Arctic Governance

The Arctic is on the threshold of historically unprecedented, potentially dangerous ecological change. The most prominent change is the recent severely accelerated melting of the arctic sea ice. This change will present new opportunities for the expansion of economic activities and exploitation of arctic resources leading to increased shipping, expanded oil and gas development, and new commercial fishing. However, these activities can also trigger the expansion of overfishing, illegal, unreported and unregulated fishing, harmful fishing practices (e.g., bottom trawling), pollution from ships and offshore extraction of oil and gas, oil spills, shipping incidents, invasion of alien species carried by ships' ballast water and other extremely harmful effects.

Many arctic species are already under stress from human activities and changes to arctic ecosystems driven by climate change. The introduction or expansion of activities that exploit the renewable and non-renewable resources of the Arctic will add further stress to already stressed systems. The additional stress may well push some arctic species and systems to the point of collapse.

Most of the marine waters of the Arctic are subject to national jurisdictions. National marine environmental protection regimes comprise a fragmented system of governance for the Arctic which contains large gaps in jurisdiction, implementation and, most notably, in effectiveness. The main international framework for arctic governance is the United Nations Convention on the Law of the Sea (UNCLOS). This convention alone does not address the special problems and growing threats facing the Arctic. UNCLOS provides the same rules for environmental protection of all ocean waters without allowing for the vast differences between different waters in

different parts of the world. It fails to provide special rules for environmental protection of ice-covered waters in the Arctic that clearly require different and stricter rules due to their unique challenges and vulnerability. Moreover, there are several gaps in the UNCLOS regime allowing for non-application of the provisions due to the general principle of sovereign immunity of ships and aircraft, i.e. the UNCLOS provisions on the protection of marine environment are not applicable to warships, or other vessels or aircrafts owned or operated by a State and used for governmental non-commercial service. The existing framework of cooperation on arctic issues consists of the Arctic Council and the Polar Code/Guidelines for Ships Operating in Arctic Ice-Covered Waters and has evolved through a set of cooperative "soft law" agreements, which do not have any legally binding force.

Therefore, the main challenge for protection of the arctic marine environment is the development of international rules, standards and systems for marine environmental protection in the face of rapidly increasing offshore activity which is accompanied by potentially adverse effects on the arctic marine environment.

There is an urgent need for a comprehensive international environmental regime specially tailored for the unique arctic conditions by which new and existing activities can be managed so that development occurs in a sustainable manner.

This regime is needed *before* the anticipated acceleration of the exploitation of arctic resources in the coming decade. The Arctic Ocean may be ice-free in the summer as early as 2013. The longer the delay in developing international environmental rules, the more likely it is that

unplanned and unregulated development will damage the very resources most necessary for a sustainable future in the Arctic.

WWF International's Arctic Programme proposes the adoption of a simple framework convention to improve the governance of the Arctic. This convention would provide a framework for arctic environmental issues, a harmonious uniform approach as opposed to a fragmented regime based on national approaches. The framework convention would allow for sustainable ecosystem-based management of the region.

The framework convention could be negotiated between the eight key Arctic countries and it would be a relatively simple instrument. It would contain the following functional elements:

- It would recognize the validity and authority of existing international agreements such as UNCLOS.
- It would recognize the overarching role of certain principles pursuant to which those instruments and other newly negotiated sub-agreements might be implemented in the Arctic. These principles would include such concepts as: resilience-based ecosystem management, the precautionary principle, stakeholder participation particularly with Indigenous peoples, and assessment and management of cumulative impacts.
- It would provide for the monitoring and assessment of environmental and socio-economic conditions throughout the Arctic and the reporting thereon.

- It would authorize the parties to enter into specific protocols as might be deemed necessary to either supplement the authorities of existing instruments or to provide for new specific management regimes. Initial areas for such protocols might include activities such as: oil & gas development, fisheries management, and shipping safety.

A framework convention could incorporate more serious obligations on the part of arctic governments to protect the marine environment and manage the regional resources sustainably. It could also provide a harmonized approach to enforcement and ensuring compliance.

Enclosed or semi-enclosed waters are normally governed by a regional governance arrangement and this is explicitly encouraged by UNCLOS. The Arctic Ocean would fall into this category. The modern trend of environmental governance is to apply ecosystem-based approach to regional marine governance. The most critical factors causing change in the Arctic are global in nature, and the consequences, in terms of ecological changes and new development opportunities, will affect the entire arctic region and beyond, as arctic systems interact with global systems. No state acting on its own can manage these changes properly.