

Marine Cooperation in the Arctic: Edging Forward in a Sea of Challenges

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Introduction

- How regional marine cooperation has been faring in the Arctic can be characterized in two phrases

1. Edging Forward

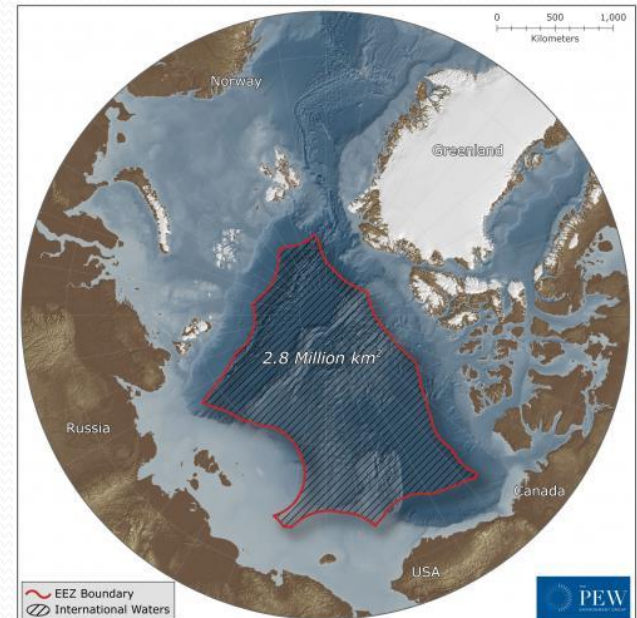
Progressions in cooperation have incrementally moved forward through

- (i) **The Arctic Council and its “progeny”**
- (ii) **Initiatives led by the five Arctic coastal States (Arctic 5)**

2. Sea of Challenges

Numerous ocean governance challenges still confront the region, e.g.

- (i) **Sorting out future governance arrangements for the central Arctic Ocean (CAO) beyond national jurisdiction**
- (ii) **Confronting the limitations of the Arctic Council**



- A two-part “speed cruise” follows



1. Edging Forward

(i) The Arctic Council and its “progeny”

- The Arctic Council, established pursuant to a non-legally binding Declaration adopted in Ottawa on 19 September 1996, has become the main institutional vehicle for furthering regional cooperation
- + Eight Arctic States included as members
 - Canada
 - Denmark/Greenland
 - Finland
 - Iceland
 - Norway
 - Russian Federation
 - Sweden
 - United States of America



+ Indigenous organizations (now six in number) elevated to status of Permanent Participants

- Aleut International Association
- Arctic Athabaskan Council
- Gwich'in Council International
- Inuit Circumpolar Council
- Russian Association of Indigenous Peoples of the North (RAIPON)
- Saami Council



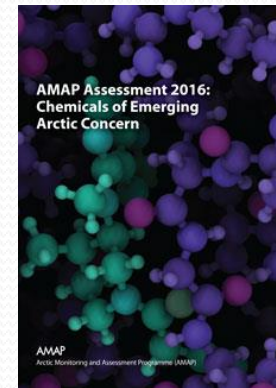
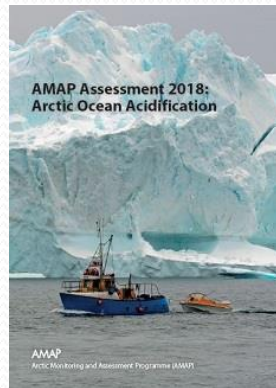
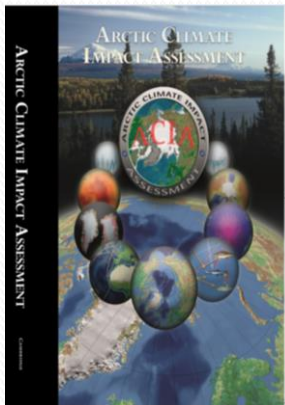
+ Six Working Groups established

- Arctic Monitoring and Assessment Programme (AMAP)
- Emergency Prevention, Preparedness and Response (EPPR)
- Conservation of Arctic Flora and Fauna (CAFF)
- Protection of the Arctic Marine Environment (PAME)
- Sustainable Development Working Group (SDWG) (1998)
- Arctic Contaminants Action Program (ACAP) (2006)

- + Rotating chairship among Arctic States (every two years)
- + Ministerial meetings on a biennial basis
- + Observer status open to
 - Non-Arctic States (13 now)
 - * First observer States were France, Germany, Netherlands, Poland, Spain and the United Kingdom
 - * China, India, Italy, Japan, Singapore and South Korea added in May 2013
 - * Switzerland accepted in 2017
 - Inter-governmental and inter-parliamentary organizations
 - Non-governmental organizations
- + Overall objective is to promote cooperation on common Arctic issues, in particular issues of sustainable development and environmental protection
- + Substantial limitations in governance
 - Largely a “talk and study” forum
 - Cannot address military and security issues
 - No powers to directly develop regional environmental standards, e.g., for oil and gas exploration/development

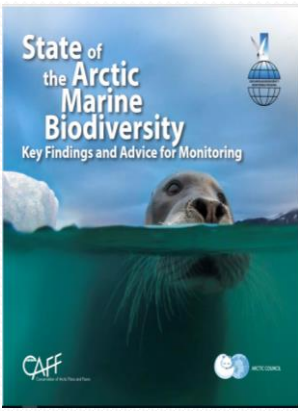


- The Council's six working groups have been the main avenues for carrying out studies and projects as demonstrated by AMAP, CAFF and PAME
- + AMAP has published numerous assessments on climate change, ocean acidity and pollutants in the Arctic

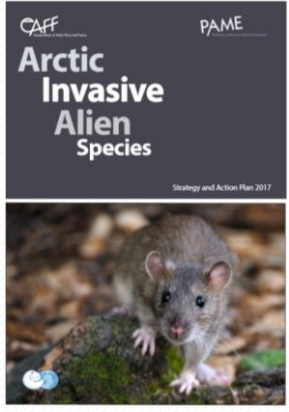


+ CAFF has facilitated numerous reports and initiatives, such as:

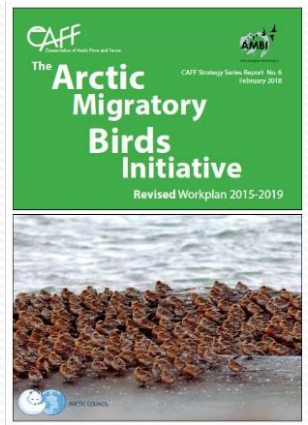
– State of Arctic Marine Biodiversity Report (2017)



– Arctic Invasive Alien Species (ARIAS) Strategy and Action Plan (2017)



– Arctic Migratory Birds Initiative (AMBI)



– Convening of Arctic Biodiversity Congresses



+ PAME has been the most active and successful working group with efforts addressing major marine environmental protection themes, e.g.

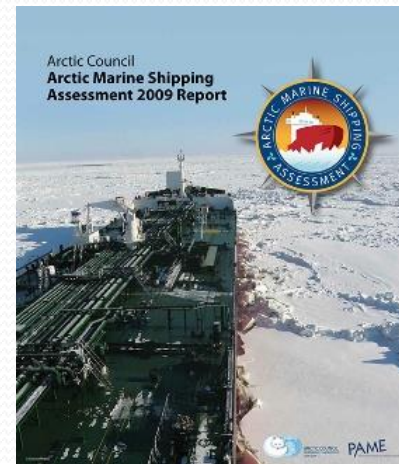
– Land-based pollution / activities

- * Regional Programme of Action for the Protection of the Arctic Marine Environment from Land-based Activities (2009)
- * Desktop Study on Marine Litter including Microplastics in the Arctic is being prepared

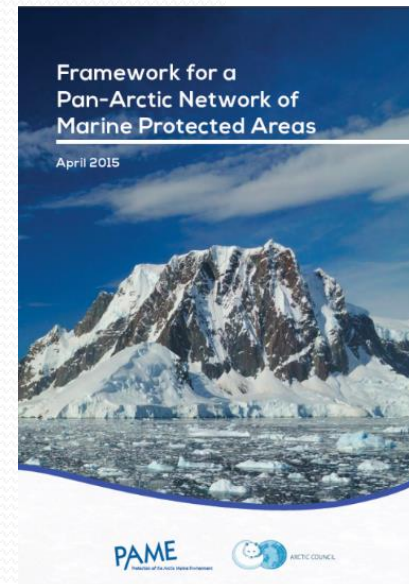


– Shipping

- * Major Arctic Marine Shipping Assessment concluded in 2009 with 17 recommendations and follow-ups
- * Arctic Shipping Best Practice Information Forum established in 2017 (www.arcticshippingforum.is)



- Offshore resource exploration/development
 - * Arctic Oil and Gas Guidelines (2009)
 - * Resource Exploration and Development Expert Group (REDEG) tasked with promoting further initiatives in relation to
 - > Offshore renewable energy
 - > Noise in the marine environment
 - > Offshore and coastal mining
- Marine protected areas (MPAs)
 - * PAME is also promoting the establishment of an MPA network across the Arctic through the *Framework for a Pan-Arctic Network of Marine Protected Areas* (April 2015)



- Three regional agreements have been negotiated by Arctic Council task forces
 - + Aeronautical and Maritime Search and Rescue Agreement
 - Agreed to at the May 2011 Nuuk Ministerial Meeting
 - Delineates areas of national search and rescue (SAR) responsibilities in the Arctic
 - Calls for further cooperation in joint exercises and training
 - Provides for expedited cooperative national responses to SAR incidents



- + Agreement on Cooperation on Marine Oil Pollution Preparedness and Response (2013)
 - Pledges Parties to maintain effective national oil pollution preparedness response systems
 - Calls for cooperation in response operations
 - Promotes joint exercises and training

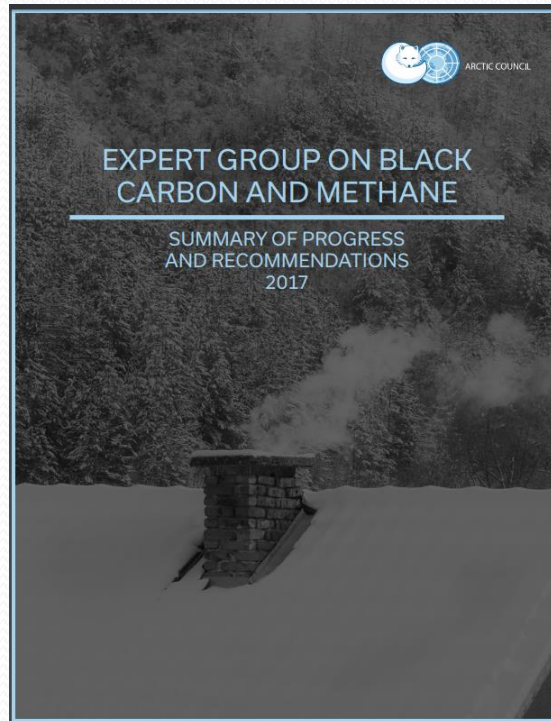


+ Agreement on Enhancing International Arctic Scientific Cooperation (2017)



- Main thrust is to require Parties (eight Arctic States) to facilitate entry into and exit from their territories by scientists from other Parties
- Parties encouraged to facilitate access by scientists from other Parties to scientific research facilities and transportation services
- Parties required to support full and open access to scientific data and published results
- Parties may enhance and facilitate Arctic scientific cooperation with non-Parties

- Arctic Council expert groups have also been established
- + Expert Group on Ecosystem-Based Management is developing guidelines on how to implement the ecosystem approach in the Arctic
- + Expert Group on Black Carbon and Methane is tasked with reviewing biennial reports by Arctic States and observer States on progress in implementing the Council's Framework for Action on Black Carbon and Methane (2015)



(ii) Regional cooperative efforts led by the five Arctic coastal States (Arctic 5)

- Adoption of a Declaration Concerning the Prevention of Unregulated High Seas Fishing in the CAO at a meeting in Oslo, Norway on 16 July 2015
- + Arctic 5 agreed to various interim measures to address potential commercial fishing in the high seas of the CAO
 - Not authorizing fishing vessels to conduct fishing in the high seas area until one or more regional or subregional fisheries management organizations or arrangements have established management measures
 - Establishing a joint scientific research program to promote ecosystem understandings
 - Coordinating monitoring, control and surveillance activities



- Subsequent expansion of CAO fisheries discussions, to include China, Japan, South Korea, Iceland and the EU, with a new draft *Agreement to Prevent Unregulated High Seas Fisheries in the CAO* concluded on 30 November 2017 with various commitments including

- + Not authorizing flagged vessels to conduct commercial fishing in the CAO unless conservation and management measures have been adopted by one or more regional or subregional fisheries management organizations or arrangements or pursuant to interim measures that may be adopted by the Parties under the Agreement



- + Establishing, within 3 years of entry into force of the Agreement, conservation and management measures for exploratory fishing

- + Adopting, within 2 years of the Agreement's entry into force, a Joint Program of Scientific Research and Monitoring and a data sharing protocol

- + Convening meetings at least every two years
 - To review Agreement implementation
 - To consider whether to commence negotiations to establish one or more additional regional or subregional fisheries management organizations or arrangements

- + Agreement opened for signature at a ceremony in Ilulissat, Greenland on 3 October 2018

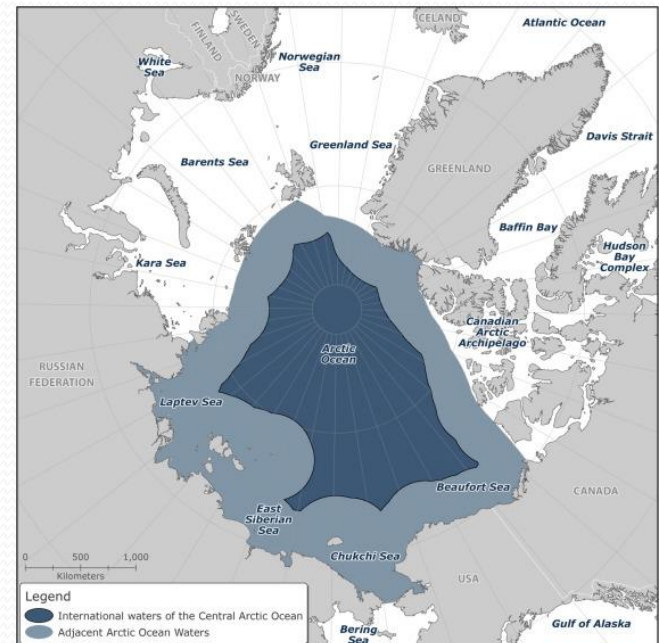


2. Sea of Challenges

A sea of governance challenges loom on the horizon with a “fast five” quickly flagged here

(i) Sorting out the future of CAO fisheries governance

- CAO Fisheries Agreement raises numerous implementation challenges, e.g.
 - + Working out the scientific cooperation details
 - + Clarifying the conditions for exploratory fishing activities
 - + Sorting out when commencement of negotiations for a new RFMO or arrangement might be appropriate, e.g.
 - What constitutes adequate scientific information?
 - How is the precautionary approach to be applied?

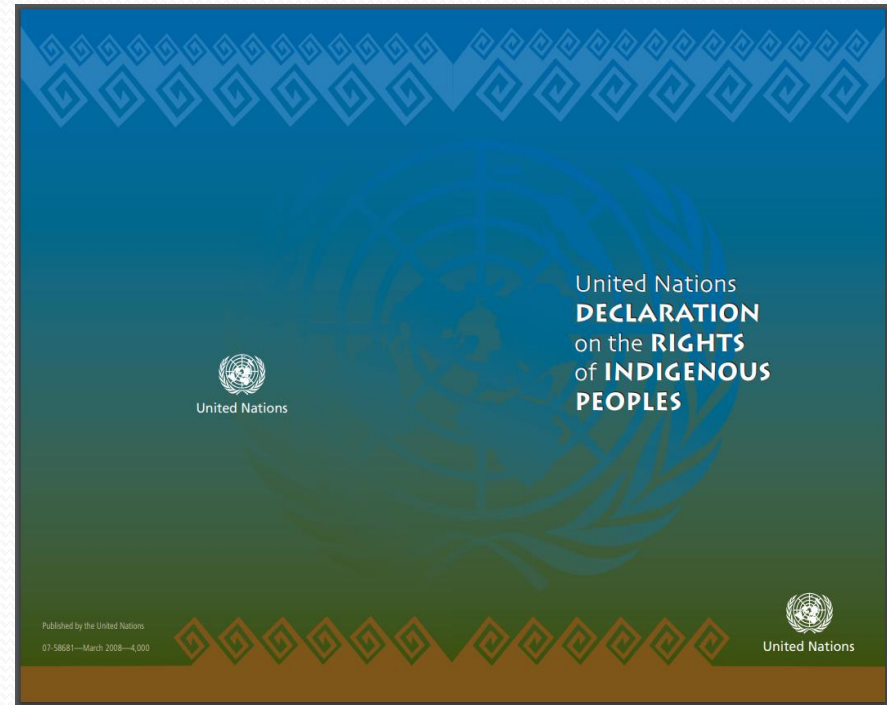


+ Fleshing out how Indigenous rights and interests will be addressed

– Preamble of the Agreement simply

- * Recalls the 2007 UN Declaration on the Rights of Indigenous Peoples
- * Recognizes the interests of Arctic Indigenous peoples and Arctic residents in the long-term conservation and sustainable use of living marine resources and in healthy Arctic Ocean ecosystems
- * Underlines the importance of involving Indigenous peoples and their communities

– No procedural or substantive details provided



- + Ensuring compliance and enforcement of interim measures
- + Deciding whether to invite other States with a “real interest” to accede to the Agreement after it enters into force (requires ratification/accession by Arctic 5 + 5)
- + Deciding whether to extend the Agreement beyond an initial 16 year period following its entry into force

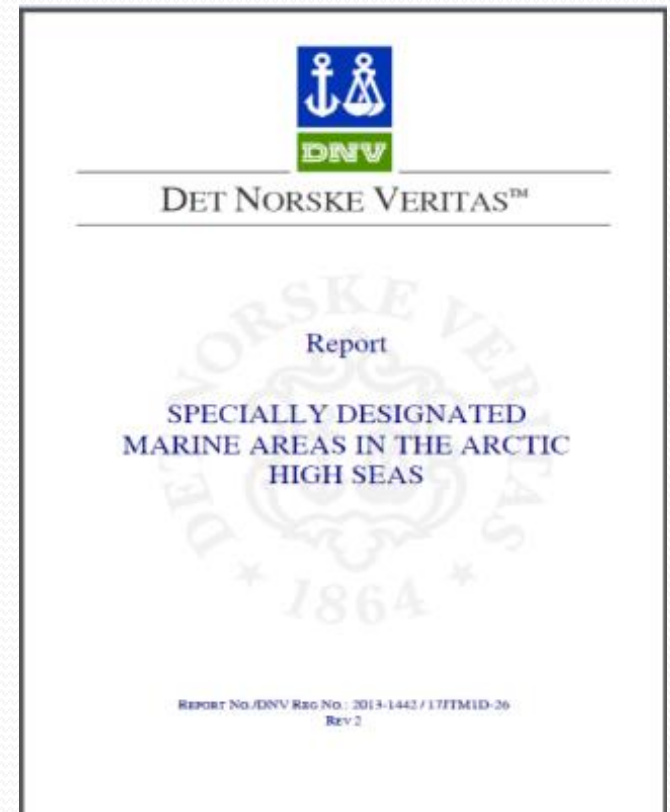


- Tough questions could be faced if commercially viable fish stocks are eventually found
- + Should a commercialization future be pursued even if commercially exploitable stocks are identified?
 - One or more “no take” areas might actually benefit and be favoured by coastal States in case of straddling fish stocks
 - The “sui generis” nature of the CAO could justify a unique international protective response
- + If commercial fishing is allowed, what should be the access and allocation criteria?



(ii) Deciding on possible future steps to protect areas of the Arctic high seas from international shipping

- Protection of the Arctic Marine Environment (PAME) Working Group undertook a study on possible future options to protect areas of the Arctic high seas from international shipping
- + Norway led project with report issued in 2014
- + Report identified three options that could be pursued at the IMO
 - Pursue a Particularly Sensitive Sea Area (PSSA) for the entire high seas area with a Vessel Traffic System (VTS), a Ship Reporting System (SRS) and a dynamic area to be avoided (ATBA)
 - Pursue a PSSA for the entire high seas area with just a VTS and SRS
 - Pursue a PSSA for one or more core ice sea areas within the CAO with ATBAs



- The PAME WG might be described as “stalled” in the wake of the 2014 Specially Designated Marine Areas in the Arctic High Seas report
- + At PAME’s September 2014 meeting, a decision was reached to take a number of interim steps before pursuing actions within the IMO including
 - A paper investigating the possibility for IMO to designate a PSSA located entirely on the high seas
 - A paper exploring whether dynamic areas to be avoided might be established
 - Papers have yet to be written
- + In October 2016, PAME further decided to suspend the high seas project pending receipt of information on vulnerable shipping areas from CAFF and/or the ICES/PICES/PAME Working Group on Integrated Ecosystem Assessment for the CAO



(iii) Deciding whether to impose further bans on heavy fuel oil (HFO) carriage and use in the Arctic

- In light of the ban on the use or carriage of HFO on ships operating in the Antarctic Treaty area, the debate on whether HFO should be banned in at least some further areas of the Arctic is not likely to go away

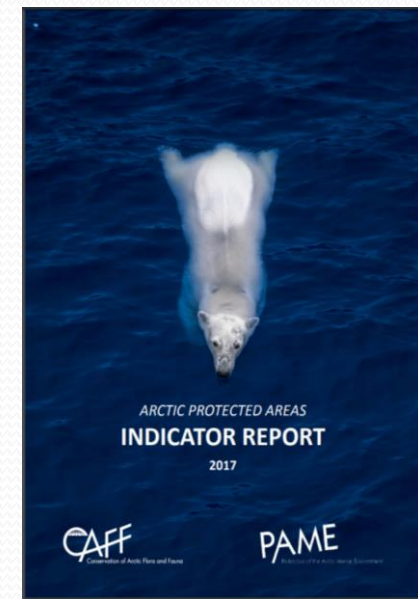
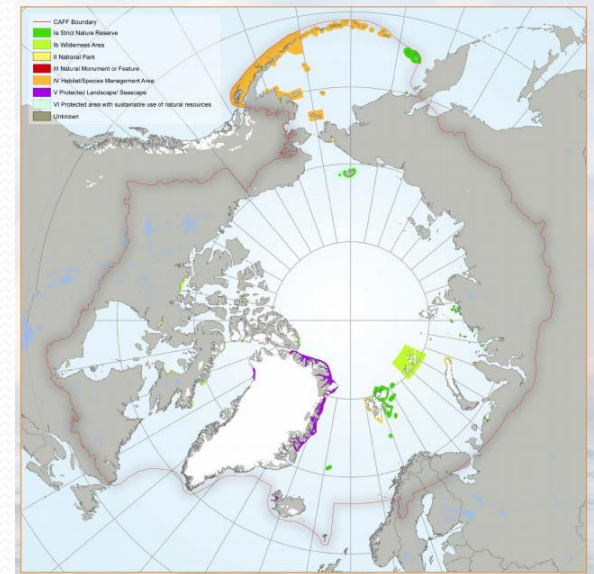


- Only selected areas off Svalbard are presently subject to HFO bans
- The Arctic Council's PAME Working Group continues to study HFO issues
 - + Were previous phase I, II and III HFO studies
 - + PAME is undertaking four further HFO studies under a Phase IV HFO initiative including
 - Review of on-shore uses of HFO by Indigenous peoples and local communities
 - Update on HFO use by ships in the Arctic
 - Study of environmental, economic, technical and practical aspects of alternative fuel use by ships in the Arctic
- Polar Code encourages ships to not carry HFO when operating in Arctic waters (Part II-B)
- The Marine Environment Protection Committee (MEPC) of the IMO at its 71st session in 2017 agreed to place the topic of possible HFO measures in the Arctic on its 2018-2019 agenda with the Pollution Prevention and Response (PPR) Sub-committee tasked with exploring future mandatory or recommendary measures



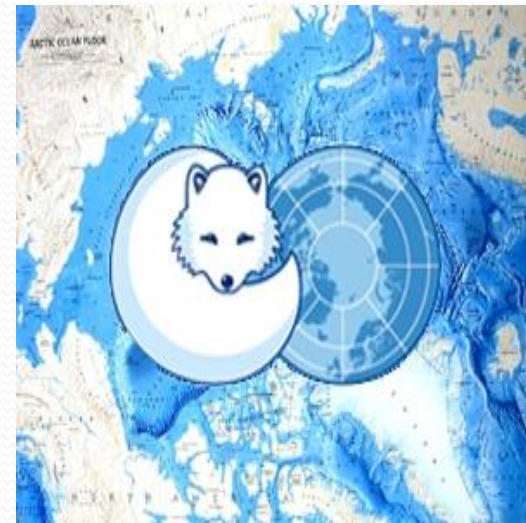
(iv) Achieving a network of MPAs

- PAME's Framework for a Pan-Arctic Network of MPAs stands out as “politically cautious”
- + No regional target adopted for MPA designations
- + Leaving priorities and timelines for possible additions of MPAs to each Arctic State
- A 2017 report summarizing the status of MPAs in the Arctic highlights the limited MPA progress with only 4.7% of the Arctic marine area being protected as of 2016



(v) Working out future directions for the Arctic Council

- Lots of lingering issues, e.g.,
 - + How might the engagement of non-Arctic States be strengthened?
 - + How might financing of Arctic Council activities be enhanced?
 - Secure funding for Permanent Participant involvements
 - Adequate funding for Council projects and assessments
 - + Should additional regional agreements be negotiated? e.g.,
 - Agreement on offshore oil and gas operational standards
 - Framework treaty further formalizing the Arctic Council and national commitments
 - Regional seas treaty with specific protocols or annexes?
 - + How might the “Arctic voice” be better communicated in international fora?



- Arctic Council Task Force on Arctic Marine Cooperation (TFAMC) was established in April 2015 at the Iqaluit Ministerial meeting to consider possible ways forward to enhance regional cooperation
- + TFAMC held five meetings and reported recommendations to the Council's Ministerial meeting in May 2017
- + TFAMC asked for a continuation of its work during the Finnish chairmanship with a revised mandate and the new mandate was given with a final report by TFAMC II expected in 2019
 - To negotiate the terms of reference for a new subsidiary body within the Arctic Council
 - To identify potential complementary enhancements to existing Arctic Council mechanisms
- + Senior Arctic Officials (SAOs) recently cut back the mandate to focus on complementary enhancements
- Arctic Council Strategic Plan is being drafted by SAOs but one can expect limited advancements



Conclusion

- Time does not permit a discussion of numerous other challenges, e.g.
- + Expanding vessel routing measures in the Arctic
- Ensuring effective ballast water management in Arctic waters
- + Reaching agreement on control measures for black carbon emissions from shipping
- + Enhancing port and navigational infrastructures in the Arctic
- + Providing adequate reception facilities for ship wastes in the Arctic
- + Ensuring effective implementation of the Polar Code



- At least four “lessons to be learned” about regional marine cooperation may be drawn from the Arctic experience
- + Regional cooperation may be substantially advanced through “soft law” arrangements, such as a council, working groups, task forces and expert groups
- + Regional cooperation may be enhanced by putting aside defence and security issues
- + Regional cooperation will continue to face the political realities of differing national interests and cooperative commitments
- + Regional cooperation should be viewed as “dynamic” often needing to extend to broader levels
 - Extra-regional (e.g. migratory seabirds, fisheries)
 - Global (e.g. long-range transport of pollutants, shipping regulation and climate change)



- One final nautical image captures the “bottom line” regarding regional marine cooperation in the Arctic
- An unfinished voyage!

