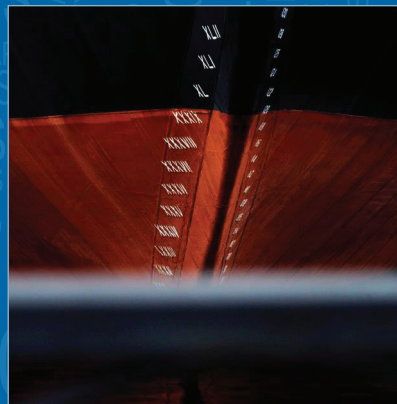




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The report reviews approaches to and mechanisms of marine management in the Arctic Ocean in areas beyond national jurisdiction of the coastal states. Given the growing interest to economic development in the Arctic, this issue is of increasing significance and implies the development of ecosystem-based management in the region. Basing on the comparative analysis of different regional solutions related to such management, the authors conclude that there is a need to develop a special regime for the Arctic based on further build up of the Arctic Council and the OSPAR experience. The report is prepared under the RIAC project "International cooperation in the Arctic".

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Summary

In recent years, the Arctic Council has been discussing the ways to improve marine management in the Arctic Ocean on the basis of the ecosystem approach. This discussion reflects the wider world trend to update the traditional sectoral regulation of different maritime activities (shipping, fisheries, exploration and exploitation of the seabed) by integrated (transboundary and cross-sectoral) marine management. Integrated approach entails the optimal consolidation of all types of economic activities in particular sea areas with the need to protect the marine environment and biodiversity from the negative impact of pollution and unsustainable resources exploitation.

In 2013, the Ministerial meeting of the Arctic Council welcomed the report submitted by the Expert Group on Ecosystem Based Management and encouraged Arctic states to implement the recommendations set forth in the report. In the recent decade the coastal Arctic states develop and implement integrated marine management plans *within the boundaries of their respective Exclusive Economic Zones*. Russia also takes effort to implement such policies. However, the implementation of principles of ecosystem-based marine management requires handling of challenging issues in this field, which so far lack decisive solutions.

First, the boundaries of ecosystems do not generally correspond to the limits of national jurisdiction of the coastal states. The Arctic, in this case, is not an exception. Consequently, this entails the need to coordinate the interstate policies of marine spatial planning, including sea areas in the central part of the Arctic Ocean *beyond national jurisdiction*. Yet the question remains – how can we secure the implementation of regional policies by third (non-Arctic) countries.

Secondly, it is necessary to provide optimal integration of the regional marine spatial planning measures with the work of sectoral international organizations, such as the International Maritime Organization, as well as Regional Fisheries Management Organizations.

Thirdly, the development of integrated ecosystem-based marine management in the Arctic requires comprehensive consolidation of relevant scientific efforts.

The Arctic nations do not have pioneering role in this field. Other regional organizations have been working towards the solution of this problem, and their experience should be taken into consideration with due regard to specific features of the Arctic region. With certain reservations three approaches to extending integrated marine management to areas beyond the national jurisdiction can be distinguished:

- To ensure the maximum number of parties to an agreement and coverage of various maritime activities;
- To establish cooperation of regional organizations with restricted membership with sectoral international organizations based on global agreements, such as the International Maritime Organization, the International Seabed Authority or Regional Fisheries Management Organizations.

- To introduce the appropriate measures within the framework of the Regional Sea regimes.

In the light of specific features of the Arctic region special priority should be given to the practice of coordination between the regional organizations with restricted membership and sectoral international organizations. The number of participants of the latter is much broader than the membership of any regional mechanism. Their mandate to regulate and restrict particular activities, including in areas beyond the national jurisdiction is not contested by their members. Cooperation with such organizations enables indirect influence on third countries that are not members of the Arctic Council.

There are two options under this approach. The first one is *evolutionary (to a large extent, “no-change” option) enhancement of the Arctic Council’s role* in decision-making on integrated ecosystem-based marine management in the Arctic Ocean and promotion of its decisions in the international organizations with broader membership. The second one is *substantial expansion of competence and mandate of the Arctic Council and its bodies*, including endowing the Arctic Council and its Secretariat with international legal personality; establishment of a subsidiary body with a broad mandate or transforming the Secretariat into a Commission of the Arctic Council; vesting the Commission (or the aforementioned subsidiary body) with the right to initiate consideration of relevant recommendations and initiatives in the Arctic Council; enhancement of financing.

The second option – substantial expanding of competence and mandate of the Arctic Council – is more preferable both in terms of implementation of integrated ecosystem-based marine management in the region and enhancement of the Arctic Council’s role generally. However, this option is difficult to implement in the short- and mid-term. While not refusing to promote it in the long-term future, implementation of set of measures aimed at enhancing the AC’s role appears to be the most realistic. These measures might include:

1. Developing a comprehensive programme of scientific research for the purpose of scientific substantiation of marine spatial planning measures in the Arctic Ocean.
2. Enhancing cooperation of the Arctic Council with national and international scientific organizations.
3. Holding of regular meetings of the heads of the relevant agencies of the Arctic Council member states. Heads of relevant bodies of observer-states alongside with representatives of international environmental and scientific organizations should be invited to such meetings.
4. Holding of summits of the Arctic states on a regular basis.
5. Monitoring and drafting of regular reports regarding implementation of decisions, adopted by the Arctic Council’s Ministerial meetings.
6. Promotion of Arctic competences in non-Arctic states (special priority should be given to the Arctic Council observer-states).
7. Regular consultations among the Arctic Council member-states in the International Maritime Organization with the official representatives of the observer-states to be involved.

Acronyms

ABNJ	Areas beyond national jurisdiction
AC	Arctic Council
AMAP	Arctic Monitoring and Assessment Programme
AZRF	Arctic Zone of the Russian Federation
CAMLR Convention	Convention on the Conservation of Antarctic Marine Living Resources
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
EEZ	Exclusive Economic Zone
EU	European Union
FAO	United Nations Food and Agricultural Organization
Fish Stocks Agreement	1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
HELCOM	Helsinki Commission (The Baltic Marine Environment Protection Commission)
IASC	International Arctic Science Committee
ICES	International Council for the Exploration of the Sea
IMO	International Maritime Organization
ISA	International Seabed Authority
IUU-Fishing	Illegal, Unreported and Unregulated fishing
MPA	Marine Protected Area
NEAFC	North East Atlantic Fisheries Commission
OSPAR	1992 Convention for the Protection of the Marine Environment of the North-East Atlantic Commission
PAG	Pacific Arctic Group
PAME	Arctic Council's Working Group on the Protection of the Arctic Marine Environment
PICES	North Pacific Marine Science Organization
PSSA	Particularly Sensitive Sea Area
RFMO	Regional Fisheries Management Organization
SAO	Arctic Council's Senior Arctic Officials
TFAMC	Arctic Council Task Force on Arctic Marine Cooperation
UN	United Nations
UNCLOS	1982 United Nations Convention on the Law of the Sea
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
WGICA	Working Group for Integrated Ecosystem Assessment of the Central Arctic Ocean

Introduction

In 2015, the Task Force of the Arctic Council (AC) on Arctic Marine Cooperation (TFAMC) was established. Its mandate was to consider future needs for strengthened cooperation on Arctic marine areas within the framework of a regional marine programme, or some other mechanism.¹ This framework and its goals were detailed in the report of the Arctic Council's Senior Arctic Officials (SAO),² presented at the 9th Ministerial meeting in 2015. From the very beginning the TFAMC's main aim was to suggest ways to optimize the AC's work on introducing integrated ecosystem-based marine management approach in the Arctic.

This issue is not new to the Arctic Council. Its working groups have been addressing different aspects of the issue for a long time. In 2013, their findings were summarized in the report of the Expert Group on Ecosystem-Based Management in the Arctic. The report³ contained definitions, principles and recommendations. The report was endorsed by the 8th Ministerial meeting of the Arctic Council, which encouraged Arctic States to implement the recommendations "both within and across boundaries, and ensure coordination of approaches in the work of the Arctic Council's Working Groups."⁴ The Expert Group on Ecosystem-Based Management continues its work within the Arctic Council's Working Group on the Protection of the Arctic Marine Environment (PAME) and submits regular progress reports regarding implementation of adopted recommendations.

The Task Force was not supposed to duplicate the work of the Arctic Council's existing structures. It was expected to assess the necessity and possible ways to optimize and enhance the integrated ecosystem-based marine management approach, relying on the available results of the Arctic Council's work. In order to achieve this goal, in 2015–2017 the Task Force summarized the activities of different working groups of the AC, considered the experience of various regional and wider international mechanisms, that are working on the same issues, including the International Council for the Exploration of the Sea (ICES), the North Pacific Marine Science Organization (PICES), the International Arctic Science Committee (IASC), the Convention for the Protection of the Marine Environment of the North-East Atlantic Commission (OSPAR), the Baltic Marine Environment

¹ Iqaluit Declaration. The Ninth Ministerial Meeting of the Arctic Council. April 24, 2015. Iqaluit, Yukon, Canada // The Arctic Council.

URL: https://oaarchive.arctic-council.org/bitstream/handle/11374/662/EDOCS-2547-v1-ACMMCA09_Iqaluit_2015_Iqaluit_Declaration_formatted_brochure_low-res.PDF?sequence=6&isAllowed=y

² The Arctic Council's Senior Arctic Officials' Report to Ministers. April 24, 2015. Iqaluit, Yukon, Canada // The Arctic Council.

URL: https://oaarchive.arctic-council.org/bitstream/handle/11374/494/ACMMCA09_Iqaluit_2015_Iqaluit_SAO_Report_to_Ministers_formatted_v.pdf.pdf?sequence=1&isAllowed=y

³ Ecosystem-Based Management in the Arctic. Report submitted to Senior Arctic Officials by the Expert Group on Ecosystem-Based Management. – Tromsø: Arctic Council, 2013.

⁴ Kiruna Declaration. The Eighth Ministerial Meeting of the Arctic Council. May 15, 2013. Kiruna, Sweden // The Arctic Council.

URL: https://oaarchive.arctic-council.org/bitstream/handle/11374/93/MM08_Final_Kiruna_declaration_w_signature.pdf?sequence=1&isAllowed=y

Protection Commission (HELCOM), the Sargasso Sea Commission, the Committee drafting a legally binding instrument under the 1982 United Nations Convention on the Law of the Sea (UNCLOS) on conservation and sustainable use of marine biodiversity in areas beyond the national jurisdiction (ABNJ).

In its 2017 report the Task Force concluded that the issue of establishing a *new subsidiary body within the Arctic Council's structure*, as well as further optimization of the Arctic Council's existing mechanisms should be considered to foster the objectives of rational management of the marine environment in the Arctic.⁵ Relevant amendment of the Task Force's mandate was approved by the 10th Ministerial meeting of the Arctic Council, which requested the Task Force to prepare relevant considerations on the matter.⁶

It is too early to prejudge the results that are to be presented at the 11th Ministerial meeting of the Arctic Council in 2019. It seems, that addressing the issues of competence, geographical scope and place of a new subsidiary body within the Arctic Council's structure might be delayed. In October 2017, the co-chair of TFAMC Anita Mäkinen (Finland) informed the SAO about the challenges arising in connection with discussions on the mandate of this body.⁷ Judging by the relevant documents, the topic was not on the agenda of the SAO Plenary Meeting in March 2018.⁸ Today the Task Force discusses approaches to the marine spatial planning in the Arctic rather than the establishment of a new subsidiary body. The question how to integrate this aspect of work into the Arctic Council's structure is, obviously, delayed, but not taken off the agenda.

Regardless of the results of the Task Force's work, the significance of the issue of integrated ecosystem-based marine management in the Arctic is obvious. This is reflected in activities of the Arctic Council and its working groups alongside with broader international efforts toward the implementation of the Agenda 2030 for Sustainable Development agreed within the UN in 2015, especially Goal 14 ("Conserve and sustainably use the oceans, seas and marine resources for sustainable development"), providing conservation of the most valuable and exposed sea areas, protection of biological diversity and marine ecosystems. Goal 14 sets in particular a task to conserve at least 10 per cent of coastal and marine areas by 2020 with due consideration to representativeness of the marine

⁵ Report to Ministers of the Task Force on Arctic Marine Cooperation, 11 May 2017 // Arctic Council Secretariat.
URL: <https://oaarchive.arctic-council.org/bitstream/handle/11374/1923/2017-04-30-Edocs-4079-v3-TFAMC-report-to-ministers-with-cover-and-colophon.pdf?sequence=1&isAllowed=y> ;
See also: The Arctic Council's Senior Arctic Officials' Report to Ministers 2017, Fairbanks, Alaska, US, 11 May, 2017 // The Arctic Council.

URL: https://oaarchive.arctic-council.org/bitstream/handle/11374/1909/MMUS10_2017_FAIRBANKS_SAO-Report-to-Ministers_13138_v1.pdf?sequence=9&isAllowed=y

⁶ Fairbanks Declaration of the Foreign Ministers of the Arctic States at the 10th Ministerial meeting of the Arctic Council, 10-11 May, 2017. p. 6 // The Arctic Council.

URL: https://oaarchive.arctic-council.org/bitstream/handle/11374/1910/EDOCS-4339-v1-ACMMUS10_FAIRBANKS_2017_Fairbanks_Declaration_Brochure_Version_w_Layout.PDF?sequence=8&isAllowed=y

⁷ Summary Report, SAO Plenary meeting, Oulu, Finland, October 2017 // Arctic Council Secretariat.
URL: https://oaarchive.arctic-council.org/bitstream/handle/11374/2109/SAOFI201_2017_OULU_Summary-Report_13441_v1.pdf?sequence=3&isAllowed=y

⁸ Summary Report, SAO Plenary meeting, Levi, Finland, March 2018 // Arctic Council Secretariat.
URL: https://oaarchive.arctic-council.org/bitstream/handle/11374/2165/SAOFI202_2018_LEVI_Summary-Report.pdf?sequence=1&isAllowed=y

ecosystems to be covered by these measures⁹ (in 2017 only 5,3 per cent of the total global ocean area were covered by protected areas¹⁰).

Undoubtedly, the Arctic is a unique region in terms of its geographic location, climate and geopolitical significance. The 2008 Ilulissat Declaration¹¹ specifies the unique position of the five coastal states of the Arctic Ocean (Canada, Denmark, Norway, Russia and the United States) due to the fact that their sovereignty, sovereign rights and jurisdiction extend in large areas of the Arctic Ocean subject to international law. In this regard, it is correct to suppose that the initiative on adopting integrated management of the Arctic seas shall rest primarily with the Arctic nations. However, significant marine areas of the Arctic Ocean are beyond the boundaries of their national jurisdiction. The freedoms of high seas apply in these areas. Therefore, the establishment of a relevant regional mechanism shall require balancing between the “special role [of the coastal states] in and responsibility for the future of the region” and the interests of “both coastal and other states.”¹²

Discussions of prospects for integrated ecosystem-based marine management in the Arctic raise three major issues (among many other) yet with no obvious solutions.

First, the boundaries of ecosystems do not, as a rule, correspond to the boundaries of national jurisdiction of coastal states. The Arctic in this case is not an exception (see Fig. 1). Thus, relevant policies of marine spatial planning in the sea areas with different legal status shall be coordinated. Moreover, neither the sovereignty and sovereign (exclusive) rights of the Arctic coastal states, nor the rights of non-Arctic states to carry out various activities in the central part of the Arctic Ocean in ABNJ should be challenged. In this regard, the most difficult issue shall be addressed: ***how to make regional measures binding on and ensure compliance with them by third (non-Arctic) states?***

Secondly, ***how ecosystem-based policies of marine spatial planning may and shall correlate with sectoral (industry-specific) environmental measures*** regarding, in particular, fisheries and vessel traffic in the Arctic, adopted by sectoral international organizations?

Finally, ***what role can the Arctic Council play in the integrated ecosystem-based management in the Arctic, taking into consideration its limited membership, and the fact that its members' jurisdiction covers only a part of the Arctic Ocean?***

⁹ Report of the UN General Assembly's Open Working Group on Sustainable Development Goals, New York, 12 August 2014 // The United Nations.

URL: https://www.iom.int/sites/default/files/UN_Documents/69th_Session/A_68_970.pdf

¹⁰ Progress towards the Sustainable Development Goals, Report of the Secretary-General (11 May 2017) // The United Nations ECOSOC.

URL: <https://unstats.un.org/sdgs/files/report/2017/secretary-general-sdg-report-2017--EN.pdf>

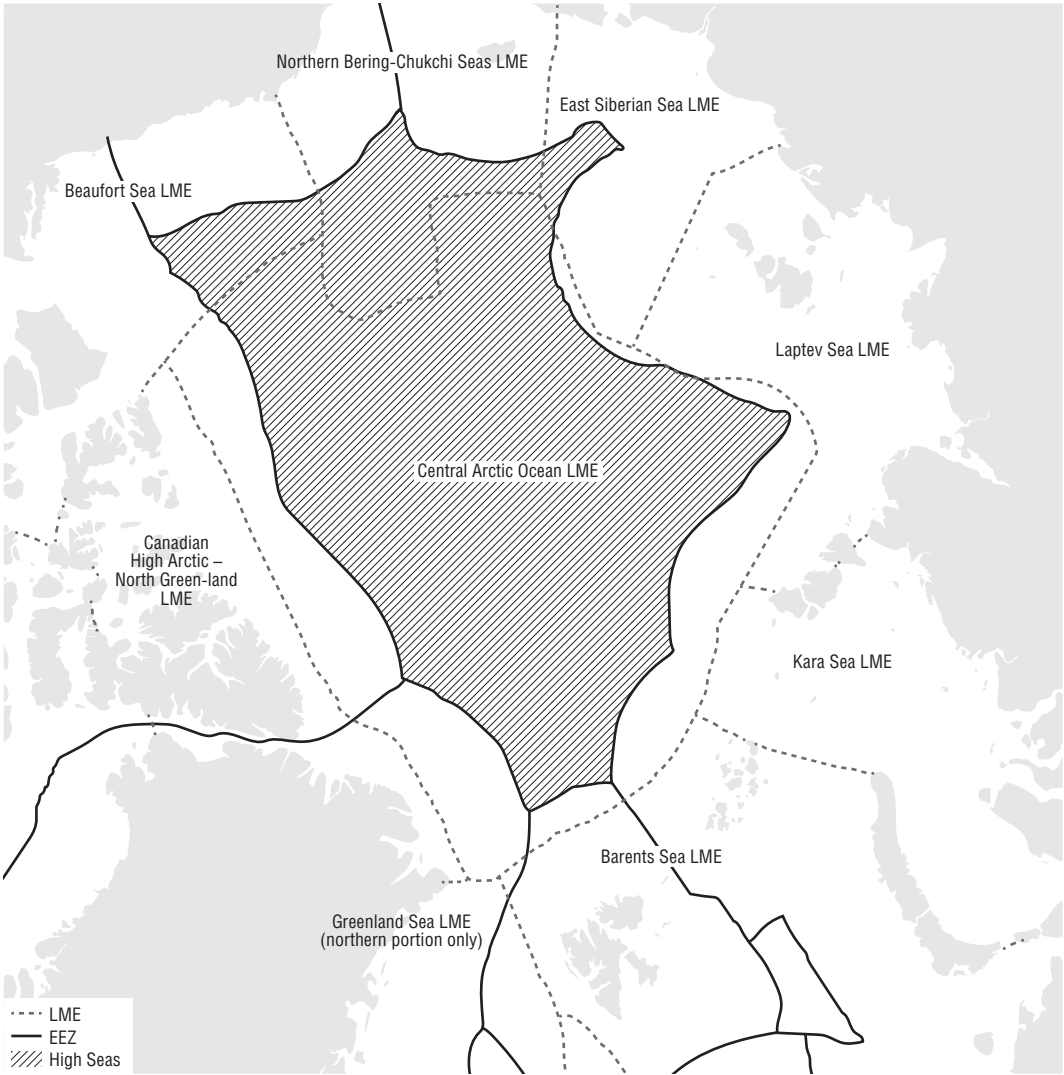
¹¹ The Ilulissat Declaration. Arctic Ocean Conference, Ilulissat, Greenland, May 27–29 May 2008.

URL: https://www.arctictoday.com/wp-content/uploads/2018/05/Ilulissat_Declaration.pdf

¹² Foreign Minister Sergey Lavrov's greetings to the Participants of Event Marking the 10th Anniversary of the Ilulissat Declaration // Ministry of Foreign Affairs of Russia. 991-23-05-2018.

URL: http://www.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/3231254?p_p_id=101_INSTANCE_cKNonkJE02Bw&_101_INSTANCE_cKNonkJE02Bw_languageld=en_GB.

Fig. 1. Boundaries of Large Marine Ecosystems in the Arctic



Source: Interim Report of the ICES/PICES/PAME Working Group on Integrated Ecosystem Assessment (IEA) for the Central Arctic Ocean (WGICA). WGICA 2017 Report 19-21 April 2017. Seattle, USA. – Copenhagen: ICES, 2017. P. 5.

The Arctic states do not have pioneering role in this field. Other regional organizations have been working towards the solution of these issues as well. The authors offer their vision from the perspective of the national interests of Russia, with due regard to the need of coordination of international efforts for the purpose of rational and sustainable marine management and conservation of the marine environment in the Arctic region, as well as enhancing of the Arctic Council's role in this process.

The first part of the report gives a brief overview of the concept of integrated ecosystem-based marine management. The second part contains the analysis of other regional environmental mechanisms in the light of the aforementioned three questions. On the basis of this analysis the third part assesses and ranks the options related to establishment of a regional mechanism for the purpose of integrated ecosystem-based marine management in the Arctic, as well as elaborates on the applicability of the experience of other regional organizations to the Arctic Ocean. In the fourth part of the report prospects for coordination of international scientific research aimed at introduction of integrated marine management in the Arctic are considered. Finally, the report concludes with some recommendations pertaining to possible avenues of establishment of a regional mechanism of integrated marine management in the Arctic under the auspices of the Arctic Council.

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1. Integrated Ecosystem-based Marine Management

Until recently marine spatial planning has been based on the *sectoral* (or species-based) approach inherent in the UNCLOS. Depending on the subject matter of regulation the leading platforms for decision-taking have been *sectoral* international organizations, e.g., the International Maritime Organization (IMO – vessel-source pollution of the sea), the Food and Agriculture Organization of the United Nations (FAO – fisheries), Regional Fisheries Management Organizations (RFMOs), the International Seabed Authority (ISA), Regional Seas Programme of the UNEP, Intergovernmental Oceanographic Commission of UNESCO (world heritage sites) etc.

By the end of the 20th century and in the first decade of the 21st century there is a trend to regulate particular types of marine activity on the basis of *integrated (cross-boundary and cross-sectoral) marine management*. Unlike the sectoral approach, integrated marine management is premised on the optimal integration of all types of economic activities in particular sea areas within a holistic strategy and a detailed roadmap for all parties concerned.

Another important current trend is the implementation of the *ecosystem approach* in the integrated marine management with the purpose of sustainable development, protection of marine environment and biological diversity from negative effects of pollution and unsustainable resource exploitation. The main implementation tool of the ecosystem-based marine management is *marine spatial planning*. According to the UNESCO Intergovernmental Oceanographic Commission definition, marine spatial planning is a public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives.¹³

Yet another important implementation tool of ecosystem approach is the identification of the most valuable and exposed ecosystems and the establishment of *marine protected areas* (MPAs). There are different definitions of MPAs in the scientific literature and various official documents.¹⁴

¹³ Marine Spatial Planning Program. Concepts and Terminology // UNESCO International Oceanographic Commission. URL: <http://msp.ioc-unesco.org/msp-good-practices/concepts-and-terminology/>

¹⁴ See, for instance: Bekyashev K.A., Bekyashev D.K. International legal problems of the establishment of MPAs [Mezhdunarodno-pravovye problemy ustanovleniya morskikh ohranjaemyh rajonov] // Lex Russia. 2016. № 2 (111). P. 63. URL: http://lexrussia.ru/articles/article_102193.html (in Russian);

Shestakov A.S. Work program for natural protected areas in the Convention on Biological Diversity. Annotated Manual for implementation in the regions of Russia. Moscow [Programma raboty po ohranjaemyh prirodnyh territorijam Konvencii o biologicheskom raznoobrazii. Kommentarii dlja prakticheskogo primenenija v regionah Rossii]: World Wildlife Fund (WWF), 2009. p. 7. URL: https://wwf.ru/upload/iblock/e1a/oopt_programme_1.pdf (in Russian);

Molenaar E.J., Elferink A.G.O. Marine protected areas in areas beyond national jurisdiction: The pioneering efforts under the OSPAR Convention // Utrecht Law Review. Vol 5 (2009). № 1. P. 6; What are marine protected areas? // Protect Planet Ocean.

URL: <http://www.protectplanetoccean.org/collections/introduction/introbox/mpas/introduction-item.html>;

What is a marine protected area? // National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. URL: <https://oceanservice.noaa.gov/facts/mpa.html>

However, all of them can be brought down to a common denominator: it is a generic term, which encompasses *marine areas with strict geographical limits fully or partially withdrawn from economic use* in order to protect biological diversity, natural or other resources of cultural or historical value, *in which specific or all human activities are regulated, restricted or fully prohibited*.

MPAs should not always be marine natural reserves where some specific activity or all kinds of activities are forbidden.¹⁵ Internationally there are different *types* of MPAs which can be distinguished by the *subject* of regulation (specific types of activities, e.g., vessel traffic, exploitation of living marine resources, exploration and exploitation of the seabed, laying of cables etc.), the *regime* of protected area (*level of protection*) ranging from non-binding restriction of certain types of activities for the protection of certain species to strict prohibition of one or several types of activities in order to protect the entire regional marine ecosystem. It could be marine natural reserves, national parks, fisheries protected zones, marine natural monuments, particularly sensitive sea areas (PSSA), world heritage sites, specially protected natural areas or areas where special measures for protection of biological diversity are necessary etc.¹⁶

Nowadays more than 40 countries in Europe, North America, East Asia and Oceania are developing and implementing plans of the integrated ecosystem-based marine management for *areas in their national jurisdiction* within 200 miles of their Exclusive Economic Zones (EEZ). Such work is also carried out in the Arctic region. For example, Norway has developed and implemented an integrated ecosystem-based marine management plan within its EEZ in the Barents Sea (2006, revised in 2010) and the Norwegian Sea (2009).

The Marine Strategy of the Russian Federation till 2030 stipulates the necessity to supplement the existing predominantly sectoral approach to marine management by integrated approach. The Strategy sets forth as promising development options the “introduction and development of integrated (cross-sectoral) management at all levels, viewing various marine activities as an integral management object, and aimed at mitigating the conflict between marine activities and protection of marine environment” alongside with the “implementation and development of marine spatial planning policies”.¹⁷

The Strategy for the Development of the Arctic Zone of the Russian Federation (AZRF) and the Provision of National Security Till 2020,¹⁸ as well as the Fundamentals of the State Policy of the Russian Federation in the Arctic up to 2020

¹⁵ What is a marine protected area? Op. cit.

¹⁶ See.: Bekyashev K.A.. Marine protected areas: definition and legal regime [Morskije ohranjaemye rajony: ponjatije i pravovoj rezhim] // Fisheries [Rybnoe hozjajstvo]. 2014. №3. P. 41-43 (in Russian); Bekyashev K.A., Bekyashev D.K. Op.cit. p. 64-67; Sustainable Development Goals and Russia [Celi ustojchivogo razvitiya OON i Rossija] / S.N. Bobylev, L.M. Grigoriev (eds). – Moscow: Russian Government Analytical Centre, 2016. P. 251 (in Russian).

¹⁷ The Marine Strategy of the Russian Federation till 2030 [Strategija razvitiya morskogo dejatel'nosti Rossijskoj Federacii do 2030 goda], approved by the Government Executive Order of 8 December 2010 r. N 2205-p // Rossijskaya Gazeta, 2010 r. 21 December. (<https://rg.ru/2010/12/21/mordeyatelnost-site-dok.html>). (in Russian)

¹⁸ The Strategy for the Development of the Arctic Zone of the Russian Federation and the Provision of National Security Till 2020 [Strategija razvitiya Arkticheskoj zony Rossijskoj Federacii i obespechenija nacional'noj bezopasnosti na period do 2020 goda], approved by the President of Russia, 20 February 2013 // Government of Russia. URL: <http://static.government.ru/media/files/2RpSA3sctEhAGn4RN9dHrtzk0A3wZm8.pdf> (in Russian).

and beyond¹⁹ lay down the importance of protection of marine environment and biological diversity in the Arctic. The Strategy provides, for instance, the development and approbation of policies on *integrated management*, in particular, of coastal areas in Arctic regions; *conservation of biological diversity of Arctic flora and fauna* in the context of climate change and expanding economic activities in the region; development and broadening of the *network of specially protected terrestrial and marine areas*; organization of comprehensive international scientific expeditions for environmental research (ice conditions, level of sea pollution, marine ecosystems) and the impact of the forecasted climate change.²⁰ Relevant activities are carried out by Russia's Ministry of Natural Resources and Environmental Protection. Notably, in October 2018 minister Dmitry Kobylkin announced the finalization of the programme of identification of marine areas which are most valuable for the preservation of biological diversity in the Russian Arctic. This work was performed on the basis of integrated approach in all sea areas of Russia's Arctic.²¹

Later in 2015 pursuant to Executive Order of the President of the Russian Federation a draft pilot project of integrated marine management of the Russian part of the Barents sea was submitted to the Government of the Russian Federation. The project was drafted in coordination with the similar revised plan of 2010 for the Norway's part of the sea. The development of similar projects for the East Siberian Sea and the Chukchi Sea is under consideration.²² At the same time, the discussion in the Government of Russia of the pilot project for the Barents Sea revealed significant legal lacunae in Russia's regulation and institutional organization of marine spatial planning.

Today the majority of MPAs in the world are established within EEZs.²³ However, nowadays widely discussed is establishment of MPAs *in ABNJ*. This trend manifests itself in the work of several regional organizations and arrangements. Moreover, drafting of a new global legally binding instrument on the preservation and sustainable use of marine biological diversity in ABNJ began in 2016 in New York. Discussions within the Arctic Council Task Force on Arctic Marine Cooperation since 2015 also encompassed both coastal and marine areas of the Arctic Ocean beyond national jurisdiction.

Integrated ecosystem-based marine management in ABNJ is a relatively new phenomenon in the international practice. Existing experience of regional mechanisms in relation to ABNJ reveals a number of *significant problems* to be solved.

¹⁹ Fundamentals of the State Policy of the Russian Federation in the Arctic up to 2020 and beyond [Osnovy gosudarstvennoy politiki Rossijskoj Federacii v Arktike na period do 2020 goda i dal'nejshuju perspektivu], approved by the President of Russia, 18 September 2008 // Government of Russia. URL: <http://static.government.ru/media/files/A4qP6brLJ175I40U0K46x4SsKRHGfUO.pdf> (in Russian).

²⁰ The Strategy for the Development of the Arctic Zone of the Russian Federation and the Provision of National Security Till 2020. Paragraphs 9.g), 16.a), b), 17.i).

²¹ Russia's Ministry of Natural Resources and Environmental Protection makes more than 10 million ha in the Arctic into natural reserves [Minprirody RF prevratit bolee 10 mln ga morskikh ugodij v Arktike v ohranjaemye territorii] // TASS Information Agency, 11 October 2018. URL: <https://tass.ru/v-strane/5665837> (in Russian).

²² The Sustainable Development Goals and Russia. Pp. 250–251.

²³ In 2017 circa 13,2 per cent of marine areas within the 200-mile EEZs were covered by protective measures, however, only 0,25 per cent in ABNJ. See: Realization of the Sustainable Development Goals. p. 19.

One of the main problems is the absence of international legal mechanisms to *ensure compliance with adopted measures by states not participating in the relevant mechanisms (third states)*. The UNCLOS contains provisions that oblige all states to prevent marine environment pollution. However, there is a reservation that regional agreements shall not affect basic principles of the UNCLOS, including the freedoms of high seas, without explicit consent of the states concerned. Members of regional mechanisms can establish a regime modifying the common legal framework and, thus, restrict the freedoms of high seas for the persons subject to their respective jurisdiction. Nevertheless, they are not entitled to limit the rights of third states in absence of their express consent.

There seems to be no unambiguous solution to the challenge of *coordination of the spatial (cross-sectoral and ecosystem-based) approach to marine management in marine ABNJ with the work of sectoral organizations (IMO, ISA, RFMOs) responsible for only specific types of activities*.

For instance, the regime of common heritage of mankind and ISA's mandate extend to areas of the seabed beyond national jurisdiction (the Area). ISA regulates the exploration and exploitation of the sea bed in the Area and, subject to article 145 of UNCLOS is authorized to protect the marine environment from pollution caused by such activities. It may to this effect establish MPAs, where exploitation of natural resources is forbidden. In 2011, for instance, ISA developed the Environmental Management Plan for the Clarion-Clipperton Zone stipulating establishment of 9 areas of particular environmental interest, where drilling is prohibited. States are not entitled to amend the regime of the Area at the regional level.

IMO activities to secure safety of navigation and prevention of vessel-source pollution of the sea also relate to a global regime. The Organization is authorized to establish special areas and PSSAs in ABNJ, where stricter shipping regulations apply, restricting certain types of activities with the view of marine environment protection.

The provisions of the 1995 United Nations Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stock Agreement) and the network of RFMOs established within the framework of that Agreement are global mechanisms for protection of specified types of fish stocks from Illegal, Unreported and Unregulated (IUU) fishing. The Fish Stock Agreement requires states to comply with species protection policies adopted by RFMOs. Such measures may include establishment of MPAs in which fishing activities are prohibited. The Agreement allows interference of regional states with marine activities of third states that violate regional environmental protection policies. However, this rule does not constitute *jus cogens* and thus is applicable only to signatories to the Fish Stock Agreement.

There are different approaches to the *scientific justification* of relevant environmental policies. The criteria for establishment of MPAs have been developed by the Conference of the Parties to the Convention on Biological Diversity. Those

include sufficient scientific data proving that a certain biological species or the entire ecosystem is endangered. In practice, however, two different approaches can be distinguished.

A traditional “cautious” approach is broadly applied by sectoral organizations. It is based on the necessity to provide proper scientific knowledge prior to adopting of any environmental protection policies. For example, the pilot project for integrated marine management in the Russian part of the Barents Sea was based on years of intensive scientific research of cumulative effect of various economic activities on the ecosystem of the Barents Sea, especially, of construction of fixed drilling offshore platforms, exploration and exploitation of mineral resources, functioning of the infrastructure of the Northern Fleet, local coastal purification plants, man-made objects on the seabed, harbor activities, shipping, commercial fishing, fish breeding (aquaculture), sea-hunting industry, cross-border pollution. The results of scientific research were the underlying rationale for the suggested policies of integrated marine management.

The other approach in the international practice is known as the “precautionary.” It presumes that “*where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.*”²⁴ Similar approach is stipulated by the Fish Stock Agreement (article 6.2): “The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.”²⁵

In this case environmental measures are introduced before adequate scientific information is accumulated for their justification. An example of implementation of the precautionary approach in the Arctic is the Agreement to prevent unregulated high seas fisheries in the Central Arctic Ocean (October 2018). This example, however, is more the exception rather than the rule. The implementation of the precautionary approach is challenged by distrust to contradictory or inadequate scientific information, suspicions of lobbying by nations and other stakeholders of their interests to the detriment of interests of certain industries of other states.

In our analysis of different regional mechanisms of marine management we shall give special attention to the ways the aforementioned problems are addressed.

²⁴ Convention on biological diversity. Preamble. URL: <https://www.cbd.int/doc/legal/cbd-en.pdf>

²⁵ The 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks // The United Nations.
URL: http://www.un.org/Depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm

2. Existing Regional Mechanisms

In the early stage of its work to assess the needs for a subsidiary mechanism for integrated ecosystem-based marine management in the Arctic, the TFAMC looked at the experience of other regional organizations and institutions. In this section the authors present their review of this experience. It is aimed at identifying optimal responses to the questions pointed out above (engaging third states in the implementation of regulations for ABNJ, achieving cross-sectoral nature of such regulations) – bearing in mind special features of the Arctic region. In this regard special focus was made on the practice of establishing MPAs in the ABNJ, for it particularly enables to consider possible ways to engage non-regional states in the mechanism and potential restriction of their rights and freedoms in such areas.

According to the 2017 UNEP report,²⁶ five regional mechanisms currently include areas beyond national jurisdiction within their geographical coverage – the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention); the Convention on the Conservation of Antarctic Marine Living Resources (CAMLR Convention); the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention); the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea Convention); and the Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific (Lima Convention). The UNEP experts consider the OSPAR, the CAMLR Convention and the Barcelona mechanisms to be relatively successful in promoting integrated ecosystem-based marine protection covering ABNJ.

2.1. The 1992 OSPAR Convention

The 1992 OSPAR Convention²⁷ covers different economic activities in the North-East Atlantic, that could have adverse effects on the marine ecosystems and biodiversity. This includes prevention of pollution from land-based sources, oil and gas exploitation, construction of artificial islands and installations, laying of cables etc. However, the Convention provides two major exceptions from the OSPAR's jurisdiction – fisheries management and certain limitations for the regulation of shipping. Important to note that the scope of the OSPAR mandate covers all *new* human activities that might adversely affect the marine environment of the North East Atlantic. This enables OSPAR to act as compe-

²⁶ Regional Seas programmes covering Areas Beyond National Jurisdictions. UNEP Regional Seas Reports and Studies No. 202, 2017 // UN.

URL: http://www.un.org/Depts/los/biodiversityworkinggroup/Regional_seas_programmes_ABNJ.pdf

²⁷ The OSPAR originated from the 1972 Oslo Convention on dumping waste at sea and the 1974 Paris Convention on land-based sources of marine pollution. In 1992 these two mechanisms were merged, updated and extended in the OSPAR Convention (Oslo-Paris Convention). It has 15 member-states: Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom. See.: OSPAR Commission. URL: <https://www.ospar.org/about>

tent regional institution where an activity is not already the subject of regulation agreed by other international organizations.

By the end of 2016 the OSPAR Commission established 10 MPAs beyond EEZ of its Contracting Parties.²⁸ Regulation of human activities there is based on the provision of the Convention, obliging member-states to take all possible steps to prevent and eliminate pollution and to protect the maritime area against the adverse effects of human activities (Art. 2). The precautionary principle and the “polluter pays” principle apply in the MPAs.

The Convention explicitly provides possible engagement of third states in the MPA regulations in ABNJ. They can be invited to accede to the Convention by a unanimous decision of the Contracting Parties (Art. 27) or obtain observer status in the Commission (Art. 11).²⁹ However, to date only international organizations are observers to the Commission. So far the Commission has not made any attempt to directly impose regulatory limitations on third states.

To enhance the efficiency of the OSPAR regime and engage a wide range of third states the Commission opted for ***coordination with regional and global sectoral organizations and mechanisms governing maritime activities***. In 2014 the OSPAR and NEAFC (an RFMO in North-East Atlantic, established within the framework of the Fish Stocks Agreement) signed an agreement on cooperation related to marine ABNJ. For the reasons that the regulatory areas of both organizations overlap to a large extent, and fisheries fall out of the OSPAR’s scope, such cooperation significantly enhances the efficiency of the mechanisms of marine ecosystem-based management. Apart from that, the OSPAR Commission makes active efforts to coordinate its work with IMO and ISA, as well as other organizations. Nonetheless, so far coordination is limited to non-binding declarations. OSPAR signed memoranda of understanding with ISA and ICES.

In the absence of a single global framework of integrated ecosystem-based marine management in ABNJ cooperation with NEAFC, IMO and ISA provides OSPAR with certain benefits:

- 1) Enhancing the legitimacy of regulatory measures in ABNJ, in particular aimed at marine environment protection. As mentioned above, IMO and ISA are global mechanisms, NEAFC being an RFMO acts within the framework of the Fish Stocks Agreement. These organizations have undisputable authority to legally restrict different kinds of state activities in the maritime domain, including in ABNJ.
- 2) Establishing an integrated cross-sectoral marine management mechanism. While shipping and fisheries fall out of the OSPAR regulatory regime, coordination with IMO and NEAFC fills up this gap. The ISA mandate to regulate exploitation of mineral resources of the Area also takes precedence over

²⁸ 2016 Status Report on the OSPAR Network of Marine Protected Areas // OSPAR Commission. 2017. URL: <https://www.ospar.org/documents?v=37521>.

See also : Bekyashev K., Bekyashev D., op. cit., pp. 67-68; Bekyashev K. Marine protected areas: definition and legal regime. P. 44.

²⁹ Convention for the Protection of the Marine Environment of the North-East Atlantic 22 September 1992 // OSPAR. URL: https://www.ospar.org/site/assets/files/1290/ospar_convention_e_updated_text_in_2007_no_revs.pdf

regional mechanisms, so that coordination with ISA will increase the efficiency of the regulations introduced by OSPAR. The fact that all the organizations mentioned above receive scientific data from ICES can also contribute to the synergy effect.

- 3) Engaging a wide range of third states. Participation of states in global international organizations, such as IMO or ISA, is much wider than in any regional mechanism. *Coordination with these organizations enables the OSPAR Commission to indirectly (any direct approach would violate international maritime law provisions) involve states non-parties to the OSPAR Convention in the regulation related to ABNJ.* The same effect is achieved by cooperation with NEAFC, which can legally impose measures on third states (inspections of fishing vessels and putting into blacklist of IUU-fishing). The legitimacy of obligation to comply with the measures developed by the international organizations are undisputable for the states parties to these organizations. On the other hand, a difficulty that may arise in this respect is coordination of measures in the region for a state which is a party to different international organizations – in case the decisions of these organizations are not harmonized between each other.

Noteworthy is the advantage of OSPAR compared to other regional mechanisms is the overlap of its regulatory area with that of the RFMO. *However, the model OSPAR+NEAFC is not applicable in regions, where there are no RFMOs in place.*

2.2. The CAMLR Commission

CAMLR Commission (CCAMLR) is a regional organization in the Southern Ocean acting within the framework of the 1980 CAMLR Convention. A broad mandate of CCAMLR in particular includes functions of a RFMO: the CAMLR Convention applies to all populations of fin fish, molluscs, crustaceans and all species of birds of the Antarctic. The marine resources managed by CCAMLR specifically exclude whales and seals, which are the subject of other conventions – namely, the 1946 International Convention for the Regulation of Whaling and the 1972 Convention for the Conservation of Antarctic Seals. Though the CAMLR Convention is an independent international instrument managing living resources of the Antarctic, it is an integral part of the Antarctic Treaty System. The CCAMLR mandate overlaps with that of the 1991 Protocol on Environmental Protection to the Antarctic Treaty (1991 Protocol), which also includes marine areas. However, as a matter of fact, the relevant marine areas are governed by CCAMLR. It is important to note, that the *overwhelming majority of the marine areas within the CCAMLR mandate constitute ABNJ* – taking into account the special status of the Antarctic.³⁰

³⁰ Sothieson D. Marine Protected Areas In The North-East Atlantic Ocean And Southern Ocean: The Role Of Regional Organisations In Areas Beyond National Jurisdiction Submitted for the LLB (Honours) Degree. Faculty of Law, Victoria University of Wellington. 2014. Pp. 38–39. URL: <https://core.ac.uk/download/pdf/41339797.pdf>. See also: Marine Protected Areas (MPA) // Commission for the Conservation of Antarctic Marine Living Resources. 2018. URL: <https://www.ccamlr.org/en/science/marine-protected-areas-mpas>.

Under the 1991 Protocol, the Parties to the Antarctic Treaty can create Antarctic Specially Protected Areas and Antarctic Specially Managed Areas, in which restrictions on human activities – up to a full prohibition of certain types – can be imposed. CCAMLR can initiate creation of such MPAs and, moreover, the Parties to the 1991 Protocol should seek CCAMLR's approval for their creation if they include a marine component.

The South Orkney Islands MPA established in 2009 by a decision of CCAMLR became the first MPA in the world history to cover ABNJ. All types of commercial fishing activities, dumping of any type of waste, and transshipment activities are prohibited within the area. This makes it an MPA with one of the highest level of protection in the world. In 2017 a decision of CCAMLR came into effect establishing another MPA in the Ross Sea which is the largest marine protected area in the world and covers zones with different level of protection with the aim of conserving krill resources.³¹

Measures related to third states. When it comes to regulating fishery activities, CCAMLR acts within the framework of the Fish Stocks Agreement, as any RFMO. Therefore, CCAMLR has *competence to induce states which are not parties to the CAMLR Convention to comply with the fisheries regulations, including in a MPA beyond national jurisdiction*. One of the measures, identified on the global level, is adding an IUU-fishing vessel to a blacklist with certain consequences such as denial of port access.

CCAMLR also developed its own approach to engaging third states in regulatory measures supporting conservation of certain fish species (toothfish). ***The Commission invites non-contracting parties***, interested in commercial use of toothfish stocks, ***to voluntary comply with the Catch Documentation Scheme***. According to the official information,³² currently, only few countries (Singapore, Ecuador, Seychelles) participate in the Scheme. *The list of states that may be involved in toothfish trade and that do not cooperate with CCAMLR is much wider.*

CCAMLR is a unique mechanism of coordinating measures relating to marine management in ABNJ. Its main feature that distinguishes it from other regional mechanisms is a ***close interconnection with the Antarctic Treaty System with appropriate reference to the special status of the Antarctic marine areas***. Moreover, ***CCAMLR has a broad mandate combining general protection of marine environment and regulation of fisheries***, which distinguishes it from OSPAR. Such mandate facilitates consolidated decision-making in relation to MPAs, for it does not require approval by two organizations, as is the case in the North-East Atlantic (OSPAR and NEAFC).

Comparative assessment of CCALMR and OSPAR highlights that the latter is more successful in establishing a network of MPAs, while CCAMLR has so far

³¹ See: Bekyashev K., Bekyashev D., op. cit., p. 63; Bekyashev K. Marine protected areas: definition and legal regime. Pp. 43–44.

³² Non-Contracting Parties (NCPs) // Commission for the Conservation of Antarctic Marine Living Resources. 2018. 21 May. (<https://www.ccamlr.org/en/compliance/non-contracting-parties>). See also: Cooperation with others // Commission for the Conservation of Antarctic Marine Living Resources. 2018. 30 Aug. (<https://www.ccamlr.org/en/organisation/cooperation-others>).

succeeded in creating only two of such areas. *The advantage of OSPAR in this regard lies in the absence of competing interests of states seeking protection of marine environment and those interested in fisheries.* Such conflict emerges where one organization combines functions of an RFMO and with those of marine environment protection (CCAMLR). Another advantage of OSPAR is ***a high level of coherence of the states-parties sharing common approaches to conservation of ecosystems.*** This is not the case in CCAMLR.

2.3. The Barcelona mechanism

One of the features of the Mediterranean Sea is that the distance between opposite coasts does not exceed 400 nautical miles (nm). It implies that in case all coastal states establish their 200 nm EEZ there will be no ABNJ (that will not affect the freedom of navigation though). To date not all of the coastal states of the Mediterranean have claimed EEZ, however, the Barcelona mechanism should be considered with due regard to potential EEZ claims. Legally, it would mean extension of national jurisdiction of coastal states, which entails regulation related to protection and conservation of marine environment, to the entire Mediterranean Sea.

In 1975 the coastal states adopted the Mediterranean Action Plan under the UNEP Regional Seas Programme. On this basis, the Convention for the Protection of the Marine Environment and the Coastal Mediterranean (Barcelona Convention) was developed in 1976. It applies also to ABNJ (high sea) until all of the coastal states claim their EEZ.³³

One of the Protocols to the Convention – the 1995 Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean – provides for possible establishment of MPAs (“Specially Protected Areas” and “Specially Protected Areas of Mediterranean Importance”) aimed at protection of marine environment from pollution, as well as certain biological species from unregulated harvest. To create a MPA covering parts of high seas a submission by at least two parties concerned is required. ***Non-contracting states are invited to cooperate in sustaining the regulatory regime – “within the limits established by the rules of international law,” in other words, on a voluntary basis.***

In 1999 France, Monaco and Italy concluded in Roma an agreement for the establishment of a sanctuary of marine mammals (“PELAGOS Agreement”). Today it is the only MPA in the Mediterranean to cover ABNJ (potential EEZ). Any taking of the marine mammals (except for the purpose of scientific research) is prohibited in that MPA, along with some other human activities (in particular, high-speed vehicle competitions). Parties shall take measures to prevent marine pol-

³³ UNEP Note on the legal framework for the protection of marine biological diversity in Mediterranean Sea areas beyond national jurisdictions (BBNJ) or for which the limits of sovereignty or jurisdiction have not yet been defined. UNEP(DEPI)/MED WG.431/Inf.9 25 April 2017 // Regional Activity Centre for Specially Protected Areas. URL: http://www.rac-spa.org/nfp13/documents/02_information_documents/wg_431_inf_9_note_on_legal_framework_for%20bnj.pdf. See also: Bekyashev K., Bekyashev D., op. cit., p. 68; Bekyashev K. Marine protected areas: definition and legal regime. Pp. 44–45.

lution. The PELAGOS Agreement stipulates that in high seas areas states-parties are responsible for the application of the provisions of the Agreement with respect to ships flying their flags as well as, within the limits provided for by the rules of international law, with respect to ships flying the flag of third States (Art. 14).

There is a discussion in academic literature on the issue of legitimacy of establishing MPAs on the high seas and involving third states in the regional regimes.³⁴ One of the arguments is that establishment of closed areas in the regimes like the Mediterranean, where the high seas are potentially overlapped by the EEZ of the coastal states, is in principle legitimate, as it is legitimate to impose the regulatory regime on third states. The Law of the Sea furnishes coastal states with sufficient rights and jurisdiction to adopt and enforce measures related to protection of marine environment within EEZ. For the Arctic region this argument is amplified by Article 234 of the UNCLOS, providing coastal states with the power to adopt regulations for the protection of marine environment from pollution from vessels in ice-covered areas within the limits of EEZ.

In case of the PELAGOS Sanctuary Agreement not all of the parties claimed EEZ, however, those states which refrain from claiming EEZ established “ecological protection zones”, entailing part of the jurisdiction exercisable in an EEZ concerning the protection of marine environment. Reference is also made to the fact that the Barcelona mechanism was established under a universal framework of UNEP, which assigns it additional legitimacy.

Measures developed under the Barcelona mechanism are not coordinated with global organizations (IMO, ISA). Obviously, there is no need in this taking into account that the total area of the Mediterranean Sea is covered by established or potential EEZ. Coordination is being made only with the RFMO – General Fisheries Commission for the Mediterranean and the Black Sea. Third states are involved in the regulation of environment protection in the PELAGOS Sanctuary only within the framework of RFMO regime, i.e. under the Fish Stocks Agreement.

2.4. Voluntary pilot projects

An unusual form of international cooperation related to integrated ecosystem-based marine management in ABNJ are voluntary pilot projects involving states, non-governmental and intergovernmental organizations. An example of such initiative is the **Sargasso Sea Alliance**. The major part of the Sargasso Sea lies beyond any national jurisdiction (with the exception of parts of the EEZ of Bermuda). There are neither regional agreements relating to protection of marine environment of the Sargasso Sea nor any RFMO (apart from the International Commission for Conservation of Atlantic Tunas which extends its mandate to the region).

The Alliance was established in 2010. It is led by the government of Bermuda in collaboration with the UK and brings together scientists and international marine

³⁴ See e.g.: Tanaka Y. Reflections on High Seas Marine Protected Areas: A Comparative Analysis of the Mediterranean and the North-East Atlantic Models // Nordic Journal of International Law. Vol. 81 (2012). Pp. 295–326.

conservation organizations. It is financially supported mainly by private donors. The work of the Alliance is aimed at developing a programme of integrated marine protection of the Sargasso Sea, in particular, through *collaboration with existing regional and global organizations*, including IMO, ISA etc. So far, the Alliance has established coordination with NEAFC with respect to a small part of the Sea included into the mandate of the latter.

In 2014 the Declaration on Collaboration for the Conservation of the Sargasso Sea (the Hamilton Declaration) was signed. The Declaration is a non-binding political statement that endorses establishment of the Sargasso Sea Commission to encourage public-private collaboration for the conservation of the Sargasso Sea. *The Commission has no official regulatory authority, it only exercises coordination functions.* The Declaration contains a special clause emphasizing the exclusive jurisdiction of Bermuda with regard to marine environment protection within the EEZ, while *activities in ABNJ are managed by the existing global and regional sectoral organizations* (IMO, ISA, NEAFC).³⁵ Parties to the Hamilton Declaration are Azores, Canada, Monaco, UK, the USA and others.

Pilot projects like the Sargasso Sea Alliance obviously have the potential and provide an *informal framework for coordination of measures related to integrated ecosystem-based marine management*. Unlike traditional global and regional mechanisms, such initiatives have the advantage of encouraging the exchange of scientific information and experiences and streamlining problem-solving efforts while avoiding or minimizing bureaucracy and politically charged decision-making. However, such projects also have evident weaknesses – their informal and voluntary nature deprives them of efficient regulatory instruments and political will of governments. Accordingly, *voluntary projects fail to succeed without cooperation with such formal institutions as IMO or ISA, which have necessary powers to adopt legally binding decisions*.

2.5. Summary

In terms of assessment of options for a regional integrated marine management mechanism in the Arctic the experience of OSPAR and CCAMLR seems to be the most relevant. Noteworthy are certain similarities (though not to a full extent) in the decision-making process in the Arctic Council and the Sargasso Sea Alliance. The experience of the Barcelona (Mediterranean) mechanism is hardly applicable to the Arctic Ocean in view of the fact that significant areas of the latter lie beyond EEZs of the coastal states. Parts of the seabed in the Arctic Ocean constituting the Area (common heritage of the Mankind), yet to be delineated, will also remain beyond national jurisdiction.

The advantage of the **CCAMLR** model is the close interlink with the Antarctic Treaty System, which significantly extends its membership and to a large extent, though not completely, facilitates the engagement of third states in the regulatory regime of MPAs.

³⁵ The Hamilton Declaration, 11 March 2014 // Sargasso Sea Commission.
URL: <http://www.sargassoseacommission.org/about-the-commission/hamilton-declaration>

The weakness of CCAMLR is combination of functions of a regional marine protection organization and those of a RFMO. As the negotiation practice of CCAMLR demonstrates, it is the inclusion of issues relating to fisheries and therefore national fishery industries interests in the integrated regime of MPAs that raises the bulk of disputes and hinders coordination of specific regulations of spatial planning. Broad membership of CCAMLR, being an obvious advantage, at the same time entails problems for the Commission, diminishing the level of coherence among the parties and hindering consensus-reaching process.

Limited membership of the **OSPAR** Convention and so far fruitless efforts to engage third states in MPA regimes in ABNJ are the main shortcomings of this model. It is balanced, however, by the exclusion of fisheries, exploration and exploitation of the resources of the Area and most of the issues pertaining to shipping from the OSPAR mandate. This encourages the OSPAR Commission to cooperate with IMO, ISA and NEAFC, allowing to indirectly engage third states in the mechanisms of integrated ecosystem-based management based on such cooperation. Critically important is also the fact that the areas included in the mandate of both, OSPAR and NEAFC, almost completely overlap, enabling issues related to fisheries to be effectively included in the regime of marine spatial planning.

Common requirements for an efficient marine management in ABNJ are sufficient scientific data proving that certain species of living resources or the ecosystem as a whole are under threat, as well as cohesion of the relevant regional organizations. The efficiency of marine management in ABNJ carried out by regional organizations with a relatively limited membership can be enhanced by their cooperation with global sectoral organizations (e.g., IMO, ISA) and RFMOs.

3. Integrated Marine Management in the Arctic

3.1. Options for a regional mechanism

Taking into account the above described experience of existing regional marine management mechanisms, including in ABNJ, the following options for establishing a regional mechanism (mechanisms) of integrated ecosystem-based marine management in the Arctic can be considered:

1. To leave everything as is, not precluding the possibility of enhancing the existing mechanisms of the AC (“no change” option).
2. To establish a regional mechanism on the basis of the Regional Sea regime (“Barcelona mechanism”).
3. To use the positive experience of the OSPAR Commission (“OSPAR model”).
4. To address the issue on the basis of a global treaty involving the largest possible number of non-Arctic states (“CCAMLR model”).

The applicability (or inapplicability) of regional mechanisms’ experience depends on the specific conditions of the Arctic, where similar issues are to be resolved.

3.2. Structural similarities and specific features of the Arctic region

1. The legal regime of the Arctic fundamentally differs from that of the Antarctic. While most of the marine areas of the latter are governed by the Antarctic Treaty with a broad membership and, what is most important, with “freezing” of national claims of sovereignty over land of the Antarctic continent³⁶ and therefore sovereignty and jurisdiction over maritime areas (territorial sea, EEZ, continental shelf), the marine Arctic is subject to the Law of the Sea. Though some environmental organizations suggested forming a global regime (treaty) to govern the marine Arctic similar to the Antarctic, the Arctic coastal states clearly stated in the 2008 Ilulissat Declaration, that they see no need in this. Non-Arctic states have not challenged that statement at the intergovernmental level. Accordingly, this difference ***makes the “CCAMLR model” generally inapplicable in the Arctic region.***
2. Large parts of the Arctic Ocean lie beyond the EEZ of coastal states. This makes it practically ***impossible to form a regional mechanism in the Arctic similar to that of the Barcelona (Mediterranean) model based on the Regional Sea regime.*** Given that the boundaries of the marine ecosystems in the Arctic (as in other regions) do not correspond to the limits of national juris-

³⁶ On the one hand, the Antarctic Treaty does not overrule the existing territorial claims, but on the other – does not recognize states’ right to submit new claims. To date seven countries have officially made territorial claims. The US and Russia maintain a special position – they have made no claims, but have reserved the right to do it. See: The Antarctic Treaty // Secretariat of the Antarctic Treaty. URL: <https://www.ats.aq/e/ats.htm>

dition of the coastal states (see Fig.1, p. 10), establishing a regional mechanism of integrated marine management in the Arctic would require engagement of third (non-Arctic) states in the regulatory regime of spatial planning in ABNJ. The OSPAR Commission and the Sargasso Sea Alliance provide examples of resolving this problem. Their experience shows that the optimal way of engaging third states in the regulatory regime is cooperative promotion by regional states of agreed decisions in the relevant sectoral international organizations (IMO, RFMO, in the long view – ISA).

3. Should a regional mechanism under consideration be established within the framework of the Arctic Council (we see no other options, except for establishing a new separate regional mechanism), it is important to note that the AC does not deal with regulation of those activities that are governed by global sectoral instruments.

Measures on prevention of vessel-source pollution of the Arctic Ocean are developed and adopted in IMO (a good example is the development of legally binding, including on non-Arctic states, Polar Code in 2015, which came into force in 2017), within the EEZ – by coastal states (principally, by Russia and Canada), in particular basing on Art. 56 and Art. 234 of the UNCLOS. Fisheries in a part of the region are managed by NEAFC basing on the scientific data provided by ICES. Issues relating to prevention of unregulated fisheries in the central part of the Arctic Ocean will be tackled within the framework of the 2018 agreement with contracting parties different from the Arctic council membership. Eventually this agreement could provide the basis for another RFMO. After the coastal states will have finalized the process of establishing outer limits of their extended continental shelf in the Arctic Ocean, areas lying beyond the shelf will be subject to the ISA mandate.

This allows suggesting that the efficiency of any regional mechanism of integrated marine management in the Arctic would significantly depend on coordination and cooperation with relevant global sectoral organizations and RFMOs. ***Such approach is practiced by the OSPAR and the Sargasso Sea Commissions***, though their methods differ significantly.

In view of the above comparative analysis of OSPAR and CCAMLR this factor should be considered as an advantage of the AC rather than its weakness.

4. Relatively broad number of observers from non-Arctic stakeholders is a potential advantage of the Arctic Council compared to the OSPAR Commission. Eventually it could facilitate engagement of third states in the implementation of decisions developed by the AC or within other regional fora, as well as in promoting joint initiatives in international organization with broader membership (IMO, RFMO, in the long view - ISA), provided observers are more intensively involved in the discussion and development of recommendations within the working bodies of the AC. However, extending the number of stakeholders would lower the level of their cohesion.
5. The level of cohesion among the member states of the Arctic Council is apparently higher than that of CCAMLR, but lower than in the case of OSPAR. There are significant differences in the national environmental legislation of

the Arctic states relating in particular to regulation of human maritime activities within their EEZ. Combined with participation of the observer states in the working groups and task forces of the AC, this would mean an even lower level of cohesion, especially in case of further extension of the number of observers that would make joint decisions making in the Arctic Council more difficult. However, this could be partially balanced out by longstanding experience of active and constructive discussion in the AC of issues related to sustainable development, which enables to eventually “raise the bar” and increase the cohesion among its participants, including observers.

3.3. Assessment and ranking of the options

In view of the above, we suggest disregarding options of establishing a regional integrated marine management mechanism in the Arctic that would rely on a broad international treaty with the largest possible involvement of contracting parties (“CCAMLR model”) as well as the regional sea concept (“Barcelona mechanism”). Basing on the existing regional experience, the main choice should be informed by two options: the “no-change” option with the possibility of optimization and efficiency enhancement of the relevant institutions of the AC and the “OSPAR model”, certainly with due regard to the above mentioned structural features of the AC.

“No-change” option

This option is to some extent similar to the approach of the Sargasso Sea mechanism. The Sargasso Sea Commission does not develop its own legally binding regulatory measures, but rather operates as coordinator of its stakeholders’ efforts. Exclusive rights of Bermuda within the EEZ are emphasized, while regulation of activities in ABNJ is carried out by the relevant sectoral organizations. The Commission is in fact a forum, where the parties including scientists and environmental organizations, basing on scientific data, discuss policy decisions to be pursued by the participants themselves.

Of course, this is not a replica of the AC institutions. Both common features and differences are obvious. The existing mechanisms of the AC offer the possibility to submit and discuss proposals on measures relating to sustainable development of the region, including integrated ecosystem-based marine management in the Arctic Ocean. Such proposals can be initiated by the AC member states. They can also be put forward by permanent participants (regional organizations of indigenous peoples) and observers, including environmental organizations and non-Arctic states – mainly, through the working groups. The working groups submit their recommendations to the AC bodies (SAO, Ministerial meetings). Recommendations approved by the Ministries obtain a status of political decisions. Ministerial meetings can decide on establishing of task forces with the mandate to elaborate on specific issues and decisions, including to draft legally-binding regional agreements. A number of such regional agreements – in particular, on cooperation on aeronautical and maritime search and rescue, marine oil pollution preparedness and response, enhancing international Arctic scientific cooperation – were signed and came into force in the recent decade.

Whenever an issue requires engagement of a larger number of states - and to that end, involvement of organizations and mechanisms with broader membership – the member states of the Arctic Council initiate the discussion in the relevant sectoral organizations. For instance, the issue of developing a legally binding Polar Code within the framework of IMO was discussed in the Arctic Council and reflected in the decisions of the Ministerial meetings. However, technically the initiative in IMO was put forward by individual members of the AC. The member states do not always take a consolidated position on every issue discussed in sectoral organizations with broad membership. This shows a lower level of cohesion in the AC compared to OSPAR.

The advantage of the “no-change” option is that the sensitive issues relating to the exclusive rights of the coastal states will fall out of discussion, maintaining, however, the possibility of joint promotion of “targeted” decisions in different international organizations approved by the members of the Council. However, that would significantly hinder the process of establishing a more efficient regional mechanism of integrated ecosystem-based marine management in the Arctic, increasing the risk that discussion of these issues would eventually shift to other international fora, including (indirectly) to the discussion in the UN of a legally binding instrument on conservation of marine biodiversity in ABNJ.

The “no-change” option seems to be too conservative and, in our view, ***establishment of a viable regional mechanism for marine cooperation in the Arctic would better serve the interests of the regional states, including Russia, than the potential inclusion of the region in the discussion of global mechanisms with significant extension of parties engaged in decision-making process.***

Accordingly, it seems reasonable to initiate discussion on a number of issues aimed at enhancing the role of the Arctic Council in development and implementation of the regional decisions, in promotion of agreed positions on integrated marine management in the Arctic in different sectoral international organizations. In the foreseeable future this refers ***to developing a joint position of the Arctic states in IMO***, taking into account the apparent and anticipated intensification of vessel traffic in the Arctic. Given that the establishment of the limits of the coastal states’ extended continental shelf in the Arctic Ocean takes much time, emerging of the Area governed by ISA is an issue of a long-term prospect. The issues relating to conservation and regulation of exploitation of biological resources in the central part of the Arctic Ocean will be dealt with by the participants of the 2018 agreement, including directly or indirectly (through participation in the EU) all member-states of the AC. In future the agenda could comprise the issue of cooperation between the AC and NEAFC regarding a small area in the central part of the Arctic Ocean, covered by the NEAFC’s mandate.

Measures on enhancing the role of the AC could include:

1. *Maintaining an appropriate level of awareness of the issues related to integrated marine management in the region among the governments of the Arctic council member states.*

The AC already plays an important role in the consensus-building between the Arctic and non-Arctic states and in enhancing the level of their cohesion on issues related to sustainable development of the region. Further increase of efficiency could be encouraged by perpetuation and institutionalization of the practice of regular meetings of the heads of relevant state agencies of the member states of the Council to discuss issues related to marine management and international scientific research in the Arctic. It would be reasonable to engage heads of the relevant agencies from the observer states, representatives of international environmental and scientific organizations in such meetings.

Efforts related to the issues of integrated marine management in the region could be facilitated by holding and institutionalizing of an Arctic Summit.

2. *Organization of systematic monitoring of implementation of recommendations and international agreements approved by consensus of the AC members.*

Such work is done today by the working groups of the AC. But it is not systematic, while the abundance of reports, which often present a two-year events review, does not allow endowing the discussion with broad publicity and transparency.

In order to better focus this work the Arctic Council Secretariat could be tasked to prepare a biannual consolidated report on progress in the implementation of the ministerial decisions and international obligations (including ratification of the relevant international agreements) and to present it to the SAO and Ministerial meetings of the AC.

3. *Raising awareness and capacity building (training, formation of the competences necessary for the region) in the member states of the Arctic Council.*

Such work is currently undertaken by single states, non-governmental environmental organizations, network of Arctic Universities. Nevertheless, it seems appropriate to make it more task-oriented by engaging the Arctic Council Secretariat in the implementation of the relevant projects.

4. *Raising global awareness of issues related to sustainable development of the Arctic and Arctic competences building in non-Arctic states with a special emphasis on observer states of the Arctic Council.*

There are first examples of such activity. Noteworthy is the initiative of Finland chairing the AC in 2017–2019 to raise the awareness of the Polar Code provisions among non-Arctic states. The member states of the AC and the AC Secretariat should strengthen this work to improve understanding of problems and issues related to integrated marine management and sustainable development of the Arctic beyond the region. This should increase the cohesion among the members and observers of the AC.

5. *Enhancing coordination of the member states of the Arctic Council on Arctic-related issues discussed in different international organizations, for the time being primarily in IMO.*

The 2013 AC Ministerial meeting provided “identifying opportunities for Arctic States to use the Council’s work to influence and shape action in other regional

and international fora.”³⁷ An important step forward in this direction, in our view, would be holding of regular consultations of the representatives of the member states of the Arctic Council in IMO with the purpose of promoting a consolidated position on Arctic-related issues. It would be also advisable to engage representatives of the Arctic Council observer states in such consultations with a view to enhance cooperation on promotion of consolidated positions in IMO.

The “OSPAR model”

Should the OSPAR’s experience inform formation of a regional mechanism in the Arctic, a more efficient incorporation of integrated ecosystem-based marine management (not necessarily covering the entire Arctic Ocean with MPAs) through cooperation with global sectoral organizations could be achieved. Such approach would promote enhancement of cohesion among the members and observers of the AC, maintaining constructive spirit in the Arctic Council and increasing its role.

This option would require ***significant expansion of the competence and mandate of the AC bodies***, in particular endowing the Arctic Council and its Secretariat with international legal personality; establishing a subsidiary body with a broad mandate comparable to that of the OSPAR Commission, or transforming the Secretariat into the Arctic Council Commission; authorizing the subsidiary body (the AC Commission) to initiate discussion on relevant issues in the decision-making bodies of the Arctic Council (Ministerial meetings); substantial increase of financing of the subsidiary body – the AC Commission.

Apart from implementation of the regional scientific research programme aimed at developing science-based decisions related to marine spatial planning in the Arctic Ocean, the subsidiary body (the AC Commission) would address the issues described above: engagement with sectoral international organizations and research programmes relevant to the region; regular monitoring of implementation of recommendations and international agreements approved by the members of the AC; preparing of progress reports on the implementation of the ministerial decisions; enhancing regional and global awareness of issues related to sustainable development of the Arctic; capacity building and development of Arctic competences in the region and beyond.

The option of establishing a regional mechanism of integrated ecosystem-based marine management in the Arctic on the basis of the OSPAR’s experience seems more preferable compared to the “no-change” option. However, today not all of the Arctic Council members are ready for such solution.

It has to be admitted, that the common ground for the both options is the ***need of coordination and cooperation of the Arctic regional mechanism with global and regional sectoral organizations and arrangements*** that would help to resolve the problem of engaging third, non-Arctic states in the implementation of adopted measures.

³⁷ 2013 Kiruna Declaration.

4. Scientific Research

Development of science-based integrated marine management in the Arctic will require comprehensive planning, coordination of numerous scientific groups, financial support and large-scale task-oriented research of both the Arctic ecosystems and the cumulative impact of various activities on them.

The TFAMC was requested to assess the need for a regional AC-based mechanism of strengthened cooperation on marine management to coordinate efforts to improve scientific understanding of Arctic marine areas for spatial planning.³⁸ So far the working groups of the AC have been basing their recommendations on scientific research conducted by external organizations, including national, acting within the framework of their own programmes. Therefore, the request to the Task Force can be put in a different way: *Could the AC serve as coordinator of efforts to improve scientific understanding of the Arctic marine areas or does the Arctic need a new marine science entity to coordinate marine research and, what is more important, to provide scientific advice to institutions responsible for taking science-based decisions?*

Despite a wide range of scientific organizations working in the Arctic, it is often recognized, that no one of them is dedicated to coordinating integrated marine science activity of the entire Arctic marine area and transferring the research results to national and regional institutions for management decision-making.³⁹

The same applies to conducting more narrow research focused on marine living resources.⁴⁰ The Barents Sea and the Bering Sea are considered to be the most studied areas.⁴¹ The reason is that large marine scientific organizations— ICES, PICES, the Pacific Arctic Group of IASC (PAG), bilateral Russian-US and Russian-Norwegian fisheries Commissions etc. — are quite efficient in the North Atlantic and the Northern Pacific.

However, none of the listed above organizations is responsible for pan-Arctic coordination of marine research. ICES is an intergovernmental organization, with all 8 Arctic states being parties to it, which is eligible to provide marine management advice to governments and international organizations.⁴² The geographic area of ICES officially covers the Atlantic Ocean with an explicit emphasis on the North Atlantic⁴³ and touches only a part of the Arctic. PICES is an organization similar to ICES, active in the Northern Pacific. But unlike ICES, it does not provide advice to competent authorities. Only 3 Arctic states belong to PICES.

³⁸ Senior Arctic Officials' Report to Ministers. Apr. 24, 2015. P. 78 // Arctic Council.

URL: https://oaarchive.arctic-council.org/bitstream/handle/11374/494/ACMCA09_lqaluit_2015_lqaluit_SAO_Report_to_Ministers_formatted_v.pdf.pdf?sequence=1&isAllowed=y

³⁹ Baker B. ICES, PICES, and the Arctic Council Task Force on Arctic Marine Cooperation. – Irvine : University of California, Irvine School of Law. P. 1. URL: https://www.law.uci.edu/lawreview/vol6/no1/Baker_Final.pdf

⁴⁰ Van Pelt T. et al. The missing middle: Central Arctic Ocean gaps in fishery research and science coordination // Marine Policy. Vol. 85 (2017). P. 84.

⁴¹ Ibid.

⁴² ICES stocktaking of its role and capabilities in ocean and coastal sustainability. 2012. P. 1 // ICES.

URL: http://www.ices.dk/explore-us/Documents/Position%20papers/ICES_Stocktaking_in_support_the_Inter-Agency_report_.pdf [<https://perma.cc/KJ7Y-UPW3>]

⁴³ Convention for The International Council for the Exploration of the Sea, 12 September 1964 // ICES.

URL: http://www.ices.dk/explore-us/who-we-are/Documents/ICES_Convention_1964.pdf

Integrated Pan-Arctic marine research is the aim of the International Arctic Science Committee and PAG, organized under IASC. The area of IASC covers the entire marine Arctic. The range of research issues is quite wide and includes integrated ecosystem study. However, unlike ICES, this scientific organization was created “bottom up” – by imitative and efforts of scientists. This is a nongovernmental organization with all relevant challenges in funding, especially for research across national boundaries.⁴⁴

There are different scholarly views on the issue of establishment of a new mechanism in the Arctic for coordination of marine scientific research.⁴⁵ Some experts believe, that despite a broad array of scientific organizations in the Arctic, currently there are still gaps in scientific understanding of the marine Arctic, especially in its central part (in particular, fish stock movements and dynamics in areas beyond EEZ). In light of this they suggest that there is a need in establishing a single coordination mechanism.⁴⁶

Others consider such measure premature and suggest amending mandates of existing mechanisms instead of establishing an entirely new scientific organization. One of the proposed alternatives is extending the geographic scope of ICES, that would, however, raise a question whether the extended mandate of ICES would entail management of Arctic marine living resources – a potentially sensitive issue for the Arctic and major non-Arctic states with fisheries interests (Japan, China etc.), given the absence of a single fishery management organization for the entire Arctic.⁴⁷

The experience of the above mentioned non-Arctic regional mechanisms for marine management in ABNJ shows that, as a rule, there are no special science institutions created within such mechanisms for science-based decision-making. Most commonly, such regional mechanisms rely on scientific data provided by national research centers, as well as various international marine institutions and organizations.

For instance, the OSPAR Commission works on the basis of scientific data sourced both within the contracting parties and from external organizations.⁴⁸

In so far as the parties to OSPAR mainly represent the EU members, with the entire EU also being a member, the Commission is to a large extent guided by the relevant EU strategies, in particular the 2008 Marine Strategy Framework Directive.⁴⁹ As a non-EU country, Norway has made management plans for its

⁴⁴ Van Pelt T. et al. Op. cit. P. 84.

⁴⁵ See, e.g.: Van Pelt T. et al. Op. cit. P. 85; Baker B. ICES, PICES, and the Arctic Council Task Force on Arctic Marine Cooperation. P. 19.

⁴⁶ Van Pelt T. et al. Op. cit. P. 85.

⁴⁷ Baker B. ICES, PICES, and the Arctic Council Task Force on Arctic Marine Cooperation // U.C. Irvine Law Review. Vol. 6 (2016). No 1. P. 19.

URL: <https://scholarship.law.uci.edu/cgi/viewcontent.cgi?article=1243&context=ucilr>

⁴⁸ OSPAR Science Agenda. P. 3 // OSPAR, 2015. 23 October. URL: <https://www.ospar.org/documents?v=7358>

⁴⁹ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) // Official Journal of the European Union. 2008. 25 June. Pp. 19–40.

URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0056&from=EN>

maritime areas within the OSPAR area which have similar scientific objectives.

Given that resources of individual states are limited, OSPAR promotes scientific understanding through coordination of regional and sub-regional scientific programmes. Special emphasis is made on support by relevant EU projects. As for engagement with external scientific organizations, OSPAR cooperates most actively with ICES on the basis of a Memorandum of Understanding.⁵⁰

The cooperation includes providing scientific advice in an array of fields by ICES and ensuring a certain annual budget for these purposes provided by OSPAR. The OSPAR Commission cooperates also with other scientific programmes and networks.

Taking into account that the Arctic Council does not have its own (at least, so far) budget for task-oriented scientific research, it would be fair to state, that the Council could inform its decisions on integrated marine management in the Arctic Ocean only by scientific data sourced from research organizations and programmes of the member-states, as well as by cooperation with external international scientific organizations and projects. The main function of the Council in this case could be coordination of such cooperation and focusing it on specific tasks for the purpose of scientific-based decision-making related to integrated marine management and spatial planning in the Arctic.

In this regard, it is worth noting that in 2016 the AC Working Group on Protection of the Arctic Marine Environment (PAME) with the Expert group on the Ecosystem Approach to Management established within its framework, together with ICES created a joint Working Group for Integrated Ecosystem Assessment of the Central Arctic Ocean (WGICA). In 2017 PICES joined the group complementing its membership with countries from the North-East Asia. WGICA puts forward an ambitious task to conduct an integrated ecosystem assessment in the central part of the Arctic Ocean and effects of climate change and various types of human activities, such as shipping and fisheries. The Group plans to present its first report before the end of 2018 and to continue the work in 2019–2021.⁵¹ The leading role in this project, judging by the documents, is played by ICES.

However, neither ICES, nor PICES by virtue of their membership, nor WGICA technically are able to submit their research results to the Arctic Council. At the same time, their proposals can be brought up for discussion in the AC (SAO, Ministerial meetings) by PAME.

⁵⁰ Memorandum of Understanding between the OSPAR Commission and the International Council for the Exploration of the Sea 2006 // ICES.

URL: <http://www.ices.dk/explore-us/Documents/Cooperation%20agreements/OSPAR/MoU%20OSPAR%20and%20ICES.pdf>

⁵¹ See: Interim Report of the ICES/PICES/PAME Working Group for Integrated Ecosystem Assessment of the Central Arctic Ocean (WGICA). 24–26 April 2018. // ICES.

URL: <http://ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/IEASG/2018/WGICA/WGICA%202018.pdf>

In this regard, it would be reasonable to work towards a comprehensive integrated regional programme within the Arctic Council for scientific research for the purpose of adopting scientific-based decisions related to spatial planning in the Arctic Ocean. Both national scientific organizations of the AC member-states (Russian research centers could play a significant role) and external international scientific organizations and programmes could be participants of such initiative, including IASC, ICES and the mechanism to be established under the 2018 Agreement on prevention of unregulated fisheries in the central part of the Arctic Ocean. It also seems feasible to address the issue of cooperation between the AC and EU with the latter's substantial budget for Arctic research.

Conclusion

In the light of the above, the following could be established:

1. Given that sovereignty, jurisdiction and sovereign rights of the Arctic states extend to significant parts, but not the entire Arctic Ocean, the authority of the Arctic Council to adopt decisions, restricting third states' rights in maritime ABNJ, is limited. This refers also to introduction of the integrated ecosystem-based marine management methods in the Arctic, including establishment of MPAs.
2. However, the AC as a regional authoritative mechanism could play the central role in this process while expanding and institutionalizing ***coordination and cooperation with the global and regional sectoral organizations and arrangements in place in the Arctic***: IMO in relation to shipping, NEAFC and parties to the agreement on prevention of unregulated fisheries in the central part of the Arctic Ocean (they include both member-states of the AC and its observers), in future – ISA in relation to exploration and exploitation of the resources of the Area, boundaries of which are not yet defined. Initiating decision-making process in the relevant organizations would provide compliance with the measures by third states and in some cases – applying relevant enforcement mechanisms.

Examples of such cooperation already exist: development of the legally-binding Polar Code in IMO, signing the agreement on prevention of unregulated fisheries in the central part of the Arctic Ocean, adoption by IMO in 2018 of the joint Russian-US proposal on establishing recommended shipping routes in the Bering Strait. Such cooperation could form the basis for addressing the issues relating to creation of MPAs in the Arctic Ocean in ABNJ – Particularly Sensitive Sea Areas (IMO), seabed areas closed for exploration and exploitation of mineral resources (ISA) etc.

Cooperation with the organizations and mechanisms based on universal international instruments does not resolve all of the problems associated with implementation of the integrated approach. First, measures, adopted by sectoral organizations, do not provide the synergy (cross-sectoral and transboundary) effect. Secondly, mandates of sectoral organizations cover not all types of economic activities that could potentially have an adverse impact on marine ecosystems and biodiversity of the region. This refers to reduction of marine environment pollution from land-based sources, oil and gas industries, construction of artificial islands and installations, laying of cables etc.

3. Synergy effects could be increased by establishing within the AC (or under its auspices) of a regional programme aimed at systematic planning, coordination and integration of scientific research for the purpose of introducing integrated approach to marine management, developing recommendations related to spatial planning to inform decisions adopted by the Ministerial meet-

ings of the Council after consideration by the SAO; task-orientation of the cooperation between the relevant bodies of the AC and national and international scientific organizations conducting integrated research in the Arctic (such as ICES, PICES, IASC). Important fields of the AC's work would be also enhancing regional and global awareness of issues of sustainable development of the Arctic; facilitating capacity-building and formation of competences in the states of the region and beyond; systematic monitoring of implementation of decisions adopted by the Ministerial meetings of the AC and drafting relevant progress reports; assisting states in their implementation of the decisions adopted by the AC and (or) broader international organizations.

4. Addressing these goals is possible both through ***gradual enhancement of the focused work of the Arctic Council*** in the above mentioned fields, without fundamental changes of its structure and methods, as well as through significant expansion of the mandates of its bodies, in particular ***endowing the AC with international legal personality; transforming the AC Secretariat into Commission of the AC*** with relevant mandate or ***creating a special subsidiary body***.

Though the second option (significant expanding of the mandates of the AC bodies) seems to us more preferable in terms of introduction of integrated ecosystem-based marine management in the Arctic Ocean and enhancement of the AC's role in the region, the cohesion among the member-states of the Arctic Council appears to be insufficient for this in the short- and middle-term prospect. While not abandoning the prospect to promote it in the longer-term future (the first step in this direction could be transforming the AC Secretariat into Commission), we consider implementation of the set of measures aimed at enhancing the AC's role to be the most appropriate for the short term.

5. Regulation of other types of economic activities that fall out of mandates of existing global or regional sectoral organizations, but that could have potential adverse impact on marine ecosystems and biodiversity of the region, is possible on the basis of ***regional agreements*** between the member-states of the Arctic Council aimed at resolving specific problems, which would be ***open for accession by third states***. In this process the Arctic Council could make use of such resource as broad number of the ***observer-states***, which could take part in discussions on relevant regional regulations in task forces established for this purpose.
6. Efficient implementation of spatial planning and integrated marine management is possible only in case of enhancing cohesion among the member-states of the Arctic Council. Along with active participation of national scientific organizations in the relevant work of the Council, ***holding regular meetings of the AC member-states' ministers responsible for environmental protection and science issues and inviting heads of relevant ministries of the observer-states, holding of Arctic summits, establishing the practice of regular consultations of representatives from the member-states of the Arctic Council to IMO with involvement of representatives from the AC observer-states*** could significantly contribute to achieving this end. Such meetings are usually arranged by the state chairing the Arctic Council.

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