

OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic
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OSPAR's Regulatory Regime for establishing Marine Protected Areas (MPAs) in Areas Beyond National Jurisdiction (ABNJ) of the OSPAR Maritime Area*

1. Introduction

1.1 This document sets out advice concerning the legal basis on which the OSPAR Commission may decide to take forward the designation of Marine Protected Areas (MPAs) in Areas Beyond National Jurisdiction (ABNJ) within the OSPAR Maritime Area¹. The advice follows the Terms of Reference given to the Group of Jurists/Linguist by OSPAR 2008.

1.2 The document:

- describes OSPAR's legal competence to establish MPAs in ABNJ and to adopt corresponding measures;
- describes the legal competence of other international organisations to contribute to OSPAR's protection of biodiversity and ecosystems in ABNJ in the OSPAR Maritime Area;
- clarifies the legal aspects of interplay between OSPAR's competences (mandate) and rights and obligations conferred under UNCLOS and customary international law to non-OSPAR contracting parties, including the possibilities of managing activities in an OSPAR MPA in ABNJ within the OSPAR Maritime Area; and
- identifies procedural options for designating OSPAR MPAs in ABNJ.

A short conclusion summarises this advice.

2. OSPAR's competence to establish MPAs in ABNJ and to adopt corresponding measures

United Nations Convention on the Law of the Sea, 1982 (UNCLOS)

2.1 The overarching international legal framework for regulating activities in ABNJ is provided in UNCLOS, more specifically Part VII on the high seas, Part XI on the area and Part XII on the protection and preservation of the marine environment. Therefore, all actions taken within the framework of the regional legal instruments & organisations need to be consistent with UNCLOS.

* Denmark and Iceland have a study reservation on this report.

¹ The OSPAR Maritime Area is the area covered by the OSPAR Convention (as defined in Article 1(1) of the OSPAR Convention)

2.2 The UN Convention on the Law of the Sea was adopted on 10 December 1982 and entered into force on 16 November 1994. The 1994 Agreement, which significantly affected the provisions of UNCLOS relating to the exploration and exploitation of mineral resources, entered into force on 28th July 1996. All Parties to the OSPAR Convention are Parties to both UNCLOS and the 1994 Agreement.

2.3 For the purpose of this document, **ABNJ** means “The Area” and the “High Seas”, as defined in UNCLOS. This is because, under UNCLOS, the Area and the High Seas are beyond the jurisdiction of States, except in relation to activity by their citizens or in their role as a Flag State. This is to be compared with the territorial sea, the contiguous zone, the EEZ and the continental shelf, over which coastal states have different kinds of jurisdiction.

- **The Area** means the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (Article 1(1)(1) UNCLOS).
- **High Seas** are all parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State (Article 86 UNCLOS).

2.4 With regard to the designation of MPAs in ABNJ UNCLOS (cf. part XII) establishes *inter alia* the following general obligations relevant for the protection of the marine environment:

- a. The obligation on States to protect and preserve the marine environment (Article 192).
- b. The obligation on States to cooperate in the protection and preservation of the marine environment and pursue this obligation directly or through competent international organizations (Article 197).

2.5 A further elaboration of these obligations is found in the obligation to take all measures, individually or jointly, consistent with the Convention, necessary to prevent, reduce and control pollution of the marine environment, including measures necessary for the protection and preservation of rare or fragile ecosystems (Article 194). UNCLOS clearly obliges the Contracting Parties to protect the marine environment also in ABNJ and to take insofar as possible, individually or jointly, the necessary measures.

2.6 In accordance with UNCLOS Article 87, the freedoms of the High Seas include navigation, overflight, laying of sub-marine cables and pipelines, construction of artificial islands and installations, fishing and scientific research. Additionally, some of these freedoms are again subject to their own limitations, set out in various relevant parts of UNCLOS, and must be carried out in any case in a manner coherent with the fulfilment of the general obligations to protect and preserve the marine environment. Competence is conferred upon the individual State, however, co-operation between States, globally and regionally, with a view to achieve such protection, is encouraged (cf. Article 197). OSPAR is a good example of successful regional co-operation in this regard. For example, the OSPAR Contracting Parties may decide to adopt a measure for their nationals not to engage in the laying of sub-marine cables within the relevant MPA. Such a measure will however not apply to other UNCLOS State Parties, not Contracting Parties to the OSPAR Convention, who will be able to exercise the freedom of laying of sub-marine cables and pipelines irrespective of the OSPAR measure.

2.7 In relation to the Area, the Area and its resources are the common heritage of mankind on whose behalf the International Seabed Authority (ISA) acts.²

² See UNCLOS Art. 136, 137, 157

Convention on Biological Diversity of 1992³ (CBD)

2.8 Another global legal framework to be considered is the Convention on Biological Diversity (CBD). CBD deals specifically with biodiversity protection. In 1995, the Conference of Parties adopted the Jakarta Mandate on Marine and Coastal Biodiversity (relying on support from international organisations, regional conventions and action plans, national governments and NGOs) under which parties are to establish a global network of Marine Protected Areas, building upon regional and national systems, by 2012. In May 2008, the 9th Conference of Parties (COP9) to the CBD furthermore adopted the scientific “Azores criteria” for identification of ecologically or biologically significant marine areas in need of protection in open-ocean waters and deep-sea habitats.

2.9 CBD recognises the sovereignty of states over their biodiversity leaving them full control of exploitation in accordance with their own economic policy, although they are expected to set up protected area systems within their main areas of biological diversity. Marine biodiversity is one component of global diversity.

2.10 The Conference of Parties to CBD has the competence to pursue conservation objectives. Where action concerns components of biological diversity, such as specific habitats, the scope of CBD will be limited to the national jurisdiction of its Parties. However, in the case of processes and activities, regardless of where their effects occur, carried out under the jurisdiction or control of a Contracting Party, the scope consists of both the areas within Parties’ national jurisdiction and areas beyond the limits of national jurisdiction⁴

OSPAR Convention

2.11 The OSPAR Convention, which entered into force on 25 March 1998, established the OSPAR Commission and has 16 contracting parties. General obligations under the OSPAR Convention are set out in Article 2 and include the taking of all possible steps to prevent and eliminate pollution and necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected. Overall, the work of the OSPAR Commission is guided by the ecosystem approach to an integrated management of human activities in the maritime area. This approach is supported by the general obligation of the Contracting Parties to apply (Article 2 paragraphs 2 and 3):

- the precautionary principle;
- the polluter pays principle;
- Best available techniques (BAT) and best environmental practices (BEP), including clean technology.

In general the Contracting Parties to the OSPAR Convention have an obligation to protect the marine environment including in ABNJ.

2.12 The UN estimates that over 50% of the OSPAR Maritime Area is found in ABNJ.

³ Convention on Biological Diversity, adopted June 1992, in force 1993: text and programme information on www.cbd.int. The CBD has 191 parties.

⁴ See Convention on Biological Diversity, Article 4.

2.13 **Annex V** to the OSPAR Convention states that Contracting Parties are to take necessary measures to protect and conserve the ecosystems and biological diversity of the maritime area, and co-operate in adopting programmes and measures. The OSPAR Commission is under a duty to draw up programmes and measures for the control of the human activities identified by the application of the criteria in Appendix 3. In fulfilling that duty, the OSPAR Commission is to, inter alia, “develop means, consistent with international law, for instituting protective, conservation, restorative or precautionary measures related to specific areas or sites or related to particular species or habitats”. Appendix 3 Criteria, which are expressly stated to be neither necessarily exhaustive nor of equal importance for the consideration of a particular activity are:

- extent, intensity and duration of the human activity under consideration;
- the actual and potential adverse effects of the human activity on specific species, communities and habitats and on specific ecological processes;
- the irreversibility or durability of these effects.

2.14 Annex V also contains specific limitations regarding OSPAR’s competence. In accordance with Article 4, no programme or measure relating to the management of fisheries shall be adopted under this Annex. However where the Commission considers that action is desirable in relation to such a question, it shall draw that question to the attention of the authority or international body competent for that question. Where action within the competence of the Commission is desirable to complement or support action by those authorities or bodies, the Commission shall endeavour to cooperate with them. Further, when action is desirable in relation to a question concerning maritime transport, the question shall be drawn to the attention of the IMO, and endeavours shall be made to co-operate in order to achieve an appropriate response.

2.15 Annex V and Appendix 3 criteria for identifying human activities for the purpose of Annex V, were adopted on 24 July 1998 and entered into force on 30 August 2000. Though no OSPAR Decisions have been adopted to implement Annex V, Recommendation 2003/3 and Agreement 2003-21 were both adopted in June 2003 for that purpose.

Recommendation 2003/3 – coherent, well-managed network

2.16 By Recommendation 2003/3, the Parties to the OSPAR Convention recommend the establishment by 2010 of “an ecologically coherent network of well-managed marine protected areas” to be known as “the OSPAR Network of Marine Protected Areas”.

2.17 For OSPAR purposes, the term **Marine Protected Area** is defined in Recommendation 2003/3 implementing Annex V of OSPAR as “an area within the maritime area for which protective, conservation, restorative or precautionary measures, consistent with international law have been instituted for the purpose of protecting and conserving species, habitats, ecosystems or ecological processes of the marine environment”.

2.18 The Recommendation defines that Network as including sites within national jurisdiction and “any ... area in the maritime area outside the jurisdiction of the Contracting Parties which has been included as a component of the network by the OSPAR Commission”. Thus it expressly envisages that the Network will include sites beyond national jurisdiction. For each MPA, the relevant party is to develop a management plan (taking into account that competence to adopt some management measures may lie with “another authority or international organisation”).

Biodiversity Strategy (Agreement 2003 – 21)

2.19 Agreement 2003-21 updates the OSPAR Strategy on the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area and sets out what the OSPAR Commission is to do

in order to implement Annex V. This includes actions “to complement the actions of the Contracting Parties under the OSPAR Recommendation on a Network of Marine Protected Areas” (i.e. Recommendation 2003/3). Amongst other things, the Agreement states that the OSPAR Commission will “consider reports and assessments from Contracting Parties and observers on possible components of the OSPAR network and on the need for protection of the biodiversity and ecosystems in the maritime area outside the jurisdiction of the Contracting Parties, in order to achieve the purposes of the network as described in OSPAR Recommendation 2003/3”. Agreement 2003-21 complements Recommendation 2003/3 in anticipating that the Network will include sites beyond national jurisdiction.

The current OSPAR network

2.20 In 2006, 81 sites were accepted by OSPAR but until now, actions by OSPAR Contracting Parties have been focused mainly on the establishment of MPAs in their territorial waters and Exclusive Economic Zones/200 nm zones, thus within their national jurisdiction. As of 2008, no Marine Protected Area (MPA) has been nominated in Areas Beyond National Jurisdiction (ABNJ), although 2008 did see a merged proposal for identifying the Mid Atlantic Ridge/Charlie Gibbs Fracture Zone as a potential future MPA in ABNJ.

OSPAR's Competence to regulate different human uses

2.21 The basis for and limitations on OSPAR competence with regard to the establishment of MPAs in ABNJ are found both in UNCLOS and the OSPAR Convention itself. Given the general obligations under the OSPAR Convention, however, OSPAR has a wide mandate when it comes to identifying and assessing specific areas within the OSPAR Maritime Area in need of protection. The role of OSPAR is important, since no other international organisation has the mandate for setting in place an integrated process for the protection of an area in ABNJ having regard to human activities and their cumulative impacts on the basis of the ecosystem approach (including *i.a.* the assessment of the status of the environment, the identification of features to be protected, the establishment of objectives and monitoring measures).

2.22 However, when establishing protective measures for the management of human activities in these areas, the limits to OSPAR competence become more evident, as important measures for the protection of marine biodiversity are outside OSPAR's remit (e.g. fisheries). However, it should be recalled that many of the limitations to manage such important activities also apply in areas within national jurisdiction (cf. UNCLOS Article 58), and this had not been an impediment for establishing MPAs in such areas. Thus it may be said that ABNJ raise additional questions, but not necessarily new issues with respect to the scope of OSPAR to exercise its competence in ABNJ.

2.23 In addition, there are also a number of human uses of the ocean, including in ABNJ, which may be subject to OSPAR regulation, for example measures relating to:

- scientific research,
- cable-laying,
- dumping, construction of installations and artificial islands, and
- deep-sea tourism.

2.24 The table at Annex 1 summarises the applicable legal regime (established by UNCLOS and the OSPAR Convention) and also draws attention to relevant regulations under other multi-lateral Conventions. This establishes the context for OSPAR competence over the management of maritime human uses that may take place now or in the future within the ABNJ in the OSPAR Maritime Area. Where competence rests with another authority/organisation, co-operation with this other competent authority/organisation will be advisable.

3. The legal competence of other international organisations to contribute to OSPAR's protection of biodiversity and ecosystems in ABNJ in the OSPAR maritime area

3.1 The legal competence of other international organisations to contribute to OSPAR's protection of biodiversity and ecosystems in ABNJ in the OSPAR maritime area is summarised in the indicative list below. Annex 2 contains a brief description of how these organisations and their competences relate to different human uses in ABNJ. These other competent authorities have taken various protective measures within the OSPAR maritime area including, importantly, NEAFC fisheries closures and protection of vulnerable habitats against bottom trawling.

Organisation/ Convention	Competence
<p>ASCOBANS Agreement on the Conservation of Small cetaceans of the Baltic, North-East Atlantic, Irish and North Seas (New York, 1992, amended Esbjerg, 2003)</p>	<p>Conservation measures may be adopted that will bind its Contracting Parties in a wider region so enhancing overall effectiveness of MPAs with respect to small cetaceans</p>
<p>ICAO Convention on International Civil Aviation (Chicago, 1944)</p>	<p>Global/regional air navigation agreements adopted that will bind its Contracting Parties so enhancing overall effectiveness of MPAs with respect to air safety and operational functions / air highways.</p>
<p>ICCAT International Convention for the Conservation of Atlantic Tunas (Rio de Janeiro, 1966)</p>	<p>May adopt measures that will bind its Contracting Parties so enhancing overall effectiveness of MPAs with respect to tuna and by-catch. Could also adopt trade-related measures against Flag states fishing on High Seas contrary to adopted fisheries conservation rules.</p>
<p>ICES International Council for the Exploration of the Sea</p>	<p>Advisory competence on sustainable use of commercial fish stocks as well as on state and conservation status of living marine resources in general.</p>
<p>IMO International Maritime Organisation</p>	<p>IMO standards/rules/safety codes applying to flag states/ Special Areas etc may be adopted that will bind its Members, so enhancing overall effectiveness of MPAs with respect to pollution from ships, special safety standards /routing jointly developed for such high seas areas.</p>
<p>ISA International Seabed Authority</p>	<p>Formal cooperation under UNCLOS Article 169. Measures may be adopted for the disapproval of mining measures that will bind its Members so enhancing overall effectiveness of MPAs with respect to mining in The Area. ISA competent to regulate pollution and rules for conservation of natural resources, but no competence in marine scientific research.</p>
<p>IWC International Convention for the Regulation of Whaling (1946)</p>	<p>Measures may be reviewed/revised that will bind its Contracting Parties so enhancing overall effectiveness of MPAs with respect to whaling</p>
<p>London Convention and Protocol Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972) and its Protocol of 1996</p>	<p>May adopt measures regarding dumping at sea that will bind its Contracting Parties so enhancing overall effectiveness of MPAs with respect to dumping.</p>

<p>NASCO</p> <p>Convention for the Conservation of Salmon in the North Atlantic Ocean (1982; implemented by NASCO)</p>	<p>Facilitates joint research cooperation and may adopt measures (gear restrictions, Port state control) that will bind its Contracting Parties so enhancing overall effectiveness of MPAs with respect to migrating salmon. Could also adopt trade-related measures against Flag states fishing on High Seas contrary to adopted fisheries conservation rules.</p>
<p>NEAFC</p> <p>North-East Atlantic Fisheries Commission (1982)</p>	<p>May adopt measures that will bind its Contracting Parties in High Seas, so enhancing overall effectiveness of MPAs with respect to rational exploitation of fish stocks, by closures or fishing methods (i.e. bottom trawl methods in extended continental shelf as NEAFC has no competence in sedentary species).</p>
<p>UNESCO</p> <p>UNESCO-IOC</p>	<p>Convention on the Protection of the Underwater Cultural Heritage (2001) will bind its Contracting Parties, which is of relevance when a cultural heritage site coincides with an OSPAR MPA</p> <p>UNESCO, through its Intergovernmental Oceanographic Commission (IOC) is the recognized competent International Organisation in the fields of Marine Scientific Research (Part XIII) and Transfer of Marine Technology (Part XIV) of UNCLOS.</p>

4. The interplay between OSPAR competences (mandate) and rights and obligations conferred under UNCLOS and customary international law to non-OSPAR Contracting Parties, including the possibilities of managing activities in an OSPAR MPA in ABNJ within the OSPAR maritime area

4.1 Following the initial evaluation of an area of interest, OSPAR has to consider:

- the extent to which OSPAR has the competence to regulate relevant activities, see section (2) of this document, and whether OSPAR should pursue measures concerning those activities;
- whether activities outside the remit of OSPAR warrant further consideration, and if so, whether/how OSPAR could interact with other competent authorities (see section (3) with a view to achieve appropriate protection.

4.2 If an activity may be subject to OSPAR regulation, all normal OSPAR measures are open to Contracting Parties, i.e. Decisions, Recommendations and other agreements (e.g. guidelines, guidance, code of conduct). When pursuing these measures, normal OSPAR procedures would apply, see *i.a.* Article 13 on the adoption of Decisions and Recommendations. In addition, OSPAR may chose to use diplomatic means of interaction with other states and actors that operate or plan to operate in an ABNJ within the OSPAR Maritime Area.

4.3 OSPAR measures apply to OSPAR Contracting Parties only.⁵

4.4. Generally, it is in the interest of OSPAR that also Non-Contracting Parties do not undertake activities which would negatively impact on OSPAR MPAs. Therefore, it is advisable that OSPAR seeks to cooperate with other international organisations which have a mandate in the respective field in order to set relevant standards that may also bind Non-Contracting Parties.

4.5 If the management of fisheries or the maritime transport or deep sea mining is concerned, and therefore outside the remit of OSPAR regulation, interaction with other competent authorities would be

⁵ The only exception to this would be if the subject matter of an OSPAR measure has reached the status of customary international law.

necessary in practical terms in order to ensure that appropriate protection is achieved. Measures adopted by other competent authorities (see section 3 of this document) would have to be considered independently and would only bind Contracting Parties to the respective regime, but not Contracting Parties to OSPAR unless they are also Contracting Parties to the respective regime.

4.6 In practice, of course, Parties to OSPAR are also Parties to other international instruments and would normally be bound by such measures as taken forward under international instruments. Further, these regimes often have a larger number of Contracting Parties or Members than OSPAR (e.g. IMO) and thus bind a larger number of States. Also, other authorities may have some competence to bind third parties (e.g., NEAFC).

4.7 In terms of interacting with other competent authorities, the OSPAR Commission may choose a collective approach, using instruments such as MoUs, encouraging mutual observer status etc. The OSPAR Convention does not contain rules of procedures for such co-operation, thus the OSPAR Commission should be free to adopt the most appropriate and effective mode of interaction in accordance with the general objectives of the Convention. The mode might be different from organisation to organisation and range from awareness-raising to concrete proposals for action.

4.8 Also, OSPAR Contracting Parties may bring individually or jointly the issue to the attention of another competent authority. Indeed, this may often be necessary to facilitate the adoption of legally binding measures by these other authorities (e.g. in the IMO). Doing so, OSPAR Contracting Parties may well make use of initial work carried out by OSPAR.

5. Procedural options for designating OSPAR MPAs in ABNJ

5.1 As stated in the previous section, if an activity may be subject to OSPAR regulation, all normal OSPAR measures are open to Contracting Parties, i.e. Decisions, Recommendations and other agreements (e.g. guidelines, guidance, code of conduct). When pursuing these measures, normal OSPAR procedures would apply, see i.a. Article 13 on the adoption of Decisions and Recommendations. In addition, OSPAR may choose to use diplomatic means of interaction with other states and actors that operate or plan to operate in an ABNJ within the OSPAR Maritime Area.

5.2 Within the framework of the CBD, the Jakarta Mandate in 1995 defined a marine biodiversity action plan that relied on international organisations, regional conventions, national governments and NGOs to implement. In its Annex III, the COP IX Decision 20 from Bonn 30 May 2008 sets out 4 steps relevant for the identification of scientific criteria and guidance for marine areas in need of protection (www.cbd.int/decisions/?m=COP-09&id=11663&lg=0).⁶

5.3 Regional work within OSPAR is further described in the OSPAR Biodiversity Strategy, which sets out tasks for the development of the OSPAR Network of Marine Protected Areas. Recommendation 2003/3 on the network of MPAs sets out further procedures for the designation of an OSPAR MPA. Paragraph 3.1 provides that Contracting Parties should consider whether any areas justify for MPA selection, in accordance with the criteria set out in the identification and selection guidelines (OSPAR Agreement 2003-17), and report the areas selected to the Commission. Paragraph 3.3 requires parties to develop a management plan in accordance with the management guidelines (OSPAR Agreement 2003-18). Within national jurisdiction it would be up to the individual Contracting Party to assess the area and report accordingly. Within ABNJ there would be a need for a collective agreement of the OSPAR Contracting Parties, and an OSPAR measure to include the area within the network would thus be required.

⁶ The Jakarta Mandate is to be observed by the Contracting Parties to OSPAR since all of them are Contracting Parties to CBD as well

5.4 Whilst it is clear that in order to establish an OSPAR MPA, OSPAR would have to identify and assess the area in question in accordance with relevant criteria, there are different interpretations as to whether it is a requirement for the establishment of an MPA that protective measures should already be in place prior to designation.

5.5 One delegation considers that such measures would have to be in place, basing this on the definition of an MPA in OSPAR Recommendation 2003/3, as well as a normal, linguistic understanding of the term MPA (an area would not in fact be “protected” until some degree of protective measures were in place). However, it was stressed that the requirement that some protection would have to be in place at the time when the MPA was established, would not prevent OSPAR from continuing its work with a view to achieve stronger protection (e.g. move from Recommendation to Decision) or regulate other human uses of the oceans at a later stage.

5.6 Other delegations consider that their interpretation of paragraph 3.3. of OSPAR Recommendation 2003/3 is that the management plan containing the relevant protective measures could be developed at a later stage, and thus, that protection did not need to be in place at the time when the MPA was established.

5.7 Although there was disagreement whether the institution of measures was a legal requirement for the establishment of an MPA, there was agreement that the institution of such measures, before or at the same time as the establishment of an MPA, was desirable.

5.8 Further, JL addressed the question of what would in fact constitute a “protective, conservation, restorative or precautionary measure” in accordance with Recommendation 2003/3. It was suggested that it might be considered whether e.g. monitoring could qualify as a measure in this context.

6. Conclusions

In conclusion, JL agreed that:

1. OSPAR Contracting Parties have an obligation to protect biodiversity in ABNJ.
2. OSPAR has competence to:
 - a. set up a process to designate and establish a network of MPAs in ABNJ;
 - b. identify features to be protected, set conservation objectives and prescribe relevant measures; and
 - c. adopt measures for those human uses for which competence is identified or to co-operate with the competent authorities where such an organisation or organisations are in place.
3. OSPAR can only bind its own Contracting Parties and cannot regulate all human activities in ABNJ.
4. Given the legal competence of other international organisations, it is desirable for OSPAR to work with these organisations with a view to contributing to the production or applications of a wider range of measures.
5. JL’s discussions were not conclusive as to whether protective measures would have to be instituted before or at the same time as the MPA was established. However, it was agreed that it would be desirable to have some protection in place at that time.

Human Activity in ABNJ	Legal regime under UNCLOS	Other multi-lateral conventions (or bodies)	OSPAR competence
Fishing	Article 63(2) Article 87(1e) Part VII, Sect. II Competent organisations in place	UNFSA ICCAT NEAFC NASCO NAFCO	OSPAR can draw questions to attention of competent authority and should endeavour to co-operate (OSPAR Convention: Annex V Article 4 (1)).
Mining	Part XI	UN Part XI Agreement (ISA)	While this is not specifically addressed by the OSPAR Convention, the Convention does not specify anything that would prevent the Commission from drawing issues to the attention of ISA and OSPAR Contracting Parties from cooperating within that Authority in order to achieve an appropriate response, including in relevant cases that Authority's agreement to regional or local action, taking account of any guidelines developed by that Authority with regard to the protection of species and habitats.
Placement of structures:			
-- Islands, floating structures	Article 87(1d) Article 147 Article 209 Article 258		OSPAR may adopt measures to protect: <ul style="list-style-type: none"> • the marine environment against pollution and adverse effects of human activities (General Obligations - Article 2) • as well as marine biodiversity and ecosystems (Annex V)
-- Cables and pipelines	Article 87(1c) Article 112-115 (Article 79(5))		OSPAR may adopt measures to protect: <ul style="list-style-type: none"> • the marine environment against pollution and adverse effects of human activities (General Obligations - Article 2) • as well as marine biodiversity and ecosystems (Annex V)
Transit and transportation issues:			
-- Shipping	Article 87(1a) Article 211 Article 217-220 Competent organisation in place		OSPAR can draw questions to the attention of the IMO and should endeavour to co-operate within IMO (Annex V Art 4 (2)) Preferred interaction through IMO, however, some scope for joint OSPAR action (e.g. Ballast Water Guidelines)
[-- Military forces]	[Article 236 Sovereign immunity]		[Some concerns such as noise from active sonar]

-- Overflight	Article 87(1b) Competent organisation in place	ICAO	None
Dumping of wastes and other matter (incl. CCS)	Article 87(1a)&(1b) Article 210 & 216 [Article 145]	LC/LP	OSPAR competence is reflected in Article 4 and in Annex II to the Convention – dumping is prohibited with the exception of matters on the “reverse” list in Article 3 of Annex II, which again are subject to OSPAR measures (Recommendations and Guidelines frequently used). CCS: Activity is subject to OSPAR measures (however, OSPAR measures may not be relevant in ABNJ as a permit issued by the competent authority of a Contracting Party is a requirement for storage, see 2007 amendments to Annexes II and III, and it is questionable whether national authorities may issue a permit for storage in the sub-seabed outside their own jurisdiction, see UNCLOS provisions on the Area. Storage in the water column is prohibited (see OSPAR Decision 2007/1)
Ocean fertilisation	Article 87(1f) Article 210 & 216 Part XIII	CBD LC/LP	OSPAR competence is reflected in Annex II of the Convention – ocean fertilization operations that constitute “dumping” are prohibited, whereas other operations may be subject to additional OSPAR measures.
Introduction of species	Article 196 Competent organisations in place	CBD; IMO Ballast Water Conv.; Fisheries Conventions	OSPAR may adopt measures to protect: <ul style="list-style-type: none"> • the marine environment against pollution and adverse effects of human activities (General Obligations - Article 2) • as well as marine biodiversity and ecosystems (Annex V) NB: Limitations in competence concerning fishing / shipping.
Bioprospecting	Part XI, Part XII		Depending on ongoing global decision making process
Marine scientific research	Article 87(1f) Article 143 Part XIII	All afore-mentioned conventions dealing with living marine resources to the extent that they conduct their own research	OSPAR may adopt measures to protect: <ul style="list-style-type: none"> • the marine environment against pollution and adverse effects of human activities (General Obligations - Article 2) • as well as marine biodiversity and ecosystems (Annex V) Work has already been done by establishing the “OSPAR Code of Conduct for Responsible Marine Research in the Deep Seas and High Seas of the OSPAR Maritime Area” In this respect, OSPAR could also co-operate with relevant international organisations with scientific remit (e.g. UNESCO–IOC, ICES etc.)

Looting and destruction of cultural heritage	Article 149 Article 303	UNESCO Convention on the Protection of the Under-water Cultural Heritage 2001	<p>May be scope for OSPAR measures, see general obligations to protect the marine environment against pollution and adverse effects of human activities (Article 2) as well as marine biodiversity and ecosystems (Annex V)</p> <p>NB: Limitations in competence concerning shipping.</p>
Sub-sea tourism			<p>OSPAR may adopt measures to protect:</p> <ul style="list-style-type: none"> • the marine environment against pollution and adverse effects of human activities (General Obligations - Article 2) • as well as marine biodiversity and ecosystems (Annex V) <p>NB: Limitations in competence concerning shipping.</p>

Human Activity in ABNJ	Legal basis	Organisation(s) with competence	How
Fishing	Article 8.4 UNFSA	ICCAT NASCO NAFCO	Fisheries closures Gear restrictions Port State Control
Mining	UNLOS Article 162(2)	ISA	Preservation reference zones
Placement of structures:			
-- Islands, floating structures			
-- Cables and pipelines			
Transit and transportation issues:			
-- Shipping	MARPOL 73/78 SOLAS Chapter V	IMO	Special Areas Particularly Sensitive Sea Areas Ship routing, mandatory ship reporting
-- Military forces			
-- Overflight		International Civil Aviation Organisation	
Dumping of wastes and other matter (incl. CCS)		London Convention and 1996 London Protocol thereto	Permit requirements (CCS under LP only)
Ocean fertilisation		London Convention and 1996 London Protocol thereto	Resolution LC-LP.1(2008)
Introduction of species		IMO	International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2008
Bioprospecting			
Marine scientific research	UNCLOS Article 256	IWC NAMMCO ASCOBANS UNESCO-IOC ICES	Research leading to conservation measure and regulating measures Global Ocean Observation System
Conservation issues	Article 64 & 65	CBD, CMS, IWC, NAMMCO, ASCOBANS	Conservation measures Whale sanctuaries
Cultural heritage	Article 149 Article 303	UNESCO	Measures to protect underwater cultural heritage
Sub-sea tourism			