

# **INFORMATION PAPER**

## **On the process of Forming a Cooperative Mechanism Between NEAFC and OSPAR**

### **From the First Contact to a Formal Collective Arrangement**



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# **Information Paper**

**on the Process of Forming a Cooperative  
Mechanism**

**Between NEAFC and OSPAR**

**From the First Contact to a Formal Collective  
Arrangement**

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## **1. Introduction**

In 2014, the North East Atlantic Fisheries Commission (NEAFC) and the OSPAR Commission for the Protection of the Marine Environment in the North East Atlantic (OSPAR) adopted a collective arrangement for working together on particular areas outside national jurisdiction within their convention areas.

This information paper is intended to provide an overview of the process of forming a cooperative mechanism, from the first contact to the implementation of a formal collective arrangement.

This information paper was jointly prepared by the NEAFC and OSPAR Secretariats, at the request of the United Nations Environment Programme. It was finalised in December 2015.

The paper was written by Stefán Ásmundsson, Secretary of NEAFC, and Emily Corcoran, Deputy Secretary of OSPAR. All opinions and statements are those of the authors and do not necessarily represent the position of NEAFC or OSPAR or their Contracting Parties.

## **2. The two organisations**

To put the cooperation between the two organisations into context, one should first have a short overview of the two organisations.

### **2.1 NEAFC**

NEAFC is a regional fisheries management organisation, established pursuant to the United Nations Convention on the Law of the Sea and other relevant international law. NEAFC has international legal competence to manage fisheries in the North East Atlantic. NEAFC's management role is mainly on the high seas, but measures can apply to areas within national jurisdiction in cases where the relevant coastal State suggests such an arrangement.

The Contracting Parties to NEAFC are Denmark (in respect of the Faroe Islands and Greenland), the European Union, Iceland, Norway and the Russian Federation. The geographic extent of the NEAFC Convention Area is shown in figure 2.

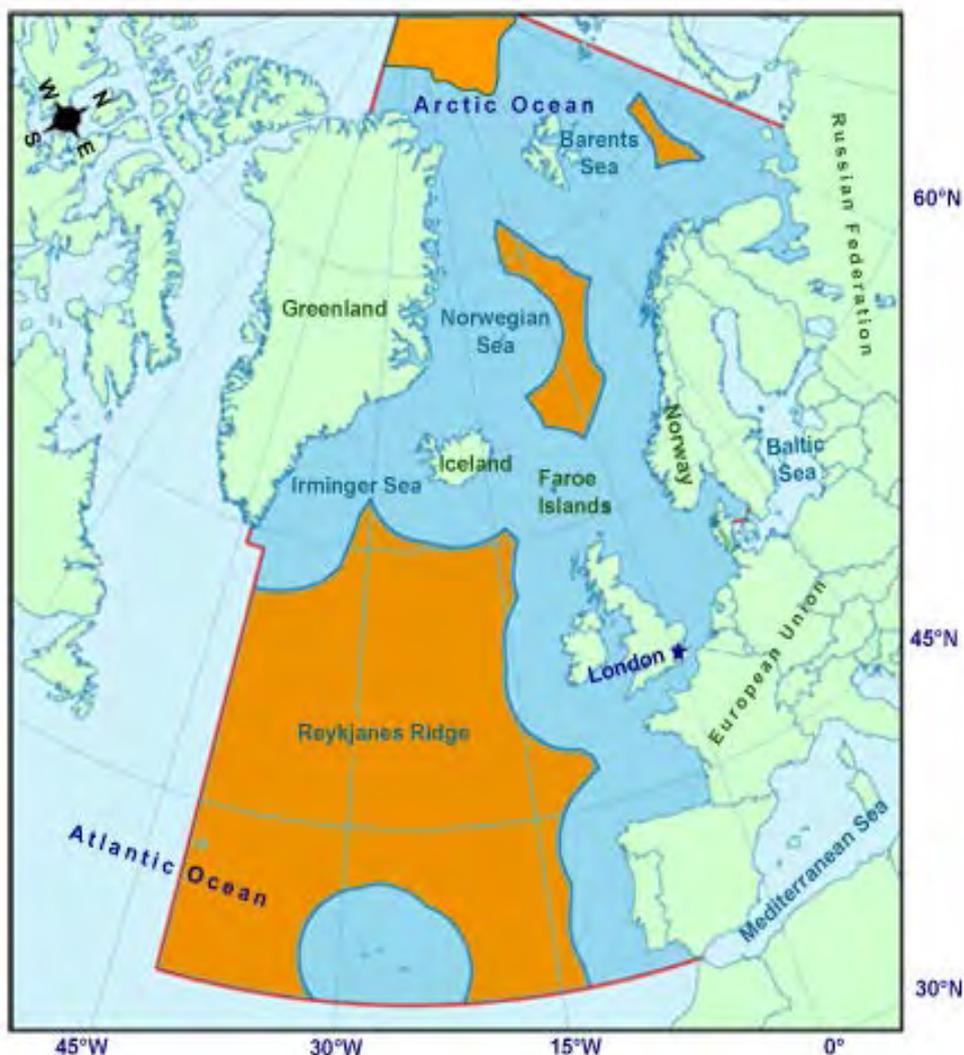


Figure 1. Map showing the NEAFC Convention Area, highlighting the four high seas areas.

NEAFC’s conservation and management measures for fisheries are generally legally binding for all the NEAFC Contracting Parties. As a result of the rules of the relevant international law, the conservation and management measures are furthermore of great legal consequence for all states, including non-members of NEAFC<sup>1</sup>.

NEAFC has adopted measures for the management of several fisheries and a variety of types of measures. These include measures related to *inter alia* data gathering, control and enforcement, and minimising negative effects of fisheries on the other parts of the marine ecosystem and on biodiversity.

<sup>1</sup> For more information on the legal status of the conservation and management measures adopted by competent regional fisheries management organisations, see <http://www.neafc.org/other/10385>.

NEAFC's conservation and management measures are based on scientific advice from the International Council for the Exploration of the Sea (ICES), a highly respected international scientific body.<sup>2</sup>

Historically, NEAFC focused on the target species of the fisheries being managed, and bycatches of other economically important species. From the 1990s, there has been a development of an increasing focus on the effects of fisheries on the other parts of the marine ecosystem and on the protection of biodiversity. In 2006, the NEAFC Convention was formally amended to remove any doubts about NEAFC's legal competence to adopt measures for this purpose.<sup>3</sup>

From 2004, NEAFC has used area closures as a key tool to protect vulnerable marine ecosystems.<sup>4</sup> NEAFC's measures in this context have been further developed over time and now include a number of areas that are closed to bottom fishing. In fact, all areas where the best available scientific advice indicates that vulnerable marine ecosystems occur, or are likely to occur, have been closed to bottom fishing by NEAFC.

Furthermore, severe restrictions are implemented on bottom fishing activities in all areas where bottom fishing activities have not been demonstrated in the recent past. This means that the vast majority of the high seas in the North Atlantic are subject to either a prohibition or severe restrictions on bottom fishing. Even in areas where bottom fishing is authorised several safeguards are in place, including encounter protocols and temporary closures of areas where vulnerable marine ecosystems are unexpectedly encountered.<sup>5</sup>

While NEAFC has become involved in considering the effects of fisheries on the other parts of the marine ecosystem and on biodiversity, NEAFC's legal competence remains limited to managing fisheries. The fact that the

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<sup>2</sup> For more information on ICES, see <http://ices.dk/Pages/default.aspx>.

<sup>3</sup> The text of the NEAFC Convention can be found on the NEAFC website, <http://www.neafc.org/system/files/Text-of-NEAFC-Convention-04.pdf>

<sup>4</sup> For more information on NEAFC's work regarding the protection of vulnerable marine ecosystems, see <http://www.neafc.org/other/14803>.

<sup>5</sup> NEAFC's legally binding Recommendation on the Protection of Vulnerable Marine Ecosystem is available on the NEAFC website, [http://www.neafc.org/system/files/Rec\\_19-2014\\_as\\_amended\\_by\\_09\\_2015\\_fulltext\\_0.pdf](http://www.neafc.org/system/files/Rec_19-2014_as_amended_by_09_2015_fulltext_0.pdf).

vulnerable marine ecosystems that NEAFC is making efforts to protect can be affected by human activities other than fishing has led NEAFC to work with other organisations, with complementary legal competences. This is seen as contributing to a more comprehensive approach and ensuring that NEAFC's work is not undermined by human activities that are, or can be, managed by other international organisations.

## 2.2 OSPAR

OSPAR is the regional mechanism for cooperation to protect the marine environment of the North-East Atlantic. OSPAR started in 1972 with the Oslo Convention against dumping and was broadened to cover land-based sources and the offshore industry by the Paris Convention of 1974. These two conventions were unified, updated and extended by the 1992 OSPAR Convention<sup>6</sup> (taking the “OS” from Oslo and “PAR” from Paris) and applies to areas both within and outside of national jurisdiction. A new annex on biodiversity and ecosystems was adopted in 1998 to cover non-polluting human activities that can adversely affect the sea (Annex V).

The Contracting Parties are the fifteen Governments of Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom as well as the European Union. The geographic area is the same as for NEAFC, see figure 2.

The OSPAR Commission has strategies to direct its work in 5 main areas:

1. protection and conservation of ecosystems and biological diversity;
2. hazardous substances;
3. radioactive substances;
4. eutrophication;
5. environmental goals and management mechanisms for offshore activities.

The OSPAR Commission works under the umbrella of customary international law as codified by the 1982 United Nations Convention on

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<sup>6</sup> The text of the OSPAR Convention can be found on the OSPAR website, <http://www.ospar.org/convention/text>

the Law of the Seas, especially in Part XII and Article 197 on the global and regional cooperation for the protection and preservation of the marine environment. The OSPAR Convention recognises the jurisdictional rights of states over the seas and the freedom of the high seas, and, within this framework, the application of main principles of international environmental policy to prevent and eliminate marine pollution and to achieve sustainable management of the maritime area. This includes principles resulting from the 1972 Stockholm United Nations Conference on the Human Environment and of the 1992 Rio de Janeiro United Nations Conference on the Environment and Development, including the 1992 Convention on Biological Diversity.



Figure 2. Map showing the geographic extent of the OSPAR Maritime Area and the five sub-regions.

Overall, the work of the OSPAR Commission is guided by the ecosystem approach to an integrated management of human activities in the marine environment. This is supported by a general obligation of Contracting Parties to apply: the precautionary principle; the polluter pays principle and best available techniques (BAT) and best environmental practice

(BEP), including clean technology<sup>7</sup>.

Like NEAFC, OSPAR receives scientific advice from the International Council for the Exploration of the Sea (ICES).

Work to implement the OSPAR Convention is taken forward through the adoption of decisions, which are legally binding on the Contracting Parties as well as recommendations and other agreements, such as agreements on guidance on the implementation of measures.

With the adoption of Annex V, OSPAR was given a significant role regarding biodiversity and ecosystems, requiring Contracting Parties to take the necessary measures to protect and conserve the ecosystems and the biological diversity of the maritime area within and beyond national jurisdiction, to restore, where this is practicable, marine areas which have been adversely affected; and cooperate in adopting programmes and measures to control human activities<sup>8</sup>. In its article 4 however, Annex V establishes that OSPAR does not undertake programmes or measures with respect to fisheries and shipping, but instead should bring any such issues to the attention of those with the relevant legal competence. This provision requires that in order to achieve its objectives successfully OSPAR requires a relationship with these organisations.

### **2.3 Two complementary organisations**

The key point regarding the two organisations, in the context of this information paper, is that a part of the work that they do is on the same substantive issues, in the same geographic area. This includes the protection of vulnerable marine ecosystems and of biodiversity. However, while the two organisations have to some extent overlapping mandates regarding what issues to address, they do not have overlapping mandates regarding the types of measures that they have a legal competence to adopt. NEAFC is largely limited to managing fishing activities, whereas any question relating to the management of fisheries is explicitly excluded from OSPAR's legal competence.

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<sup>7</sup> The principles applied within OSPAR are explained at <http://www.ospar.org/about/principles>.

<sup>8</sup> For more information about the work under the biodiversity and ecosystem strategy see <http://www.ospar.org/work-areas/bdc> and <http://www.ospar.org/work-areas/eiha>.

The conclusion is that NEAFC and OSPAR have some overlap in the substantive issues that they shall work on but have a complementary, non-overlapping, legal competence to address these issues. Any attempt to have a more comprehensive approach regarding these issues will therefore not be possible through having one organisation deal with the issue in a more comprehensive manner, but rather will require cooperation and coordination between the two organisations.

### **3 Initial contact between the two organisations**

After OSPAR's Annex V was adopted in 1998 and NEAFC started to look more widely at the effects of fisheries on the marine ecosystem in the late 1990s, the substantive overlap between the two organisations became apparent. This resulted in some of the Contracting Parties starting a process of attempting to harmonise their positions in NEAFC and OSPAR. There was regular criticism aimed at several Contracting Parties in both organisations that their position within the two organisations was sometimes inconsistent, which could cause problems in both organisations.

The representatives of the Contracting Parties at the two organisations generally come from different parts of the national administrations (fisheries and environment administrations, respectively). A key challenge was therefore to establish better cooperation and coordination not only between the two organisations but also between the different parts of the respective national administrations.

The Secretariats of the two organisations also started to consult each other, seek and provide information on the relevant issues. These consultations were informal and initially were mostly based on building an informal relationship between the Executive Secretaries, where they were attempting to increase each organisation's understanding of the other. These consultations were initially not formalised, and relied fully on the interest and initiative of the Executive Secretaries (initially Sigmund Engeseter and then Kjartan Hoydal on the NEAFC side and Alan Simcock and then David Johnson on the OSPAR side).

The emerging cooperation between the two Secretariats and the increased consultation at national level led to the conclusion that it would be sensible to build further cooperation between the two organisations on a more formal basis. The next step was to have a joint meeting of the Heads of Delegation of the two organisations.

The first such joint meeting of Heads of Delegation was held at the office of the NEAFC Secretariat in London in November 2005 and explored the scope of cooperation in the context of the ecosystem approach. At this meeting and the second such meeting, which was held the following year,

it became clear that while there was a genuine will on both sides to increase cooperation and coordination between the two organisations, there was still some way to go. There was a clear lack of understanding on both sides regarding the intentions and practices of the other organisation.

An obvious next step was therefore to formulate a Memorandum of Understanding between the two organisations, which would explicitly state the limits of the organisations' respective legal competence (alleviating misconceptions about the respective intentions) and establish participation by the respective Secretariats in the relevant committee of the other organisation (to both inform participants in that committee of the other organisation's work and bring back to their own organisation information on the other's work). A third meeting of the Heads of Delegation was held in November 2007 to initiate work on formalising the relationship between the two organisations through finalising the Memorandum of Understanding. This entered into force in 2008.<sup>9</sup>

Ever since the entry into force of the Memorandum of Understanding, the NEAFC Secretariat has attended at least a part of the meetings of the OSPAR Biodiversity Committee (BDC). Likewise, the OSPAR Secretariat has attended a specific part of meetings of NEAFC's Permanent Committee on Management and Science (PECMAS), and has also regularly attended NEAFC's Annual Meetings.

The respective participation in the other organisation's meetings has included making presentations on relevant work by the observing organisation and providing input into discussions.

It is widely accepted that this participation has been instrumental in both increasing the organisations' understanding of the role and working practices of each other's organisation, and transforming the cooperation and coordination between NEAFC and OSPAR from something that relied on interest and initiative of the two Executive Secretaries into something that has become more institutionalised as a part of the working practices of both organisations. Those attending a PECMAS meeting now take it for granted that the meeting will include a session with the OSPAR Secretariat

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<sup>9</sup> A copy of the Memorandum of Understanding can be seen here: [http://www.neafc.org/system/files/opsar\\_mou.pdf](http://www.neafc.org/system/files/opsar_mou.pdf).

and those attending BDC meetings take it for granted that the NEAFC Secretariat will provide input into the relevant discussions.

The cooperation between the two organisations was further strengthened by jointly working on a few specific projects together. The best example of that is the joint work regarding Ecologically and Biologically Significant Marine Areas (EBSAs), which is discussed further in chapter 8 of this paper.

#### **4 Initiative to both widen and deepen the cooperation and coordination**

NEAFC and OSPAR are not the only international organisations with legal competence relevant to area management in areas beyond national jurisdiction in the North East Atlantic. Both organisations were involved in area management for the purpose of protecting vulnerable marine ecosystems and marine biodiversity, but there were human activities that neither organisation had legal competence to manage, which could nevertheless affect the protected entities.

Consequently, it was recognised that cooperation and coordination between the two organisations could not constitute a comprehensive approach. This led to an initiative in OSPAR to establish wider cooperation and coordination among all authorities that have international legal competence in this context.

In 2008, OSPAR decided to invite other such competent authorities to a meeting to discuss possible future cooperation and coordination. This initial meeting was held in Madeira in March 2010, and this initiative therefore became known as the “Madeira process”.

There were two meetings under the Madeira process. In addition to the initial meeting there was also one meeting in Paris in January 2012. There was good participation in the meetings with representatives from various organisations, including NEAFC, the Food and Agriculture Organization of the United Nations (FAO), the Intergovernmental Oceanographic Commission of UNESCO (IOC-UNESCO), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the International Council for the Exploration of the Sea (ICES), the International Seabed Authority (ISA), the International Whaling Commission (IWC), with invited guests from IDDRI, IUCN, LDRAC, Marine Conservation Biology Institute, NOC-Southampton, and the Sargasso Sea Commission. There were apologies from the Agreement on the Conservation of Small Cetaceans in the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS), the International Maritime Organization (IMO), the North Atlantic Marine Mammal Commission (NAMMCO) and the North Atlantic Salmon Conservation Organisation (NASCO).

Participants were generally positive towards increasing cooperation and coordination. However, the issue was not necessarily highly prioritised within all the organisations. For some organisations, this type of cooperation was perhaps considered to be something of a marginal issue, rather than an issue of great priority. For example, ICCAT has legal competence to adopt conservation and management measures for tuna fisheries in the high seas, which means that the actual activities it manages are pelagic fisheries that have minimal effects on the seafloor. While ICCAT is a relevant organisation, and unquestionably has international legal competence to be involved in area management in the high seas, the issue of protecting vulnerable marine ecosystems on the seafloor, for example, understandably receives less attention in ICCAT than in NEAFC which manages a number of bottom fishing activities in the high seas.

The discussions within the Madeira process were positive enough to move away from the phase of bringing organisations together to discuss the possibility of further cooperation and coordination, and into the phase of formulating exactly how that cooperation and coordination would be established and who would take part in it in practice.

## 5 Finalising the collective arrangement

When it came to formulating text for a collective arrangement between the competent authorities, it became clear that NEAFC was the only organisation which had already concluded the necessary internal consultations on the issue and was in a position to take the firm step to work with OSPAR with the clear aim of finalising and adopting such a collective arrangement.

This complicated things somewhat. Both NEAFC and OSPAR were taking part in the exercise with the aim of having the collective arrangement as a forum for cooperation and coordination on a wider basis, including all or at least most of the international organisations which have the relevant international legal competence. While the marginal relevance of the increased cooperation and coordination for some organisations was recognised, the two organisations had certainly not intended to have the exercise of formulating a collective arrangement transformed into simply formulating a bilateral arrangement between the two of them.

Continued efforts to bring on board at least a few key organisations, led by some Contracting Parties and supported by the two Secretariats, continued to result in largely positive but to date non-committal responses.

The main targets for these efforts have from the outset been the International Seabed Authority (ISA) and the International Maritime Organization (IMO). The thinking behind this prioritisation was that if they were to join NEAFC and OSPAR, the collective arrangement would include organisations that complement each other to collectively have the international legal competence to manage almost all (and quite possibly absolutely all) of the relevant human activities that are likely to actually take place in practice in areas beyond national jurisdiction in the North East Atlantic. After all, there is much less variety of different human activities in areas beyond national jurisdiction than there is in coastal areas.

The lack of commitment from other international organisations left NEAFC and OSPAR with a choice between two options regarding how to proceed.

Firstly, they could choose to maintain the approach that the collective arrangement should be a multilateral arrangement that should not be formally adopted until the process had full commitment of participation by at least the main players that had been identified. This would mean continuing efforts to get other organisations to commit to being full participants, and wait for success in that endeavour before the text of the collective arrangement would be adopted.

Secondly, they could agree to formally adopt an initial collective arrangement as a bilateral arrangement between NEAFC and OSPAR. Efforts would nevertheless continue to try to get full participation by other competent bodies, and the text of the arrangement would be amended as appropriate to accommodate any new participants. Furthermore, legally competent organisations that were not in a position to commit themselves to full participation in the collective arrangement could be invited to take part in work under the arrangement on a more *ad hoc* basis or in something akin to observer capacity.

The conclusion was to proceed on the basis of the latter option, so the next phase in the development was the formulation of the text of the collective arrangement as a bilateral arrangement between NEAFC and OSPAR.

The final text of the collective arrangement was formally agreed by NEAFC and OSPAR in 2014 and work on the basis of the arrangement began in 2015<sup>10</sup>.

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<sup>10</sup> The text of the collective arrangement can be found at <http://www.ospar.org/documents?v=33030> and [http://www.neafc.org/system/files/Collective\\_Arrangement.pdf](http://www.neafc.org/system/files/Collective_Arrangement.pdf).

## **6 The collective arrangement**

The collective arrangement is significantly different in its nature compared to the 2008 Memorandum of Understanding between NEAFC and OSPAR.

Firstly, the collective arrangement is not intended to be simply a bilateral arrangement. Even though it still remains in bilateral form, it has been an essential element from the outset to have wide participation that will include all authorities that have competence under international law to manage human activities in areas beyond national jurisdiction in the North East Atlantic. Even without full participation from others, this means that NEAFC and OSPAR will be sharing information with a larger group of organisations, and also seeking to receive relevant information from these organisations. This means that although the collective arrangement remains formally a bilateral instrument, the two formal participants are already in practice interacting on a wider basis pursuant to the arrangement.

Secondly, the intention is to facilitate cooperation and coordination between the competent authorities that will ensure that they share information and avoid undermining each other's conservation and management measures. This includes not only observing each other's meetings and providing written notifications, as is done pursuant to the Memorandum of Understanding, but includes maintaining a joint overview of areas that are subject to special measures and even having joint meetings to discuss issues related to these areas.

The collective arrangement focuses on selected areas of the North East Atlantic, these areas are identified by each of the organisations. The participants jointly maintain an annex to the collective arrangement that includes information on the areas that they have identified as relevant to the arrangement. This includes the coordinates of the borders of such areas as well as information on what measures apply to the areas. The nominating organisation can at any time amend the submission it has made to the annex, to ensure that the information contained in it remains fully up-to-date and that the information is fully controlled by the organisation that submits it.

This means that the collective arrangement, with its annexes, is intended to provide an opportunity to find the relevant information on area management in the North East Atlantic all in one place. Anyone who is looking for information on what organisations with different competences have done should therefore not have to look in many places in order to be able to eventually put together a mosaic picture. This can obviously be useful for academics, non-governmental organisations and interested members of the public. However, more importantly, it should ensure that decision-makers have access to information on what others have done before making their own decisions regarding particular areas.

The text of the collective arrangement articulates the agreed basis of the cooperation. This shall be the applicable internationally agreed principles, standards and norms; the Memorandum of Understanding and other bilateral cooperation arrangements; scientific evidence; and, relevant binding and non-binding international instruments.

This basis was purposely set out in rather general terms. This was partially due to the fact that it emerged that NEAFC and OSPAR tend to use different terms for related concepts (for example, NEAFC referring to “the precautionary approach” and OSPAR referring to “the precautionary principle”). This was also for practical purposes, and to prevent the text of the collective arrangement slowly becoming obsolete over time.

This general approach was sufficient to ensure that the collective arrangement is put in the context of the relevant international instruments and internationally agreed principles, standards and norms, and makes it explicit that any work pursuant to the collective arrangement shall be based on scientific evidence. However, as time passes and new instruments are adopted and new principles, standards and norms are agreed, the collective arrangement will take account of them without any need for amending the text of the arrangement to add a new reference. There is a list of relevant international instruments, but this is a non-exhaustive list which should not require amendments if new relevant instruments are adopted.

Paragraph 6 sets out how the participants should cooperate pursuant to the collective arrangement. The text describes six areas for cooperation and coordination:

6. To this end the international organisations should:
  - a. inform each other, as appropriate, of any relevant updated scientific information and environmental assessment and monitoring data;
  - b. notify and inform each other of existing and proposed human uses relating to any area in Annex 1;
  - c. cooperate, where appropriate, on environmental impact assessments, strategic environmental assessments and equivalent instruments;
  - d. consult annually to review their respective objectives in relation to the areas listed in Annex 1, the status of the areas concerned and existing measures;
  - e. cooperate to obtain a better knowledge of the areas concerned through, where appropriate, developing exchange of data, sharing of databases and collecting data in standardised formats;
  - f. consult the coastal State in those cases where the areas listed in Annex 1 are superjacent to areas under national jurisdiction, as appropriate.

This sets out cooperation and coordination which ranges from informing and notifying each other, in a manner that is similar to what was already established under the Memorandum of Understanding, to cooperating directly on a variety of tasks and consulting annually to review objectives, status of relevant areas and existing measures.

While it is clear that there is no intention of establishing joint management, given the separate legal competence, there is clearly an intention to significantly increase cross-sectoral cooperation and coordination.

## 7 Implementing the collective arrangement

The two organisations formally adopted the collective arrangement in 2014. The initial phase was then finalised with two separate actions that took place in 2015.

Firstly, the two organisations finalised their submissions to Annex 1 of the arrangement and formally notified each other of these. The arrangement as a document had thereby achieved the aim of being the object where one can get, in one place, comprehensive information on what NEAFC and OSPAR are doing regarding the relevant areas in the North East Atlantic. While the collective arrangement remains on a bilateral level between these two organisations it is of course not fully comprehensive, but nevertheless represents a significant step in providing the overall overview that was envisaged. As discussed before, involvement of other competent authorities (in particular IMO and ISA) continues to be sought, with the aim of eventually reaching full comprehensiveness.

Secondly, the first formal meeting under the collective arrangement was held in London on 27-28 April 2015.<sup>11</sup> This initial meeting was purposefully kept small. Participating were the President of NEAFC, Chair of OSPAR, Chairs of relevant subsidiary bodies and the Secretariats. There was also limited participation of Contracting Parties. As a demonstration of the global interest there is in the initiative that NEAFC and OSPAR have shown in strengthening their regional cooperation and coordination, there were also observers at the meeting from the Abidjan Convention and the Canary Current Large Marine Ecosystem Project.

Although the ISA is not a formal participant in the collective arrangement, the ISA Secretariat joined the meeting remotely to contribute to the discussions and to provide information on the relevant activities of the organisation.

As an initial meeting, the focus was on setting out how the participants wanted the meetings under the collective arrangement to be, and there was therefore perhaps more emphasis on form rather than on substance. This

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<sup>11</sup> Report of the first meeting is at <http://www.ospar.org/documents?v=31983> and [http://www.neafc.org/system/files/Collective-Arrangement\\_aidememoire\\_April2017\\_FINAL.pdf](http://www.neafc.org/system/files/Collective-Arrangement_aidememoire_April2017_FINAL.pdf)

was seen as the best way to ensure that the two organisations know where they stand regarding the form of future meetings. Nevertheless, there were discussions on a wide range of topics at the meeting.

Both organisations made presentations on their background regarding work relating to the area management that forms the basis of the cooperation and coordination under the collective arrangement. This included explaining what areas they had adopted measures for and exactly what these measures prescribed.

There was a discussion on the relationship that the two organisations have with the International Council for the Exploration of the Sea (ICES), which is scientific adviser to both NEAFC and OSPAR. This included identifying the different ways that the two organisations approach scientific issues, where NEAFC relies fully on the ICES advice as it is and does not do any additional scientific work while ICES is not necessarily the only source of scientific information for OSPAR. This also included a discussion on how NEAFC and OSPAR might better coordinate their relationship with ICES, including possibly through joint requests for advice in some cases.

Among other substantive issues that were discussed, albeit briefly, were potential cooperation on environmental impact assessments and possible exchange of data. The participants also noted that there would be value in discussing further how different terms and principles are expressed within the two organisations. There are in some cases the same, or very similar, concepts that are expressed differently and therefore can create the impression of there being less harmony in the approach used than there actually is. Even where the same terms are used, it would be interesting to explore what the two organisations are doing in practice. The ecosystem approach was mentioned as an example of this. In general, the participants noted the usefulness of mixing sectoral perspectives with more integrative considerations, both looking at the breadth of human activities and their interactions within the ecosystem, including cumulative effects.

There was a discussion on what type of issues the two organisations were most likely to draw to each other's attention, as issues that are of concern for one of the organisations but not within its legal competence to act on. It

was concluded that NEAFC was most likely to raise issues relating to contaminants, pollution, marine debris/litter and other human impacts on the marine environment under OSPAR's remit. It was concluded that OSPAR was most likely to raise issues relating to vulnerable marine ecosystems, impact of fisheries on the environment, or species and habitats.

It was concluded that the two organisations and their Contracting Parties should continue efforts to get other relevant competent authorities to become participants in the collective arrangement. The fact that NEAFC and OSPAR had started implementing the collective arrangement on a bilateral basis did not change the fact that the aim was to bring into this cooperation and coordination all the international organisations which have relevant legal competence under international law.

It was noted that it was a complicating factor that the two organisations that are being prioritised as candidate participants in the collective arrangement, IMO and ISA, are both global organisations. NEAFC and OSPAR are of course regional organisations and the collective arrangement is of a regional nature. This was nevertheless considered to be an issue that could be overcome.

However, it was also concluded that even on a bilateral basis the work under the collective arrangement could be very useful. It provided a forum for the two organisations to discuss various topics and thereby both share information and establish a basis for joint work (for example, regarding requests for scientific advice). It also ensured that a collaborative platform existed, which enabled other organisations to contribute and extract information even if they are not formal participants in the collective arrangement. The ISA contribution to the meeting was seen as a demonstration of this useful involvement of those who are not formal participants.

The two organisations will continue to implement the collective arrangement through submitting information to each other, including amendments to the annexes as appropriate, and through having regular meetings where the organisations and their Contracting Parties can discuss any relevant issue.

Potential topics for the next meeting under the collective arrangement were discussed, and it was tentatively decided to accept the invitation of the government of Norway to host the next meeting in Svalbard in April 2016.

The intention is to have annual meetings under the collective arrangements where the two organisations will, as is stated in paragraph 6.d of the arrangement, “review their respective objectives in relation to the areas listed in Annex 1, the status of the areas concerned and existing measures”. The intention is also to have these meetings as a forum where any other relevant issue can be raised and discussed, and a platform for informal discussions to increase the organisations’ understanding of each other’s practices.

## **8 Lessons learned**

The process of forming a cooperative mechanism between NEAFC and OSPAR has resulted in various outcomes that are important for the two organisations and can be interesting for others to consider. For the purposes of this information paper, the lessons learned regarding what are the main substantive benefits derived from the increased cooperation and coordination and regarding the procedure for establishing the collective arrangement require special attention.

### **8.1 Substantive benefits**

The main substantive benefits of the increased cooperation and coordination between NEAFC and OSPAR are relating to the collective arrangement's contribution to establishing a more comprehensive approach. While there is no suggestion of amending the legal competence of either organisation, or of any organisation that may join the arrangement at a later date, the collective arrangement is a part of a development which represents something of a departure from a purely sectoral approach and a step towards ambitions of such a more comprehensive approach.

This can be seen as a natural progression from the development within NEAFC to consider the effects of fisheries on other parts of the marine ecosystem and on biodiversity, and the development within OSPAR to look at various issues related to biodiversity. Both of these developments started in the 1990s.

Both organisations found that considering some of the issues they were now involved in had limitations, where challenges were identified but the organisation in question neither had the legal competence nor substantive expertise to address these challenges. Rather than attempt to expand their legal competence and substantive expertise, the solution was found to be in cooperating and coordinating with those who already have the relevant legal competence and substantive expertise.

A bilateral arrangement between NEAFC and OSPAR is therefore both a very important development towards a comprehensive approach and insufficiently inclusive to be considered fully comprehensive. For

example, NEAFC implements measures to protect corals on the seafloor beyond national jurisdiction and would be disappointed if the corals it was protecting from significant adverse impacts from fisheries were destroyed by seabed mining. NEAFC is a fisheries management organisation and it would therefore not be sensible to expect NEAFC to develop in the direction of managing seabed mining. However, the approach is not fully comprehensive until the organisation with the legal competence to manage seabed mining in areas beyond national jurisdiction, the International Seabed Authority (ISA), and other relevant organisations regarding other human activities, are involved in the cross-sectoral efforts to the extent that they share information and consider any information from other competent authorities before making their conclusions.

While this would ideally be through full participation in the collective arrangement, one can also foresee the possibility of comprehensiveness being achieved through a core of full participants being complemented by a number of international organisations that are associated with the arrangement without being full participants. The most important point is to ensure that all the relevant information is shared in a satisfactory manner and then taken into account, as appropriate.

It is also useful to keep in mind that the subject of the collective arrangement is areas beyond national jurisdiction. These are of course far from land, and therefore in some ways constitute more of a challenge than coastal waters do. However, it is important to keep in mind too that in some ways these areas are simpler to deal with than coastal waters. In coastal waters there is a myriad of different uses of the sea, resulting in a difficult challenge for managers who often have to balance the rights, duties and interests of various different types of users. The fact is that in the high seas there are fewer types of uses of the sea. For example, on the high seas one is not likely to encounter much recreational activity (other than that which would be classified as marine navigation), sand extraction or energy production through wind farms.

For any of the human activities that actually take place in the high seas, there is generally an international organisation that has the legal competence to manage these. In areas where there is a lack of coverage of such organisation, there is then in place the general legal framework for

establishing them. For example, in areas where there is no general regional fisheries management organisation, such an organisation will have to be established for it to be possible to have comprehensive cooperation and coordination between all the organisations that have the legal competence to manage the human activities that take place in the relevant region. The same applies for the lack of a regional seas organisation in some regions.

In practice, to gather those who have legal competence regarding fisheries; maritime navigation; seabed mining; the laying and maintaining of cables and pipelines; and, providing an overview for environmental protection and considering cumulative impacts should be enough to have the basis for comprehensive cooperation and coordination. This means that what is really needed is just a handful of organisations for each region.

In the North East Atlantic, the conclusion has been that if the IMO and the ISA join NEAFC and OSPAR in the collective arrangement, or at least become closely involved in the work relating to the arrangement, this will be close enough to a fully comprehensive approach. Area management for the areas covered by the collective arrangement is only of marginal significance for the other organisations with relevant legal competence, such as ICCAT. It may sound like an objective that is hardly achievable to have comprehensive cooperation and coordination regarding area management in areas beyond national jurisdiction. However, the fact is that bringing together four different international organisations, all of which are already fully functional, is all that is really necessary in the North East Atlantic.

It is for this reason that NEAFC and OSPAR, and their Contracting Parties, have decided to continue with efforts to get the IMO and ISA on board. The preference is for them to become full participants in the collective arrangement, and the minimum aim is for them to take part to the extent that they provide the relevant information and disseminate internally the relevant information they receive from the others who take part in the collective arrangement.

While the contribution to a more comprehensive approach may be the main benefit, there are also substantive benefits that are narrower in scope. The increased cooperation and coordination between NEAFC and OSPAR

has already resulted in them cooperating on particular issues where they are stronger acting together than alone.

The clearest example of this is ecologically or biologically significant marine areas (EBSAs). These are being identified in a process that is led by the Convention on Biological Diversity (CBD),<sup>12</sup> and workshops have been held around the world in that context. For the North East Atlantic region, NEAFC and OSPAR cooperated with the CBD to hold a workshop to identify candidate EBSAs. Without going into too much detail in this short information paper, NEAFC and OSPAR not only jointly organised the workshop but then worked together on various stages of the follow-up to it. This included jointly submitting the results of the workshop to ICES for review, and then formulating a joint request for ICES to work further on particular aspects of the report. This then led to the two organisations being very close to completing together the task of identifying candidate EBSAs. In fact, the issue which then led to this process being halted was concerns by some Contracting Parties relating to jurisdictional issues, and not any hesitation relating to the issue being dealt with jointly by NEAFC and OSPAR. EBSAs therefore remain an example of good cooperation between NEAFC and OSPAR on specific issues, despite the fact that this work has not yet overcome the final hurdle to be fully completed.

Another example of specific issues where NEAFC and OSPAR are cooperating is marine litter. OSPAR is leading work on this issue. However, NEAFC undertook work in this context too with the explicit aim of gathering fisheries-related information that was then submitted to OSPAR to enhance the overall efforts in this context. While NEAFC's mandate means that it takes a narrower look at the issue of marine litter than OSPAR does, NEAFC will continue to work on this both by contributing to OSPAR's more widely focused work and by carrying out work for its own purposes which may in part be based on what OSPAR achieves.

These specific issues that NEAFC and OSPAR cooperate on are good examples of the benefits that come from enhancing the cooperation and coordination between relevant international organisations. The steps towards an overall comprehensive approach ensure that none of the

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<sup>12</sup> For further information on EBSAs, see the CBD website <https://www.cbd.int/ebsa/>.

participating organisations act in isolation, without being aware of relevant information from other competent organisations. These steps also ensure that the relevant organisations build a good working relationship which enables them to tackle specific issues jointly in a manner that is much more effective than they could have achieved on their own.

It should be stressed that this is achieved without aiming for joint management measures or amending the legal competence of existing international organisations. The relevant organisations already exist and the purpose of the collective arrangement is to ensure that they cooperate and coordinate so that they can utilise the fact that they have complementary legal competence.

All the relevant organisations will then continue to manage the human activities that they have legal competence regarding, but will do so on the basis of more comprehensive information and in a manner that is coordinated with the actions of organisations that have legal competence for other human activities. This should enhance the effectiveness of the measures that the participating organisations adopt, without undermining any of the participants in any way. In other words, it should enable the organisations to become more than the sum of their parts.

## **8.2 Procedure for establishing the collective arrangement**

The process that led to the establishment of the collective arrangement is set out in Chapters 3-5 of this information paper, and will not be repeated here. However, it is worthwhile to point out a few key points regarding the process.

Firstly, the process began after both organisations had expanded their horizons to look beyond what had previously been their main focus. The process is likely to have been much more difficult if only one organisation found itself in a situation where it considered further cooperation and coordination helpful. NEAFC had moved towards increasingly considering the effects of fisheries on other parts of the marine ecosystem, and on biodiversity, and OSPAR had expanded into looking more widely at various issues related to biodiversity.

While it is fair to say that OSPAR showed more initiative, in particular early on in the process, the situation was not one where an interested organisation is trying to drag an uninterested organisation towards a new arrangement for cooperation and coordination. The experience in the North East Atlantic shows that this type of arrangement can be formulated in a situation where at least two organisations with complementary legal competence independently have an interest in strengthening their cooperation and coordination. Such mutual interest can be seen as essential for this to go reasonably smoothly.

Secondly, the process in the North East Atlantic was at key stages kept going on the basis of the good informal relationship that emerged between the two Secretariats. It is obviously not a task for the Secretariats to push for substantive initiatives, as this should be driven by the Contracting Parties. However, the fact is that those representing the Contracting Parties to the two organisations had very limited knowledge about the actual practices of the other organisation. While increased coordination by the Contracting Parties at domestic level was certainly very important, there is no denying the fact that the two Secretariats played a key role in ensuring proper understanding on both sides.

This contributed to dispelling myths and identifying substantive areas where cooperation and coordination could be mutually beneficial. This, in turn, contributed to the Contracting Parties moving away from paths that would be likely to be counter-productive, such as aiming for fully joint management measures or aiming for one of the organisations withdrawing from involvement in matters that are clearly within its legal competence.

More than anything, the good informal relationship that was established between the two Secretariats helped build trust, which then expanded to other parts of the organisation. All international organisations have their own institutional culture which has developed over time. Strengthened cooperation therefore requires the organisations to step slightly out of their comfort zone. Any organisation contemplating engaging in cooperation and coordination comparable to that established by the collective arrangement between NEAFC and OSPAR should be aware of the need to be flexible in how things are dealt with, and take it as understood from the

outset that the process will not be fully on their own terms. The establishment of trust between key figures can be very important in this context.

Thirdly, there is the time it takes to establish a collective arrangement. In the case of NEAFC and OSPAR, this certainly took years rather than months. The time that passed from the first joint meeting of Heads of Delegation to the formal adoption of the collective arrangement was almost a decade.

Of course, a significant period was spent on the two organisations getting to know each other better, including the other organisation's internal processes and institutional culture. It was also not clear from the outset exactly what the organisations wanted when it came to increased cooperation and coordination. It was only through building an initial relationship that the basis was created for even having a discussion on what type of collective arrangement would be desirable and realistic. Any two organisations that are already more familiar with each other's function, and have a clearer goal in mind regarding strengthened cooperation and coordination, should be able to reach a comparable conclusion in a shorter time period. However, those engaging in this type of development should be prepared for the likely eventuality of the process taking some years to conclude.

Fourthly, there is the importance of institutionalising the cooperation and coordination. One of the most important outcomes of the process, which was a direct result of the time taken to slowly reach a conclusion, was the fact that the cooperation and coordination between NEAFC and OSPAR has been fully institutionalised. The Secretariats routinely take part in meetings of the other organisation's relevant committees without needing the initiative of a particularly interested individual. The organisations exchange information routinely, again without needing the initiative of a particularly interested individual. The joint meetings under the collective arrangement further mean that there is a regular point where the Secretariats, committee chairs and Contracting Party representatives of the two organisations meet to discuss and review the relevant issues, again in a routine manner without needing the initiative of a particularly interested individual. While the commitment and interest of key persons is important

for the initial phase, it is also very important that the development is clearly into a process that turns the cooperation and coordination into a routine that becomes a part of the internal procedures of the organisations taking part, and grows to form a part of their institutional culture.

The fact that NEAFC and OSPAR have already formulated a collective arrangement and started implementing their strengthened cooperation and coordination should make it easier for other regions to establish comparable arrangements. No two regions will have exactly the same situation, so it is unlikely to be possible to simply copy the collective arrangement for the North East Atlantic. However, the experience that has now been gained by NEAFC and OSPAR should give other regions a good platform to strengthen a cross-sectoral approach in their region. The fact that NEAFC and OSPAR have achieved this with full support from both organisations and without amending the legal competence of either organisation in any way, and without either organisation feeling it has been marginalised, should be an encouragement to those who feel that the path to a comprehensive approach is possible within the existing international framework.



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