



Final Report: the European Union and the Legal Protection of Marine Biodiversity in the Arctic (Euro-ArcticLaB)^{*} Nengye Liu[†] & Elizabeth A. Kirk[‡]

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The Euro-Arctic LaB project was designed to establish (1) what powers the European Union (EU) has and (2) how it may best use those powers to pursue its stated objective of protecting marine biological diversity (biodiversity) in the Arctic (COM (2008)763 final; JOIN (2012) 19 final). To this end Euro-Arctic LaB assesses the range of locations in which the EU could pursue its policy objectives in relation to Arctic Marine Biodiversity and the range of potential policies it could pursue.

To achieve these objectives desk based research was conducted to review the scientific literature on the State of Arctic marine biodiversity, the status of the current law, gaps in the law and the action the EU has taken to date both internally and in international fora. Euro-Arctic LaB has produced high quality research results, which have been published in top international conferences and journals. It has also produced a briefing note for policy makers, a web page for dissemination of research results and a range of outreach activities detailed in the dissemination measures section of this final report.

Findings

The research underpinning the Euro-Arctic LaB project indicates that the EU could take action to protect Arctic marine biodiversity both internally and within international fora, such as the negotiations for an implementation agreement on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (see Liu and Kirk 2015). This approach will have the advantage of both ensuring concrete action to protect Arctic marine biodiversity is taken and of changing the wider normative context in which all decisions on the protection of Arctic marine biodiversity are made. The change of normative context will make it more likely that any measures relating to the conservation of Arctic marine biodiversity will fit with the EU's objectives regardless of where they are adopted, or whether the EU is party to the negotiations (see Kirk 2012). These recommendations are explored more fully below.

General Measures: We **recommend** that the EU focus on two key general measures: (i) promoting the establishment of marine protected areas (MPAs) and (ii) promoting implementation of the ecosystem approach.

MPAs: We **recommend** that the EU continue to support the adoption of the new implementing agreement of the UN Convention on the Law of the Sea (UNCLOS) relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. As the 'owner' of one of the largest distant water fishing fleets in the world and with a strong presence of coastal states amongst its membership, the EU has a powerful voice in the negotiations on the implementing agreement. Focussing on this issue has the potential to ensure the adoption of new legal norms concerning the establishment of marine protected areas in areas beyond national jurisdiction, including on Arctic high seas.

Ecosystem Approach/Ecosystem-Based Management: The need for oceans management based on an ecosystem approach (EA) is now widely recognized by the international community, as reflected, for example, in calls for the application of the EA by 2010 in the 2002 Johannesburg Plan of Implementation of the World Summit on Sustainable Development (WSSD). The Arctic Council also recognized in the 2004 Arctic Marine Strategic Plan that ecosystem-based management (EBM) is the best approach to managing the Arctic marine environment. However, scientific uncertainty is a significant barrier to the implementation of the ecosystem approach in global oceans, including the Arctic. We therefore **recommend** that the EU

^{*} <http://www.dundee.ac.uk/law/research/researchprojects/details/the-european-union-and-the-legal-protection-of-marine-biodiversity-in-the-arctic.php>

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should continue to support scientific research into implementation of the ecosystem approach in the Arctic both in partnership with coastal States and through supporting Arctic Council projects.

Shipping: Arctic shipping is expected to increase with decreasing sea-ice cover. Shipping may pose significant threats to Arctic marine biodiversity through accidental or operational release of oil and other pollutants (e.g. invasive species from ballast water). It is **recommended** that the EU take actions as a flag State to enforce existing international law such as the International Code for Ships Operating in Polar Waters (the Polar Code) and the International Convention for the Control and Management of Ships' Ballast Water and Sediments on EU flagged ships sailing in the Arctic. This action should be taken regardless of whether the agreements are fully in force. This would be consistent with previous action taken by the EU in relation to shipping (see Liu 2013). Moreover, as a potential destination for trans-Arctic shipping, we **recommend** that the EU strengthen its port state control to address issues such as the ban on the carriage and/or use of heavy-grade fuels in the Arctic.

Fisheries: Overfishing combined with the physical harm caused by fishing methods have, in many parts of the world, had a severe impact on the marine ecosystem and it is likely that they will have the same types of impacts in the Arctic. Fishing vessels of EU Member States operating in the Arctic must follow the EU's Common Fisheries Policy (CFP) including implementing the new, since 2014, discard ban by which "the CFP shall gradually eliminate discards, on a case-by-case basis, ... unwanted catches," (Art. 2(5)(a), Regulation 1380/2013 of 11 December 2013 on the Common Fisheries Policy). One third of fisheries caught in the Arctic end up in the European market, we **recommend** that the EU make use of its market power to require non-EU fishing vessels in the Arctic to follow EU standards as set out in the CFP. At the regional level, the five Arctic coastal States have initiated a moratorium for commercial fishing in the Central Arctic Ocean until more scientific information is available for achieving sustainable fisheries. It is **recommended** that the EU support this moratorium.

Offshore oil and gas operations: (See Liu 2015) Europe-based oil giants such as BP and Shell are active in offshore oil and gas development in the Arctic. Their activities could lead to harm to the marine ecosystem through, for example, the release of oil through operational activities or accidents. Through Directive 2013/30 on Safety of Offshore Oil and Gas Operations, the EU requires companies registered in the EU to report major accidents outside the EU waters, such as in the Arctic. We **recommend** that the reporting obligation be expanded to cover daily operational pollution too. In addition, Directive 2013/30 clearly states that the text is of European Economic Area Relevance, which means it should be applied in Norwegian Arctic waters as well. Norway however is against the implementation of Directive 2013/30 in its waters. It is **recommended** that the EU should negotiate with Norway to find a compromise on implementation of Directive 2013/30 in Norwegian waters.

We **recommend** that in addition to focusing on the prevention of accidental pollution under Directive 2013/30, the EU should establish uniform Construction Design Equipment and Manning (CDEM) standards regarding the prevention of operational pollution from offshore oil and gas operations in European waters. This would establish a good example for Arctic States to follow.

References/Future Reading

- Kirk, EA, Marine Governance, Adaptation, and Legitimacy, *Yearbook of International Environmental Law* 22 (2012) 110-139
- Liu, N, The European Union's Potential Contribution to Enhanced Governance of Arctic Shipping, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 73 (4) (2013) 705-733
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- Liu, N & Kirk, EA, The European Union's potential contribution to protect marine biodiversity in the changing Arctic: a roadmap, *International Journal of Marine and Coastal Law* 30 (2) (2015) 255-284