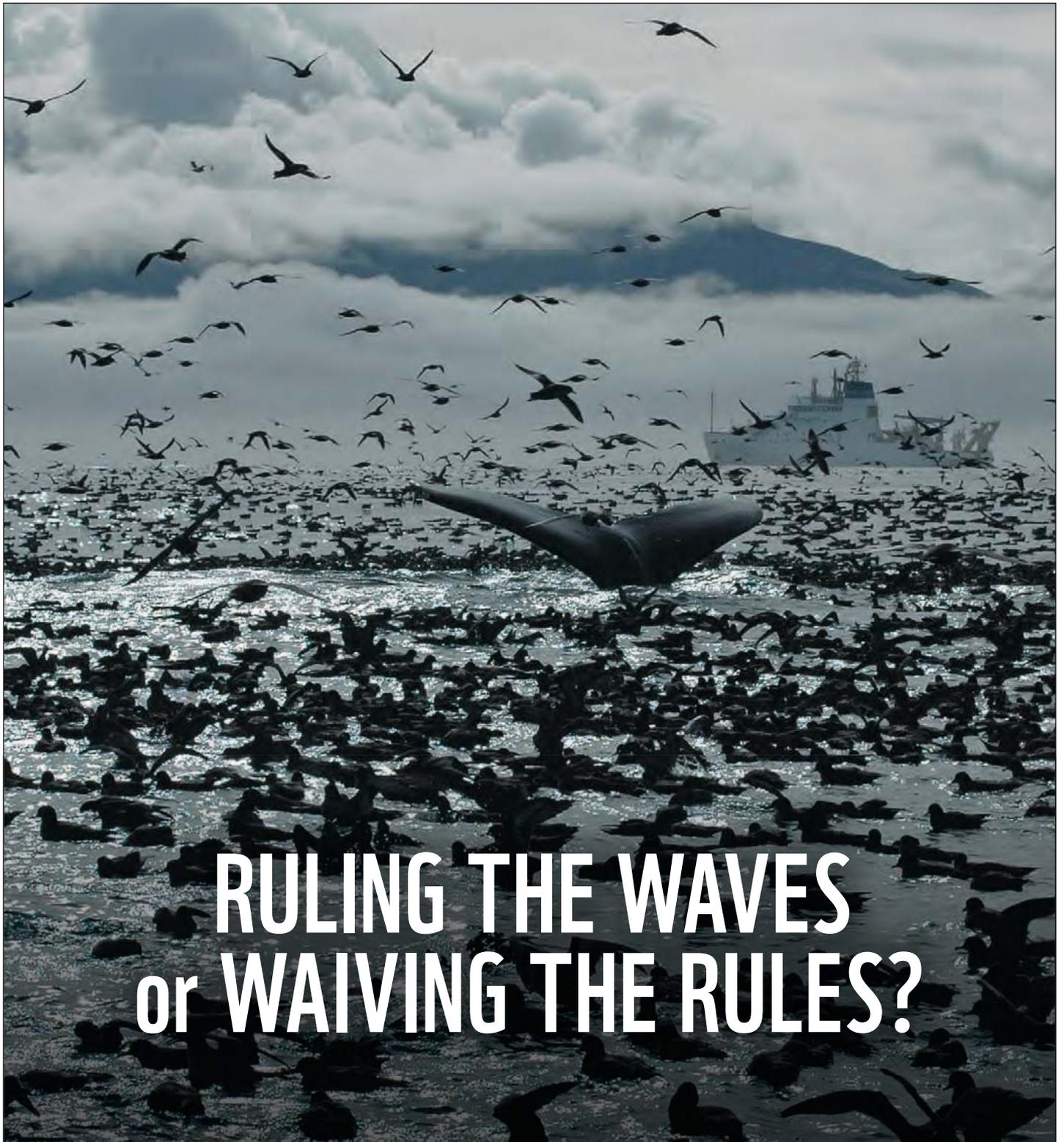


# THE CIRCLE



The Great Upwelling	6
Building common interests	12
Ecosystem-based management	17



## RULING THE WAVES or WAIVING THE RULES?

## ARCTIC MARINE GOVERNANCE

### Contents

**EDITORIAL** Navigating marine governance 3

**IN BRIEF** 4

**KUUPIK VANDERSEE KLEIST** Community consultations on "The Great Upwelling" 6

**KANAKO HASEGAWA** The regional seas agreements: lessons learned 9

**PAUL BERKMAN** and **ALEXANDER N. VYLEGZHANIN** Building common Interests 12

**ALISTAIR GRAHAM** The conundrum: conserving biodiversity in Areas Beyond National Jurisdiction 14

**BETSY BAKER** Ecosystem based management: a flexible tool for stewardship 17

**ERIK MOLENAAR** The evolution of the Arctic Council and the Arctic Council System 19

Options for Arctic marine cooperation: the WWF vision 22

**THE PICTURE** 24

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*A magnificent profusion of life as a humpback whale dives amidst thousands of seabirds. Alaska. 2005. The NOAA Ship OSCAR DYSON is in the distance.*

Photo: Dr. Phillip Clapham, NMFS/AKFSC/NMML – Creative Commons

*ABOVE: U.S. Coast Guard icebreaker Healy cuts through thick multiyear sea ice in the Arctic Ocean. July 6, 2011.*

Photo: NASA/Kathryn Hansen – Creative Commons

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# Navigating marine governance

THE ARCTIC COUNCIL was set up twenty years ago with a focus on conservation and sustainable development in the Arctic region including its marine realm. Since then we have seen the dizzying downward spiral of Arctic sea ice due to climate change. We have seen fish stocks moving around the Arctic, fleeing warming waters or chasing moving food sources. We have seen the catastrophic failure of a deep sea drilling rig as well as nations and businesses preparing for a future where the Arctic Ocean is more liquid more of the time. To deal with these changes, the Arctic Council must change. The Council has laid much groundwork for responding to changing conditions with its reports and policy recommendations. An evolving Council now needs to focus on implementing decisions and recommendations collectively made by Arctic states including the Arctic Marine Strategic Plan, in an effective and collaborative way. This requires new approaches to Arctic marine cooperation.

At time of publication, the Arctic Council's Task Force on Arctic Marine Cooperation is developing options for cooperation mechanisms for the Arctic marine environment. Arctic states and Permanent Participants will elaborate on a number of questions to be answered before proposing a working instrument. Those questions include identification and acquisition of knowledge inputs; coordination of stewardship efforts at various scales; area-based management measures; relations with other international marine instruments (and lessons learned from their operations and experience); scope (legal and geographical) of the instrument; organizing principles within the structure of the Arctic Council and how that structure may need to be changed.

Authors in this issue provide context and insight on some of those questions to help inform discussions at the Task Force on Arctic Marine Cooperation. Paul Berkman and Alexander Vylegzhanin explore questions of Arctic

states' authority in the Arctic area beyond national jurisdiction, and the role of non-Arctic states. Some states from outside the Arctic have long experience of joint management of marine areas. Kanako Hasegawa shares UNEP's experience of regional seas agreements and lessons learned. Alistair Graham examines those portions of the Arctic Ocean beyond national jurisdiction, and how international tools already developed or in development may interact with those being developed by Arctic states, a theme also explored by Eric Molenaar.

Governments are not the only entities with an interest in management of the seas. Kuupik Kleist writes of an Inuit-led commission examining the

Pikialasorsuaq (North Water Polynya) and involving Inuit in management of the marine environment. Betsy Baker focuses on ecosystem-based management as the basic guiding principle for any management system in the Arctic.

She underscores Indigenous participation and knowledge are key to such management.

We also present WWF's proposal for Arctic marine cooperation within the structure and current mandate of the Arctic Council. The options respond to many Task Force questions. They also support an opportunity for open discussion about the future of the Arctic Council and potential improvements in its current structure and efficiency as related to implementation of the Council's recommendations. With the change in the Arctic Ocean over the past two decades, coordinated and mutually supportive implementation mechanisms are urgently needed to secure a sustainable future for the Arctic marine environment. ○

## MUTUALLY SUPPORTIVE IMPLEMENTATION MECHANISMS ARE URGENTLY NEEDED TO SECURE A SUSTAINABLE FUTURE FOR THE ARCTIC MARINE ENVIRONMENT



Dr. ALEXANDER SHESTAKOV is Director of the WWF Global Arctic Programme

# Building common interests

Research and investment into sustainable development across the Arctic Ocean are urgently needed. Some investment initiatives have already emerged: The Arctic Business Council appeared in 2012, then the Arctic Economic Council in 2015, and the Arctic Investment Protocol in 2016. PAUL BERKMAN and ALEXANDER VYLEGZHANIN say the emerging challenge now is to find options that contribute to informed decision-making on sustainability in the Arctic Ocean.

WITH DIMINISHING sea-ice boundary and summer open water across more than half of its area, there are immediate opportunities and risks associated with the environmental change in the Arctic Ocean. We now have a new ocean north of the Arctic Circle. Issues, impacts

and resources are crossing and extending beyond national jurisdictions in ways that were premature to address even a decade ago.

In terms of sustainable development, how can we provide wise stewardship in the Arctic, while recognizing the challenge to balance environmental protection, economic prosperity and societal

well-being for the benefit of present and future generations?

Fundamental for sustainability in the Arctic Ocean is legal and political stability, promoting environmental and economic cooperation, and preventing international conflicts in the region. Operationally, such stability involves balancing national and common interests. But the first step is to build common interests.

For consideration by all stakeholders, the Arctic high seas offer humankind such a path because this marine region is unambiguously beyond sovereign jurisdictions. Freedom of the high seas became international law in 1958 with the Convention on the High Seas, establishing that the high seas are “open to all nations” and “no State may validly purport to subject any part of them to its sovereignty.”

Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), all states have rights and responsibilities in the high seas, explicitly the water column beyond the 200-mile Exclusive Economic Zones (EEZ) of the coastal states. In this international space, Indigenous peoples – with their unique relationship to nation states through the Arctic Council – also have rights and responsibilities as residents of the Arctic for millennia.

Both the Northern Sea Route (along the coasts of Russia) and the Northwest Passage (along the coasts of Canada and Alaska) are within EEZ and not within the Arctic high seas. Environmental laws and regulations of the Arctic coastal states under Article 234 of UNCLOS (“Ice-Covered Areas”) also are applicable only within EEZ, but not in the Arctic high seas.

Moreover, the high seas in the Arctic Ocean will continue to exist, independent of any decisions made about Arctic continental shelves by the surrounding states (Canada, Denmark, Norway, Russian Federation and United States). Even if these nations delimit all the sea

floor up to the North Pole as their continental shelf under Article 83 of UNCLOS, there still will be overlying waters of the high seas in the Central Arctic Ocean. Importantly, the Arctic high seas do not conflict with “sovereignty, sovereign rights and jurisdictions” of the Arctic coastal states relating to their continental shelf and EEZ. Significant for humanity, the water column in the Arctic Ocean surrounding the North Pole beyond EEZ – defined as the Arctic high seas with an area over 2.8 million square-kilometers – is unique to build common interests in the Arctic.

With stewardship, in 2015 the five Arctic coastal states adopted their Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean:

■ Recognizing that until recently ice has generally covered the high seas portion of the central Arctic Ocean on a year-

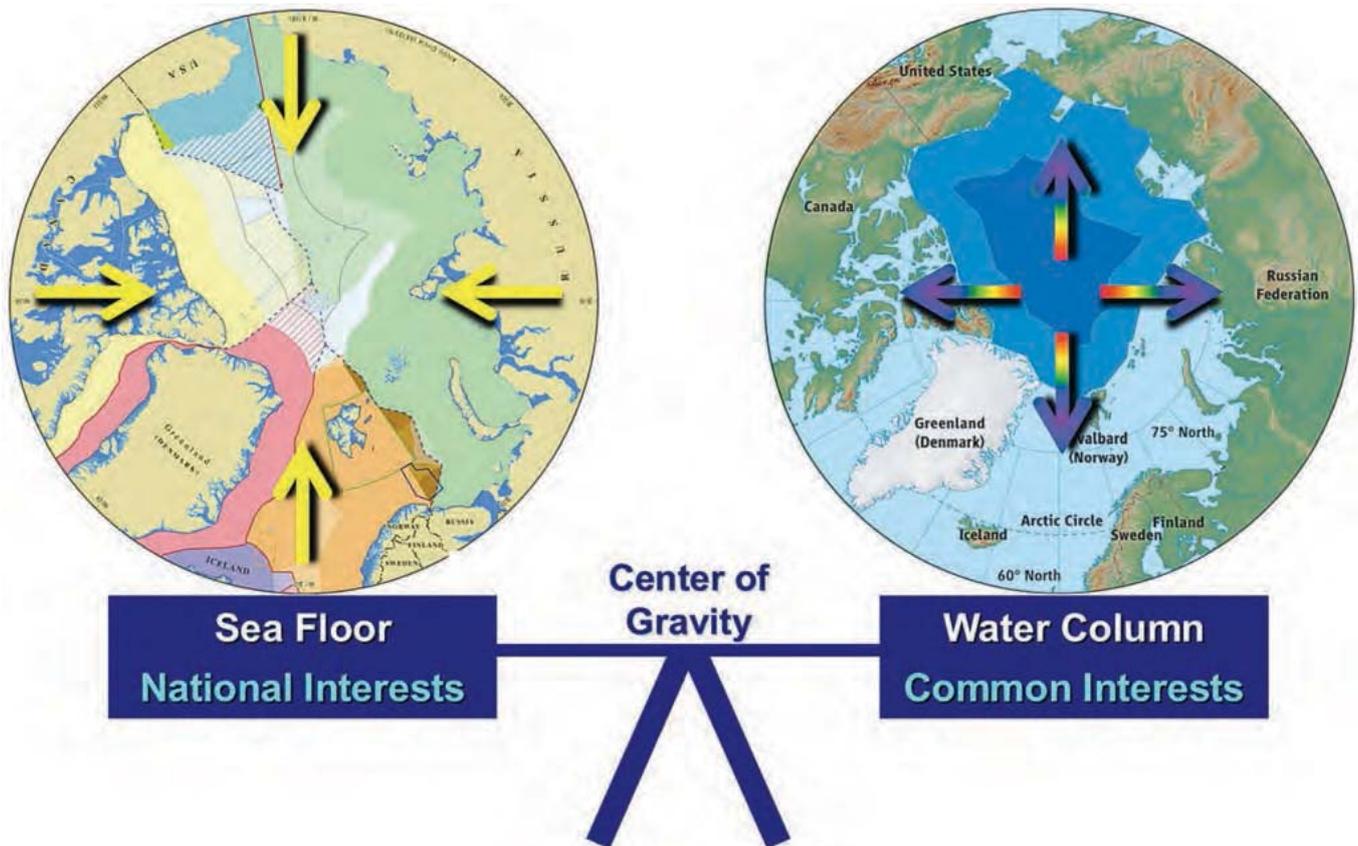
**HARMONY IS NECESSARY TO ENSURE THAT THE ARCTIC REMAINS A REGION OF LOW TENSION, WHICH IS THE PRECURSOR FOR SUSTAINABLE DEVELOPMENT OF THE HIGH NORTH.**

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*The Arctic high seas is the heart of the Arctic Ocean, pulsing poleward with national interests from the surrounding coastal states and landward with common interests from our global society. Progress to balance national interests and common interests in the Arctic Ocean will resonate with precedents and lessons for humanity on a planetary scale.*

Adapted from Berkman, P.A. and Young, O.R. 2009. Governance and Environmental Change in the Arctic Ocean. Science 324:339-340.

round basis, which has made fishing in those waters impossible to conduct.  
 ■ Recalling the obligations of States under international law to cooperate with each other in the conservation and management of living marine resources in high seas areas, including the obligation to apply the precautionary approach...

This Declaration along with the Chairman's Statements (in Nuuk from February 2014 and in Washington in December 2015) open the door for the international community to collectively address fisheries, as well as shipping, research and other issues of common concern in this international space.

Other international forums are also addressing the Arctic high seas, including the Convention on Biological Diversity, which convened a workshop in March 2014 with the Northeast Atlantic Fisheries Commission and the Convention for the Protection of the Marine

Environment of the North-East Atlantic to consider potential "Ecologically or Biologically Significant Marine Areas" in the Arctic high seas. Also in March 2014, the European Parliament introduced a joint motion for a resolution that would include area protection as well as precautionary measures in the Arctic high seas.

The Arctic High Seas is the heart of the Arctic (see Figure). In effect, the sea floor represents the coastal states looking seaward toward the North Pole from the perspective of their national interests. Conversely, the Arctic high seas involves the entire international community with rights and duties – in an inclusive manner – looking coastward from the North Pole in view of their common interests.

This juxtaposition of perspectives in the Arctic Ocean reflects the challenge that we face as a civilization to balance national interests and common inter-

ests, promoting cooperation and preventing conflict. Such harmony is necessary to ensure that the Arctic remains a region of low tension, which is the precursor for sustainable development of the high north.

Looking at the Arctic and Earth with a sense of shared responsibility – we are in our infancy to resolve issues with planetary implications. Nearly 30% of our planet's surface falls within the boundaries of nations, reflecting diverse national interests. The other 70% of the Earth's surface exists in areas beyond national jurisdictions, in international spaces that humankind has established in terms of common interests. Building common interests in the Arctic high seas – a special area that is unambiguously beyond national jurisdictions – holds lessons as well as answers to achieve balance, harmony and sustainability for the benefit of all on Earth. ○