

An Introduction to the Central Arctic Ocean Fisheries Agreement

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Overview presentation

- Structure of the CAOF Agreement
- Agreement Area
- Nature of the Agreement
- Key Interim Measures
- The Role of the Arctic Five
- Decision-Making, Entry into Force and Duration of the Agreement
- Relationship with the Arctic Council



Structure of the CAOF Agreement

- Preamble
- Art. 1 'Use of Terms'
- Art. 2 'Objective of this Agreement'
- Art. 3 'Interim Conservation and Management Measures Concerning Fishing'
- Art. 4 'Joint Program of Scientific Research and Monitoring'
- Art. 5 'Review and Further Implementation'
- Art. 6 'Decision-Making'
- Art. 7 'Dispute Settlement'
- Art. 8 'Non-Parties'



Structure of the CAOF Agreement (cont.)

- Art. 9 'Signature'
- Art. 10 'Accession'
- Art. 11 'Entry into Force'
- Art. 12 'Withdrawal'
- Art. 13 'Duration of the Agreement'
- Art. 14 'Relation to Other Agreements'
- Art. 15 'Depositary' (Canada)
- Date of signature and authentic texts (Chinese, English, French and Russian)



Agreement Area

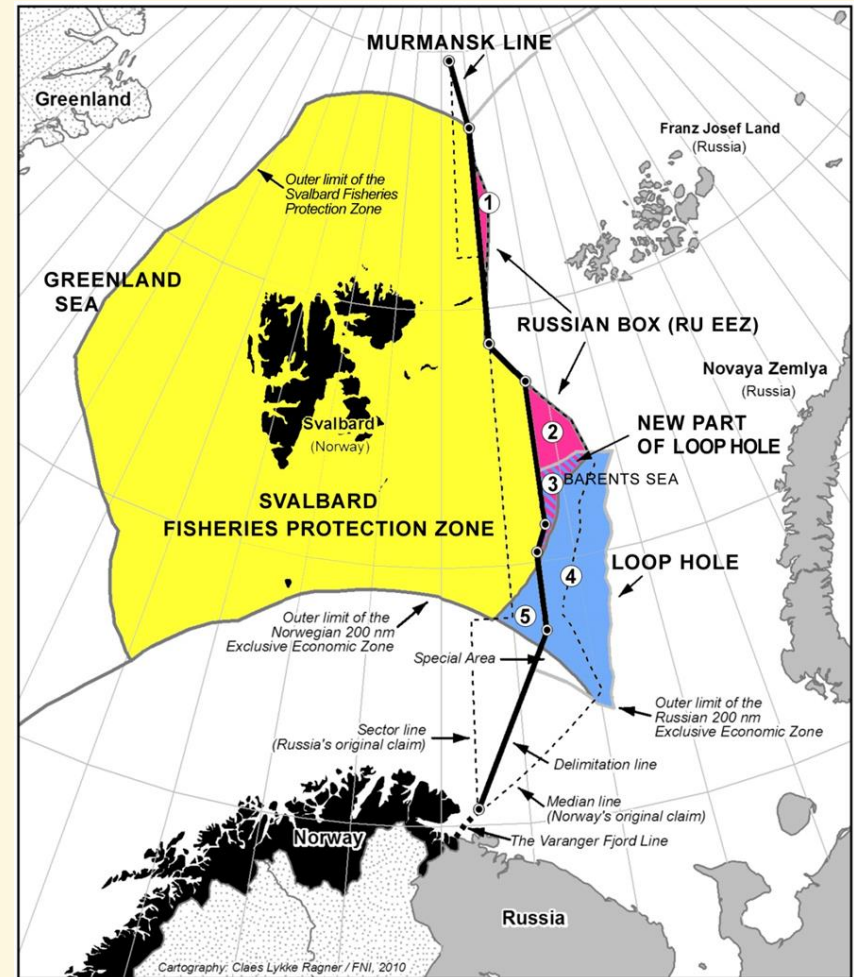
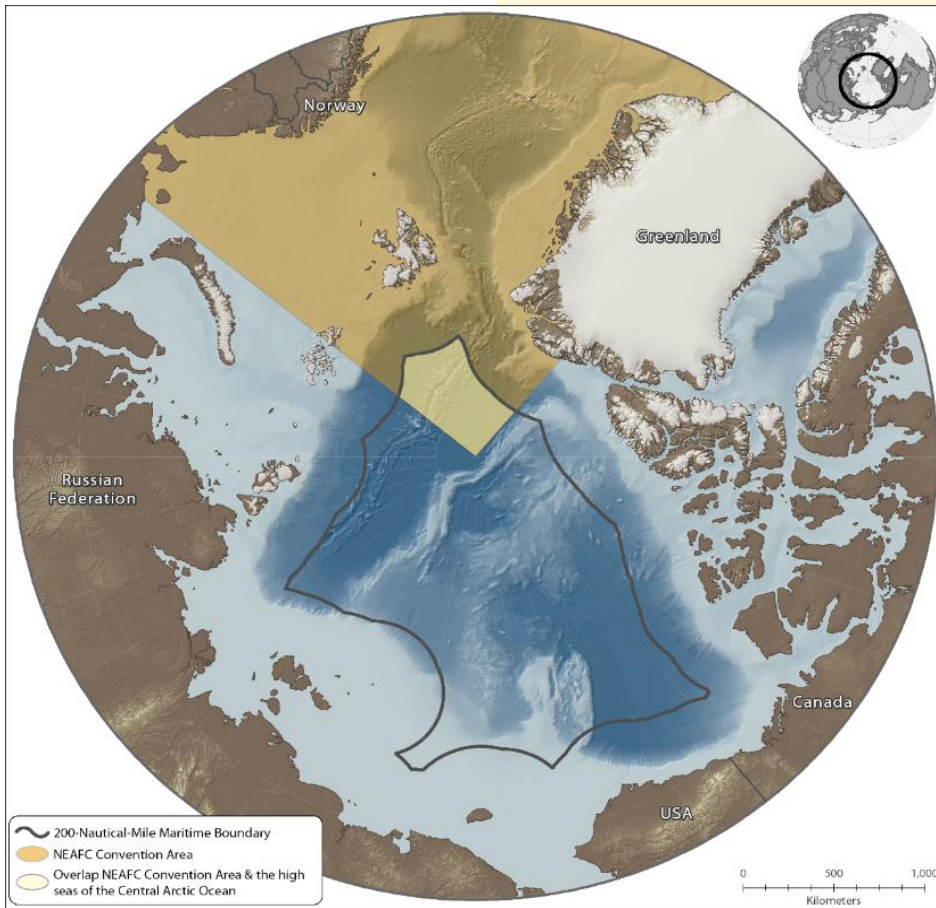
- As there are four high seas pockets in the marine Arctic
- Overlap with NEAFC Convention Area
- In the end, definition of 'Agreement Area' in Art. 1 'Use of Terms'

Article 1 *Use of Terms*

For the purposes of this Agreement:

(a) “Agreement Area” means the single high seas portion of the central Arctic Ocean that is surrounded by waters within which Canada, the Kingdom of Denmark in respect of Greenland, the Kingdom of Norway, the Russian Federation and the United States of America exercise fisheries jurisdiction;





Nature of the CAOF Agreement

- Legal nature: treaty
- Not a ban or moratorium on commercial high seas fishing
 - indefinite abstention from such fishing, which can be lifted when certain procedural and substantive conditions are met
- Probably unique in international fisheries law; application of the precautionary approach
- Similarities with the ban on commercial whaling agreed within the International Whaling Commission (IWC) and the arrangements on the resumption of fishing for pollock in the Central Bering Sea
- In light of fundamentally different interests of A5 and Other 5, arrangements to discontinue the abstention are crucial



Key Interim Measures

- Indefinite abstention from commercial fishing (Art. 3(1))
 1. Exception relating to existing RFMOs or RFMAs
 - No generally accepted definitions of RFMO or RFMA
 - NEAFC is generally accepted to be an RFMO
 - Is the Joint Norwegian Russian Fisheries Commission an RFMA and, if so, was/is it “established and [...] operated in accordance with international law”?
 2. Exception relating to future RFMOs or RFMAs
 - Stepwise approach (commence negotiation of RFMO/A)
 - One or more
 - Is the CAOFA Agreement an RFMA?
 3. Exception relating to conservation and management measures established by MOP to CAOFA Agreement



Article 3

Interim Conservation and Management Measures Concerning Fishing

1. Each Party shall authorize vessels entitled to fly its flag to conduct commercial fishing in the Agreement Area only pursuant to:

(a) conservation and management measures for the sustainable management of fish stocks adopted by one or more regional or subregional fisheries management organizations or arrangements, that have been or may be established and are operated in accordance with international law to manage such fishing in accordance with recognized international standards, or

(b) interim conservation and management measures that may be established by the Parties pursuant to Article 5, paragraph 1(c)(ii).



Key Interim Measures (cont.)

- Exception relation to exploratory fishing (Art. 3(3))

Article 3

Interim Conservation and Management Measures Concerning Fishing

3. A Party may authorize vessels entitled to fly its flag to carry out exploratory fishing in the Agreement Area only pursuant to conservation and management measures established by the Parties on the basis of Article 5, paragraph 1(d).

- Very detailed specifications in Art. 5(1)(d), including requirement of notification but without need for approval by the MOP



The Role of the Arctic Five

- *De facto* preparatory process (2010-2015) culminating in the 2015 Oslo Declaration
- Earlier cooperation
 - 1973 Agreement on the Conservation of Polar Bears
 - 1991 Arctic Environmental Protection Strategy (AEPS) among Arctic Eight
 - 1996: AEPS incorporated into Arctic Council
 - May 2008: Ilulissat Declaration among Arctic Five (Arctic Ocean coastal States)
 - March 2010: Arctic Five Ministerial Meeting in Chelsea, Canada



The Role of the Arctic Five (cont.)

- During 5+5 negotiations
 - Acknowledgment of role A5 in Preamble
 - Agreed terminology “central Arctic Ocean coastal States”
 - Special role (3 or 4) or *de facto* veto (all A5) in decision-making and entry into force
 - Concerns by the Other 5 on precedent-setting effects (‘creeping coastal State jurisdiction’)
- All this eventually led to a package deal on decision-making, entry into force, duration of the agreement (next slide), and an additional preambular paragraph



Recognizing the special responsibilities and special interests of the central Arctic Ocean coastal States in relation to the conservation and sustainable management of fish stocks in the ~~high seas of the~~ central Arctic Ocean;

Noting in this regard the initiative of the central Arctic Ocean coastal States as reflected in the Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean signed on 16 July 2015;



Decision-Making, Entry into Force, and Duration of the Agreement

- Decision-making (Art. 6)
 - From multiple decision-making procedures to a single procedure
 - From qualified majority & special role A5 to consensus
- Requirements for entry into force (Art. 11)
 - From qualified majority & special role A5 to all 5+5
- Duration of the Agreement (Art. 13)
 - Initial period of 16 years after entry into force
 - Subsequently: successive five-year extension unless any Party objects (veto)



Relationship with the Arctic Council

- A5 and 5+5 processes both 'stand-alone'; not under auspices Arctic Council or other intergovernmental body
 - US initiated discussions in Arctic Council in 2007, but no support
- Invitation Other 5 ensures representation of A8 (Iceland, and EU in respect of Finland and Sweden)
- Arctic Council Observer status of China, Japan, South Korea and - *de facto* - EU irrelevant
- No explicit reference to Arctic Council in CAOFA Agreement
 - But covered by phrase "relevant international bodies and programs" in Preamble





Thanks!

Questions?



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