Like the North-East Atlantic, the CAO contains areas within national jurisdiction and an area beyond national jurisdiction.<sup>30</sup> This suggests that a marine management body should either

- (1) include as Members non-coastal States that have some clearly identifiable interest in the area to participate in managing human activities, or at least those activities that are not within the exclusive purview of the coastal States; or
- (2) limit membership to the coastal States but seek to work with sectoral organizations such as the IMO to make measures legally binding on all States concerned.

Either approach has its advantages and disadvantages. Most significantly, perhaps, the former approach would complicate decision-making within the management body but might ultimately produce outcomes that legally bind all relevant States directly in ways that the latter approach would not.

In any event, whether established inside or outside the Arctic Council framework, the new marine management organization should operate with transparency, allowing for engagement by stakeholders, including representatives of Arctic indigenous peoples, and participation by observers. The organization should establish procedures for regular monitoring and reporting on the actions taken by its Members in response to its decisions, including the state of, and trends regarding, the marine environment of the CAO.



**T**he suggestions outlined above would, we believe, go a long way toward achieving long-standing ambitions to realize EBM in the Arctic Ocean, particularly the CAO. As human activities increase in that Ocean in coming years, implementation of these ideas would provide Arctic States with a stronger regime through which to implement effective marine management. Not incidentally, development of this improved architecture would also provide a common project for the States concerned, pursuit of which might actually reduce the geopolitical tensions that have recently arisen in respect of the Arctic.

---

---

---

---

---

---

---

---

---

---





David Balton is Senior Fellow, Polar Institute, Woodrow Wilson International Center of Scholars and previously served as the Deputy Secretary of State and Deputy Assistant Secretary for Oceans and Fisheries in the Department of State, attaining the rank of Ambassador in 2006. He coordinated U.S. foreign policy concerning oceans and fisheries, as well as issues relating to the Arctic and Antarctica, and oversaw U.S. participation in international organizations dealing with these issues. Ambassador Balton functioned as the lead U.S. negotiator on a wide range of agreements and chaired numerous international meetings. During the U.S. Chairmanship of the Arctic Council (2015-2017), he served as Chair of the

Senior Arctic Officials. He also co-chaired Arctic Council Task Forces that produced the 2011 Arctic Search and Rescue Agreement and the 2013 Arctic Oil Pollution Agreement. He separately chaired negotiations to produce an Arctic fisheries agreement. Ambassador Balton received an A.B. from Harvard College and a J.D. from Georgetown University. He appeared with the National Symphony Orchestra (juggling oranges).

Dr. Andrei Zagorski is the Head of the Department for Disarmament and Conflict Resolution Studies at the Primakov National Research Institute of World Economy and International Relations (IMEMO), Russian Academy of Sciences. He is member of the Russian International Affairs Council (RIAC), and Professor of International Relations at the Moscow State Institute of International Relations (MGIMO-University). Dr Zagorski has worked intensively on various issues, including Arms Control, European Security and Post-Soviet Studies. Over the past ten years, Dr. Zagorski intensively engaged in the studies of Arctic politics on governance and security. In particular, he has co-authored with Andrei Todorov a study on the Integrated Marine Management in the Arctic (RIAC Report No. 42/2018).



