



# Council

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Item 19 of the provisional agenda\*

**Report of the Secretary-General on cooperation with the  
OSPAR Commission for the Protection of the Marine  
Environment of the North-East Atlantic**

## **Status of consultations between the International Seabed Authority and the OSPAR Commission**

### **Report of the Secretary-General**

#### **I Introduction**

1. At its twenty-eighth session, the Assembly of the International Seabed Authority requested the Secretary-General to prepare a report for the consideration of the Council at its twenty-ninth session concerning the implications of a decision adopted by the Commission for the Protection of the Marine Environment of the North-East Atlantic ('OSPAR Commission'), resulting in the extension of the scope of the North Atlantic current and Evlanov Sea basin marine protected area ('NACES MPA'), on the exclusive mandate of the Authority over the Area. The Assembly requested the Secretary-General to include in the report details of the communication that took place between the secretariat of the Authority and the OSPAR Commission regarding the decision, an assessment of the potential impact of the decision on the Authority's mandate, and recommendations on how to prevent interference with the Authority's mandate while enhancing cooperation and consultation with relevant organizations.<sup>1</sup>

2. In response to the above request, the present report provides an overview of the decision adopted by the OSPAR Commission as well as a summary of the communications that took place between the OSPAR Commission and the secretariat of the Authority regarding that decision and related matters. The report then provides an assessment of the impact of the decision adopted by the OSPAR Commission on the Authority's mandate. Some recommendations are provided for consideration by the Council.

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\* [ISBA/29/C/L.1](#)

<sup>1</sup> ISBA/28/A/18, para.24.

## II. Competence of the OSPAR Commission for the protection of the marine environment of the North-East Atlantic

3. The OSPAR Commission is established by the OSPAR Convention of 1992 and is the mechanism by which 15 governments<sup>2</sup> and the European Union cooperate to protect the marine environment of the North-East Atlantic.<sup>3</sup> The competence of the OSPAR Commission is to draw up, in accordance with the general obligations set out in article 2 of the OSPAR Convention, programmes and measures for the prevention and elimination of pollution and for the control of human activities which may directly or indirectly adversely affect the maritime area in the North-East Atlantic, with the explicit exception of fisheries management and with certain other limitations for the regulation of shipping.

4. The Council will recall that the Authority entered into a memorandum of understanding with the OSPAR Commission in 2010.<sup>4</sup> The main objective of this memorandum of understanding was to specify the scope of cooperation between the OSPAR Commission and the Authority. The memorandum states that in areas where OSPAR maritime area and the Area overlap, both the OSPAR Commission and the Authority have complementary competences, which must be exercised in accordance with the principles governing the Area and as stipulated in section 2 of Part XI of the Convention. The memorandum of understanding is intended to serve as a framework for the parties to consult on matters of mutual interest “with a view to promoting or enhancing a better understanding and coordination of their respective activities in respect of such matters” including through the collection and exchange of environmental data in the sea areas of the North-East Atlantic located beyond national jurisdiction. The two organizations also granted one another mutual observer status.<sup>5</sup>

5. The impetus behind the decision to enter into a memorandum of understanding came from a proposal by the OSPAR Commission in 2008 to establish a marine protected area at the Charlie Gibbs Fracture Zone on the Mid-Atlantic Ridge, within the OSPAR maritime area but beyond the limits of national jurisdiction. As a result of a subsequent meeting between the OSPAR Commission, the secretariat of the Authority and the secretariat of the North-East Atlantic Fisheries Commission (NEAFC) it was agreed that, given the overlapping mandates and jurisdictions of the organizations concerned and in particular the exclusive nature of the Authority’s mandate with respect to the seabed beyond the limits of national jurisdiction of the OSPAR maritime area, a dialogue should be established to ensure that marine protected areas are established with due regard to the rights and duties of States as set out in the Convention and the 1994 Agreement as well as with full respect for the jurisdiction of the Authority to organize and control activities in the Area.

6. The secretariat of the Authority has also participated as an observer in meetings of the so-called ‘Collective Arrangement’, formed between the OSPAR Commission and the North-East Atlantic Fisheries Commission (NEAFC) as a platform to facilitate discussion and information exchange, particularly in relation to the protection of areas beyond national jurisdiction in the North-East Atlantic. Under this non legally binding arrangement, participants agree to communicate information about areas in which they have adopted area-based management measures, and they agree to seek to coordinate their activity ‘to ensure that suitable measures for the conservation and management of these areas are implemented, informed, where appropriate, by conservation objectives established for these areas.’<sup>6</sup> Whilst both the International Maritime

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<sup>2</sup> Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and United Kingdom.

<sup>3</sup> The OSPAR maritime area is defined in article 1(a) of the OSPAR Convention. It covers a geographically defined maritime area both within and beyond national jurisdiction broadly extending from the North Pole to the Azores and from the Mid-Atlantic Ridge to the North Sea.

<sup>4</sup> [https://www.isa.org.jm/wp-content/uploads/2022/06/isba-16a-inf2\\_0.pdf](https://www.isa.org.jm/wp-content/uploads/2022/06/isba-16a-inf2_0.pdf)

<sup>5</sup> ISBA/16/A/13, para.6.

<sup>6</sup> Collective arrangement between competent international organisations on cooperation and coordination regarding selected areas in areas beyond national jurisdiction in the North-East Atlantic, OSPAR Agreement 2014-09 (Update 2018 Annex 2, 2021, Annex 1b, 2023 Annex 1a and 1b), available at Microsoft Word - 14-09e\_Collective\_Arrangement.doc (ospar.org)

Organization and the Authority have attended meetings of the Collective Arrangement, both have refrained from becoming full participants in the Collective Arrangement, in part due to concerns by some members about the role of regional seas organizations in the management of areas beyond national jurisdiction.<sup>7</sup> There have been recent discussions within the framework of the Collective Arrangement as to whether the Arrangement may be opened up to other international organizations (or what other institutional forms further collaboration between the Collective Arrangement and other international organizations, including the Authority, may take). The Secretariat is participating in these discussions.

### **III. Decision by the OSPAR Commission with respect to the NACES MPA**

7. The NACES MPA was established by a Decision of the OSPAR Commission in 2021,<sup>8</sup> with the goal of protecting and conserving seabirds and the ecosystems of the waters superjacent to the seabed in a marine area beyond national jurisdiction (ABNJ) covering 595,196 km<sup>2</sup> within the OSPAR maritime area. A roadmap for further development of the NACES MPA was adopted during the same year.<sup>9</sup> On 1 December 2022, in conformity with the roadmap, the OSPAR Commission opened a public consultation process to review whether there was evidence to support extending the scope of the NACES MPA to the seabed, ocean floor and subsoil thereof and additional species and habitats.

8. Subsequently, at its meeting in Oslo on 26-30 June 2023, the OSPAR Commission decided to amend the NACES MPA by including in its scope additional OSPAR listed features (species and habitats) and the seabed, ocean floor and subsoil thereof (Decision 2023/01).<sup>10</sup> The Decision entered into force on 16 January 2024 (i.e., becoming binding as between OSPAR Contracting Parties). In more detail, the amendments added, as one of the purposes of establishing the MPA, the goal of protecting, conserving, maintaining, and restoring “the integrity of ecosystems of the seabed, ocean floor and subsoil thereof, and the superjacent waters of the Site”, and incorporated into the NACES MPA 546,511 km<sup>2</sup> of the Area, defined in terms of article 1 of the Convention.

#### **A. Communications between the OSPAR Commission and the secretariat of the Authority concerning the NACES MPA**

9. In the absence of a specific notification procedure for consultation between the OSPAR Commission and members of the Authority on matters affecting the Area, the Secretary-General of the Authority provided comments on the proposal to extend the NACES MPA on 9 June 2023 as part of the public consultation process. In his response, the Secretary-General recalled the mandate assigned to the Authority in relation to the protection of the marine environment of the Area, including the requirement for the Authority to adopt appropriate rules, regulations, and procedures pursuant to article 145 of the Convention and section 1(5)(g) of the 1994 Agreement. The Secretary-General also highlighted that pursuant to article 165 of the Convention, the Legal and Technical Commission was responsible for making recommendations to the Council on the protection of the marine environment, with respect to relevant rules, regulations and procedures, as well as a monitoring programme on the risks to and impacts on the marine environment resulting from activities in the Area and ultimately, for keeping under review the rules, regulations and procedures relating to activities in the Area.

10. The Secretary-General further recalled that, in November 2022, the Legal and Technical Commission had presented a draft regional environmental management plan for the Area of the Northern Mid-Atlantic Ridge (N-MAR REMP) with a focus on polymetallic sulphide deposits to the Council.<sup>11</sup> The draft N-MAR REMP had been developed through an extensive scientific process involving three expert workshops during 2018-2020 and a formal stakeholder consultation

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<sup>7</sup> See particularly Relations with Intergovernmental Organisations – Note by the Secretariat, IMO Document A/29/19(c) (2015). See also the Statement of the President of the Assembly of the Authority for the 28th session, Document ISBA/28/A/18, 4 August 2023, para.24.

<sup>8</sup> Decision 2021/01, <https://www.ospar.org/documents?v=46308>

<sup>9</sup> Agreement 2021-08, <https://www.ospar.org/documents?v=46310>

<sup>10</sup> <https://www.ospar.org/documents?v=52056>

<sup>11</sup> ISBA/27/C/38.

from April to June 2022. The OSPAR Commission has been invited to take part in, but did not attend, the workshops and the stakeholder consultation.<sup>12</sup>

11. The Secretary-General informed the OSPAR Commission that, whilst the draft N-MAR REMP did not cover the Area under the NACES MPA, it did set out the goals and objectives for regional environmental management, including the encouragement of cooperation among stakeholders such as competent international and regional organizations within their mandates, and that it identified, among other measures, various area-based management tools (ABMTs) for the maintenance of regional biodiversity and ecosystem structure and function.

12. In light of the above considerations, the Secretary-General urged the OSPAR Commission to ensure consistency between the mandates and competencies that the Convention, the 1994 Agreement and the OSPAR Convention recognize to the Authority and OSPAR respectively. To achieve that goal, it was suggested that the OSPAR Commission align its discussions on the possible extension of the NACES MPS with the work being done in relation to the N-MAR REMP, which is a global process initiated under the Convention and under the auspices of the Council, with the expert input of the Legal and Technical Commission. This would ensure that discussions are based on available scientific data and information with a view to establishing a coherent and ecologically connected network of ABMTs, including MPAs in the North Atlantic, that are effectively managed and monitored.

13. At the meeting of the OSPAR Commission in June 2023, several Contracting Parties welcomed the valuable and interesting information contained in the letter from the Authority and emphasized the importance of maintaining a good working relationship between OSPAR and the Authority. Several Contracting Parties proposed that engagement and collaboration with the Authority and other competent authorities should be strengthened for future designations of MPAs in areas beyond national jurisdiction and in future discussions on REMPs. Nevertheless, due to alleged late submission of the information from the Authority, the OSPAR Commission decided not to include the information in the final version of the revised nomination pro forma for the NACES MPA, but instead to include it in the overview of responses received.

14. By letter of 29 September 2023, the Secretary-General informed the Executive Secretary of the OSPAR Commission of the discussion that took place at the twenty-eighth session of the Assembly in July 2023 with respect to the relationship between the Authority and the OSPAR Commission. The Secretary-General also proposed that in future, the OSPAR Commission could consider a review of the process by which it consults with competent intergovernmental organizations on matters engaging their competencies, including in relation to the establishment of ABMTs, whilst confirming the disposition of the Secretariat to further discuss these and other matters of common interest. This seems of particular importance when a decision by the OSPAR Commission overlaps with the exclusive mandate assigned to the Authority by the Convention and the 1994 Agreement as well as the rights and obligations of Members of the Authority and entities with which contracts have been signed by the Authority.

**B. Communications between the OSPAR Commission and the secretariat of the Authority regarding the report of the OSPAR Group of Jurists and Linguists on the competence of the OSPAR Commission with regard to deep seabed mining activities within the OSPAR maritime area**

15. On 24 January 2023, the Executive Secretary of the OSPAR Commission invited the secretariat of the Authority to provide comments on legal advice presented by the OSPAR Group of Jurists and Linguists (JL) pertaining to the OSPAR Commission's jurisdiction over deep seabed mining activities within the OSPAR Maritime Area. The JL was requested to provide legal advice by OSPAR's Committee on Environmental Impacts of Human Activities (EIHA) on questions of the interpretation and application of the OSPAR Convention to deep seabed mining.<sup>13</sup>

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<sup>12</sup> Invitations had been sent to the OSPAR Commission on 10 March 2022, 14 March 2023 and 9 June 2023.

<sup>13</sup> Neither the relevant proceedings of the EIHA nor the JL advice are publicly available on the OSPAR website. For the information of members of the Authority, the letter of the Executive Secretary of 24 January, and the secretariat's response of 14 March 2023 will be uploaded to the Authority's website

16. On 14 March 2023, the secretariat of the Authority submitted its observations. The secretariat recalled the universal and unified character of the Convention as the overarching legal framework for all activities carried out in the oceans, including the Area. The secretariat also noted that Parties to the OSPAR Convention, as members of the Authority, should adhere to the rules, regulations and procedures adopted by the Authority and applicable to the Area within the OSPAR maritime area, to ensure consistency with the regime set out by the Convention and the 1994 Agreement. More specifically, the secretariat noted that:

(a) The Convention and the 1994 Agreement confer on the Authority an exclusive competence in organizing and controlling activities in the Area including the competence to adopt measures for the protection of the marine environment from the possible harmful impacts associated with activities in the Area.

(b) Although some States could collectively adopt more stringent environmental protection measures than those adopted by the Authority within a regional cooperation framework such as OSPAR, this does not confer on such States or regional organizations any competence to regulate activities in the Area.

(c) Disposal of waste arising from deep seabed mining activities falls within the definition of 'dumping' as set out in article 1 of the OSPAR Convention and therefore falls within the scope of Article 4 and Annex II of the OSPAR Convention.

(d) Measures already adopted under Annex V of the OSPAR Convention (to protect the maritime area against the adverse effects of human activities) are, in general, applicable to deep seabed mining, depending on their contents.

(e) Deep seabed mining is not one of the sources of pollution falling within the scope of articles 3, 4 and 5 of the OSPAR Convention and therefore the OSPAR Contracting Parties would need to adopt an annex under article 7 if it wished to address deep seabed mining as a source of pollution.

17. The secretariat further stressed that the granting of contracts for exploration and exploitation lies at the core of the legal regime applicable to the Area and its resources. Any measures taken by the OSPAR Commission in relation to activities in the Area carried out under such contracts, whether involving an OSPAR member or not, would conflict with the regime established by the Convention and the 1994 Agreement and the competence recognized by the OSPAR Convention.

18. In response, the OSPAR JL stressed that, notwithstanding the various points of agreement between the secretariat and JL, and some disagreement on legal interpretations, the recommendation for the Heads of Delegations of OSPAR was to open up informal discussion between the secretariats of OSPAR and the Authority as to how the two organisations could work together on more practical aspects such as the designation and management of MPAs.<sup>14</sup>

#### **IV. Preliminary assessment of the potential impact of the decision to extend the scope of the NACES MPA to the Area on the mandate of the Authority**

19. Currently, no activities in the Area are taking place in the NACES MPA. Furthermore, the probability of the existence of economic deposits of polymetallic sulphides and polymetallic nodules is considered minor due to intense sedimentation processes taking place in that area (ISA Technical Study No. 30). However, it cannot be excluded the Authority might in future receive notifications of prospecting or applications for approval of plans of work for exploration covering this part of the Area.

20. It is acknowledged, including in the context of the OSPAR Heads of Delegation meetings,<sup>15</sup> that the Authority is the only competent organization to regulate activities in the Area, including

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alongside the present report.

<sup>14</sup> OSPAR HOD (1) 23/2/1 Rev.1 (L) para.8.2

<sup>15</sup> See [ISBA/15/A/2](#) para.21

by adopting appropriate rules, regulations, and procedures to ensure effective protection of the marine environment from harmful effects which might arise from activities in the Area.

21. The decision by the OSPAR Commission to extend its measures to the Area would appear to conflict with the competence of the Authority in so far as it impacts the rights and duties of those members of the Authority that are not parties to the OSPAR Convention. OSPAR Decisions<sup>16</sup> and the measures or programmes adopted thereunder are binding only upon the sixteen OSPAR members and applicable only to the OSPAR maritime area.

22. The regulatory competencies with respect to the protection of the marine environment in the Area assigned to the Authority, whose decisions are applicable to all its members, including those members of the Authority that are also OSPAR members, cannot be overridden.

23. In this respect, it is recalled that members of the Authority have a duty of cooperation towards the Authority, which requires them, amongst other things, to ensure that there is no duplication with the work and mandate of the Authority and no interference through the work undertaken through regional organizations.

24. In conclusion, measures implemented on the basis of Decisions taken by the OSPAR Commission with respect to matters falling under the competence of the Authority pursuant to the Convention and the 1994 Agreement, (a) do not properly reflect and respect the competence of the Authority over the Area, (b) potentially conflict with other actions taken by the Authority pursuant to its mandate, (c) risk undermining the Authority's competence by applying different standards and scientific criteria to those adopted globally for the Area, and (d) risk being ineffective because they do not bind non-parties to the OSPAR Convention.

## **V. Recommendations on how to prevent interference with the Authority's mandate while enhancing cooperation and consultation with relevant organizations**

25. It is paramount to ensure consistency between the respective mandates and competencies recognized to the Authority and OSPAR by the existing legal framework. In this context, the OSPAR Commission has been invited to attend the Authority's workshops and to participate in stakeholder consultations concerning the development of the N-MAR REMP. The Authority has also proposed a possible extension of the geographical scope of the N-MAR REMP to ensure alignment between global and regional processes.

26. On 17 November 2023, a bilateral meeting took place between the secretariats of the Authority and the OSPAR Commission. It was agreed to have more regular meetings to brief each other on matters of relevance and share updates. The secretariat of the Authority will also participate, when appropriate, in relevant work of the OSPAR Commission, such as the Ad Hoc Working Group on Amendments to the OSPAR Convention, the Collective Arrangement, and meetings of the Commission.

27. The Council is invited to take note of the content of the present report. The Council is further invited to provide such guidance to the secretariat as may be necessary to facilitate enhanced cooperation and consultation between the Authority and the OSPAR Commission.

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<sup>16</sup> While Decisions adopted by the Contracting Parties of OSPAR are legally binding, Recommendations do not have binding force, according to article 13 of the OSPAR Convention.