HJR

19

<TARGET><BILL>HJR 19</BILL><SUBJECT>HJR 19</SUBJECT><COMM>HRES27</COMM></TARGET>

ALASKA STATE LEGISLATURE

HOUSE SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE, & TOURISM

Representative Bob Herron, Chair

Rep. Neal Foster, Rep. Berta Gardner, Rep. Reggie Joule, Rep. Wes Keller, Rep. Cathy Muñoz, Rep. Kurt Olson, Rep. Steve Thompson, Rep. Chris Tuck

MEMORANDUM

Date: March 8, 2011

To: Rep. Eric Feige, House Resources Co-Chair
Rep. Paul Seaton, House Resources Co-Chair

From: Rep. Bob Herron

RE: HJR 19, Supporting Ratification of Law of the Sea

I respectfully request a hearing in House Resources for **HJR 19, "Urging the United States Senate to ratify the United Nations Convention on the Law of the Sea."**

HJR 19 urges the United States Senate to ratify the United Nations Convention on the Law of the Sea (UNCLOS), also known as the Law of the Sea treaty (LOST). This resolution will help Alaska's Senate delegation bring the Law of the Sea treaty to the Senate floor for a vote on ratification. Ratification of this treaty is important to protect United States interests concerning the use and development of the high seas off Alaska.

In her annual address to the Alaska State Legislature February 24, 2011, United States Senator Lisa Murkowski called on the Legislature to once again pass a resolution urging United States Senate ratification of UNCLOS.

Under the treaty, member nations can claim an exclusive economic zone (EEZ) to 200 miles, with sovereign rights to explore, develop, and manage the resources within that zone. A claim can extend beyond the 200 mile limit if the continental shelf can be proven to extend beyond 200 miles. It is estimated that the northern seabed off Alaska and beyond the 200-mile limit could be as large as the state of California.

If you have any questions or need additional information, please contact myself or my staff Rob Earl at 465.4942.

27-LS0608\I
Kane
3/9/11

CS FOR HOUSE JOINT RESOLUTION NO. 19( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE, AND TOURISM

A RESOLUTION

Urging the United States Senate to ratify the United Nations Convention on the Law of the Sea.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the United Nations Convention on the Law of the Sea preserves freedom of navigation as a basic right of all countries; and

WHEREAS the United Nations Convention on the Law of the Sea permits member nations to claim an exclusive economic zone out to 200 nautical miles from shore, with an exclusive sovereign right to explore, manage, and develop all living and nonliving resources, including deep sea mining, within that exclusive economic zone; and

WHEREAS the United States Arctic Research Commission estimates that the United Nations Convention on the Law of the Sea would permit the United States to lay claim beyond the present 200-mile exclusive economic zone to an area of the Arctic Ocean seabed north of Alaska that is about the size of California; and

WHEREAS, by not joining the Convention, the United States is forfeiting sovereign rights to and international recognition of an expansion of United States resource jurisdiction by as much as 1,000,000 square kilometers of ocean, an area half the size of the Louisiana

Purchase; and

WHEREAS, with nearly one-third of all the world's hydrocarbons being produced off-shore, the United States would be unwise to ignore the need for access to extended oil and gas resources on the outer continental shelf; and

WHEREAS the United States Geological Survey estimates that the Arctic contains conventional oil and gas resources totaling approximately 90,000,000,000 barrels of oil, 1,669 trillion cubic feet of natural gas, and 44,000,000,000 barrels of natural gas liquids, amounting to more than one-fifth of the world's undiscovered, recoverable oil and natural gas resources; and

WHEREAS American energy and deep-seabed companies are at a disadvantage in making investments in the outer continental shelf because of the legal uncertainty over the outer limit of the federal continental shelf; and

WHEREAS the United States, as a major maritime power and as the country with the largest exclusive economic zone and one of the largest continental shelves, stands to gain more from the Convention in terms of economic and resource rights than any other country; and

WHEREAS other Arctic nations have been asserting their sovereignty in the Arctic and making extended continental shelf claims under the United Nations Convention on the Law of the Sea; and

WHEREAS the United States, with 1,000 miles of Arctic coast off of the State of Alaska, remains the only Arctic nation that has not ratified the United Nations Convention on the Law of the Sea; and

WHEREAS, until the United States ratifies the United Nations Convention on the Law of the Sea, the United States will not become a full partner in cooperative efforts of Arctic nations to address the manifold problems of the region; and

WHEREAS, until the United States ratifies the United Nations Convention on the Law of the Sea, the United States cannot participate in deliberations to amend provisions of the Convention that relate to the

(1) oil, gas, and mineral resources in the Arctic Ocean and other northern waters;

(2) conduct of essential scientific research in the world's oceans;

(3) right of the United States to the use of the seas;

(4) rules of navigation;

(5) effect of the use of the seas on world economic development; and

(6) environmental concerns related to the use of the seas; and

WHEREAS the United States continues to reject a carefully negotiated accord that enjoys overwhelming international consensus, one that has been adjusted specifically to meet the demands set out by President Ronald Reagan two decades ago; and

WHEREAS the United Nations Convention on the Law of the Sea will have sizable beneficial effects on virtually all states, both coastal and noncoastal, because the United States is heavily dependent on the use, development, and conservation of the world's oceans and their resources; and

WHEREAS 161 nations have ratified the United Nations Convention on the law of the sea, including almost all of the world's maritime powers; and

WHEREAS ratification of the United Nations Convention on the Law of the Sea has been pending before the United States Senate since 1994, and seven hearings on the treaty were held by the United States Senate Committee on Foreign Relations in 2003, 2004, and 2007; and

WHEREAS, despite favorable reports by the United States Senate Committee on Foreign Relations regarding the United Nations Convention on the Law of the Sea in 2004 and 2007, the United States Senate has yet to vote on the ratification of the Convention; and

WHEREAS all six of the United States military leaders making up the Joint Chiefs of Staff support Senate ratification of the United Nations Convention on the Law of the Sea; and

WHEREAS ratification of the United Nations Convention on the Law of the Sea has wide bipartisan support; and

WHEREAS, in 2009, the Twenty-Sixth Alaska State Legislature passed a similar resolution to this one;

BE IT RESOLVED that the Alaska State Legislature again strongly urges the United States Senate in emphatic terms to please ratify the United Nations Convention on the Law of the Sea as soon as possible.

COPIES of this resolution shall be sent to the Honorable Joseph R. Biden, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable John F. Kerry,

Chair of the U.S. Senate Committee on Foreign Relations; the Honorable Richard G. Lugar, ranking Republican on the U.S. Senate Committee on Foreign Relations; the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S. Senators, members of the Alaska delegation in Congress; and all other members of the United States Senate.

CS FOR HOUSE JOINT RESOLUTION NO. 19(EDT)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE, AND TOURISM

Offered:
Referred:

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WHEREAS, by not joining the Convention, the United States is forfeiting sovereign rights to and international recognition of an expansion of United States resource jurisdiction by as much as 1,000,000 square kilometers of ocean, an area half the size of the Louisiana

Purchase; and

WHEREAS, with nearly one-third of all the world's hydrocarbons being produced off-shore, the United States would be unwise to ignore the need for access to extended oil and gas resources on the outer continental shelf; and

WHEREAS the United States Geological Survey estimates that the Arctic contains conventional oil and gas resources totaling approximately 90,000,000,000 barrels of oil, 1,669 trillion cubic feet of natural gas, and 44,000,000,000 barrels of natural gas liquids, amounting to more than one-fifth of the world's undiscovered, recoverable oil and natural gas resources; and

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WHEREAS, other Arctic nations have been asserting their sovereignty in the Arctic and making extended continental shelf claims under the United Nations Convention on the Law of the Sea; and

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WHEREAS the United States continues to reject a carefully negotiated accord that enjoys overwhelming international consensus, one that has been adjusted specifically to meet the demands set out by President Ronald Reagan two decades ago; and

WHEREAS the United Nations Convention on the Law of the Sea will have sizable beneficial effects on virtually all states, both coastal and noncoastal, because the United States is heavily dependent on the use, development, and conservation of the world's oceans and their resources; and

WHEREAS ratification of the United Nations Convention on the Law of the Sea has been pending before the United States Senate since 1994, and hearings on the treaty were held by the United States Senate Committee on Foreign Relations in 1994, 2003, and 2004, and on September 27, 2007, and October 4, 2007; and

WHEREAS, despite favorable reports by the United States Senate Committee on Foreign Relations regarding the United Nations Convention on the Law of the Sea in 2004 and 2007, the United States Senate has yet to vote on the ratification of the Convention; and

WHEREAS all six of the United States military leaders making up the Joint Chiefs of Staff support Senate ratification of the United Nations Convention on the Law of the Sea; and

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Murkowski and the Honorable Mark Begich, U.S. Senators, members of the Alaska delegation in Congress; and all other members of the United States Senate.

ALASKA STATE LEGISLATURE

HOUSE SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE, & TOURISM

Representative Bob Herron, Chair

Rep. Neal Foster, Rep. Berta Gardner, Rep. Reggie Joule, Rep. Wes Keller,
Rep. Cathy Muñoz, Rep. Kurt Olson, Rep. Steve Thompson, Rep. Chris Tuck

Sponsor Statement

HJR 19, "Urging the United States Senate to ratify the United Nations Convention on the Law of the Sea."

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The Law of the Sea treaty governs many aspects of oceans, such as mapping, state area control, environmental control, marine scientific research, economic and commercial activities, transfer of technology and the settlement of disputes relating to ocean matters.

161 countries are signatories to the treaty, including all of the Arctic nations with the exception of the United States.

In her annual address to the Alaska State Legislature February 24, 2011, United States Senator Lisa Murkowski called on the Legislature to once again pass a resolution urging United States Senate ratification of UNCLOS. United States participation in the Law of the Sea Treaty was approved in 1994 by President Clinton after work was done on portions of the treaty to address concerns raised by President Reagan. Entities and persons on record supporting ratification are all United States Presidents since Reagan, the United States Coast Guard, the Department of the Navy, the State Department, the Joint Chiefs of Staff, AT&T, The American Petroleum Institute, The International Association of Drilling Contractors, and the National Oceans Industries Association and many others.

Under the treaty, member nations can claim an exclusive economic zone (EEZ) to 200 miles, with sovereign rights to explore, develop, and manage the resources within that zone. A claim can extend beyond the 200 mile limit if the continental shelf can be proven to extend beyond 200 miles. It is estimated that the northern seabed off Alaska and beyond the 200-mile limit could be as large as the state of California.

Key features of the Law of the Sea treaty include the following:

- Coastal States exercise sovereignty over their territorial sea which may not exceed 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters;
- Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage;
- Coastal States have sovereign rights in the 200-nautical mile EEZ with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection;
- All other States have freedom of navigation and over flight in the EEZ, as well as freedom to lay submarine cables and pipelines;
- All States enjoy the traditional freedoms of navigation, over-flight, scientific research and fishing on the high seas; they are obliged to adopt, or cooperate with other States in adopting, measures to manage and conserve living resources;
- States are bound to prevent and control marine pollution and are liable for damage caused by violation of their international obligations to combat such pollution;
- All marine scientific research in the EEZ and on the continental shelf is subject to the consent of the coastal State, but in most cases they are obliged to grant consent to other States when the research is to be conducted for peaceful purposes and fulfils specified criteria;
- States Parties are obliged to settle by peaceful means their disputes concerning the interpretation or application of the Convention;
- Disputes can be submitted to the International Tribunal for the Law of the Sea established under the Convention, to the International Court of Justice, or to arbitration. Arbitration is also available and, in certain circumstances, submission to it would be compulsory. The Tribunal has exclusive jurisdiction over deep seabed mining disputes.

The State of Alaska has much to gain from international recognition of the United States' 200 mile EEZ and extended continental shelf and much to lose if we are the only Arctic nation not to extend our ocean boundaries.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number
Bill Version: **HJR 19**
() Publish Date

HJR19-LEG-COU-3-7-2011
Title: "Support for United Nations Convention on the Law of the Sea"
Sponsor: House Special Committee on Econ Dev, Trade & Tourism
Requester: House Special Committee on Econ Dev, Trade & Tourism

Dept. Affected: Legislature
Appropriation: Legislative Council
Allocation: Session Expenses
OMB Component Number: 782

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2012**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2011) cost

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version

Initial Version

Prepared by: Shane Miller, Finance Manager — Phone 465-6626
Division: Administrative Services Division — Date/Time 3/7/11 1:04 PM
Approved by: Pamela Varni, Executive Director — Date 3/7/2011
Legislative Affairs Agency

(Revised 12/29/2010 OMB)

Analysis

This fiscal note has zero impact on the Legislative Affairs Agency.

PREPARED STATEMENT OF REAR ADMIRAL CHRISTOPHER C. COLVIN, COMMANDER, SEVENTEENTH COAST GUARD DISTRICT, U.S. COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

Good morning, Mr. Chairman and distinguished members of the Committee. I am Rear Admiral Christopher C. Colvin, Commander of the Seventeenth Coast Guard District. It is an honor to appear before you today to provide you information about how accession to the United Nations Convention on the Law of the Sea would benefit the United States Coast Guard in the performance of its missions and in protecting the American people.

In my current position, I am responsible for directing Coast Guard operations, including search and rescue, maritime safety, environmental protection, fisheries law enforcement and military readiness, in Alaska and portions of the North Pacific Ocean, the Arctic Ocean, and the Bering Sea. Units under my command patrol over 3.8 million square miles of ocean and 33,000 miles of coastline. Coast Guard aircraft and vessels monitor more than 950,000 square miles off the Alaskan coast to enforce U.S. fisheries laws. The Coast Guard patrols an even larger area of the North Pacific to stop large scale, high seas drift netting and other illegal fishing practices. I also consider maritime safety and environmental protection to be priority missions. Over 15 percent of the oil that America produces each day transships through the Port of Valdez. Alaska is the world's second most popular cruise destination, bringing nearly one million passengers to its waters every year. The safety of these ships and passengers and protection of the waters in and around Alaska are critical missions.

Due to my time in Service, I have become one of the most experienced mariners in the Coast Guard. I have been assigned to six cutters and have commanded three; the last of which included conducting combat operations in the Middle East in support of Operation Iraqi Freedom. In general, I have spent about half of my afloat career conducting fisheries patrols in Alaska and the other half conducting drug patrols in the Caribbean. I once calculated that I've spent about three years of my life on patrol in the Bering Sea. I have also served as the Chief of Staff and Chief of Operations of the Coast Guard Atlantic Area. Just before my present assignment, I served as the Deputy Director for Operations at the U.S. Northern Command.

The breadth of these assignments—encompassing Coast Guard operations in the Caribbean Sea, the Gulf of Mexico, the Bering Sea, and the Atlantic, Pacific, and Arctic Oceans—provides me with the experience necessary to comment on the many beneficial effects that becoming party to the Law of the Sea Convention would have on U.S. Coast Guard missions.

The Law of the Sea Convention created a comprehensive legal regime that provides the Coast Guard with the legal certainty and stability to exercise its navigational rights and freedoms, to protect fisheries, to control marine pollution, and to maintain a legal order of the oceans against criminals and terrorists. From the Coast Guard perspective, public order of the oceans is best established and maintained by a stable, universally accepted law reflective of U.S. national interest. The navigation provisions of the Law of the Sea Treaty are reflective of customary international law.

One of the core foundations of the Convention was codification of rights and responsibilities of states as port States, flag States, and coastal States. It clarifies and delimits seaward territorial claims by coastal States to ensure navigational freedoms while at the same time recognizing the U.S.'s interest as a coastal State with sovereignty to protect its living and non-living marine resources. The result is an appropriate balance between the exclusive interests of coastal States and the interests of maritime States. It limits the maximum breadth of the territorial sea that a coastal State could claim to 12 nautical miles. Our fishery conservation management interests, as reflected in the Magnuson-Stevens Fishery Conservation Management Act of 1977, were instrumental in the international development of the concept of the 200-nautical mile Exclusive Economic Zone (EEZ). In the EEZ, all nations enjoy freedoms of navigation and overflight as on the high seas, while the coastal State possesses sovereign rights to protect and exploit the living and non-living marine resources. The United States, with the world's largest and richest EEZ, is perhaps the greatest beneficiary of this concept.

The Convention also calls for international cooperation among States in preserving the world's high-seas fisheries. An example of such cooperation is the UN ban on high seas drift net fishing and other illegal fishing practices. Each year, the Coast Guard patrols the North Pacific to conduct boardings and inspections under the Convention on the Conservation and Management

of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. Over two dozen nations participate in this effort, which is a direct outcome of the Law of the Sea Convention.

The Convention also provides a comprehensive framework for the prevention, reduction, and control of maritime pollution. The Coast Guard conducts a wide-ranging port-state-control program to purge our waters of substandard ships and is assisting other nations in doing the same. The Convention carefully balances the rights of coastal States to adopt certain measures to protect the marine environment adjacent to their shores with the right of a flag State to set and enforce standards and requirements concerning the operation of its vessels. Moreover, it does all this without unduly burdening international maritime navigation and sea-borne trade.

The Coast Guard already relies heavily on the navigational freedoms and overflight rights codified in the Law of the Sea Convention. These protections allow the use of the world's oceans to meet changing national security requirements. In this regard, worldwide mobility requires undisputed access through international straits and archipelagic waters. The Convention ensures that our Coast Guard cutters will have their sovereign immunity protected wherever in the world they may be operating. In addition, the Convention limits a nation's territorial sea to no more than 12 nautical miles, beyond which all nations enjoy a high seas navigation regime that includes the freedom to engage in law enforcement activities. The Convention codifies the right to operate freely beyond a nation's territorial sea and protects this right by limiting excessive maritime claims that can have the effect of creating maritime safe havens for drug traffickers and other criminals. Each year, Coast Guard maritime interdiction operations occurring on international waters result in the seizure of tens of thousands of pounds of cocaine, dozens of vessels, and hundreds of arrests. Most of these seizures take place on distant maritime transit routes far from our shores. However, during bi-lateral negotiations, several nations have, in the past, questioned our authority to contest some of their excessive maritime claims simply because we have yet to become party to the Convention.

The Convention contains effective provisions for dealing with illegal activities at sea. Article 108 of the Convention requires international cooperation in the suppression of the transport of illegal drugs. The United Nations Convention against Illicit Traffic in Narcotic Drugs and

Psychotropic Substances, also known as the 1988 Vienna Convention, is a fine example of this. The United States has been at the forefront of international cooperation in the war against illegal drugs, and the use of ocean space to transport them. We have aggressively pursued bilateral agreements with many nations that border drug transit zones as well as States with large registries to facilitate the effective interdiction of vessels suspected of transporting illegal drugs and the eventual prosecution of the drug traffickers. During discussions with these nations, we emphasize the Convention's call for cooperation and premise each agreement on concepts codified within the Convention. Articles 100-107 detail the international legal principles dealing with acts of piracy at sea. Other provisions prohibit the transport of slaves, the operation of stateless vessels, and other activities in violation of international norms.

The Convention also contains provisions that enhance our ability to interdict foreign-flagged vessels off our own coasts. The Convention codifies a coastal nation's right to establish a 12-nautical mile contiguous zone just beyond the territorial sea, where it may exercise control to prevent and punish infringements of its customs, immigration, fiscal, and sanitary laws. Adoption by the U.S. of an expanded contiguous zone has doubled the area where we can exercise these increased authorities. The benefits of the contiguous zone against traffickers surreptitiously shipping their illicit products to U.S. shores are clear.

As the lead Federal agency for maritime safety and security, the Coast Guard believes that U.S. accession to the 1982 UN Convention on the Law of the Sea would benefit the Coast Guard in its efforts to improve maritime safety and ensure the security of our maritime borders, thus promoting homeland security. The Convention recognizes that various UN subsidiary bodies may serve as competent international organizations for the further development of certain aspects of the law of the sea. The International Maritime Organization has always been the recognized competent international organization for maritime safety and marine environmental protection. More recently, it has assumed a similar role in port facility and vessel security. The Coast Guard has worked at the IMO to amend the SOLAS Convention for vessel and port facility security, to enhance maritime domain awareness through Long Range Identification and Tracking (LRIT) of vessels bound for U.S. ports and waters, and to increase the operational effectiveness of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

(SUA Convention). The negotiations necessary to support efforts such as these take place in the context of the overwhelming number of nations at IMO being parties to the Law of the Sea Convention. Because of this fact, the Law of the Sea Convention provides the framework for the discussions and agreements. Although we have enjoyed success in the international security agreements so far, those negotiations have not always been easy. Frankly, the fact that the United States is not a party to the Law of the Sea Convention, when the overwhelming number of our international partners are parties, has repeatedly placed us in a difficult negotiating position at IMO and other forums.

In summation, while I am not in a position to express an Administration or Coast Guard position on the specific Resolution that this committee is considering, I am of the opinion that the provisions of the Law of the Sea Convention fairly balance the interests of coastal nations to control activities off their coasts with the freedom of navigation and overflight rights of all nations. The practical effect for the United States is to control economic activities within the world's largest Exclusive Economic Zone, while enabling our forces and merchant vessels to freely operate in every part of the globe. The Convention guarantees our military and transportation industries critical navigation and overflight rights. And U.S. fishermen enjoy exclusive fishing out to 200 nautical miles. In the view of the Coast Guard, the Convention for the Law of the Sea greatly improves our ability to protect the American public as well as our efforts to manage our ocean resources and to protect the marine environment. Becoming a party to the Convention would significantly enhance our global position in maritime affairs.

Thank you for the opportunity to make this informational appearance before you today.

Coast Guard commander urges treaty ratification

THE ASSOCIATED PRESS

JUNEAU — The departing commander of the Coast Guard's 17th District, which includes Alaska, said the U.S. must ratify the Law of the Sea treaty to ensure access to and control over a rich oil and mineral bed that is getting attention from China.

Rear Admiral Christopher Colvin said the U.S. would gain exclusive control of the ocean bottom up to 440 miles off the Alaska northern coast, according to KTOO-FM.

"That's important territory on the bottom," Colvin said. "It has oil, gas and minerals that will be very valuable."

The U.S. has exclusive control of 200 miles of ocean bed off the coast, and Colvin said Chinese mineral exploration crews are working in the area that would turn over to U.S. control if it ratified the treaty.

"(The Chinese) have an icebreaker, they're building another icebreaker, the world's largest non-nuclear icebreaker to go along with the previous one," Colvin said. "They're doing scientific research probably for energy exploration because there's lots of energy on the Chuchki Plateau."

Colvin will be transferred in May to the Coast Guard's Pacific Area Command in Alameda, Calif., where he'll be second in command of Pacific operations.

The European Union and 160 nation states have ratified the Law of the Sea treaty. The United States is one of 18 countries that have signed, but not ratified it.

The treaty, first put forward by the United Nations in 1982, would establish a governing system for the use of the ocean for military, transportation and mineral extraction purposes.

U.S. Sen. Lisa Murkowski, who is pushing for ratification of the treaty, said she has faced questions that first surfaced during the administration of President Ronald Reagan concerning the U.S. ceding its sovereignty by ratifying the treaty.

"They ask, what does this do to America's sovereignty?" Murkowski said. "By failing to ratify the treaty, by failing to be at the table, we give up that sovereignty ourselves."

Last week, Murkowski told the state Legislature she'll push for ratification of the Law of the Sea treaty this spring or summer. She said Senate Foreign Relations Committee Chair John Kerry and President Barack Obama are behind the measure, but it faces opposition in Congress.

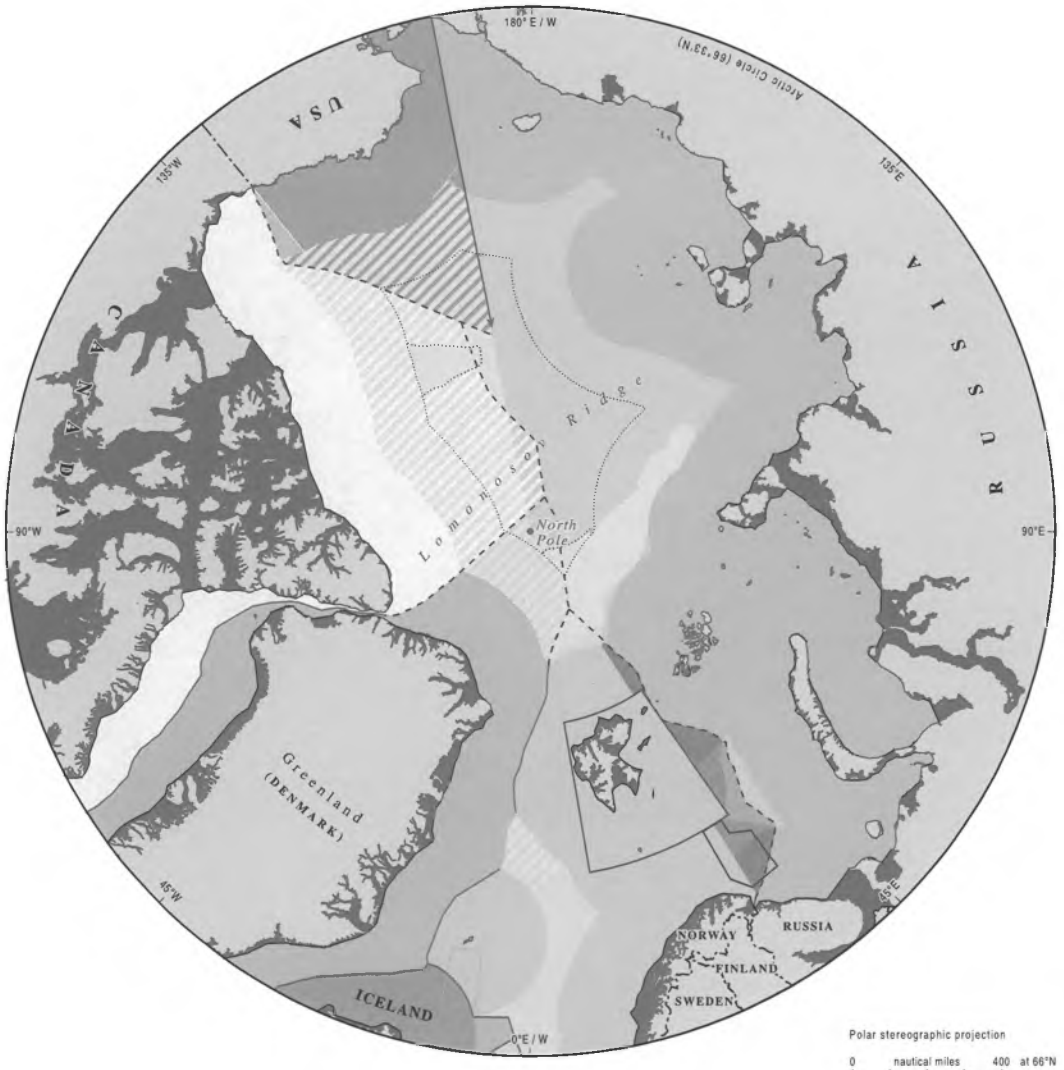
Murkowski also asked U.S. Department of Homeland Security Secretary Janet Napolitano for an update on the Coast Guard's icebreaker fleet.

Obama's budget proposal calls for decommissioning the icebreaker the Polar Sea, which would leave the U.S. with only one icebreaker for the next two years — the Healy, which can't break heavy ice.

IBRU International Boundaries

Durham University

Maritime jurisdiction and boundaries in the Arctic region



- Internal waters
- Canada territorial sea and EEZ
- Potential Canada continental shelf beyond 200 nm
- Denmark territorial sea and EEZ
- Denmark claimed continental shelf beyond 200 nm
- Potential Denmark continental shelf beyond 200 nm)
- Iceland EEZ
- Iceland claimed continental shelf beyond 200 nm
- Norway territorial sea and EEZ / Fishery zone Jan Mayen) / Fishery protection zone (Svalbard)
- Norway claimed continental shelf beyond 200 nm
- Russia territorial sea and EEZ
- Russia claimed continental shelf beyond 200 nm
- Overlapping Norway / Russia EEZ
- Overlapping Norway EEZ / Russia claimed continental shelf beyond 200 nm
- Overlapping Norway / Russia claimed continental shelf beyond 200 nm
- USA territorial sea and EEZ
- Potential USA continental shelf beyond 200 nm
- Overlapping Canada / USA EEZ
- Straight baselines
- Agreed boundary
- Median line
- 350 nm from baselines
- 100 nm from 2500 m isobath (beyond 350 nm from baselines)
- Svalbard treaty area
- Iceland - Norway joint zone
- Norway - Russia 'Grey Area' (agreed fishing regime)
- Canada EEZ boundary claim
- Eastern Special Area

Notes

1. The depicted potential areas of continental shelf beyond 200 nautical miles (nm) for Canada, Denmark and the USA are theoretical maximum claims assuming that none of the states claims continental shelf beyond median lines with neighbouring states where maritime boundaries have not been agreed. **In reality, the claimable areas may fall well short of the theoretical maximums** (see the summary of the definition of the outer limit of the continental shelf below). It is also possible that one or more states will claim areas beyond the median lines.

   Where the continental margin of a coastal state extends beyond 200 nm from the state's territorial sea baseline, the outer limit of the continental shelf is defined with reference to two sets of points: (i) points 60 nm from the foot of the continental slope; (ii) points at which the thickness of sedimentary rocks is at least 1% of the shortest distance from the points in question to the foot of the continental slope. The outer limit of the continental shelf is defined by a series of straight lines (not exceeding 60 nm in length) connecting the seawardmost of the points in the two sets described above. This map does not attempt to depict such lines, which can only be identified with precision through bathymetric and seismic surveys. However, it is possible to depict the 'cut-off' limit beyond which states may not exercise continental shelf jurisdiction regardless of the location of the foot of the continental slope and the thickness of sediment seaward of that point. The cut-off limit is the seawardmost combination of two lines: (i) a line 350 nm from the state's territorial sea baseline; (ii) a line 100 nm seaward of the 2,500 metre isobath. Both the 350 nm line and (where it runs seaward of the 350 nm line) the 2,500 m + 100 nm lines are depicted on the map. The 2,500 m + 100 nm line is derived from the US National Geophysical Data Center's etopo2 bathymetry dataset.

2. The depicted claims of Denmark and Iceland to continental shelf beyond 200 nm in the northeast Atlantic Ocean are defined in the "Agreed Minutes on the Delimitation of the Continental Shelf beyond 200 Nautical Miles between the Faroe Islands, Iceland and Norway in the Southern Part of the Banana Hole of the Northeast Atlantic" of 20 September 2006. The agreed division of the continental shelf in this area is subject to confirmation by the Commission on the Limits of the Continental Shelf (CLCS) that there is a continuous continental shelf in the area covered by the agreement. Neither Denmark nor Iceland has yet made a submission to the CLCS.

3. An executive summary of Norway's submission to the CLCS of 27 November 2006 is available at http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_exec_sum.pdf. The Commission has yet to respond to Norway's submission.

4. Maps and coordinates defining the area covered by Russia's submission to the CLCS of 20 December 2001 are available at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm. The Commission asked Russia to revise its submission relating to its continental shelf in the Arctic Ocean.

5. Norway and the Soviet Union agreed a partial maritime boundary in Varangerfjord in 1957 but disagree on the alignment of their maritime boundary in the Barents Sea: Norway claims the boundary should follow the median line, while Russia seeks a 'sector' boundary extending due north (but deviating around the 1920 Svalbard Treaty area). As the Barents Sea is an important fishery for both states, in January 1978 the two governments agreed on a fishing regime in the so-called "Grey Zone", a 19,475 nm² area covering 12,070 nm² of overlapping EEZ claims, 6,588 nm² of undisputed Norwegian EEZ and 817 nm² of undisputed Russian EEZ. Within the Grey Zone Norway and Russia have jurisdiction over their own fishing vessels.

6. Canada argues that the maritime boundary in the Beaufort Sea was delimited in the 1825 treaty between Great Britain and Russia defining the boundary between Alaska and the Yukon as following the 141° W meridian "as far as the frozen ocean". The USA argues that no maritime boundary has yet been defined and that the boundary should follow the median line between the two coastlines. The area of overlap between the two claims is more than 7,000 nm².

7. Under a treaty signed in February 1920, Norway has sovereignty over the Svalbard archipelago and all islands between latitudes 74° and 81° north and longitudes 10° and 35° east. However, citizens and companies from all treaty nations enjoy the same right of access to and residence in Svalbard. Right to fish, hunt or undertake any kind of maritime, industrial, mining or trade activity are granted to them all on equal terms. All activity is subject to the legislation adopted by Norwegian authorities, but there may be no preferential treatment on the basis of nationality. Norway is required to protect Svalbard's natural environment and to ensure that no fortresses or naval bases are established. 39 countries are currently registered as parties to the Svalbard treaty.

8. The Eastern Special Area lies more than 200 nm from the baseline of the USA but less than 200 nm from the baseline of Russia. Under the June 1990 boundary agreement between the two states, the Soviet Union agreed that the USA should exercise EEZ jurisdiction within this area. A second Eastern Special Area and a Western Special Area (in which the opposite arrangement applies) were established adjacent to the boundary south of 60° north. The agreement has yet to be ratified by the Russian parliament but its provisions have been applied since 1990 through an exchange of diplomatic notes.

Agreed maritime boundaries

Canada-Denmark (Greenland): continental shelf boundary agreed 17 December 1973.

Denmark (Greenland)-Iceland: continental shelf and fisheries boundary agreed 11 November 1997.

Denmark (Greenland)-Norway (Jan Mayen): continental shelf and fisheries boundary agreed 18 December 1995 following adjudication by the International Court of Justice.

Denmark (Greenland)-Iceland-Norway (Jan Mayen) tripoint agreed 11 November 1997.

Denmark (Greenland)-Norway (Svalbard): continental shelf and fisheries boundary agreed 20 February 2006.

Iceland-Norway (Jan Mayen): fisheries boundary following the 200 nm limit of Iceland's EEZ agreed 28 May 1980; continental shelf joint zone agreed 22 October 1981 following the report of the Conciliation Commission.

Russia-USA: single maritime boundary agreed 1 June 1990 (see also note 8).

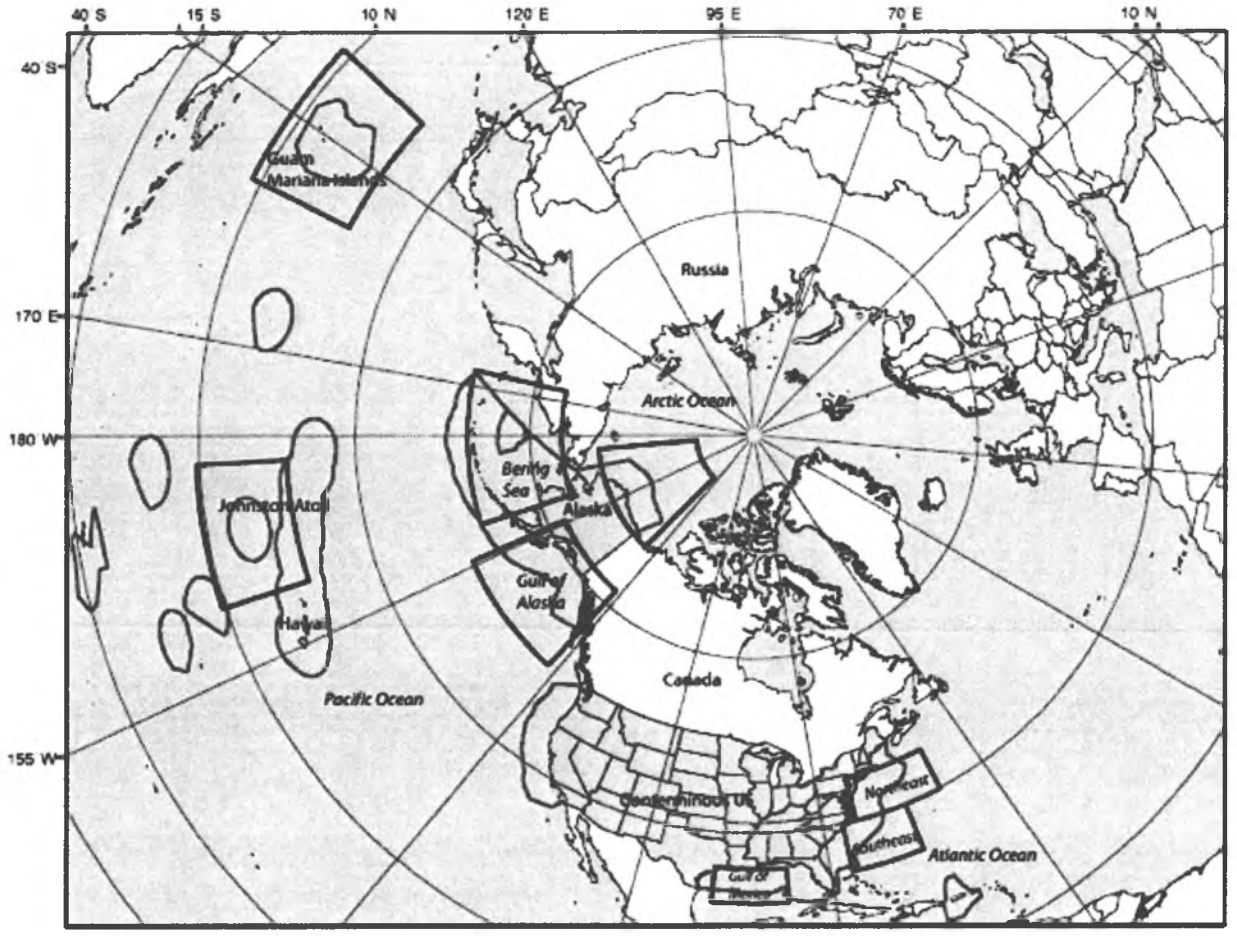


Figure 2: Eight regions (in red) adjacent to the United States and its dependences, where there likely exists extended continental shelf (ECS) beyond 200 nautical miles (in blue) identified by Mayer et al.(2002), The compilation and analysis of data relevant to a U.S. Claim under the United Nations Law of the Sea Article 76: A Preliminary Report. The regions presented in this figure are the result of an academic study, do not represent a formal position of the United States, and are without prejudice to any rights that the United States has with respect to its continental shelf.

US Department of State
Extended Continental Shelf Project

3. Law of the Sea and Governance of Shipping in the Arctic and Antarctic

David L. VanderZwaag

3.1 Introduction

The 1982 UN Law of the Sea Convention (LOSC), which came into force in November 1994, might be described as setting the legal foundations for marine environmental protection and controlling marine resource exploitations in all the world's oceans, including the Polar seas. Having 320 articles and nine Annexes, the Convention sets out a basic requirement for all states to protect and preserve the marine environment (Art. 194) and to cooperate in developing global standards for shipping (Art. 211) and global and regional standards for land-based marine pollution (Art. 207), ocean dumping (Art. 210) and seabed activities (Art. 208). States also have an obligation to subject all activities under their jurisdiction or control which may cause substantial pollution or significant harmful changes to the marine environment to environmental impact assessment procedures (Art. 206).

While LOSC clearly applies to both the Arctic and Antarctic marine areas, two major differences in application stand out in light of the presence of recognised coastal states and port states in the Arctic but not in the Antarctic. Many of the Convention's provisions focus on clarifying the rights and responsibilities of coastal states in the five zones of national jurisdiction, internal waters, the territorial sea, a contiguous zone, the exclusive economic zone (EEZ) and a continental shelf. While five coastal states (Canada, Denmark/Greenland, Norway, the Russian Federation and the United States) surround the Arctic Ocean and thus those states are clearly bestowed powers to pass and enforce national laws in those zones, the Antarctic does not have generally recognised coastal states. Seven states (Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom) have historic territorial claims on the continent which have been "frozen" by the Antarctic Treaty (Art. IV). The LOSC also recognises the powers of port states over ships choosing to enter their ports, such as the right to inspect vessels for their seaworthiness and to prevent unseaworthy ships from sailing before being re-

paired. While all five Arctic coastal states are clearly port states with corresponding inspection and enforcement powers, the Antarctic continent does not have generally recognised port states in the actual region.

Shipping is a growing concern in both Polar Regions. Cruise ship visits have been on the increase with corresponding human safety and environmental concerns. The Arctic appears to be on the verge of a new era in commercial shipping with vast hydrocarbon and mineral resources and growing interest in transpolar shipping that may substantially cut transport distances between Europe and Asia. Navigation in the Arctic by military vessels and other ships on governmental service is also expected to rise. For example, the Government of Canada has announced a commitment to build new Arctic patrol vessels and to construct a vessel refuelling facility in Nanisivik, Nunavut. Both Polar Regions are remote, raising special challenges for emergency responses and search and rescue in case of accident. Navigating in ice and freezing temperatures are common challenges although the Arctic may be even more treacherous in light of a greater proportion of thicker multi-year ice.

A key social and political difference between the Polar Regions is the presence of indigenous communities and an overall human population of about 4 million in the Arctic, while the Antarctic hosts scientific stations with temporary teams of scientists. The potential human impacts of shipping which are a special concern in the Arctic include the interference caused to traditional hunting and harvesting activities and the overwhelming of small communities with tourists. Indigenous rights over marine areas and resources have yet to be fully resolved in the Arctic adding another layer of political and legal complexity not present in the Antarctic.

This chapter provides a broad overview of the law of the sea and shipping governance arrangements applicable to the Arctic and the Antarctic. The realities and challenges connected with the LOSC are first described for each region. The similarities and differences in regional approaches to addressing shipping safety and vessel-source pollution, including related environmental threats, are then surveyed. The maritime safety and pollution "main sails" are highlighted, namely, the (1974) International Convention on Safety of Life at Sea (SOLAS) and the (1973) International Convention for the Prevention of Pollution from Ships, as modified by the (1978) Protocol Relating Thereto (MARPOL 73/78) as well as further supportive conventions and guidelines ('jib sails') to the two central agreements governing international shipping. The chapter concludes by summarising the differences and commonalities in law of the sea and shipping governance approaches in the Polar Regions and highlights the many issues still needing to be resolved such as the adoption of a mandatory code for shipping in Polar waters.

This chapter, by attempting to provide a broad overview of Polar law relating to law of the sea and shipping governance, by necessity omits detailed discussion of some legal topics. A review of international agree-

ments relating to liability and compensation in case of marine accidents, such as an oil spill, is therefore beyond the scope of this paper. The effort to address seafarer working and living conditions, such as food, medical care and wages, through a consolidated 2006 Maritime Labour Convention, is not discussed nor are the international customs and contractual practices of ship owners and commercial interests surveyed. For example, marine insurance contracts may be critical for ensuring Polar shipping ventures actually occur and the cost of insurance may be a major constraint. The International Maritime Organization (IMO) has developed over 50 treaty instruments and hundreds of other measures, including codes and guidelines, over the years to control shipping and only some of the most important and relevant documents to Polar shipping can be summarised.

3.2 Law of the Sea Realities and Challenges

3.2.1 Arctic Law of the Sea Realities

The law of the sea reality for the Arctic is at the same time both simple and complex. The LOSC provides as easy to understand division of rights to living and non-living marine resources. Arctic coastal states are given exclusive rights to exploit fisheries, minerals, hydrocarbons and energy resources within their 200–nautical mile (n.m.) EEZs. Where the natural prolongation of continental shelves extends beyond 200–n.m., coastal states have the right to exploit sedentary species, such as shellfish, and mineral resources on the seabed. In the high seas water column beyond national 200–n.m. zones, various freedoms of the sea apply whereby all states may have access to living resources and shipping routes. For the deep seabed beyond national jurisdiction, the International Seabed Authority, a management organisation established pursuant to the LOSC and based in Jamaica, would be responsible for licensing and regulating any mineral exploration or exploitation activity should it arise. The Agreement to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, adopted in 1994, sets out further "rules of the game" in relation to deep seabed mineral policy including provisions on technology transfer and the financial terms of contracts.

The 1982 Convention also clearly bestows substantial coastal state jurisdiction to undertake and control marine scientific research in Arctic waters. Coastal states have the exclusive right to conduct marine scientific research in their territorial seas and such research can only be undertaken with the express consent and under conditions set by the coastal state (Art. 245). Marine scientific research in the EEZ and on the continental shelf is also subject to coastal state consent which should be normally given (Art. 246(2)). Exceptions where consent may be refused

include where a project is of direct significance for the exploration and exploitation of natural resources or where a project involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment (Art. 246(5)).

The LOSC is also straightforward in establishing various state responsibilities both within and beyond national zones of jurisdiction in the Arctic. For example, coastal states are obligated to ensure proper conservation and management measures so living resources in the EEZ are not endangered by over-exploitation and such measures must avoid seriously threatening the reproduction levels of associated or dependent species (Art. 61(2)(4)). States are required to cooperate directly or through sub-regional or regional organisations to ensure the conservation of fish stocks shared across national EEZs (Art. 63(1)) and stocks that straddle an EEZ and the high seas (Art. 63(2)). States must take all measures necessary to prevent, and control pollution of the marine environment from any source (Art. 194(1)) and seek to minimise to the fullest possible extent the release of toxic or noxious substances (Art. 194(3)(a)). States are required to protect and preserve rare or fragile ecosystems and the habitat of threatened or endangered species (Art. 194(5)). The intentional or accidental introduction of alien species to the marine environment which may cause significant harmful changes is to be avoided (Art. 196(1)). States are also required to cooperate in conserving and managing living resources in the high seas and to consider establishing sub-regional or regional fisheries organisations (Art. 118).

With broad acceptance that the Arctic Ocean is a semi-enclosed sea, Article 123 of LOSC urges states bordering such an area to cooperate in managing the conservation of living marine resources, in protecting and preserving the marine environment and in coordinating scientific research activities. Two key criteria must be met for the Arctic Ocean to be considered a semi-enclosed sea as defined in Article 122 of LOSC. First, the Arctic Ocean must be deemed a "sea," a term that is not defined in the Law of the Sea Convention. Second, the Arctic Ocean must consist entirely or primarily of the territorial seas and EEZs of two or more coastal states.

A further overlay of cooperative obligations emanates from the 1995 UN Agreement on Straddling and Highly Migratory Fish Stocks (Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks). The Agreement urges the application of precautionary and biodiversity protective approaches to fisheries management (Art. 5). The Agreement also calls for the strengthening of existing regional fisheries management organisations and arrangements with management mandates for straddling or highly migratory fish stocks (Art. 13). Coastal states and states fishing on the high seas are to consider es-

tablishing a new regional fisheries management organisation or arrangement where no such organisation or arrangement exists (Art. 8(5)). This latter obligation might be described as a "prospective" for the Arctic as it remains to be seen whether viable commercial fish stocks exist in the high seas pocket in the central Arctic Ocean and whether states will wish to support the opening up of new fisheries areas.

The LOSC has cast a complex web of jurisdictional entitlements and limitations for the three categories of states concerned with Arctic shipping – coastal states, flag states, and port states. These categories are reviewed in turn.

3.2.1.1 Coastal State Jurisdiction and Control

Canada, Denmark (Greenland), Norway, the Russian Federation and the United States have coastal frontage on the Arctic Ocean and thus are considered as coastal states which can exert legislative and enforcement control over foreign ships in offshore waters. The amount of control varies with the zones of coastal state jurisdiction. The greatest powers exist in internal waters, the waters closest to the coastal state, and the powers become less according to the distance offshore with least control existing over foreign vessels navigating above an extended continental shelf beyond 200–n.m.

In internal waters, a coastal state has total sovereignty. Thus, if it wishes, the state may prohibit entry of certain ships, such as those carrying hazardous cargoes and may impose "zero discharge" limits on specific pollutants. The only limit on this maximum power is the customary duty to allow foreign ships in distress, such as those facing a major storm, to seek refuge in sheltered waters.

Internal water status can be claimed in various ways. LOSC recognises the right of coastal states to draw closing lines across mouths of geographical bays, ports and harbours and the marine areas on the landward side of the lines are considered internal. A coastal state is allowed to draw straight baselines around a deeply indented coastline or where there is a fringe of islands in the immediate vicinity of the coast, and the waters enclosed would be internal. Internal waters might also be claimed based upon their being recognised as such historically.

Within the territorial sea limit which may extend 12–n.m. from the low-water line along the coast or outside enclosed internal waters, the coastal state has full sovereignty but that sovereignty is subject to the right of foreign ships to enjoy innocent passage. Passage is considered innocent so long as it is continuous and expeditious and not prejudicial to the peace, good order, or security of the coastal state. The Convention lists various activities that are considered non-innocent including: carrying out of research or surveys, any fishing activities and any act of wilful or serious pollution in contravention of the Convention.

While the LOSC allows coastal states to adopt pollution control and navigational safety laws applicable to foreign ships transiting through the territorial sea, it places key limits on this authority. Coastal states cannot impose design, construction, crewing or equipment standards on foreign ships unless giving effect to generally accepted international rules or standards. Coastal states are also prohibited from imposing requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage. Coastal states can require foreign ships to use designated sea lanes or traffic separation schemes, but before doing so the state must consider the recommendations of the IMO and take into account any channels customarily used for international navigation.

Coastal states may also claim a 12 n.m. contiguous zone adjacent to the territorial sea to a seaward limit of 24 n.m. In a contiguous zone a coastal state may exercise necessary control over foreign ships to prevent infringement of its customs, fiscal, immigration or sanitary laws and to punish infringement of such laws committed within its territory or territorial sea. For example, a state might seek to enforce a law prohibiting any garbage disposal in its territorial sea against a foreign ship navigating within the contiguous zone that had previously disposed of garbage in the territorial sea.

In a coastal state's 200–n.m. EEZ, legislative and enforcement jurisdiction over foreign vessels is substantially curtailed. A coastal state cannot impose its own pollution standards on such vessels but is restricted to only imposing international pollution standards. Actual arrests and detention of a foreign ship is only allowed if there is a discharge causing or threatening major damage to the coastline, interests or resources of the coastal state. Monetary penalties may only be imposed for such EEZ pollution infringements.

Where the natural prolongation of a coastal state's continental shelf extends beyond 200–n.m. from the baselines from which the territorial sea is measured, the coastal state has very limited control over foreign shipping activities occurring in waters above the extended continental margin. A coastal state may establish safety zones around artificial islands or structures involved in seabed exploration or exploitation activities, and no such activities may be carried out without the coastal state's consent. A coastal state in exercising its rights over the continental shelf must not cause any unjustifiable interference with navigation or with other freedoms such as fishing.

A coastal state bordering a strait used for international navigation is severely restricted in controlling foreign shipping because of the right of all ships to transit passage. A coastal state may only impose international pollution control standards, not stricter national regulations. Sea lanes and traffic separation schemes may be established but only with IMO approval. A submarine exercising transit passage may remain submerged

whereas an innocent passage through the territorial sea a submarine is required to navigate on the surface and to show its flag.

While the various national zones of jurisdiction are applicable to all the world's oceans including the Arctic, the LOSC has recognised special hazards of navigation in ice-covered waters and has given extra powers for coastal states to pass and enforce laws for control of vessel source pollution for those waters. A coastal state may adopt stricter than international pollution standards normally applicable in the EEZ. Article 234 provides:

> Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment and be based on the best available scientific evidence.

Article 234 leaves open many questions of interpretation. For example, what is the significance of recognising special coastal state powers specific to the EEZ? One interpretation is that coastal states are given no greater powers than those granted for the territorial sea and thus no unilateral right exists to adopt special ship construction, crewing and equipment standards. What extent of ice coverage is required to invoke this article? The application of Article 234 to straits used for national navigation may also be questioned, although the LOSC does not explicitly exempt straits from application.

3.2.1.2 Flag State Jurisdiction and Control

A flag state, referring to the country granting its nationality to a ship and allowing a ship to fly its flag, has extensive jurisdictional control over its vessels. The flag state's national laws including criminal laws, apply to those aboard its ships. The flag state has exclusive jurisdiction over its vessels on the high seas with limited exceptions, for example, if the state consents to boarding and inspection by officials from other states pursuant to a regional fisheries enforcement agreement. A flag state has a duty to ensure that its ships conform to international standards in relation to safety at sea, pollution control and communications.

Two potential "weak links" in the flag state control approach stand out. First is the "flag of convenience" challenge where some states continue to register ships without having adequate capacity and political will to ensure their vessels live up to international standards and commitments. The International Transport Workers' Federation lists over 30 countries, including Antigua and Barbuda, Bahamas, Belize, the Cayman Islands, Liberia and Panama, that are considered flags of convenience

where vessels are registered for the purposes of reducing operating costs and avoiding strict regulations. Second is the sovereign immunity reality. Article 236 of the LOSC exempts warships and government owned or operated ships used for non-commercial service from the marine and environmental protection provisions of the Convention. States are merely required to ensure such vessels act consistent "as far as is reasonable and practicable" with the Convention's provisions.

3.2.1.3 Port State Jurisdiction and Control

When a vessel is voluntarily within a port or off-shore terminal of a state, the state possesses broad powers of inspection and enforcement. Article 218 of the LOSC recognises the right of a port state to investigate and institute proceedings regarding illegal pollution discharges even if outside its own maritime zones, specifically on the high seas or within the jurisdictional zones of other states (if they request institution of proceedings). Article 219 of the LOSC requires port states to prevent unseaworthy ships from sailing and authorises port states to require a vessel to proceed to the nearest repair yard.

Most marine regions around the globe are covered by memorandums of understanding (MOU) on port state control, including the Paris MOU covering Europe and the North Atlantic and the Tokyo MOU applicable to Asia and the Pacific, whereby maritime administrations agree to cooperate in undertaking inspection of ships visiting their ports to ensure compliance with key international conventions relating to maritime safety and pollution. With the projected increase in Arctic commercial shipping the question arises as to whether the maritime authorities of the Arctic states should develop a new MOU specific to port state control in the Arctic.

3.2.2 Arctic Law of the Sea Challenges

At least four main "law of the sea" challenges can be seen to directly concern Arctic waters. First, two ocean boundary disputes continue to fester in the region. Canada and the United States disagree over the maritime boundary in the Beaufort Sea. Canada and Denmark (Greenland) contest a small area of jurisdiction in the Lincoln Sea. Until such disputes are resolved, ship operators may face uncertainty over which national shipping laws are applicable in a contested zone. While Norway and the Russian Federation had a long-standing ocean boundary dispute in the Barents Sea, they reached a preliminary agreement in April 2010 to finally delineate their maritime border.

Second, the five coastal states of the Arctic Ocean have yet to finally determine the outer limits of their continental shelves. The Russian Federation, made its initial submission for an extended continental shelf to the Commission on the Limits of the Continental Shelf in December 2001, but was requested to submit a revised submission as to a possible

Arctic extension and that submission is expected in 2010 or possibly later. Norway, filing its submission to the Commission in November 2006, received recommendations from the Commission in March 2009 and at the time of writing had yet to formally establish the outer limits. Canada, Denmark (Greenland) and the United States are still in the process of collecting scientific and technical data in order to establish their claims. The United States has not yet acceded to the LOSC and there is increasing pressure on it to become a Party in order to legitimise its potential extended continental shelf through the Commission on the Limits of the Continental Shelf.

Resolving disagreements over the jurisdictional status of some marine waters in the Arctic is a third challenge. For example, the United States and other states have objected to Canada's enclosure of its Arctic Archipelago with straight baselines and the status of those waters as internal. The United States considers the Northwest Passage and parts of the Northern Sea Route off the Russian Federation as straits used for international navigation where the right of transit passage would apply, while Canada and the Russian Federation vehemently contest such status.

The status of maritime zones off Svalbard is also open to contention. While the Treaty of Spitsbergen (Svalbard) adopted in 1920, recognises Norwegian sovereignty over the archipelago subject to equal rights of access, fishing and hunting for other parties, the application of the treaty beyond the territorial sea is disputed. Norway maintains the treaty's application ends at the territorial sea limit and, therefore, Norway is entitled to an EEZ and continental shelf off Svalbard. Tensions over the legal status of waters seaward of the territorial sea have been partly quelled by Norway's restraint in only establishing in 1977 a Fisheries Protection Zone out to 200 n.m., and granting fisheries access to contracting parties to the treaty founded on historical fishing patterns.

A fourth challenge is the need to consider possible future directions for strengthening international cooperation in protecting the marine environment in the large pocket of high seas beyond natural jurisdiction in the central Arctic Ocean. With various freedoms of the sea, including fishing and navigation, a looming challenge is to initiate international discussions on future development and conservation objectives and options for providing further protective measures. Various governance options have been proposed by various authors including the establishment of a regional ocean management organisation (ROMO), the creation of a regional fisheries management organisation (RFMO) and the negotiation of a high seas marine protected area.

Future directions for high seas governance for all the world's oceans, including the Arctic, has become an international cauldron of controversy. The UN General Assembly has established an Ad Hoc Open-ended Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdic-

tion (ABNJ Working Group). The ABNJ Working Group has met three times, most recently in February 2010, and has not been able to resolve deep divisions of opinion over such issues as whether an Implementation Agreement on High Seas Marine Biodiversity should be forged and whether bio-prospecting for genetic resources on the high seas should be subject to a special access and benefit sharing arrangements supportive of developing countries.

3.2.3 Antarctic Law of the Sea Realities and Challenges

With no generally recognised coastal states in the Antarctic region with national zones of jurisdiction and concomitant control over the activities of foreign vessels, the Antarctic law of the sea reality is the primacy of flag state jurisdiction. Each state authorising ships to fly its flag is responsible for ensuring its vessels operating in the Antarctic comply with international treaty and customary law obligations relating to such areas as shipping, fishing, ocean dumping and marine biodiversity conservation. For example, the Basel Convention on the Trans-boundary Management of Hazardous Wastes and Their Disposal requires parties to prohibit the export of hazardous wastes for disposal within the area south of the 60° South latitude, and it is the flag state that bears prime responsibility for ensuring its flagged vessels do not undertake such shipments. While ocean dumping in most regions would be strictly regulated by coastal states, in the Antarctic control measures for potential dumping from outside the region would fall on the shoulders of flag states.

Two main law of the sea challenges continue to hover over Antarctic waters. First is the potentially frayed regulatory nets opened by reliance on flag state jurisdiction as the prime means of controlling human uses. Flag states may not become party to key multilateral environmental or fisheries agreements aimed at protecting Antarctic waters. For example, the Madrid Protocol on Environmental Protection to the Antarctic Treaty, which sets out environmental impact assessment obligations for contracting parties authorising activities in the Antarctic, has only 34 parties. Thus, the danger exists that states not party might allow their flagged vessels to undertake tourism visits to the region without imposing any environmental impact assessment (EIA) requirements.

A second challenge is ensuring territorial claimant states in the Antarctic do not "rock the boat" in relation to contested offshore jurisdiction. For example, while Australia has passed national legislation prohibiting the taking of whales in its 200 EEZ declared off its claimed Antarctic Territory, it has thus far chosen not to enforce the legislation against foreign vessels. Political pressures continue within Australia for the government to take effective action against Japanese whaling allegedly undertaken for scientific research purposes. Potential extended continental shelf claims by territorial claimant states is a further jurisdictional issue.

For example, Australia in making its extended continental shelf claims to the Commission on the Limits of the Continental Shelf gave notice of its potential claim off Antarctica but requested the Commission not to consider the submission relating to the continental shelf appurtenant to Antarctica.

Numerous issues lurk in the background regarding maritime claims in the Antarctic. They include: how to determine baselines for measuring maritime zones where the normal "low-water line along the coast" may not be possible to determine due to ice-cover; whether ice shelves can be equated with land and be used as base points; and how to treat ice for maritime boundary delimitation purposes if claimant states in Antarctica choose to delimit boundaries between themselves.

The legal status of icebergs, which have potential for commercial exploitation, is a further looming issue. Whether coastal claimant states might eventually exert "ownership" rights over icebergs within 200 n.m. zones remains to be seen. A freedom of the high seas approach is also possible where "harvesting" would be open to anyone, but a common heritage of humankind approach whereby exploitation would be subject to equitable sharing of benefits through an international management scheme might also be considered.

3.3 Governance of Polar Shipping: Similarities and Polarities

3.3.1 Similarities

Shipping standards for the two Polar Regions are common on many fronts. Global conventions relating to maritime safety apply to both the Arctic and Antarctic as do some vessel-source pollution and marine environmental protection provisions. Various guidelines, some specifically tailored to address the special challenges of Polar shipping, have also been forged.

3.3.1.1 Maritime Safety Agreements

The "main sail" agreement setting out international safety standards for shipping in all oceans, including Polar seas, is the (1974) Safety of Life at Sea Convention, (SOLAS) as amended. The Convention casts a broad net of rules and standards in such areas as construction, steering gear requirements, fire detection and extinction, life-saving equipment including lifeboats and life jackets, radio communications, carriage of dangerous goods and maritime security. Chapter V of SOLAS addresses safety of navigation in various ways: by imposing navigational equipment requirements like radar and eco-sounding devices (to display available water depth); by requiring vessels to carry adequate and up-to-date nautical

charts; and by providing for the imposition of mandatory ships routeing systems through application to the IMO.

Four other maritime safety "jib sails" are also particularly important. The (1966) International Convention on Load Lines, is aimed at ensuring ships are not overloaded by requiring adequate freeboard, that is, the distance between the ship's deck and the waterline. The (1972) Convention on the International Regulations for Preventing Collisions at Sea, (COLREGS) sets out various speed, lookout and navigational rules to help avoid collisions and also requires various lighting arrays and sound signals. The (1979) International Convention on Maritime Search and Rescue provides the legal umbrella for countries to cooperate in ensuring that adequate search and rescue capabilities are in place in all marine regions. The (1978) International Convention on Standards of Training, Clarification and Watch-keeping for Seafarers, significantly amended in 1995 and again in June 2010, establishes training and competency requirements for ship officers and crew and covers hours of work and rest.

3.3.1.2 Vessel-source Pollution and Marine Environmental Protection Provisions

The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), the "main sail" for addressing vessel-source pollution, is applicable to both Polar Regions and establishes detailed marine pollution and protection standards through six annexes. Annexes I (oil) and II (noxious liquid substances) are mandatory for all parties to the Convention while the others Annexes III (harmful substances in packaged form), IV (sewage), V (garbage) and VI (air emissions) are optional.

While substantial differences in vessel discharge standards for the Arctic and Antarctic exist in relation to oil, noxious liquid substances, and garbage as discussed below, two major commonalities stand out. First, Annex VI of the MARPOL 77/78 which seeks to control air emissions such as ozone-depleting substances, nitrogen oxides and sulphur oxides, applies uniformly to ships operating in both Polar Regions. One of the key control mechanisms is to generally limit the sulphur content of ship fuels at 4.5 percent, but special Emission Control Areas can be established where the sulphur content would be capped at 1.5 percent. Amendments to Annex VI in 2008 will gradually decrease the general cap from 4.5 percent to 0.5 percent (effective from 1 January 2020) and the Emission Control Areas standard from 1.5 percent to 0.1 percent (effective from 1 January 2015). The revised Annex VI allows an Emission Control Area to be designated not to just control sulphur oxides but also nitrogen oxides. Neither Polar Region has yet been proposed for special emissions status, thus the general sulphur content standards will apply.

While some differences do exist over how the Antarctic and Arctic regions address sewage discharges from ships, such as which ships are subject to controls, the two regions are also subject to quite similar sew-

age discharge standards. Annex IV to the Protocol on Environmental Protection to the Antarctic Treaty in Article 6 allows untreated sewage from a holding tank to be discharged beyond 12 n.m. from land or ice shelves at a moderate rate while the ship is *en route* at a speed of no less than 4 knots. This is consistent with Regulation 11 of MARPOL's Annex IV which sets a global standard from sewage discharges also applicable to the Arctic so long as coastal states do not adopt stricter standards.

Other global "jib sails" aimed at protecting the marine environment are also applicable to both Polar Regions. The (1972) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, permits ocean dumping if authorised pursuant to a national ocean dumping permit but prohibits disposal of wastes listed on a global prohibited list, such as industrial and radioactive wastes. A 1996 Protocol to the Convention adopts a precautionary approach whereby only wastes listed on a global "safe list'; such as dredged materials and organic wastes of natural origin, may be disposed of subject to a waste assessment review and a national permit.

The International Convention on the Control of Harmful Anti-fouling Systems on Ships, which came into force on September 17, 2008, requires ships to either not use organotin compounds on their hulls by January 1, 2008 or to have a protective coating to prevent leaching of organotin compounds. Organotin compounds, such as tibutylin (TBT), act as biocides to prevent marine life such as algae and molluscs from attaching themselves to ship hulls and TBT has been shown to cause sex changes in whelks and deformities in oysters.

The International Convention for the Control and Management of Ships' Ballast Water and Sediments, adopted in 2004 but not yet in force, seeks to avoid transfer of invasive alien species across marine regions through ballast water exchange obligations (whenever possible conducting exchanges at least 200 n.m. from the nearest land in water at least 200 metres in depth) and ballast water management systems. Shifting from ballast water exchange to treatment systems to control the levels of viable organisms is to occur for all ships by 2016.

Two global agreements seek to ensure adequate preparations for preventing and responding to pollution incidents. The (1990) International Convention on Oil Pollution Preparedness, Response and Co-operation, requires contracting parties to require ships flying their flags to have on board a shipboard oil pollution emergency plan, to provide a minimum level of pre-positioned oil combating equipment, and to cooperate upon the request of any party in responding to an oil pollution incident. The (2000) Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, extends the obligations to cover carriage and spills of hazardous and noxious substances.

3.3.1.3 Shipping Guidelines

Three key sets of guidelines, adopted under the auspices of the IMO, seek to address the special conditions posed by shipping in Polar waters including remoteness and the dangers posed by ice. First, the Maritime Safety Committee in May 2006 adopted a Circular (MSC. 1/Circ. 1184) on Enhanced Contingency Planning Guidance for Passenger Ships Operating in Areas Remote from SAR Facilities. The guidance document urges companies operating passenger ships in areas remote from search and rescue facilities to develop contingency plans in case of emergencies which should consider, among other things, the possibility of voyage "pairing" where other passenger ships operating in the same area might be used as a search and rescue facility.

Guidelines on Voyage Planning for Passenger Ships Operating in Remote Areas, adopted by the IMO Assembly in November 2007, further urge passenger ships to develop detailed voyage and passage plans. Such plans for ships operating in the Arctic or Antarctic waters should address such factors as safe distance from icebergs, safe speeds in the presence of ice, no entry areas and special preparations necessary before entering waters where ice may be present, such as abandoning ship drills.

A third set of guidelines was adopted by the IMO Assembly in December 2009 which revised Guidelines for Ships Operating in Arctic Ice-Covered Waters (2002) and extended coverage to both the Arctic and Antarctic waters (See Figures 1 and 2). The Guidelines for Ships

Operating in Polar Waters provide a four-part overlay to existing international maritime agreements in order to address the special situation of ships operating in Polar waters. The Guidelines are applicable to ships subject to regulations under the SOLAS Convention which generally covers passenger ships and cargo ships of 500 gross tonnage or more when engaged on international voyages but not warships, pleasure yachts or fishing vessels. Part A of the Guidelines provides construction, stability and other technical requirements for new Polar Class Ships. The Guidelines, adopting the seven Polar classes recognised by the International Association of Classification Societies (IACS), seek to ensure ships can withstand flooding

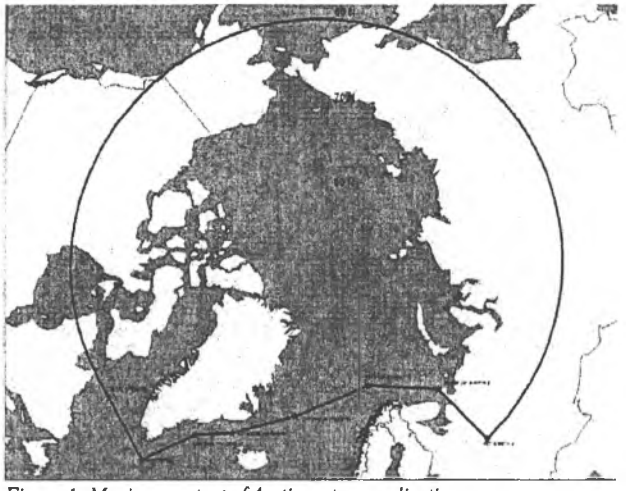


Figure 1: Maximum extent of Arctic waters application

Source: IMO, Guidelines for Ships Operating in Polar Waters, Assembly Res. A. 1024(26) (2009), p. 9

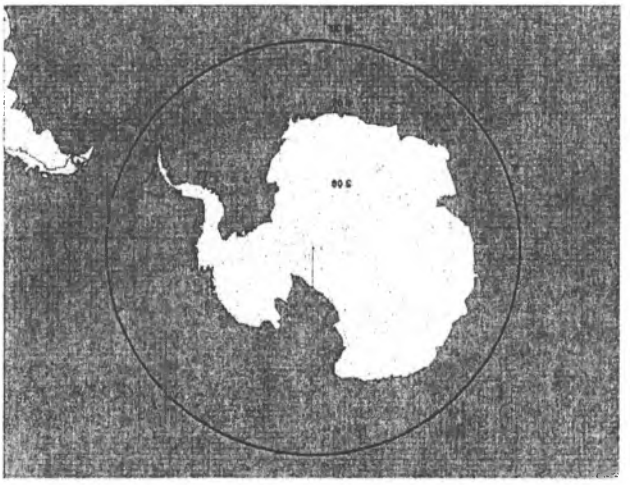


Figure 2: Maximum extent of Antarctic Waters application

Source: IMO, Guidelines for Ships Operating in Polar Waters, Assembly Res. A. 1024(26) (2009), p. 9.

Resulting from hull penetration due to ice impacts, advocate against Polar Class ships carrying any pollutant against the outer shell, urge appropriate anchoring and towing arrangements, and call for all equipment on a ship to not be susceptible to brittle fracture.

Part B, applicable to Polar Class and other ships, sets out various equipment suggestions. These include, among others, the design and location of fire detection and extinguishment systems to avoid freezing temperatures, the provision of personal survival kits capable of protecting against severe weather conditions, the carrying of partially or totally en-

closed lifeboats, and redundancy in key navigational systems such as radar and depth sounding devices.

Part C, also applicable to Polar Class and other ships, sets out various operational suggestions. A checklist of what crew members should consider in an evacuation drill is provided. Carriage of at least one qualified Ice Navigator aboard all ships operating in Polar ice-covered waters is advocated, but with no detail on what would constitute adequate on-the-job training or simulation training. Reserve supplies of fuel and lubricants are urged in light of heavy fuel consumption in heavy ice.

Part D encourages the equipment and preparation for Polar Class and other ships navigating in Polar waters to control damage to the marine environment. Proper equipment and training to ensure minor hull repairs is urged along with the capability to contain and clean up minor deck or over side spills.

A process is currently underway within the IMO to make the voluntary Guidelines for Ships Operating in Polar waters mandatory with 2012 being a target completion date. Various issues are being discussed including the geographic scope of application, appropriate classroom and practical experiences that should be required for ice navigators, possible extension of coverage to barges, fishing vessels and pleasure craft, phase-in requirements for existing ships, and possible expansion to cover ballast water and hull-fouling.

A more general set of IMO guidelines also has potential to be applied to Polar waters. Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas (PSSAs), undergoing substantial revision in 2005, provide for the designation of PSSAs for areas particularly vulnerable from international ship traffic where special associated protective measures may be imposed such as areas to be avoided, traffic routeing, mandatory ship reporting, and discharge restriction. However, to date PSSA designations have not been applied to either Polar Region.

3.3.2 Polarities

With the Antarctic listed as a special area under Annexes I (oil), II (noxious liquid substances) and V (garbage) of MARPOL, stricter than global discharge standards have been established for the marine region south of the 60° South latitude. These stricter standards have been further solidified by inclusion in Annex IV to the Madrid Protocol on Environmental Protection. Article 3 of Annex IV prohibits the discharge into the sea of oil or oily mixtures from ships with limited exceptions such as a discharge relating to accidental damage to the ship or equipment. Article 4 prohibits the discharge of any noxious liquid substance and any other chemical substances in quantities or circumstances harmful to the marine environment. Article 5 prohibits disposal of all plastics into the sea from vessels and most other garbage with the exception of ground up food

wastes if disposed of 12 n.m. or more from the nearest land or ice shelf. The question of whether the Antarctic special area designations should be extended northward from the present area south of the 60° South latitude to the Antarctic convergence is under discussion by Antarctic Treaty Consultative Parties.

The MARPOL Convention provides special reception facility requirements to support Antarctic special area designations in relation to oil and garbage. Parties to MARPOL at whose ports ships depart *en route* to or arrive from the Antarctic area must ensure adequate facilities for the reception of oily residues and garbage from all ships. Each Party to MARPOL is also required to ensure that all ships entitled to fly its flag, before entering the Antarctic area, have sufficient capacity on board for the retention of oily residues and garbage and have concluded arrangements for the discharge of oily residues and garbage at a reception facility after leaving the area.

With no area of the Arctic Ocean having been designated as a special area under MARPOL, the pollutant discharge standards for some areas of the Arctic are less strict than for the Antarctic. Unless coastal states choose to impose stricter than global standards pursuant to the special legislative and enforcement powers granted by Article 234 of the LOSC, global standards will apply. Annex I of MARPOL allows oily ballast water discharges from tankers if they are over 50 n.m. offshore at a rate of 30 litres per nautical mile while *en route*, and the Annex also allows oily bilge waste discharges from oil tankers and other ships with a 15 parts per million (ppm) limitation. Annex II allows some discharge of noxious liquid substance residues based on the level of toxicity. Annex V allows considerable garbage deposits, other than plastics, including packing materials if more than 25 n.m. from the nearest land and glass, metal, paper products, rags and similar refuse if more than 12 n.m. from the nearest land.

Canada and the Russian Federation exemplify how coastal states may choose to impose stricter than global discharge standards. Canada prohibits all oil discharges from ships in Arctic waters with limited exceptions, as well as garbage and other waste deposits. The Russian Federation has prohibited the discharge of oily ballast water from tankers and the deposit of garbage for the Northern Sea Route.

Regional differences have also emerged in relation to the carriage of heavy grade oil and the control of ballast water in Polar Regions. A proposal to prohibit the use of carriage of heavy grade oil in the Antarctic was adopted by the IMO's Marine Environment Protection Committee in March 2010 and the ban on the use and carriage of heavy fuel oil by vessels operating in Antarctic waters will take effect from 1 August 2011 through a regulatory amendment to Annex I of MARPOL. In 2007, non-binding Guidelines for Ballast Water Exchange in the Antarctic Treaty Area were adopted by the IMO with various control measures suggested

including the exchange of ballast water before arrival in Antarctic waters. To date regional approaches to addressing heavy grade oil carriage and ballast water controls have not been developed for the Arctic region.

3.4 Conclusion

As this chapter has sought to highlight the Arctic and Antarctic are in many ways "poles apart" in relation to law of the sea contexts and shipping discharge standards. While the Arctic, being an ocean surrounded by continents, is largely subject to the jurisdiction of five coastal states, the Antarctic, constituting a continent surrounded by an ocean, remains in a law of the sea "twilight zone" with no generally recognised coastal state offshore jurisdiction and thus the primacy of flag state legislative and enforcement controls. While the Antarctic has been designated as a special area under three of MARPOL's annexes where stricter than general international vessel-source discharge standards apply for oil, noxious liquid substances and garbage, the Arctic has not yet been globally designated for special pollution control measures.

However, shared commonalities in the areas of maritime safety, vessel discharge standards and marine environmental protection obligations have emerged. For example, The Guidelines for Ships Operating in Polar Waters (2009) establish a common framework for construction and operational requirements for ships in the Arctic and Antarctic. Consistent air emission and sewage discharge standards for ships have been adopted for the two regions. International agreements relating to ocean dumping, antifouling agents, ballast water management and emergency preparedness are also applicable to both regions.

The quest for effective governance in both Polar regions is thus far from over. The Guidelines for Ships Operating in Polar Waters have yet to be made mandatory and numerous issues remain to be resolved, such as the geographical scope of applications, the types of vessels covered and the strength of regulatory measures. Efforts continue within the IMO to further tighten controls on sewage and garbage from ships. The regulation of greenhouse gas emissions from ships has become a topic of important but unresolved debate. Pressures to better control vessel noise in order to protect marine mammals have also not abated.

Both Polar Regions are currently experiencing increased attention in respect of the inadequacies of existing shipping governance measures and the need to strengthen international and regional rules and standards. The Arctic Council's comprehensive Arctic Marine Shipping Assessment (AMSA), published in April 2009, offered numerous recommendations under three themes. For example, to enhance Arctic marine safety, AMSA urged Arctic states: to work through the IMO to augment global ship safety and pollution prevention conventions with specific mandatory requirements for ship

construction, design, equipment, crewing, training and operations aimed at Arctic shipping safety; to explore harmonisation of national Arctic shipping regulatory regimes; and to develop a multi-national Arctic Search and Rescue (SAR) instrument including aeronautical and maritime SAR. To protect Arctic people and the environment, AMSA recommends that Arctic states: identify areas of heightened ecological and cultural significance and implement protective measures from marine shipping impacts; explore the need for specially designated Arctic marine areas as "special areas" or "particularly sensitive sea areas" through the IMO; enhance cooperation in oil spill prevention; and support reduction of air emissions of greenhouse gases, nitrogen oxides, sulphur oxides and particulate matter. To build Arctic marine infrastructure, the third theme, AMSA urges Arctic states: to improve infrastructure in the areas of ice navigation training, navigational charts, communication systems, port services, reception facilities for ship-generated waste, and icebreaker assistance; develop circumpolar pollution response capabilities; and increase investments in securing adequate hydrographic, meteorological and oceanographic data to support safe navigation. At the Sixth Ministerial Meeting of the Arctic Council in Tromsø, Norway, April 29, 2009, Ministers approved the actual establishment of a task force to negotiate an international SAR instrument for the Arctic by the next Ministerial meeting in 2011.

The Antarctic Treaty Meeting of Experts on Ship-borne Tourism in the Antarctic Treaty Area, hosted by New Zealand in December 2009, also produced a set of recommendations to be forwarded to the next Antarctic Treaty Consultative Meeting. For example, Antarctic Treaty Parties are urged to: consider the development of a specific checklist for inspections of tourist vessels in Antarctica; contribute to hydrographic and charting information in the Antarctic Treaty Area; proactively apply port state control regimes to tourist vessels bound for the Antarctic; exchange information on contingency planning preparedness; and consider mechanisms for enhancing coordination with respect to Antarctic-related matters within the IMO.

The time is ripe for the further strengthening of shipping governance and cooperative arrangements to protect the marine environment in both Polar Regions. However, it remains to be seen how far the vested social and economic interests of states and their constituents will constrain progress. The voyage towards safe and sustainable seas in both regions is thus likely to be a long and arduous.

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International Maritime Organization <http://www.imo.org>.

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Secretariat of the Antarctic Treaty <http://www.ats.aq/index_e.htm>.

Questions:

1. What are the main differences in the Law of the Sea contexts for the Arctic and the Antarctic?
2. What is the main Law of the Sea challenge for each Polar region?
3. Are shipping activities in the Arctic and Antarctic adequately controlled?
4. What governance strengthening, if any, would you recommend for the Arctic? For the Antarctic?

Source: Wikipedia

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

Pro-ratification arguments

- *The environment:* Oceans cover over 70% of the Earth. In the U.S., there are laws to keep marine resources available for future generations. UNCLOS sets a legally binding international standard which aims to protect the marine wildlife and environment.

- *National security:* The U.S. military, which relies heavily on its ability to freely navigate on and fly over the sea, has been a strong advocate of UNCLOS. In the absence of treaty law, the US relies on customary law that can change as states' practices change. Also, under this customary law, the Pentagon claims that countries often make unreasonable and irresponsible claims on marine territory that frustrate U.S. military action. The U.S. has tried to work around these claims, but without a legal framework to support them, the Pentagon believes it risks compromising its intelligence and military operations at sea.

- *International diplomacy and peaceful dispute resolution:* The Convention offers a peaceful way to resolve territorial and natural resource disputes through the International Tribunal for the Law of the Sea (ITLOS), based on agreements to which signatory parties have already committed. In contrast, without ratification, the US has no peaceful recourse if another non-signatory party decides to close its straits to navigation except through the Permanent Court of Arbitration which was established in 1902 to allow States to settle disputes in a manner other than war.

- *It helps American businesses:* Each country has exclusive rights to manage the resources in areas near its coast. Under the terms of UNCLOS, which maps out the boundaries of these areas, the American zone is larger than that of any other country in the world. The size of this zone is 3.36 million square miles — bigger than the lower 48 states combined. In addition, under UNCLOS, coastal states can exercise sovereign rights over natural resources within the extended continental shelf area beyond this territory. It would also give US companies an opportunity to apply for licenses with the ISA, which manages claims to resources in the deep seabed, an area over which no country has sovereign rights.

Eight National Security Myths:
United Nations Convention on the Law of the Sea

Myth #1: The United States does not need to join the Convention. We are getting along just fine relying on military might and customary international law.

We are at war. The President, his war cabinet, the Joint Chiefs of Staff, and the Commandant of the Coast Guard urge the Senate to provide its advice and consent to the Law of the Sea Convention because it enhances our national security.

The Convention codifies navigation rights and freedoms essential for the global mobility of our armed forces and the sustainment of our combat troops. Benefits include:

- a 12 nautical mile limit to territorial seas
- innocent passage through territorial seas
- archipelagic sea lanes passage though island nations like Indonesia
- laying and maintaining submarine cables for communication
- warship right of approach and visit
- sovereign immunity of warships and public vessels
- transit passage in international straits (and their approaches)
- high seas freedoms in exclusive economic zones (EEZs)

The last two are the most important. Transit passage gives us freedom of movement above, on, and below the surface in critical chokepoints such as the Straits of Singapore and Malacca, Hormuz, and Gibraltar, and the Bab el Mandeb. Exercising high seas freedoms in foreign EEZs includes conducting military activities.

Our non-party status is hurting us. It denies us a seat at the table when the 155 parties to the Convention interpret (or try to amend) those rights and freedoms; it denies us use of an important enforcement tool against coastal state encroachment (binding dispute resolution); it hinders us in our efforts to recruit more countries to the Proliferation Security Initiative (PSI); it creates a seam between us and our coalition partners; it prevents us from gaining legal certainty for our extended continental shelf in the Arctic (and elsewhere); and it denies U.S. companies access to deep seabed mining sites.

Relying on customary international law as the basis for those rights and freedoms is an unwise and unnecessary risk. Our Soldiers, Sailors, Marines, Airmen, and Coast Guardsmen put their lives on the line, every day, to preserve the rights and freedoms codified in the Convention; they deserve to be on the firmest legal ground possible as they go into harm's way; they deserve the legal certainty that accrues from treaty based rights.

Myth #2: Joining the Convention will surrender U.S. sovereignty by submitting the U.S. Navy to the jurisdiction of international courts or tribunals.

distributed by Rep. Seaton

Military officers serving as members on the United States delegation that negotiated the Convention ensured that it contained a military activities exemption from dispute resolution, which is ironclad. The Convention they helped craft permits a maritime nation, like the United States, to use compulsory dispute resolution as a sword against foreign coastal state encroachment while simultaneously shielding military activities from review.

Given the central importance of this issue, it is important to review the compulsory dispute resolution procedures contained in Part XV, Section 2 of the Convention, and explain, in detail, how Article 298 of the Law of the Sea Convention, under its express terms, will permit the United States to completely exempt its military activities from dispute resolution, and prevent any opposing State or court or tribunal from reviewing our determination that an activity is an exempted military activity.

Part XV, Section 2 of the Convention is titled, "Compulsory Procedures Entailing Binding Decisions." Section 2 is comprised of eleven Articles (286 – 296), which contain the compulsory dispute resolution procedures that some are concerned could be used to effect a review of our military activities.

Section 2 begins with Article 286, which provides that, except as provided in Section 3 of the Part XV, "any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to Section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section."

Article 287 then provides the choice of procedure election. The President has asked the Senate to reject the first two choices available, the International Court of Justice and the International Tribunal for the Law of the Sea, and instead choose arbitration (what are referred to formally as arbitral tribunals).

Now, let's move on to Section 3, which is titled, "Section 3. Limitations and Exceptions to Applicability of Section 2." In Section 3 we find Article 298; and in Article 298, subparagraph 1, it states in pertinent part:

> 1. When signing, ratifying, or acceding to this Convention or at any time thereafter, a State may…declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes…"

There then follows three categories of disputes: Maritime boundary disputes, disputes involving military activities, and disputes involving matters before the United Nations Security Council. The president has asked the Senate to exempt all three categories.

The key language from Article 298.1 is: "A State may declare that it … does not accept any one or more of the procedures provided for in section 2." It is the right of the State, and solely the State, to completely and preemptively reject all of the dispute resolution procedures provided for in Section 2. It is those very procedures that the

opposing State or international court or tribunal would have to rely upon to try to assert authority over us.

It simply does not get any better than that---not in private contract law nor in treaty law. What this Convention makes clear is that a State party can completely reject all the dispute resolution procedures—on its own terms—for disputes involving maritime boundaries, military activities, and matters before the Security Council.

There is simply no process or procedure whereby our determination can be subject to review, because we have already preemptively rejected all the procedures provided for in Section 2, including article 287 (choice of forum), article 288 (the right of a court or tribunal to determine its own jurisdiction), article 290 (provisional measures) and article 292 (prompt release).

All permanent members of the United Nations Security Council (except the United States) and numerous other countries have taken the military activities exemption. They, like us, would never accept a court or tribunal acting *ultra vires*---beyond the limits of the Convention itself.

Myth #3. Our intelligence activities will be constrained because the Convention's provisions on innocent passage prohibit intelligence collection in the territorial sea and require submarines to surface in the territorial sea.

U.S. intelligence collection activities at sea are not constrained by the Convention.

This matter was fully reviewed at closed hearings before the SSCI and SASC in 2004. At the unclassified level we can comment that those Committees concluded, after receiving testimony from DoD, CIA, and DoS, that the Convention does not affect US intelligence collection activities. Those agencies confirmed that testimony in recent correspondence to the SFRC.

With regard to innocent passage, the United States already obligates itself to abide by articles 19 and 20 of the Convention, and we are already formally bound to the same obligations in the 1958 Territorial Sea Convention.

Myth #4. Maritime Interdiction Operations will be constrained because Article 110 of the Convention limits warships to only boarding ships suspected of engaging in Piracy, Slave Trade, or Unauthorized Broadcasting, or being without Nationality.

This is simply not true. Article 110, which codifies the peacetime right of "approach and visit," expressly provides in its opening clause that the interdiction authorities it provides are *in addition to* those interdiction authorities that we already enjoy, because they are "derived from powers conferred by treaty." This language is consistent with the preamble of the Convention, which clearly states, "matters not regulated by the Convention continue to be governed by the rules and principles of international law."

We and our coalition partners routinely conduct interdiction operations under powers derived from treaty, including interdictions conducted pursuant to Flag State consent, Port State control measures, resolutions passed by the United Nations Security Council, the wartime right of Visit and Search, and our inherent right of self-defense as reflected in article 51 of the UN Charter.

Before moving to the next myth, it is worth noting that Article 110 of the Convention contains a key authority for conducting interdictions that was not found in its antecedent provision of the 1958 High Seas Convention. Under Article 110, a warship can conduct a boarding if it suspects that the target vessel is without nationality. We rely on that authority frequently in our maritime interdiction operations.

Myth #5. The Convention's provisions on "peaceful purposes" (Articles 19(2)(a), 39(1)(b), 88, 141, 240) and the prohibition in Article 301 against using force or threatening to use force in any manner inconsistent with the UN Charter or the principles of international law, will be used to constrain military activities.

Those provisions simply reflect the incorporation into the Law of the Sea Convention of the same obligations that we---and the international community as a whole---already have under the UN Charter; obligations that we fully support.

It would make little sense to have the provision in Article 298(1) allowing a State to completely reject dispute resolution for military activities, if military activities were already barred by articles 88 and 301.

The negotiating history on the Convention is clear on this point. In 1976, Ecuador attempted to turn the "peaceful purposes" provisions into an arms control obligation. They got nowhere. In response to the argument by Ecuador in 1976, the U.S. replied:

> "The term 'peaceful purposes' did not, of course, preclude military activities generally. The United States has consistently held that the conduct of military activities for peaceful purposes was in full accord with the Charter of the United Nations and with the principles of international law. Any specific limitation on military activities would require the negotiation of a detailed arms control agreement."

See 66-68th plenary sessions in 1976.

In 1985, the Secretary General of the United Nations reported that, "military activities which are consistent with the principles of international law embodied in the Charter of the United Nations, in particular Article 2, paragraph 4, and Article 52, are not prohibited by the Convention on the Law of the Sea."

It is ironic that Convention opponents would raise today a long-discredited and failed argument raised by Socialist countries in the 1970s.

Myth #6: If the US Navy seizes a terrorist vessel on the high seas or captures a vessel carrying weapons of mass destruction, it will be subject to "prompt release" under Article 292 of the Convention.

There are two things wrong with that argument. First, under Article 298 of the Convention, the United States will reject all the dispute resolution procedures for disputes concerning US military activities, and those procedures include Article 292. (See Myth #2 above.)

Second, Article 292, itself, is quite clear that it only applies to the prompt release of vessels seized for violating fishing or marine pollution regulations in Exclusive Economic Zones.

Specifically, in the very first sentence in Article 292, it states that a tribunal or court may only order the prompt release of vessels when, "it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial surety..."

There are only three provisions in the Convention for prompt release of vessels upon the posting of a reasonable bond or other financial surety: Articles 73, 220, and 226, and those expressly involve fishing cases and marine pollution cases.

In fact, the International Tribunal for the Law of the Sea has ordered the prompt release of vessels seven times in its entire history---all involved the release of fishing vessels in accordance with Articles 292 and 73.

The negotiating history of the treaty is crystal clear on this point. (See pages 67 – 71 of Volume V of the University of Virginia Commentary, which is widely recognized as the definitive commentary on the Convention.)

Myth #7: Article 23 of the Convention, which recognizes the right of innocent passage for nuclear powered ships and ships carrying nuclear or other inherently dangerous substances, will prevent the United States from interdicting a North Korean vessel in U.S. territorial seas (or another Nation's territorial seas) even if the vessel is carrying a nuclear bomb for delivery to Iran.

As noted earlier, the U.S. already is bound to and abides by the provisions on innocent passage; thus, foreign flag ships already have the right to exercise innocent passage through the territorial sea of the United States (and other nations' territorial seas).

Article 23 of the Convention was adopted at the insistence of the U.S. delegation to protect the innocent passage of U.S. warships and to prevent U.S. ships from having to declare their cargo as a condition of entering foreign territorial seas.

Article 23 does not constrain U.S. interdiction activities in any manner whatsoever. As noted earlier, the United States relies on *all of its interdiction authorities* (and those of its friends and allies) to combat the transport of weapons of mass

destruction. Indeed, the founding principles of the Proliferation Security Initiative (PSI) are based on PSI participants using their respective national legal authorities and international law (including the Convention) to interdict weapons of mass destruction and related material.

If a North Korean ship were carrying a nuclear weapon to Iran, it would be interdicted. In fact, vessels carrying North Korean and Libyan material have been interdicted under PSI in accordance with the Law of the Sea Convention.

Myth #8: Had the United States been subject to the Law of the Sea Treaty, President Kennedy could not have quarantined Cuba with the U.S. Navy, President Ford could not have used the Navy to rescue the Mayaguez, and President Reagan could not have sent a Navy carrier force to defy Qaddafi of Libya in the Gulf.

This is completely untrue. All the above operations were conducted in accordance with international law.

- President Kennedy established a quarantine around Cuba under the authorities of the UN Charter (Article 51 on self-defense and Article 52 on regional security arrangements) and the Rio Treaty (which established the Organization of American States (OAS)). On October 23, 1962, OAS voted to approve a U.S.-sponsored quarantine of Cuba.

- President Ford's use of military force to rescue the Mayaguez and its crew was a lawful use of force in self defense under Article 51 of the UN Charter.

- President Reagan deployed an aircraft carrier task force into the Gulf of Sidra to challenge Libya's unlawful claim that the Gulf was Libyan internal waters. During U.S. freedom of navigation operations in the Gulf, United States Navy aircraft engaged Libyan aircraft in self-defense in accordance with Article 51 of the UN Charter.

The Convention does not in any manner whatsoever restrict, condition or infringe upon our inherent right of self-defense as reflected in Article 51 of the UN Charter. Nor does it affect our rights under the law of armed conflict.

The Law of the Sea Convention does not constrain or limit the President's options to defend our country; it *enhances* them by codifying navigation rights and freedoms that are essential for the global mobility of our armed forces and the sustainment of our combat troops.

That is why the President, the Joint Chiefs of Staff, the Commandant of the Coast Guard, and every former living Chief of Naval Operations have all urged the Senate to provide its advice and consent on the Convention.

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Memorandum

TO: Representative Bob Herron

FROM: Chuck Burnham, Susan Haymes, Susan Warner, Tim Spengler, and Roger Withington, Legislative Analysts

DATE: March 11, 2011

RE: United Nations Convention on the Laws of the Sea
LRS Report 11.220

You asked for information regarding the United Nations Convention on the Law of the Sea. Specifically, you asked us to confirm and provide supporting documentation to statements put forth in an updated draft Legislative Resolve concerning the Convention dated March 9, 2011.

We present each of the "Whereas" statements in the draft resolution you provide below. Our findings for each statement immediately follow.

1 WHEREAS the United Nations Convention on the Law of the Sea (UNCLOS) preserves freedom of navigation as a basic right of all countries;

Part VII, Article 87, of UNCLOS guarantees freedom of the high seas as follows:

> 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
>
> (a) freedom of navigation;
>
> (b) freedom of overflight;
>
> (c) freedom to lay submarine cables and pipelines, subject to Part VI;
>
> (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
>
> (e) freedom of fishing, subject to the conditions laid down in section 2;
>
> (f) freedom of scientific research, subject to Parts VI and XIII.
>
> 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.[1]

Free Navigation of the "territorial sea"—the sea area immediately adjacent to a state and extending up to 12 nautical miles seaward—is provided by Part II, Section III, Articles 17-18, under the concept of "innocent passage." That concept means navigation for the purpose of traversing the sea without entering internal waters or calling at port; or proceeding to or from internal waters or a port facility. Such passage must be peaceful as defined in Article 19. Similarly, Part III, Section 3, Article 45, provides the right to innocent passage in straits used for international navigation, while Article 52 provides the same right for passage through archipelagic waters, and Article 58 does so for "exclusive economic zones," which extend 200 nautical miles seaward.

[1] Full text of the Convention is available online at *http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf*.

2 WHEREAS the United Nations Convention on the Law of the Sea permits member nations to claim an exclusive economic zone out to 200 nautical miles from shore, with an exclusive sovereign right to explore, manage, and develop all living and nonliving resources, including deep sea mining, within that exclusive economic zone;

Part V, Articles 56-57, delineate exclusive economic zones as follows:

> 1. In the exclusive economic zone, the coastal State has:
>
> (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
>
> (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
>
> (i) the establishment and use of artificial islands, installations and structures;
>
> (ii) marine scientific research;
>
> (iii) the protection and preservation of the marine environment;
>
> (c) other rights and duties provided for in this Convention.
>
> 2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
>
> 3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

Article 57

Breadth of the exclusive economic zone: The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

3 WHEREAS the United States Arctic Research Commission estimates that the United Nations Convention on the Law of the Sea would permit the United States to lay claim beyond the present 200-mile exclusive economic zone to an area of the Arctic Ocean seabed north of Alaska that is about the size of California;

In his May 6, 2010, testimony before the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Insular Affairs, Oceans, and Wildlife, John Farrell, Executive Director of the U.S. Arctic Research Commission (USARC), advocated for greater mapping of the Arctic Ocean. Describing the bases for his advocacy, Dr. Farrell made the following statement:

> Should the U.S. accede to the United Nations Convention on the Law of the Sea, as recommended by the Commission and many others, estimates . . . suggest that the U.S. stands to gain sovereign rights over seafloor resources in the Arctic Ocean in an area at least the size of California.[2]

The basis for this claim appear to relate to the Convention's provisions related to the extension of a state's control over the continental shelf adjacent to and beyond its 200 nautical mile exclusive economic zone. Those provisions are in Part VI, Article 76, et seq., which read, in part, as follows:

> 3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

[2] Dr. Farrell's full testimony can be accessed online at *http://www.arctic.gov/testimony/farrell-05-06-2010.pdf*.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.[3]

Where a state makes legitimate claim to its continental shelf extending beyond the 200 mile exclusive economic zone, Article 77 provides that "the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources." Further, Article 81 states that "[t]he coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources."

4 WHEREAS, by not joining the Convention, the United States is forfeiting sovereign rights to and international recognition of an expansion of United States resource jurisdiction by as much as 1,000,000 square kilometers of ocean, an area half the size of the Louisiana Purchase;

The U.S. Extended Continental Shelf Task Force—a multi-agency effort chaired by the U.S. Department of State—is currently working to identify the extended continental shelf (ECS) lying more than 200 nautical miles off the shores of the U.S. The Task Force's preliminary estimate puts the entire U.S. ECS at over one-million square kilometers. In order to claim sovereignty over its ECS under Article 76 of the UNCLOS, the U.S. must collect and analyze data sufficient to prove its claims.

It is clear that should the U.S. not become a signatory to the Convention, a number of the rights, responsibilities, privileges, and protections therein will not be available. However, we found nothing in the document that delineates what the specific impact of not becoming a signatory would have on sovereignty rights on the ECS. In the UNCLOS preamble, the signatories affirm that "matters not regulated by this Convention continue to be governed by the rules and principles of general international law." Indeed, among opponents to the U.S. becoming a signatory to the Convention, the impact of current international law is among the primary bases for their resistance. That is, opponents believe that international law already provides the U.S. with desirable sovereignty protections without subjecting the country to the extra-national judicial oversight and other controlling mechanisms in the Convention. A study of the matter prepared for the Council on Foreign Relations strongly disagrees with such claims by Convention opponents as follows:

[3] To see a graphic illustration of the application of the measurement formulae discussed in this section, please see *http://www.state.gov/g/oes/continentalshelf/*.

> Continuing to treat most parts of the convention as customary international law, as the United States does now, literally leaves it without a seat at the table in important decision-making bodies established by the convention, such as the Commission on the Limits of the Continental Shelf (CLCS); weakens the hand the United States can play in negotiations over critical maritime issues, such as rights in the opening of the Arctic Ocean; and directly undercuts U.S. ability to respond to emerging challenges, such as increasing piracy in the Indian Ocean. Joining or not joining the convention is more than an academic debate. There are tangible costs that grow by the day if the United States remains outside the convention.[4]

The impact on U.S. national sovereignty of remaining outside the Convention does not appear to be a settled legal matter. On this point, you may wish to seek an opinion from Legal Services explaining the relationship between the Convention and international maritime law as relates to ECS issues.

5 WHEREAS, with nearly one-third of all the world's hydrocarbons being produced off-shore, the United States would be unwise to ignore the need for access to extended oil and gas resources on the outer continental shelf;

According to the experts with whom we communicated, it appears that the statement that "nearly one-third of all the world's hydrocarbons [are] being produced off-shore," is accurate. G. Allan Petzet, chief editor (explorations) at the Oil and Gas Journal, relates that, while he is not aware if precise published up-to-date figures exist, it is his understanding that around one-third of the world's hydrocarbons are produced off-shore.[5] Additionally, Alex Chakhmakhchev, senior manager, Global Support, IHS Inc., informs us that in 2009, 30 percent of the world's hydrocarbons were produced off-shore.[6] He believes the percentage is roughly the same in today's market.

The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)—an agency of the U.S. Department of the Interior—released a comprehensive inventory of outer continental shelf (OCS) resources in 2006 that indicated that significant oil and gas resources exist in the U.S. OCS.[7] The study estimated that the quantity of undiscovered, technically recoverable, resources ranges from 66.6 to 115.3 billion barrels of oil and 326.4 to 565.9 trillion cubic feet of natural gas. The mean or average estimate is 85.9 billion barrels of oil and 419.9 trillion cubic feet of natural gas. Therefore, it may be argued that it could be "unwise" for the U.S. to ignore potential oil and gas resources in the OCS.[8]

6 WHEREAS the United States Geological Survey estimates that the Arctic contains conventional oil and gas resources totaling approximately 90,000,000,000 barrels of oil, 1,669 trillion cubic feet of natural gas, and 44,000,000,000 barrels of natural gas liquids, amounting to more than one-fifth of the world's undiscovered, recoverable oil and natural gas resources;

We found the information in the above "whereas" to be accurate. A 2008 United States Geological Survey (USGS) assessment found that 90 billion barrels of oil, 1,669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids may remain to be found in the Arctic. The USGS estimates that these resources account for about 22 percent (or slightly more than one-fifth) of the undiscovered, technically recoverable resources in the world.[9]

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[4] Scott G. Borgerson, Ph.D., "The National Interest and the Law of the Sea," for the Council on Foreign Relations, Council Special Report No. 46, May 2009, p. 19. This publication is available online at *http://www.cfr.org/global-governance/national-interest-law-sea/p19156*. The Council on Foreign Relations describes itself as an independent, nonpartisan membership organization, think tank, and publisher. More information on the Council is available at *http://www.cfr.org/about/*.

[5] G. Allan Petzet can be reached at (713) 963-6292. The Oil and Gas Journal provides international oil and gas news, analysis of issues and events, practical technology for design, operation and maintenance, and statistics on international markets and activity (*http://www.ogj.com/*).

[6] Alex Chakhmakhchev can be reached at (303) 790-0600. The IHS is a leading source of information in the following areas: energy, economics, geopolitical risk, sustainability and supply chain management (*http://www.ihs.com/*).

[7] The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), is the federal entity responsible for overseeing the safe and environmentally responsible development of energy and mineral resources on the outer continental shelf (*http://www.boemre.gov/*).

[8] More information on the BOEMRE assessment is available at *http://www.boemre.gov/revaldiv/RedNatAssessment.htm*.

[9] A USGS document on these finding can be accessed at *http://pubs.usgs.gov/fs/2008/3049/*.

7 WHEREAS American energy and deep-seabed companies are at a disadvantage in making investments in the outer continental shelf because of the legal uncertainty over the outer limit of the federal continental shelf; and

A wide majority of the opinions that we found in our review generally support the above "whereas." For example, Gerald Leape, senior officer (international policy) with the Pew Charitable Trusts, related to us that the ratification of the Convention would benefit U.S. energy and deep-seabed companies.[10] As an example, Mr. Leape, who specializes in international marine issues, relates that when disputes regarding OCS claims arise, countries that have ratified UNCLOS have a place "at the table" to work through the issues. Countries that have not ratified the treaty would not have an official voice in such a forum.

Additionally, Coast Guard Rear Admiral Christopher Colvin, commander of Coast Guard operations in Alaska, said recently in an interview that ratifying UNCLOS was imperative for the county.[11] He relates that there are valuable oil, gas, and mineral resources that the U.S. would have a legitimate claim to if the country signs on to the treaty. Admiral Colvin asserts that China is currently exploring areas north of the United States' exclusive economic zone off Alaska that would otherwise be under sovereign control of the U.S. under terms of the Convention.

Further, according to Citizens for Global Solutions (CGS), joining UNCLOS will benefit American businesses.[12] The CGS affirms that UNCLOS would protect the claims of U.S. firms to resources and give us an opportunity to provide better management of the sensitive Arctic environment adjacent to U.S. boundaries. Under UNCLOS, Arctic states stand to gain tremendously by claiming mineral and oil extraction rights in the Arctic seabed in areas that extend beyond their respective exclusive economic zones. Additionally, joining the Convention, would give U.S. companies an opportunity to apply for licenses with the International Seabed Authority, which manages claims to resources in the deep seabed, an area over which no country has sovereign rights.

8 WHEREAS the United States, as a major maritime power and as the country with the largest exclusive economic zone and one of the largest continental shelves, stands to gain more from the Convention in terms of economic and resource rights than any other country;

Our review found the above "whereas" to be accurate. According to our review, the United States' exclusive economic zone (EEZ) is the largest in the world, spanning over 13,000 miles of coastline and containing 3.4 million square nautical miles of ocean (a square nautical mile is equal to 1.3 square miles). According to preliminary studies, the extended continental shelf—again, that portion of the continental shelf beyond 200 nautical miles off shore—likely totals roughly one million square kilometers, or an area about twice the size of California, according to the U.S. Department of State.

Given the size of the U.S. continental shelf, the potential resources may be worth billions if not trillions of dollars, according to a U.S. Department of State article "Defining the Limits of the U.S. Continental Shelf."[13] Mr. Leape of the Pew Charitable Trusts affirms that it is quite likely that the U.S. has more to gain than any other country from the treaty. He cautions, however, that what resources actually exist in the unexplored depths is uncertain.

9 WHEREAS other Arctic nations have been asserting their sovereignty in the Arctic and making extended continental shelf claims under the United Nations Convention on the Law of the Sea;

Receding sea ice in the Arctic has heightened territorial claims in the area. In 2007, Russian divers planted their nation's flag on the seabed below the North Pole. The Russian Federation claims that the underwater Lomonosov Ridge is a natural

[10] Gerald Leape can be reached at (202) 552-2000. The Pew Charitable Trusts strives to improve public policy, inform the public, and stimulate civic life (*http://www.pewtrusts.org/*).

[11] Rear Admiral Colvin can be reached at (907) 463-2065.

[12] Citizens for Global Solutions is a non-partisan membership organization that envisions a "future in which nations work together to abolish war, protect our rights and freedoms and solve the problems facing humanity that no nation can solve alone." More information on Citizens for Global Solutions' stance on UNCLOS can be accessed at *http://globalsolutions.org/law-justice/law-seatreaty*.

[13] "Defining the Limits of the U.S. Continental Shelf," can be accessed at *http://www.state.gov/g/oes/continentalshelf/index.htm*.

extension of Siberia's continental shelf and, therefore, the nation owns the rights to that vast tract of Arctic seafloor.[14] Denmark responded to Russia's pronouncement with a claim that the 1,200-mile ridge is an extension of Greenland, a Danish possession.[15] Canada's prime minister has vowed to defend "Canada's sovereignty" in the Arctic. While the U.S. considers the Northwest Passage an international strait, Canada asserts that is has sole jurisdiction over the increasingly ice-free waterway.[16]

10 WHEREAS the United States, with 1,000 miles of Arctic coast off of the State of Alaska, remains the only Arctic nation that has not ratified the United Nations Convention on the Law of the Sea;

According to the United Nations, 161 nation-states have ratified the United Nations Convention on the Law of the Sea.[17] Except for the United States, every Arctic nation—Canada, Denmark (Greenland and the Faroe Islands), Finland, Iceland, Norway, the Russian Federation, and Sweden—are parties to the treaty.[18]

11 WHEREAS, until the United States ratifies the United Nations Convention on the Law of the Sea, the United States will not become a full partner in cooperative efforts of Arctic nations to address the manifold problems of the region;

If the United States does not ratify the UNCLOS, it is still highly likely that the United States will continue to partner in various ways with other nations in addressing issues surrounding the Arctic region. According to U.S. Senator Richard Lugar, however, many critical Arctic policy decisions will be made without the input of the U.S. if we do not accede to UNCLOS. Unlike some treaties, such as the Kyoto Agreement, which is inoperable in a practical sense without ratification by the United States, UNCLOS participants will make decisions regardless of whether the U.S. is a party. Senator Lugar maintains that nonparticipation will put the U.S. in a position of "self-imposed weakness," forcing our nation to rely on others to advocate for our interests.[19]

Additionally, the Council on Foreign Relations reports that without accession, the U.S. will give up "a seat at the table" in the important decision-making bodies established by the convention, including the economically critical Commission on the Limits of the Continental Shelf and the International Seabed Authority. The Council also warns that the U.S. could damage efforts to develop cooperative maritime partnerships, such as the Proliferation Security Initiative (PSI), a U.S.-led multilateral effort to interdict shipments of weapons of mass destruction.[20]

12 WHEREAS, until the United States ratifies the United Nations Convention on the Law of the Sea, the United States cannot participate in deliberations to amend provisions of the Convention that relate to the

(1) oil, gas, and mineral resources in the Arctic Ocean and other northern waters;

(2) conduct of essential scientific research in the world's oceans;

(3) right of the United States to the use of the seas;

(4) rules of navigation;

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[14] Fred Weir, "Russian's Putin Says he Wants Peaceful Division of Arctic," *Christian Science Monitor*, September 23, 2010. This article can be viewed at *http://www.csmonitor.com/World/Europe/2010/0923/Russia-s-Putin-says-he-wants-peaceful-division-of-Arctic.*

[15] Adrian Blomfield, "Canada and Denmark Join Rush to Claim Arctic," *The Telegraph*, August 11, 2007. This article can be read at *http://www.telegraph.co.uk/news/worldnews/1560028/Canada-and-Denmark-join-rush-to-claim-Arctic.html.*

[16] John Ibbitson, "Who Owns the Arctic?" *The Globe and Mail*, January 27, 2011. This article can be viewed at *http://byers.typepad.com/arctic/2011/01/dispute-over-hans-island-nears-resolution-now-for-the-beaufort-sea.html.*

[17] The United Nations prepared a table that shows the status of each nation with regard to Law of the Sea participation, *http://www.un.org/Depts/los/reference_files/status2010.pdf.*

[18] The Arctic Council, an intergovernmental forum that provides a means for promoting cooperation, coordination and interaction among the Arctic States, defines the Arctic nations as Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russian Federation, Sweden, and the United States of America. (*http://arctic-council.org*)

[19] Senator Richard Lugar, Opening Statement for the Hearing on the UN Convention on the Law of the Sea, U.S. Senate Committee on Foreign Relations, October 4, 2007, *http://lugar.senate.gov/news/record.cfm?id=284885&&.*

[20] Borgerson, "The National Interest and the Law of the Sea," pp. 19 and 26.

(5) effect of the use of the seas on world economic development; and

(6) environmental concerns related to the use of the seas;

In 1973, the United States participated in the Third United Nations Conference on the Law of the Sea with the objective of dealing with the issues listed above. The U.S. wanted to preserve its freedoms of navigation, diminish threats to fisheries and marine mammals, protect the marine environment, preserve the freedom of scientific research, ensure access to the mineral resources of the deep seabed to U.S. companies, and create a strong, viable organization to arrest the growing claims by northern nations to the Arctic seafloor.[21]

The 1973 UNCLOS agreement addressed these U.S. objectives, and additional U.S. concerns were attended to in a subsequent agreement in 1994; however, according to Scott Borgerson of the Council on Foreign Relations, failure to take the next step through accession will severely weaken the U.S. role in advocating its position on these issues and will undercut its ability to respond to emerging challenges. Mr. Borgerson continues:

> Immediate U.S. accession to the treaty is imperative to advance critical U.S. national interests. These stakes can be grouped into three general "baskets": national security, economic, and environmental. Each day the convention is in force—and each day its various organs make ocean policy and set legal precedent—the United States is in effect marginalizing itself. It is also placing itself at a disadvantage by being unable to mobilize the convention to advance its interests through new initiatives or by means of the credibility that accompanies being a state party.[22]

13 WHEREAS the United States continues to reject a carefully negotiated accord that enjoys overwhelming international consensus, one that has been adjusted specifically to meet the demands set out by President Ronald Reagan two decades ago;

The assertion that the UNCLOS is a "carefully negotiated accord" appears to be accurate. According to a Congressional Research Service Issue Brief entitled, *The Law of the Sea Convention and U.S. Policy*, the treaty "resulted from the third U.N. Conference on the Law of the Sea, which met for a total of 93 weeks between December 1973 and December 1982."[23]

The claim that the UNCLOS "enjoys overwhelming international consensus" appears to be accurate. Currently, 161 nations have ratified the treaty while 32 have not.[24]

The assertion that the UNCLOS was "adjusted specifically to meet the demands put forth by President Reagan" appears to be accurate. On March 10 1983, after months of consideration of the implications of the adoption of the Law of the Sea Conference, and after 119 other nations adopted the Convention on the Law of the Sea, President Ronald Reagan issued his statement on U.S. Oceans policy. In this statement he noted that the U.S. would not join the Convention because of unacceptable provisions related to deep seabed resources beyond national jurisdictions. He also noted, however, that the balance of the Convention was in the interest of, and be observed by, the United States.[25]

Scott G. Borgerson, in "The National Interest and the Law of the Sea," notes that:

> In the end, the Reagan administration declared it could accept Part XI of the Convention only if certain changes were made in six areas relating to matters like technology transfer, and if the United States "preserved a de facto veto power in the governing organs of the new authority so that no financial obligations could be imposed on the United States without its consent." When these changes were not made by 1982, the Reagan administration refused to sign the convention.

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[21] Borgerson, "The National Interest and the Law of the Sea," p. 9.

[22] Borgerson, "The National Interest and the Law of the Sea,"p. 22.

[23] Marjorie Ann Browne, *The Law of the Sea Convention and U.S. Policy*, Congressional Research Issue Brief, February 10, 2005, *http://www.fas.org/sgp/crs/row/IB95010.pdf*.

[24] The status of nations with respect to the Convention can be reviewed at *http://www.un.org/Depts/los/reference_files/status2010.pdf*.

[25] One source for President Reagan's statement is OceanLaw.org, *http://www.oceanlaw.org/index.php*.

> Eventually, all six of the Reagan administration's objections were amended to the satisfaction of the United States in a subsequent supplemental agreement that was negotiated and signed by most countries, including the United States, in 1994.[26]

We note that the text for this "whereas" statement appears to have been extracted from page 38 of Mr. Borgerson's report.

14 WHEREAS the United Nations Convention on the Law of the Sea will have sizable beneficial effects on virtually all states, both coastal and noncoastal, because the United States is heavily dependent on the use, development, and conservation of the world's oceans and their resources;

The statement appears to be accurate. In "The National Interest and the Law of the Sea," Mr. Borgerson spends a great deal of time discussing national interest in the UNCLOS.[27] He notes that:

> The oceans are marine highways, carrying 90 percent of U.S. imports and exports, and most of the world's oil passes through shipping choke points such as the Suez Canal and the Straits of Malacca.

He further notes that:

> ...acceding to the convention would advance a long list of national security, economic, and environmental issues of strategic importance to the United States. Beyond establishing the rules for territorial seas and exclusive economic zones, the convention establishes regimes for managing shipping fleets, fish, and pollutants that do not abide by national boundaries. The Law of the Sea Convention includes specific provisions guaranteeing freedom of navigation for merchant fleets and navies, and sets firm limits on jurisdiction to prevent "creeping sovereignty" by a few aggressive coastal states [nations] eager to unilaterally extend their authority seaward.

15 WHEREAS 161 nations have ratified the United Nations Convention on the Law of the Sea, including almost all of the world's maritime powers; and

According to the United Nations, 161 countries have ratified the United Nations Convention on the Law of the Sea.[28] It is difficult to unequivocally confirm the second portion of the statement as we are unsure of precise definitions of a "maritime power". However, based on our review of the list of the 32 nations that have not ratified the Convention, many of which are landlocked, we consider this statement to be accurate.

16 WHEREAS ratification of the United Nations Convention on the Law of the Sea has been pending before the United States Senate since 1994, and seven hearings on the treaty were held by the United States Senate Committee on Foreign Relations in 2003, 2004, and 2007;

Mr. Borgerson, in his report for the Council on Foreign Relations, notes that:

> On July 29, 1994, President Bill Clinton signed the Agreement on the Implementation of Part XI of the Convention on the Law of the Sea. He sent the agreement, along with the 1982 convention, to the Senate on October 7, 1994. The following month, Republicans won control of the Senate, and in January 1995, Senator Jesse Helms (R-NC) became chairman of the Senate Foreign Relations Committee. Worried that the convention had not been fixed and that it sacrificed U.S. sovereignty, Senator Helms refused to hold committee hearings.[29]

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[26] Borgerson, "The National Interest and the Law of the Sea," p. 11.

[27] Borgerson, "The National Interest and the Law of the Sea," pp. 14 and 20.

[28] *http://www.un.org/Depts/los/reference_files/status2010.pdf*. We note that Israel, long considered to be an ally of the Unites States, also has not ratified the UNCLOS.

[29] Borgerson, "The National Interest and the Law of the Sea," p. 12.

Based on this summary it appears that the Convention on the Law of the Sea has been placed before the U.S. Senate Committee on Foreign Relations since 1994 although no hearings on the issue appear to have occurred until 2003.

We identified seven meetings of the U.S. Senate Committee on Foreign Relations that had the U.N. Convention on the Law of the Sea on the agenda. The dates are: October 14 and 21, 2003; February 24-25, 2004; September 27, 2007; and October 4 and 31, 2007.[30]

17 WHEREAS, despite favorable reports by the United States Senate Committee on Foreign Relations regarding the United Nations Convention on the Law of the Sea in 2004 and 2007, the United States Senate has yet to vote on the ratification of the Convention;

On February 25, 2004, the Senate Foreign Relations Committee voted 19-0 to approve the UNCLOS, sending it to the full Senate for ratification. Subsequently, on October 31, 2007, the Senate Foreign Relations Committee voted 17-4 to approve the treaty. However, the treaty was not brought to the Senate floor for a vote on either occasion, thus the full Senate has never voted on UNCLOS.[31]

18 WHEREAS all six of the United States military leaders making up the Joint Chiefs of Staff support Senate ratification of the United Nations Convention on the Law of the Sea;

A June 26, 2007, letter to Senator Joseph Biden, Chairman of the Senate Foreign Relations Committee, signed by all six members of the Joint Chiefs of Staff supported ratification of the treaty as follows.[32]

> As the world's preeminent maritime power, leader in the War on Terrorism, and Nation with the largest exclusive economic zone, the United States should accede to the Law of the Sea Convention during this session of Congress. No county has a greater interest in public order for the world's oceans. Becoming a party to the Convention will ensure our leadership role in the continuing development of oceans laws and policies.

On September 27, 2007, testifying before the Senate Foreign Relations Committee, Deputy Secretary of Defense Gordon England reiterated the Joint Chiefs of Staff support as follows:[33]

> As Deputy Secretary of Defense, and a prior Deputy Secretary of Homeland Security and prior Secretary of the Navy, I am well acquainted with the Law of the Sea Convention. The legal framework that the Convention establishes is essential to the mission of the Department of Defense, and the Department of Homeland Security concurs that it is also essential for their mission. For that reason, Secretary Gates, the Joint Chiefs of Staff, the Military Department Secretaries, all of the Combatant Commanders, and the Commandant of the Coast Guard join me in asking the Senate to give its swift approval for U.S. Accession to the Law of the Sea Convention and ratification of the 1994 Agreement.

19 WHEREAS ratification of the United Nations Convention on the Law of the Sea has wide bipartisan support;

The Clinton, Bush, and Obama administrations have all asked for ratification of the Convention. In 2007, it was one of only five international agreements that the Bush Administration placed in its "urgent" category of treaty priorities submitted to the Foreign Relations Committee. Current and former representatives from the Department of State, the Office of the Secretary

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[30] *http://foreign.senate.gov/search/?q=law+of+the+sea&as_sitesearch=http%3A%2F%2Fforeign.senate.gov%2Fhearings&x=22&y=17.*

[31] Senate Executive Report 108-10, March 11, 2004, 108th Congress and Senate Executive Report 110-9, December 19, 2007, 110th Congress can be accessed at *http://www.virginia.edu/colp/los.html*. Scott Borgerson, Council on Foreign Relations, pp. 12-13, further discusses Senate action on the treaty. We note that under Senate rules, treaties must be reconsidered by the Senate Foreign Relations Committee in each new Congress. Because the full Senate did not take action on UNCLOS before the end of the Congressional term in 2008, the treaty is still before the Senate Foreign Relations Committee.

[32] The entire letter can be accessed at *http://www.virginia.edu/colp/pdf/Biden-Letter-JointChiefs.pdf*.

[33] Deputy Secretary England's full testimony can be accessed at *http://foreign.senate.gov/imo/media/doc/EnglandTestimony070927.pdf*.

of Defense, the U.S. Navy, the U.S. Coast Guard, and the Commerce Department have testified in support of the Convention at various Congressional hearings. Representatives from six Bush Administration Cabinet departments participated in the interagency group that helped write the resolution of advice and consent accompanying the treaty and the U.S. Commission on Ocean Policy, appointed by President Bush, strongly endorsed U.S. accession to the Law of the Sea.

On May 19, 2007, President George W. Bush urged the Senate to approve the Convention during the then-current session of Congress, stating as follows:[34]

> Joining [the Convention] will serve the national security interests of the United States, including the maritime mobility of our armed forces worldwide. It will secure U.S. sovereign rights over extensive marine areas, including the valuable natural resources they contain. Accession [to the Convention] will promote U.S. interests in the environmental health of the oceans. And it will give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted.

In an October 16, 2009 letter to the U.S. Senate Foreign Relations Committee, Secretary of State Hillary Clinton offered strong support for U.S. accession to the Convention, noting that as the country with the largest Exclusive Economic Zone, and one of the largest continental shelves, the United States stands more to gain from the treaty in terms of economic and resource rights than any other country. Likewise, the Department of Defense 2010 Quadrennial Defense Review "strongly supports accession" to the UNCOLS for national security reasons, as well as economic and environmental benefits.[35]

A September 24, 2007, letter to Senators Harry Reid and Mitch McConnell requesting the Senate approve U.S. accession to the treaty was signed by 101 individuals representing former and current government and military officials, environmental and conservation groups, and major industry groups. The signers included such persons as retired Admiral James D. Watkins, former Secretary of State Madeline Albright, co-founder of the Natural Resources Defense Council, John Adams, president and CEO of the American Petroleum Institute, Red Cavaney, Walter Cronkite, former Secretary of the Interior Bruce Babbitt, former Secretary of State, Alexander Haig, Jr., and former Alaska Governor Tony Knowles. In addition, former Alaska Governor Sarah Palin also supported ratification of the treaty.[36]

20 WHEREAS, in 2009, the Twenty-Sixth Alaska State Legislature passed a similar resolution to this one;

In 2009, the Alaska Legislature approved HJR 22 (Legislative Resolve 14), which urged the United States Senate to ratify the Law of the Sea Treaty. The House voted 34 to 4 and the Senate 15 to 2 to issue the resolution.[37] An identical measure was considered in 2008 (HJR 39), but died in the House Rules Committee.

We hope this is helpful. If you have questions or need additional information, please let us know.

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[34] Senate Executive Report, 110-9, December 19, 2007, 110th Congress.

[35] "Quadrennial Defense Review Report," Department of Defense, February 2010, p. 26. The report can be accessed at *http://www.defense.gov/qdr/images/QDR_as_of_12Feb10_1000.pdf*.

[36] Numerous letters and testimony from individuals supporting the treaty can be accessed at the Center for Oceans Law and Policy at *http://www.virginia.edu/colp/los.html*. Scott Borgerson, Council on Foreign Relations, notes that the Law of the Sea might be the only issue on which all of these individuals and constituencies agree.

[37] Legislative Resolve 14 (2009) can be accessed at *http://www.legis.state.ak.us/PDF/26/Bills/HJR022Z.PDF*. The text and legislative history for HJR 39 (2008) is available at *http://www.legis.state.ak.us/basis/get_bill.asp?bill=HJR%2039&session=25*.

Source: Wikipedia

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

Pro-ratification arguments

- *The environment:* Oceans cover over 70% of the Earth. In the U.S., there are laws to keep marine resources available for future generations. UNCLOS sets a legally binding international standard which aims to protect the marine wildlife and environment.

- *National security:* The U.S. military, which relies heavily on its ability to freely navigate on and fly over the sea, has been a strong advocate of UNCLOS. In the absence of treaty law, the US relies on customary law that can change as states' practices change. Also, under this customary law, the Pentagon claims that countries often make unreasonable and irresponsible claims on marine territory that frustrate U.S. military action. The U.S. has tried to work around these claims, but without a legal framework to support them, the Pentagon believes it risks compromising its intelligence and military operations at sea.

- *International diplomacy and peaceful dispute resolution:* The Convention offers a peaceful way to resolve territorial and natural resource disputes through the International Tribunal for the Law of the Sea (ITLOS), based on agreements to which signatory parties have already committed. In contrast, without ratification, the US has no peaceful recourse if another non-signatory party decides to close its straits to navigation except through the Permanent Court of Arbitration which was established in 1902 to allow States to settle disputes in a manner other than war.

- *It helps American businesses:* Each country has exclusive rights to manage the resources in areas near its coast. Under the terms of UNCLOS, which maps out the boundaries of these areas, the American zone is larger than that of any other country in the world. The size of this zone is 3.36 million square miles — bigger than the lower 48 states combined. In addition, under UNCLOS, coastal states can exercise sovereign rights over natural resources within the extended continental shelf area beyond this territory. It would also give US companies an opportunity to apply for licenses with the ISA, which manages claims to resources in the deep seabed, an area over which no country has sovereign rights.

Anti-ratification arguments

- *National sovereignty:* The treaty creates the International Seabed Authority (ISA) with its own dispute resolution tribunal. However, should the U.S. stop its current compliance with the U.S.-negotiated laws of the Convention, the U.S. could not be taken to the Law of the Sea Tribunal since the U.S. has indicated that it would choose binding arbitration rather than availing itself of the International Tribunal on the Law of the Sea.

- *The environment:* Some of the Convention's conservation provisions would provide new avenues for non-U.S. environmental organizations to affect domestic U.S. environmental policies by pursuing legal action in both US and international courts. In addition, requirements that nations either harvest their entire allowable catch in certain areas or give the surplus to other nations could result in mandated overfishing.

- *Taxation:* The license fees and taxes levied on economic activities in the deep seabed area by the ISA would be, in effect, a form of 'taxation without representation'. Citizens would be indirectly taxed through business and governmental activities in the area.

- *Economics:* Businesses can already exploit resources from the international area; ratifying the treaty would force them to buy licenses for that right and pay taxes on the proceeds.

- *Navigation rights not threatened:* One of the treaty's main selling points, legally recognized navigation rights on, over, and under straits, is unnecessary because these rights are not currently threatened by law or by any military capable of opposing the U.S.

- *Harm to de-militarizing operations:* The treaty would require all undersea ocean vessels, including submarines used for mine detection to protect ships exercising the right of innocent passage, to navigate on the surface in territorial waters to be entitled to the right of innocent passage. The operative language is identical to that contained in the 1958 Convention on the Territorial Sea and Contiguous Zone to which the U.S. is already a party.

- *Limited control over funding: The U.S. would have no direct control over how the money is used.*

- *Eminent domain: The treaty applies eminent domain to intellectual property* giving the UN the power to seize technology and share it with potentially enemy states.

- *Lack of need:* The U.S. already honors almost all the provisions of the treaty. For practical purposes, there is no pressing need to ratify it that outweighs the negatives of the remaining provisions.

Chinese Claims

TORONTO SUN, January 17th, 2011

A top Chinese admiral said that because 1/5 of the world's population lives in China, China was entitled to 1/5 of the resources that lie in the Arctic's international waters.

"The Arctic belongs to all the people around the world as no nation has sovereignty over it," Rear Admiral Yin Zhuo said in the spring. "China must play an indispensable role in Arctic exploration as we have one-fifth of the world's population."

TORONTO SUN
torontosun.com

News | G20

Harper deals with new Arctic rival: China

By DAVID AKIN, NATIONAL BUREAU CHIEF

Last Updated: June 23, 2010 4:24am

OTTAWA – When Prime Minister Stephen Harper and Chinese President Hu Jintao meet here in Ottawa Thursday, one of them will be able to talk about the new Arctic icebreaker his country will launch in a couple of years.

It won't be Harper.

Through Harper's Conservative government has made Arctic sovereignty one of its centerpiece priorities over four years in government, Canada still finds itself unable to do much to actually enforce that sovereignty on its own. It won't have its own new polar class icebreaker until 2017 and, until then, Canada simply doesn't have the equipment to operate in the Arctic in the middle of winter at the top of the world.

Meanwhile, Russia has a fleet of year-round icebreakers that it actually wants to use to establish a Murmansk to Churchill, Man. shipping route. The U.S. is refitting one of its ships so it can handle the Arctic ice year-round. And now China — although as much as a mile of Arctic coastline of its own — is also building an icebreaker it will launch in 2013.

"Yeah, that's an interesting development because it's not an Arctic nation, is it," Harper wryly noted in an exclusive interview Tuesday with Sun Media.

He arrives in Ottawa for a state visit Thursday ahead of the G8 and G20 summits to be held respectively in Huntsville, Ont. and Toronto. The Hu visit follows Harper's visit to China last fall.

Does China's Arctic aspirations come up between the two leaders?

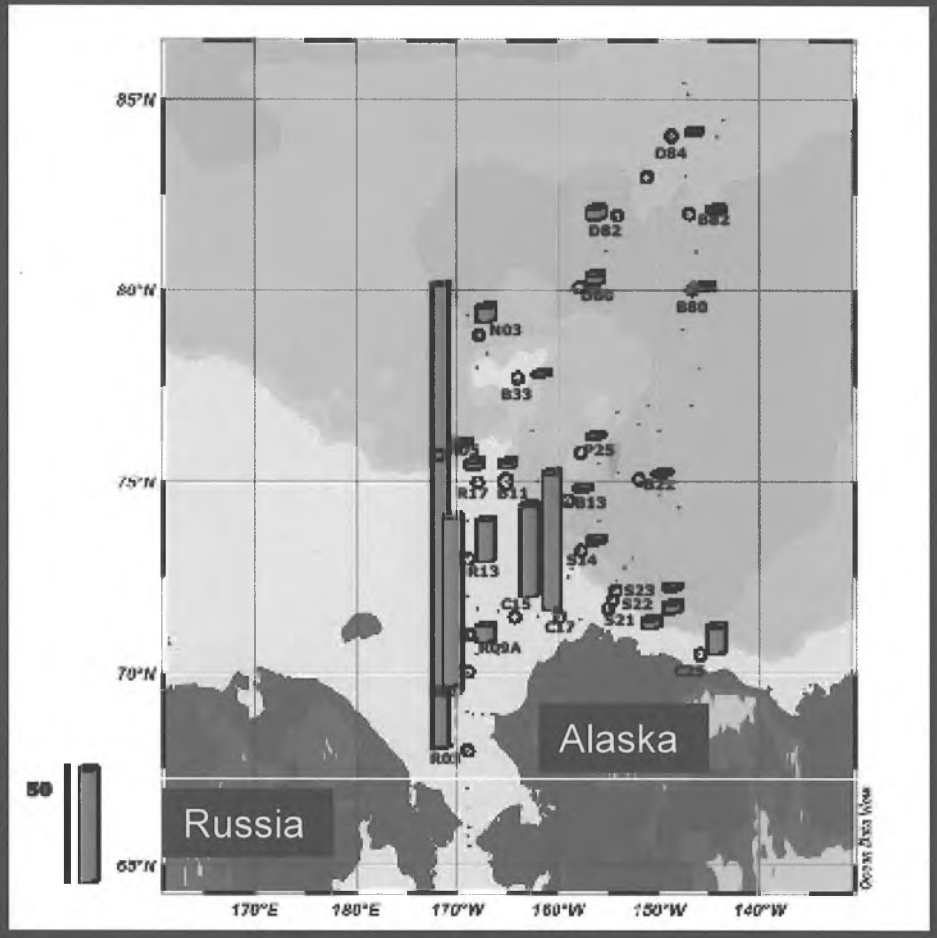
"It certainly comes up between our governments," Harper said. "We're watching these developments very carefully. China is increasingly an important partner of Canada in the economic realm. In other realms, we and other Western countries are still not that close to China so we watch some of these other developments very carefully."

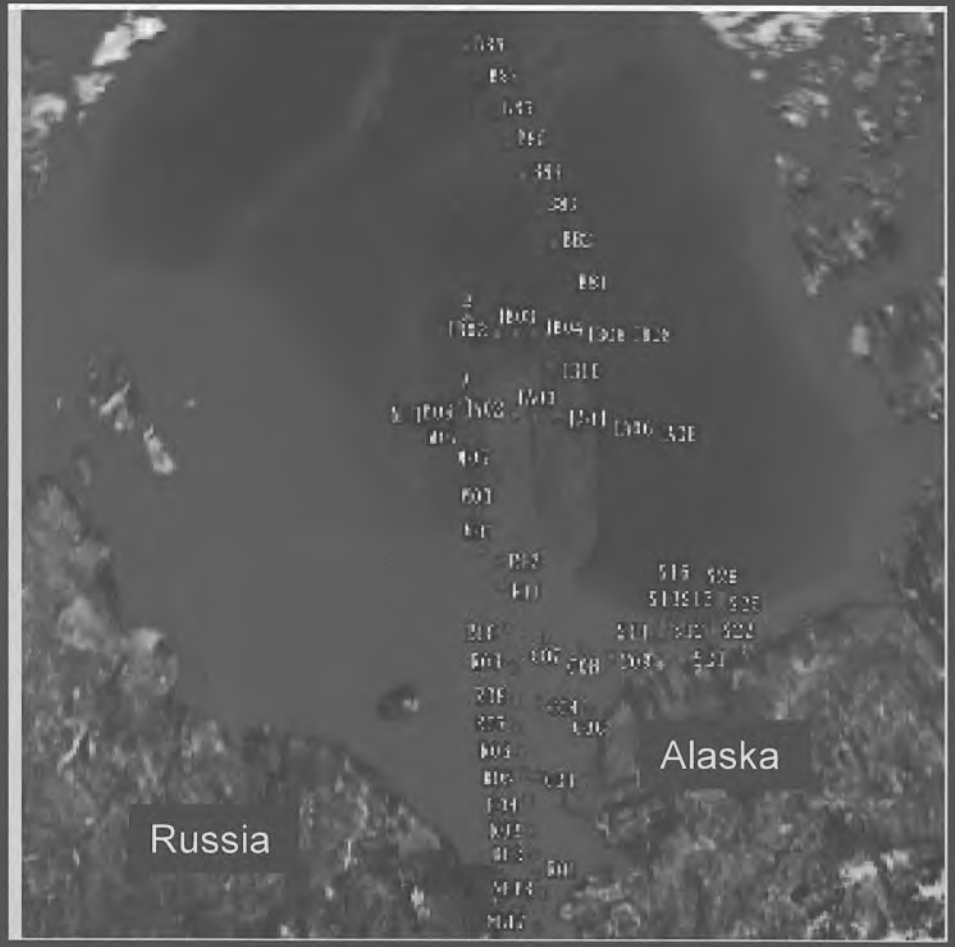
China is playing for keeps when it comes to vast natural resources that lie under the Arctic Ocean. A top Chinese admiral said earlier this year that, by his reasoning, because one-fifth of the world's population lives in China, China was entitled to one-fifth of the resources that lie in the Arctic's international waters.

"The Arctic belongs to all the people around the world as no nation has sovereignty over it," Rear Admiral Yin Zhuo said in the spring. "China must play an indispensable role in Arctic exploration as we have one-fifth of the world's population."

CHINESE IN THE ARCTIC

XUE LONG Arctic Deployment summer 2009 operating in the white space above Alaska





100 stations… 1 mooring system… **1 ice camp on Chukchi Plateau**

CHINESE IN THE ARCTIC

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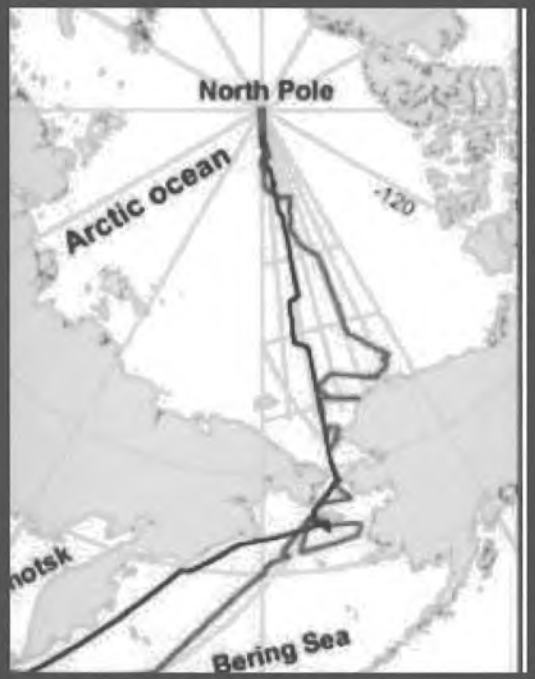
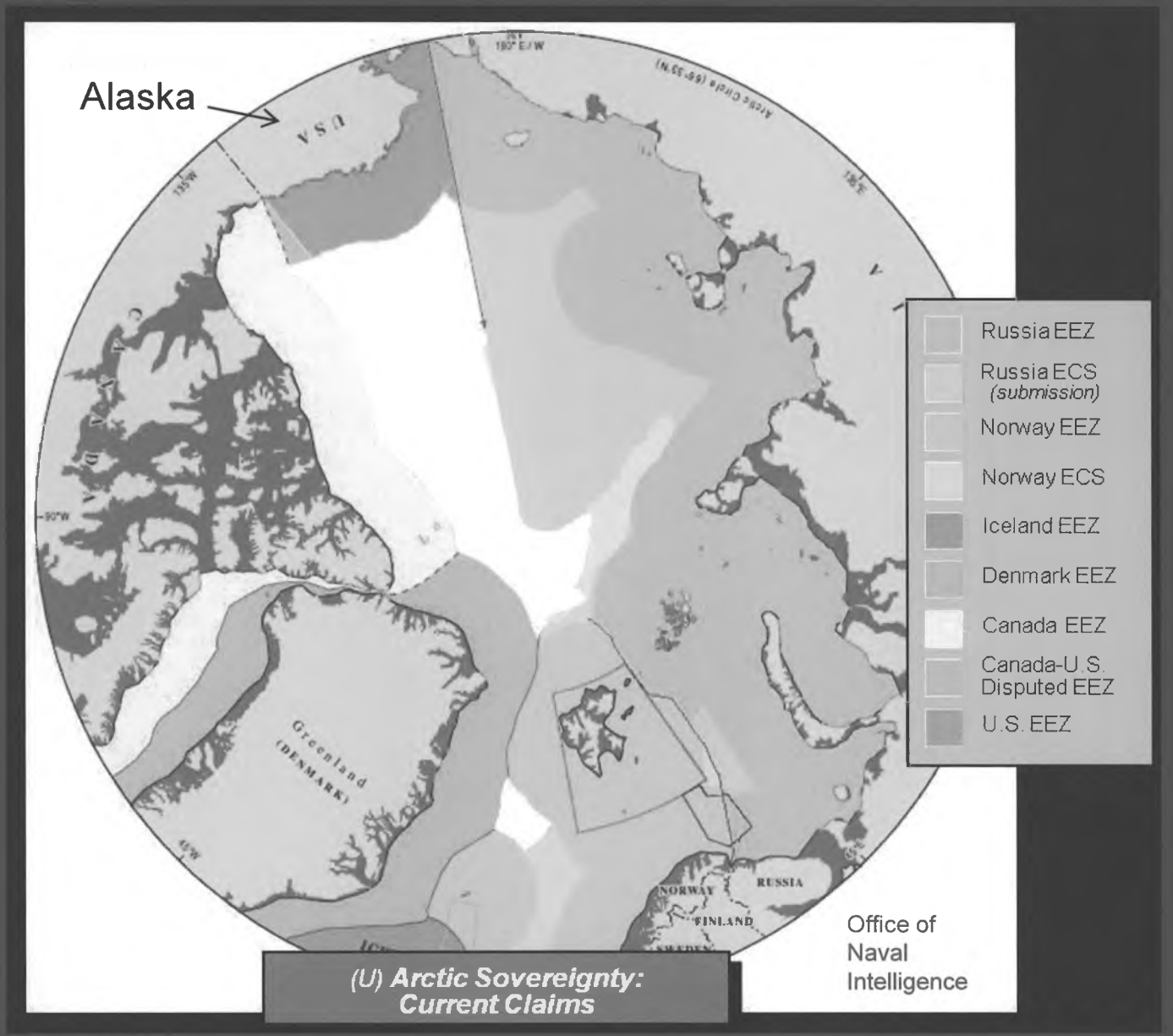


Voyage to North Pole… focus on Chukchi Plateau

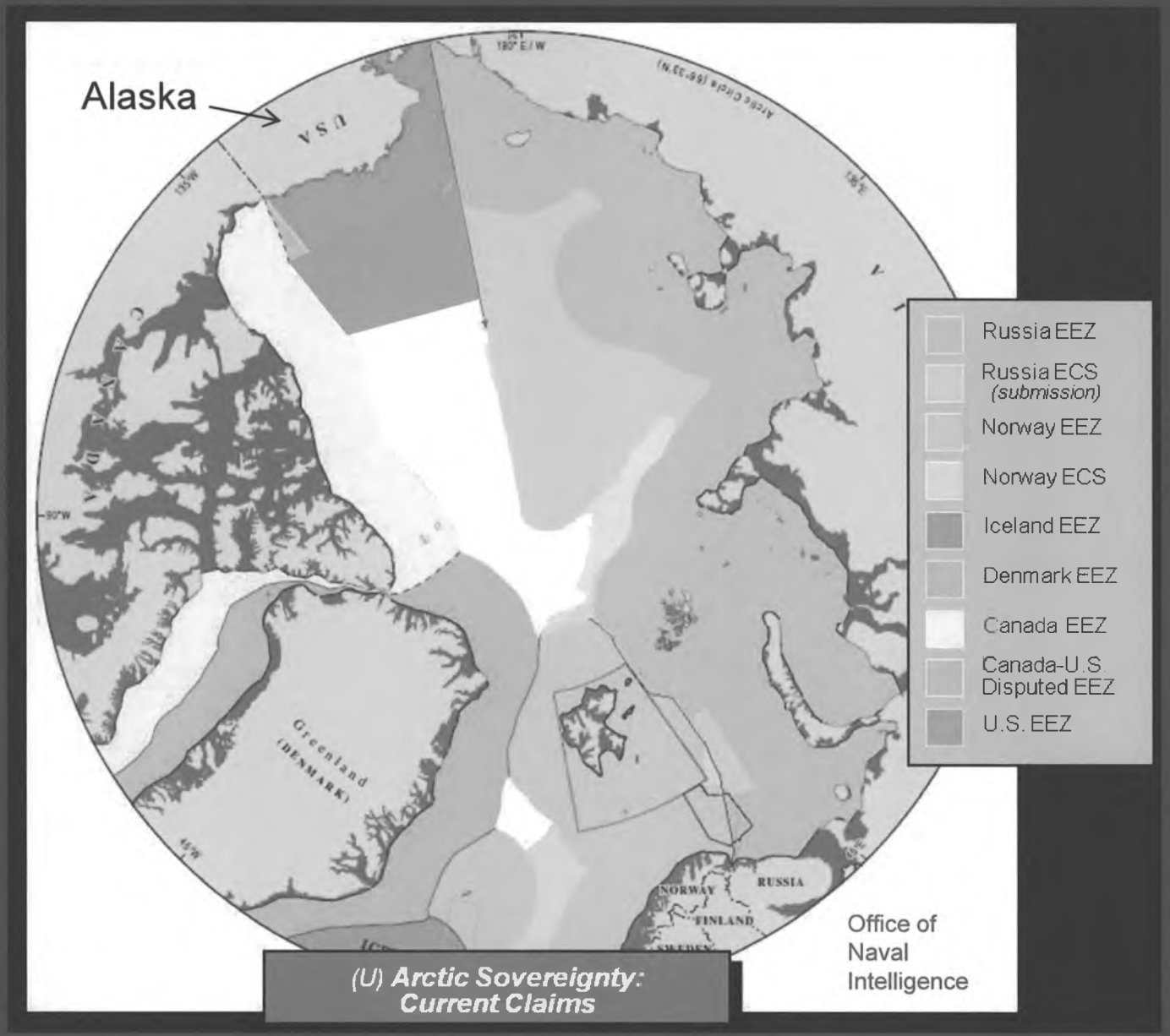
Remaining White Space



(U) ***Arctic Sovereignty: Current Claims***

Note: The United States can make an Extended Continental Shelf Claim north of the U.S. EEZ when UNCLOS is ratified by the U.S. Senate.

Potential Extended Continental Shelf Claim



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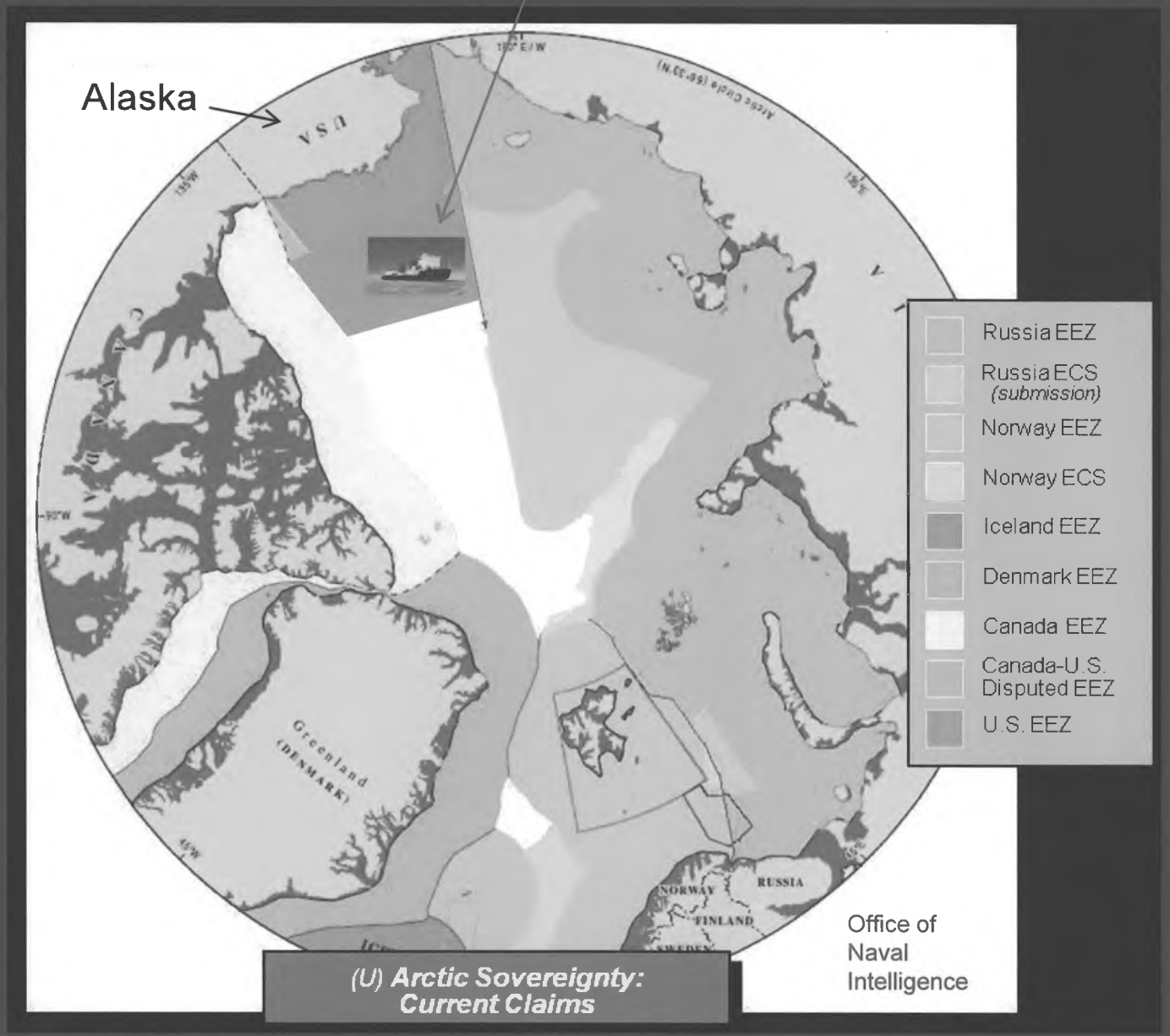
Where Chinese have been operating



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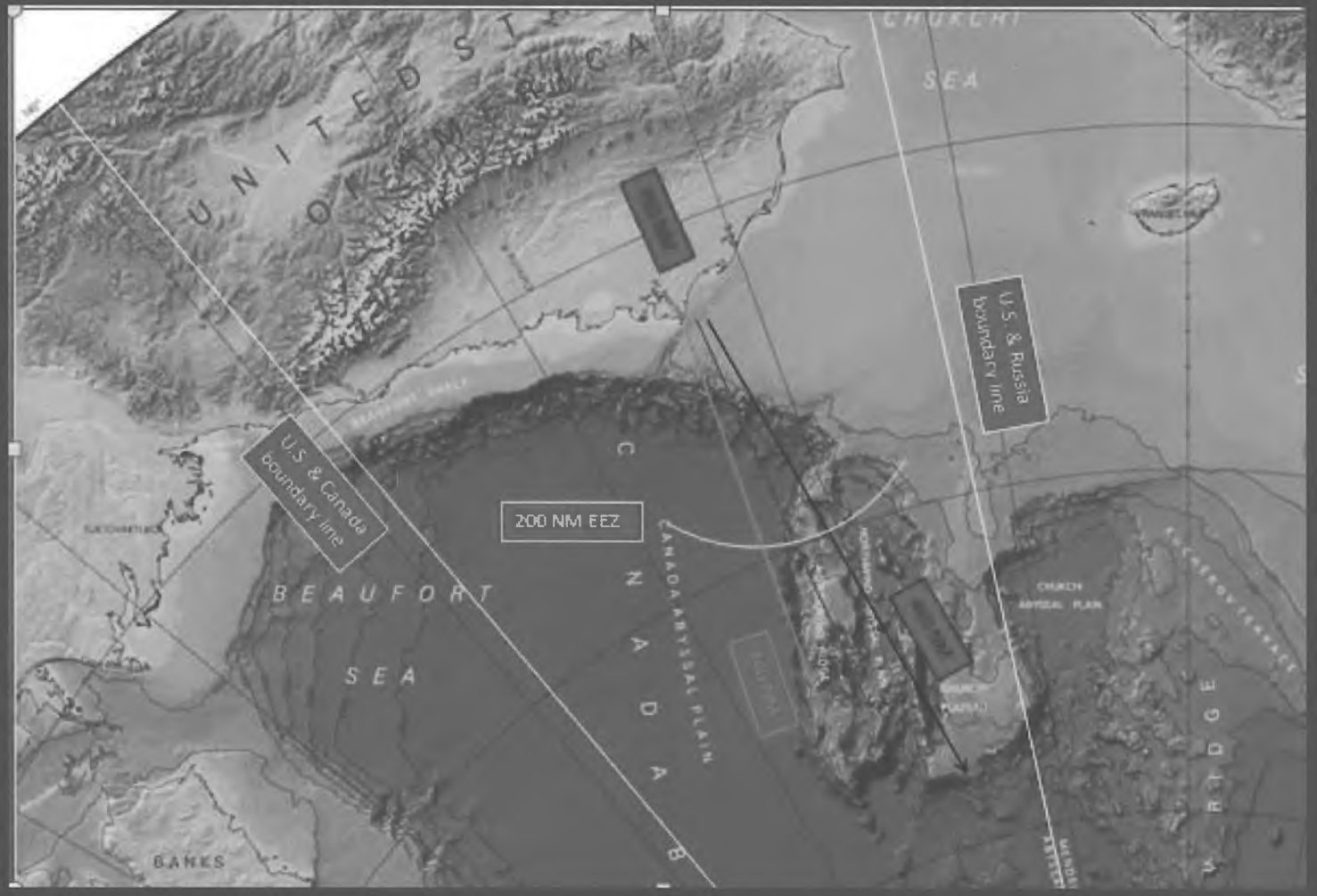


ALASKA MUNICIPAL LEAGUE
Alaska Conference of Mayors

217 Second Street, Suite 200 • Juneau, Alaska 99801
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

ALASKA MUNICIPAL LEAGUE
RESOLUTION #2011-09

A RESOLUTION BY THE ALASKA MUNICIPAL LEAGUE IN SUPPORT OF RATIFICATION OF THE UNITED NATION'S CONVENTION ON THE LAW OF THE SEA, WHICH, UNTIL RATIFIED, WILL KEEP THE UNITED STATES FROM PARTICIPATING IN DELIBERATIONS WHICH AFFECT NATIONAL SECURITY, ENVIRONMENTAL CONCERNS RELATING TO THE USE OF THE SEAS, AND TO ECONOMIC DEVELOPMENT FOR ALASKA'S COASTAL COMMUNITIES

WHEREAS, the oceans had long been subject to the freedom-of-the-seas doctrine, a principle put forth in the 17th century, essentially limiting national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline; and

WHEREAS, a tangle of claims, spreading pollution, competing demands for lucrative fish stocks in coastal waters, growing tension between coastal nations rights to resources, the increased presence of maritime powers, the pressures of long-distance navigation, and a seemingly outdated, if not inherently conflicting, freedom-of-the-seas doctrine; and

WHEREAS, on November 1, 1967, Malta's Ambassador to the United Nations, Arvid Pardo, asked the nations of the world to update the freedom-of-the-seas doctrine to take into account the technological changes that had altered man's relationship to the oceans; and

WHEREAS, the United Nation's Convention on the Law of the Sea was adopted in 1982 and covered setting limits, navigation, archipelagic status, transit regimes, exclusive economic zones (EEZs), continental shelf jurisdiction, deep seabed mining, exploitation, protection of the environment, scientific research, and settlement disputes; and

WHEREAS, in 1990, consultations were begun between signatories (including the U.S.), over the possibility of modifying the Convention to allow the industrialized countries to join the Convention; and

WHEREAS, the resulting 1994 agreement was adopted, at which time the United States signed the agreement and now recognizes the Convention of general international law, but has not yet ratified it at this time; and

WHEREAS, in April, 2004, the United Nation's Ambassador argued against ratification of the treaty; in May, 2007, President George W. Bush urged the Senate to approve the United Nation's Convention on the Law of the Sea (UNCLOS); in October, 2007, the Senate Foreign Relations Committee voted to send the treaty to the full U.S. Senate for

a vote; in January, 2009, Senator Hilary Clinton said that ratification of the Law of the Sea would be a priority for her; and

WHEREAS, in the United States, there has been vigorous debate over the ratification of the treaty, with criticism coming from those who feel that involvement in some international organizations and treaties are detrimental to U.S. national interests and that it would impinge on sovereignty; and

WHEREAS, the pros for ratification are:

1. The environment: Oceans cover over 70% of the earth, and UNCLOS sets a legally binding international standard which aims to protect the marine wildlife and environment.
2. National Security: The Pentagon claims that countries often make unreasonable and irresponsible claims on marine territory that frustrate military action.
3. International Diplomacy: The Convention offers a peaceful way to resolve territorial and natural resource disputes through the world.
4. Business: The U.S. EEZ zone is 3.36 million square miles under UNCLOS, giving the U.S. the ability to exercise sovereign rights over natural resources within the extended continental shelf area.

NOW, THEREFORE BE IT RESOLVED that the Alaska Municipal League urges Congress to ratify the United Nation's Convention on the Law of the Sea, which, until ratified, will prohibit the U.S. from participating in deliberations which affect the national security; environmental concerns relating to the use of the seas; and to economic development for Alaska's coastal communities.

PASSED AND APPROVED by the Alaska Municipal League on this 19th day of November, 2010.

Signed: Hal Smalley

Hal Smalley, President, Alaska Municipal League

Attest: Kathie Wasserman

Kathie Wasserman, Executive Director, Alaska Municipal League

Marine Exchange of Alaska

www.mxak.org

Marine Exchange of Alaska

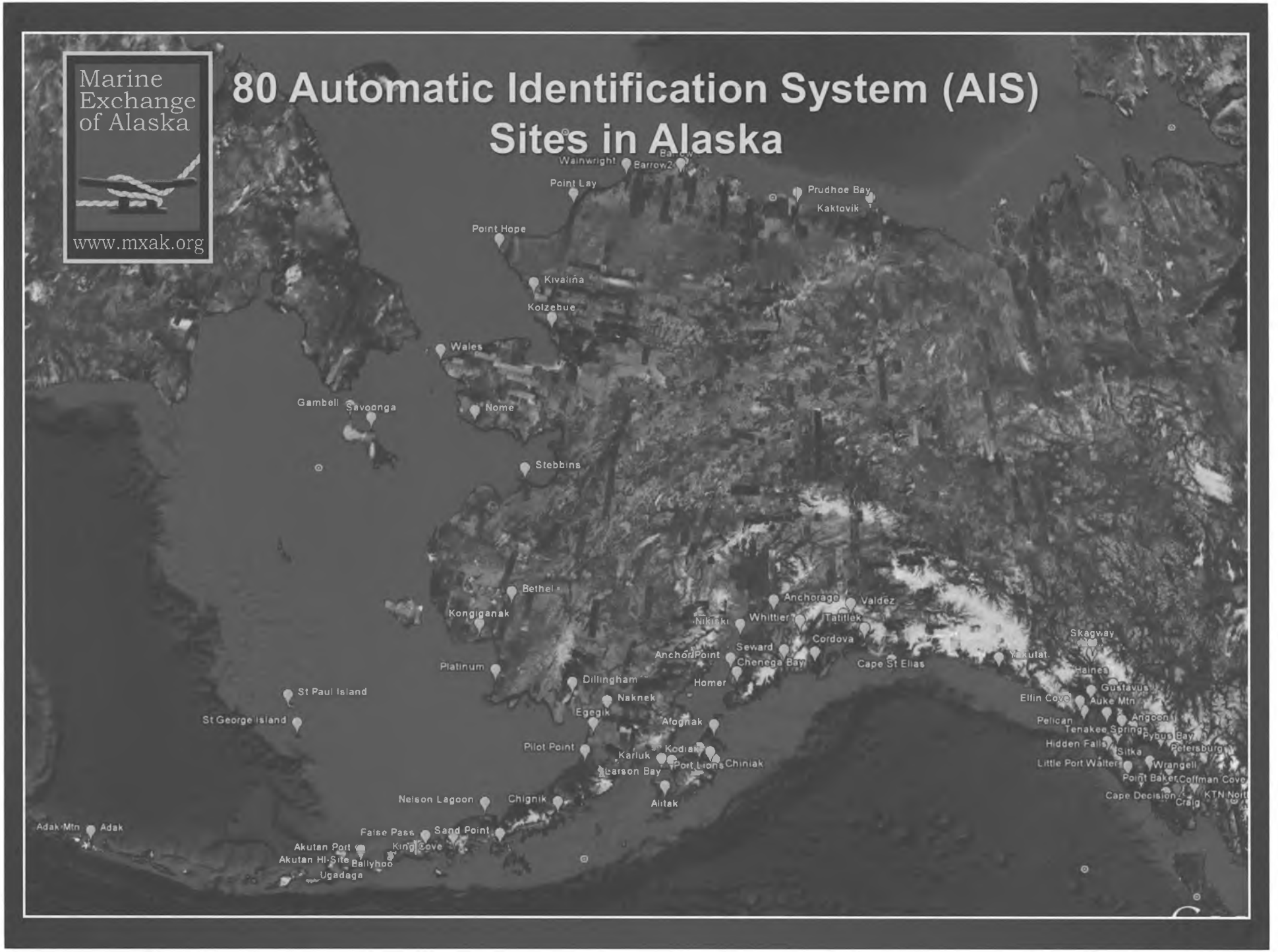
UNCLOS Impacts

Paul Fuhs, Chairman of the Board of Directors

A non-profit maritime organization established to provide the Alaska maritime community information, communications and services to ensure safe, secure, efficient and environmentally responsible maritime operations.

UNCLOS Ratification Impacts on Alaska

1. *Ensures Coast Guard regulatory oversight of operations beyond EEZ*
2. *Reduces Risk by ensuring U.S. oversignt*
3. *Ensures activities conducted in best interests of U.S. interests*
4. *American jobs*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Wales
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Point Baker
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Cape Decision
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Pilot Point
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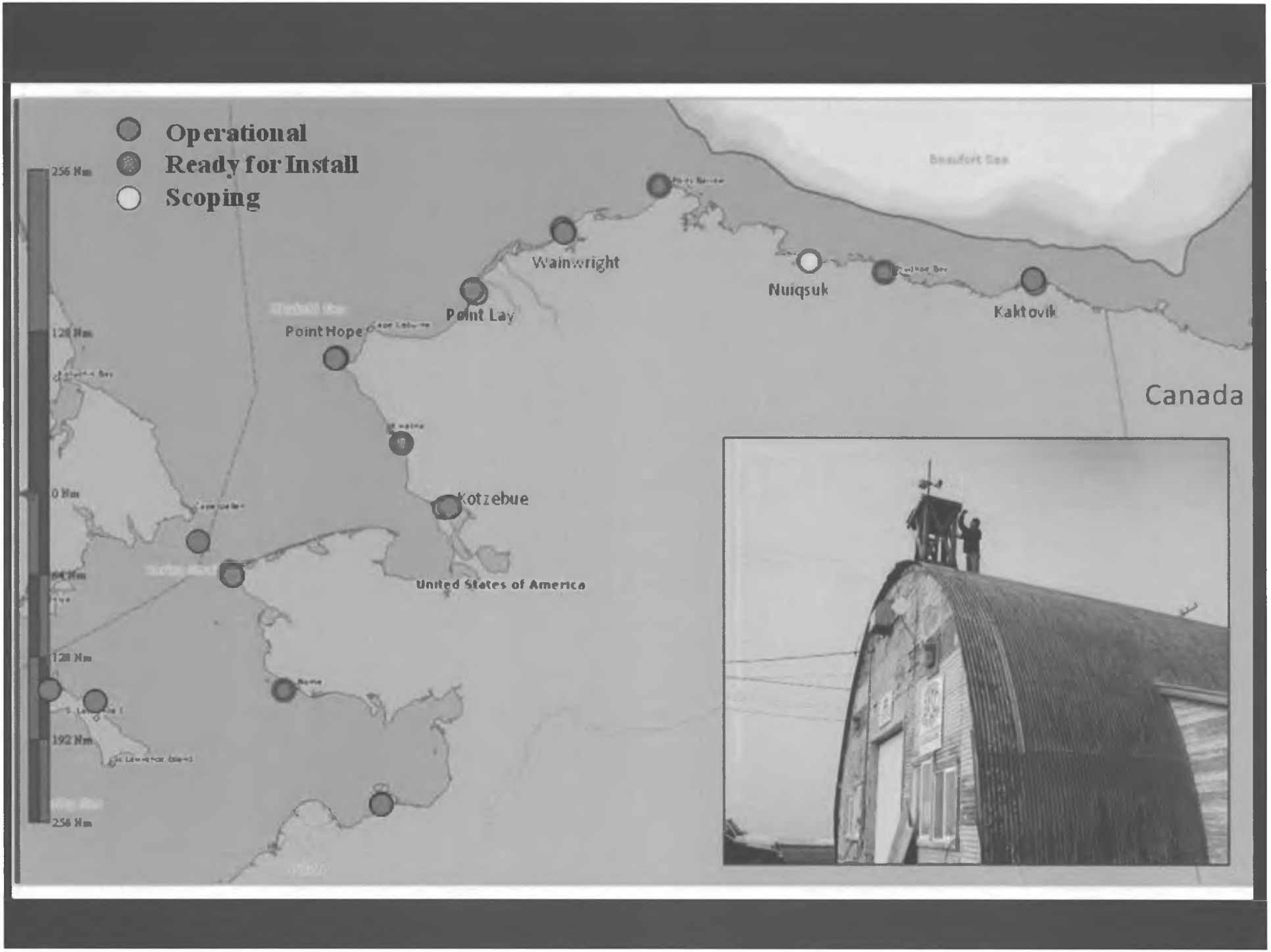
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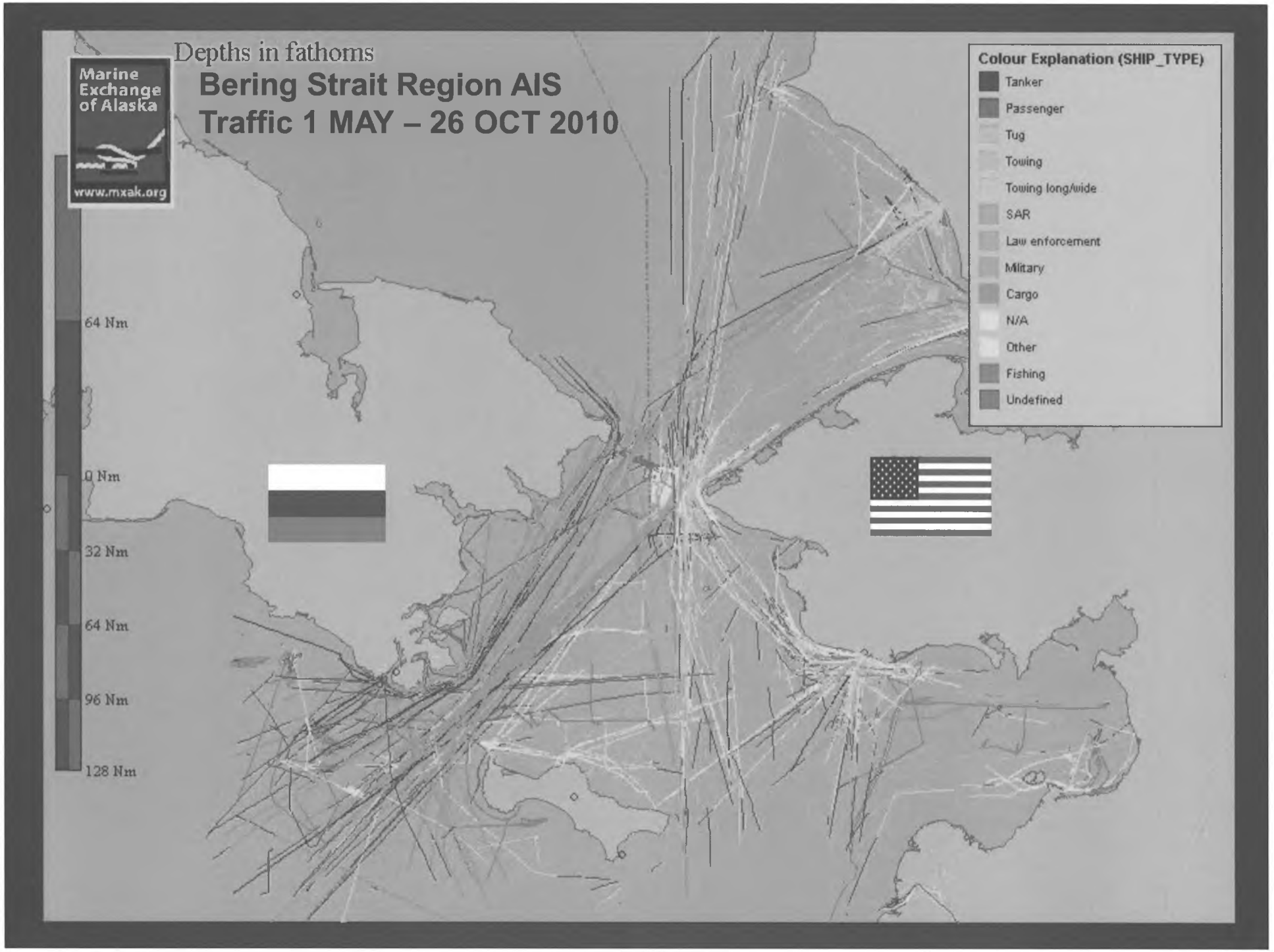
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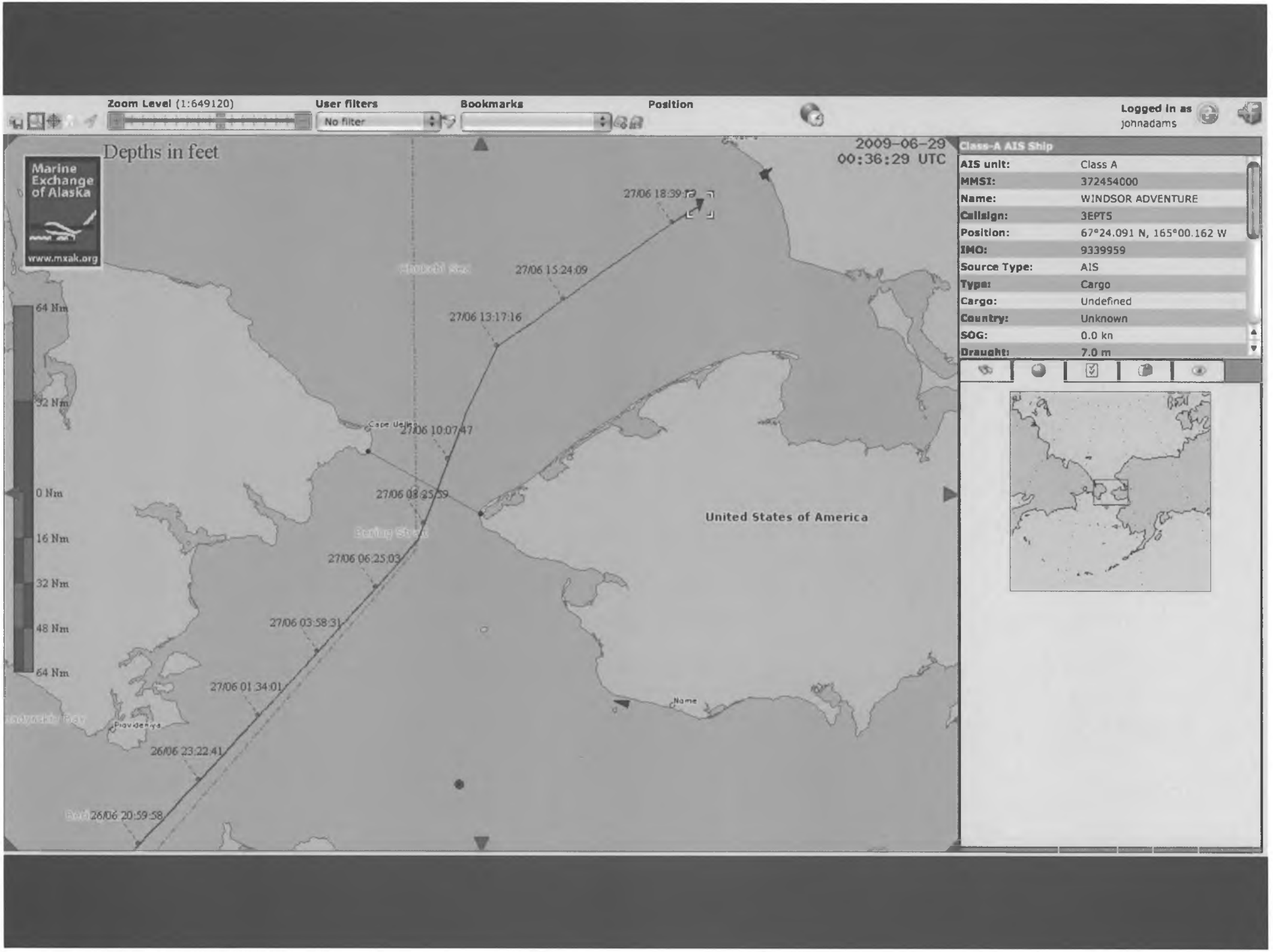
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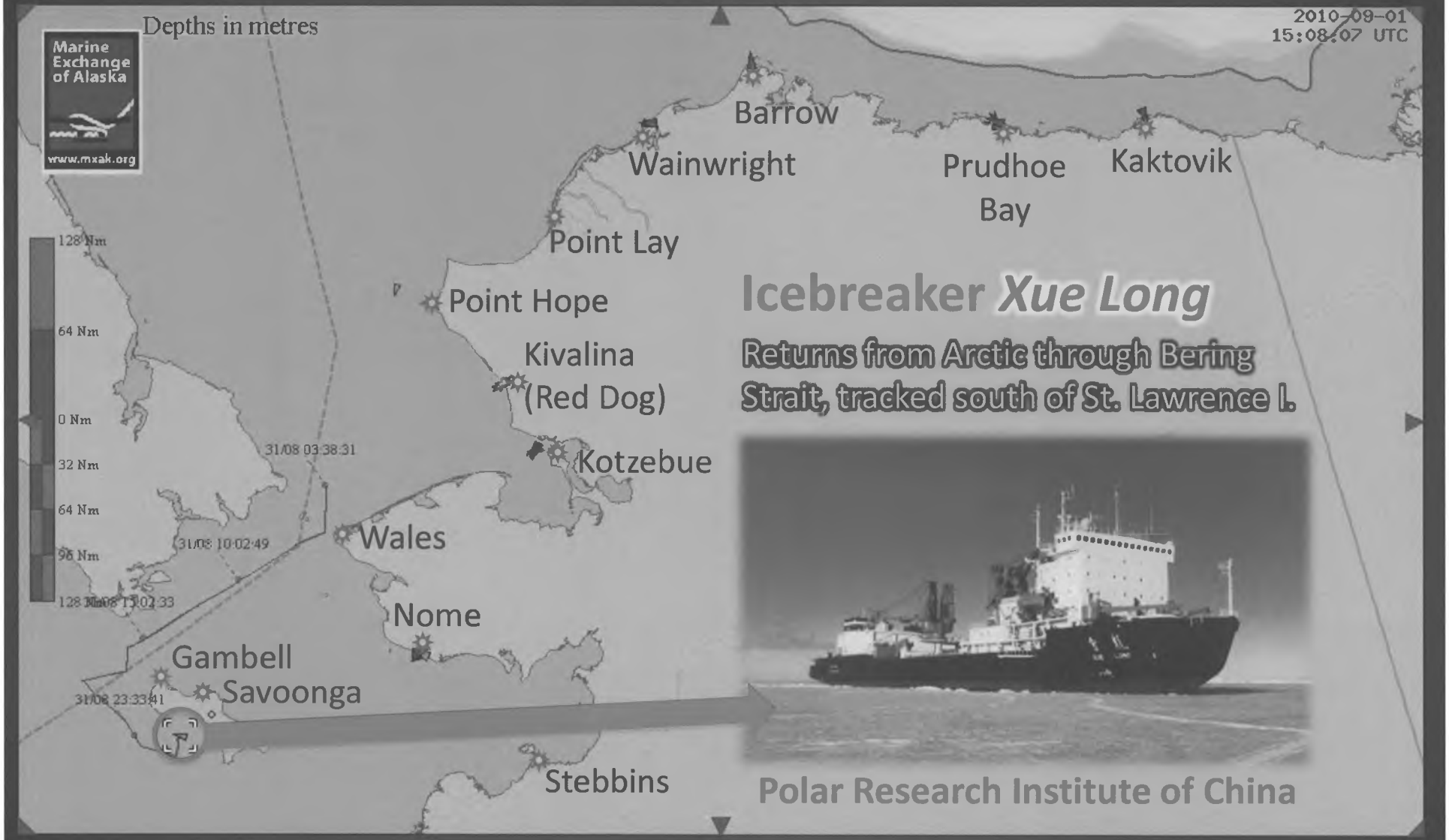
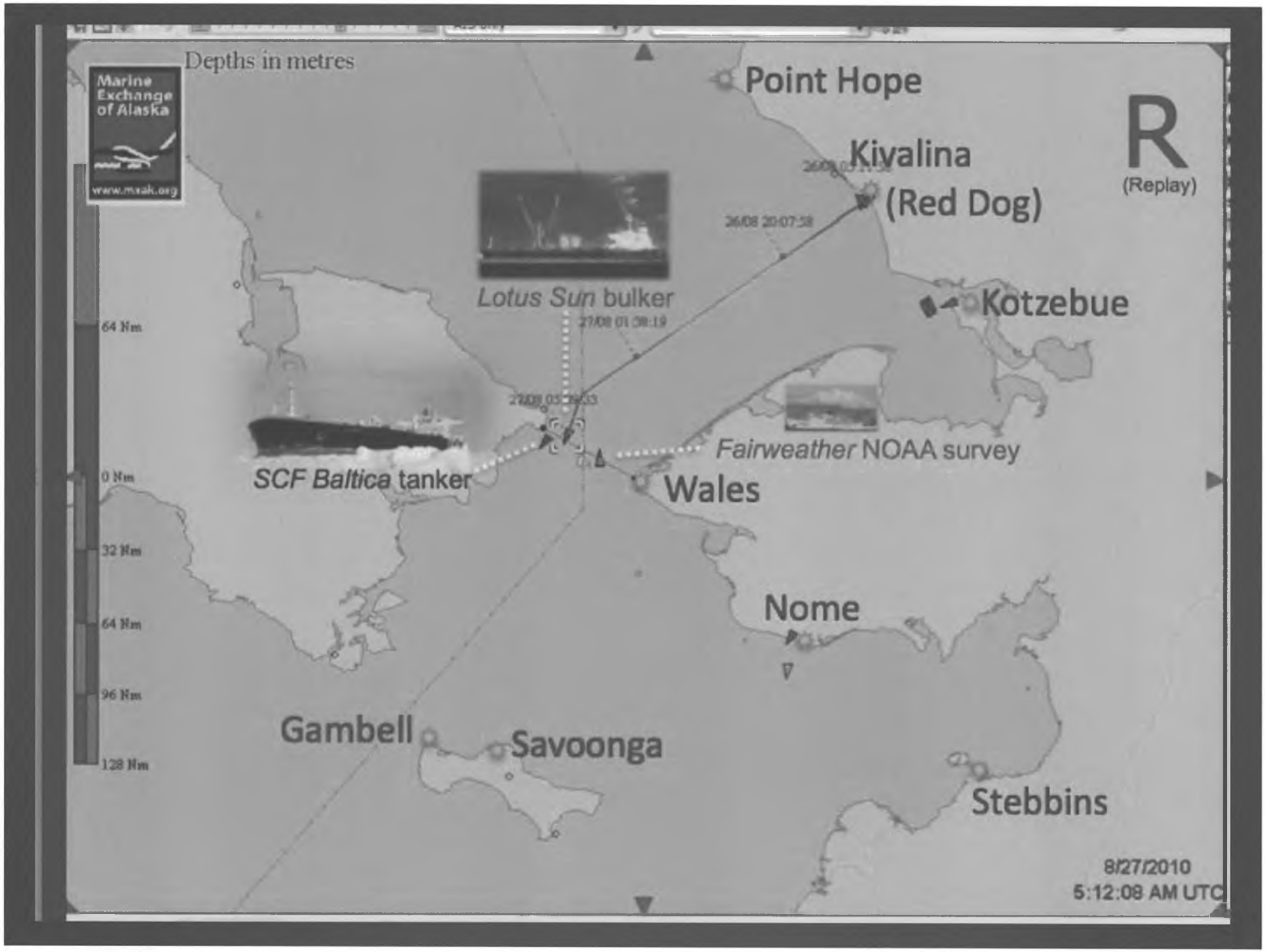
Maritime Domain Awareness –September 2010




Depths in metres
Marine Exchange of Alaska
www.mxak.org
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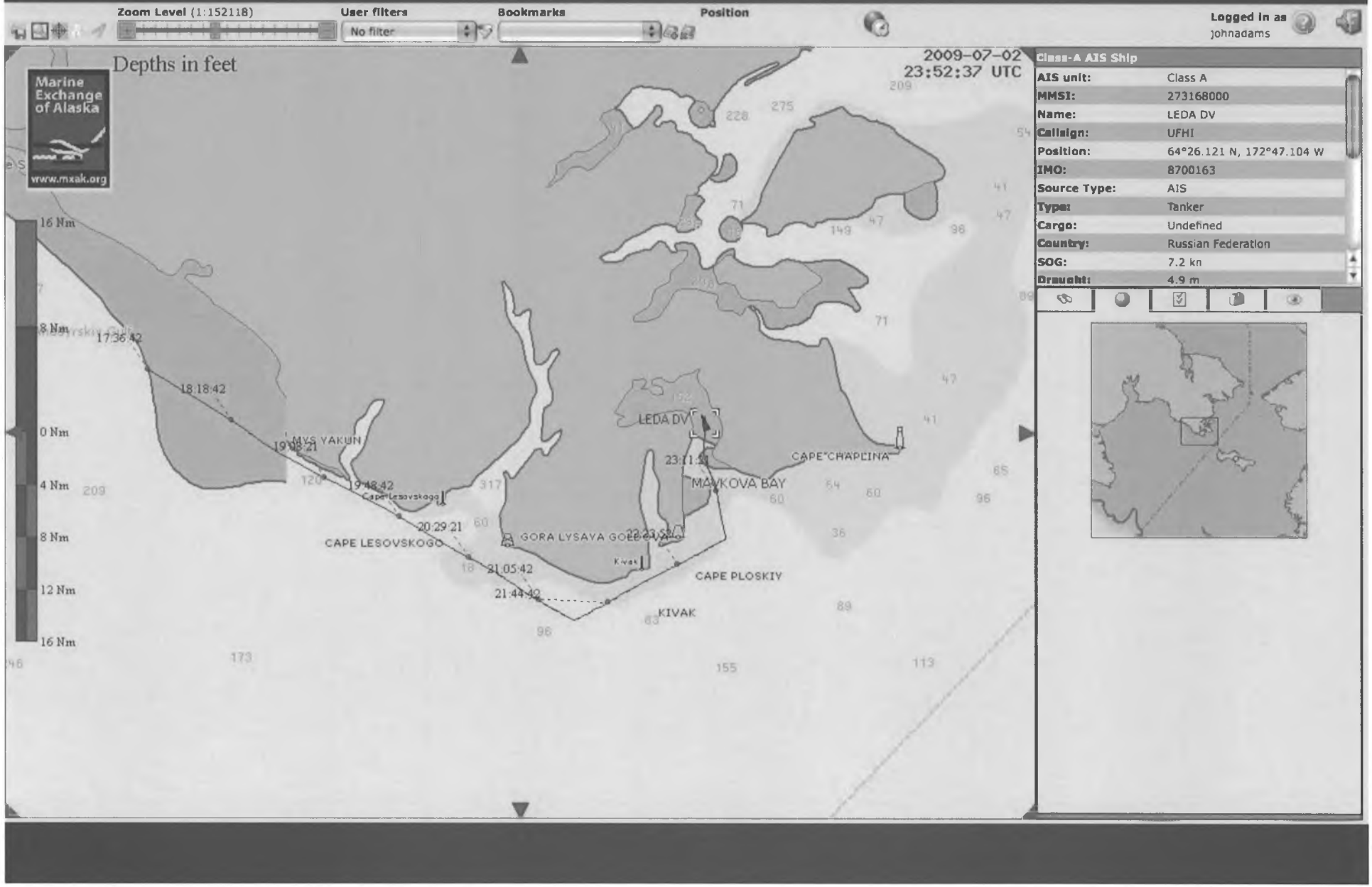
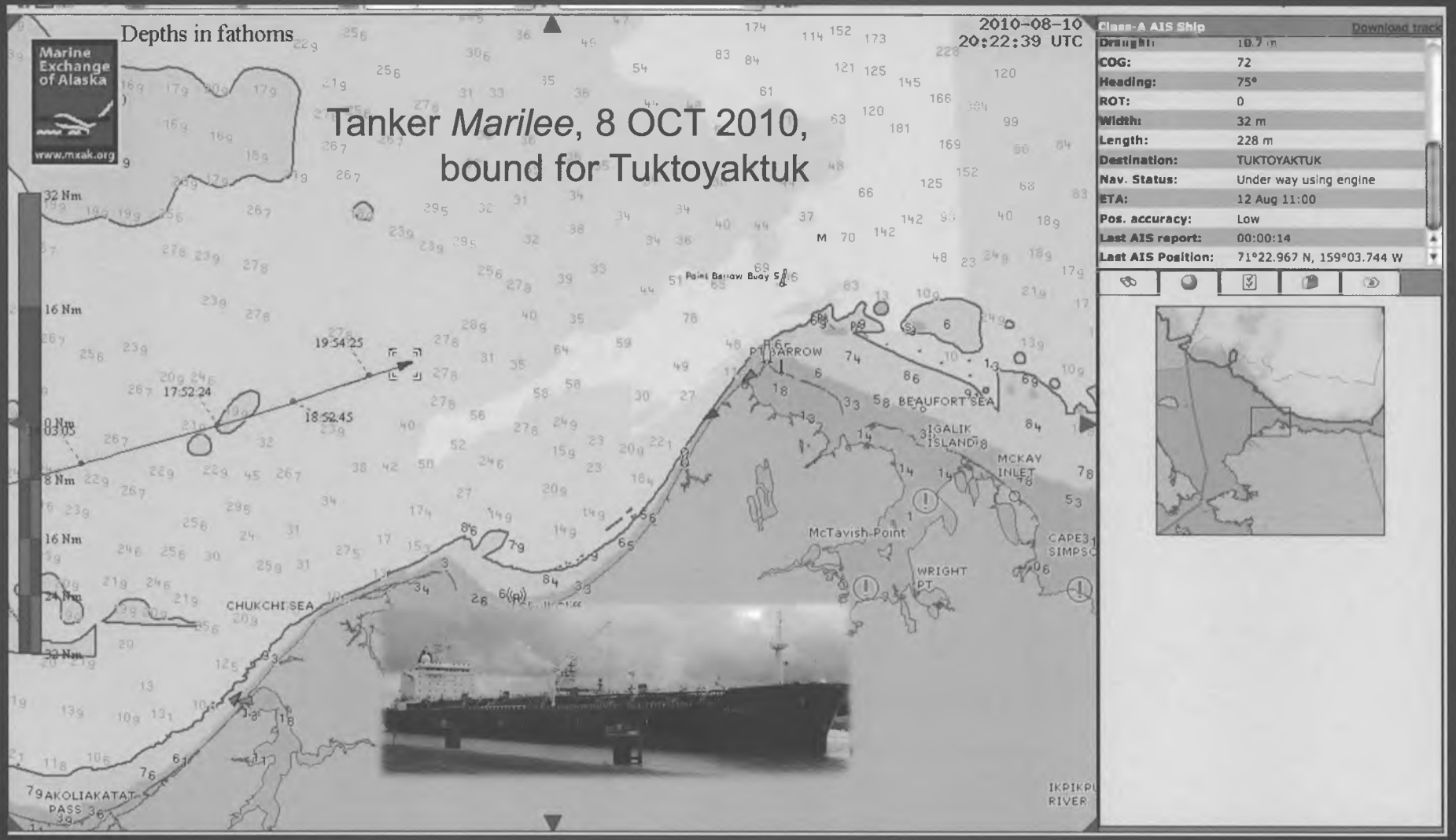
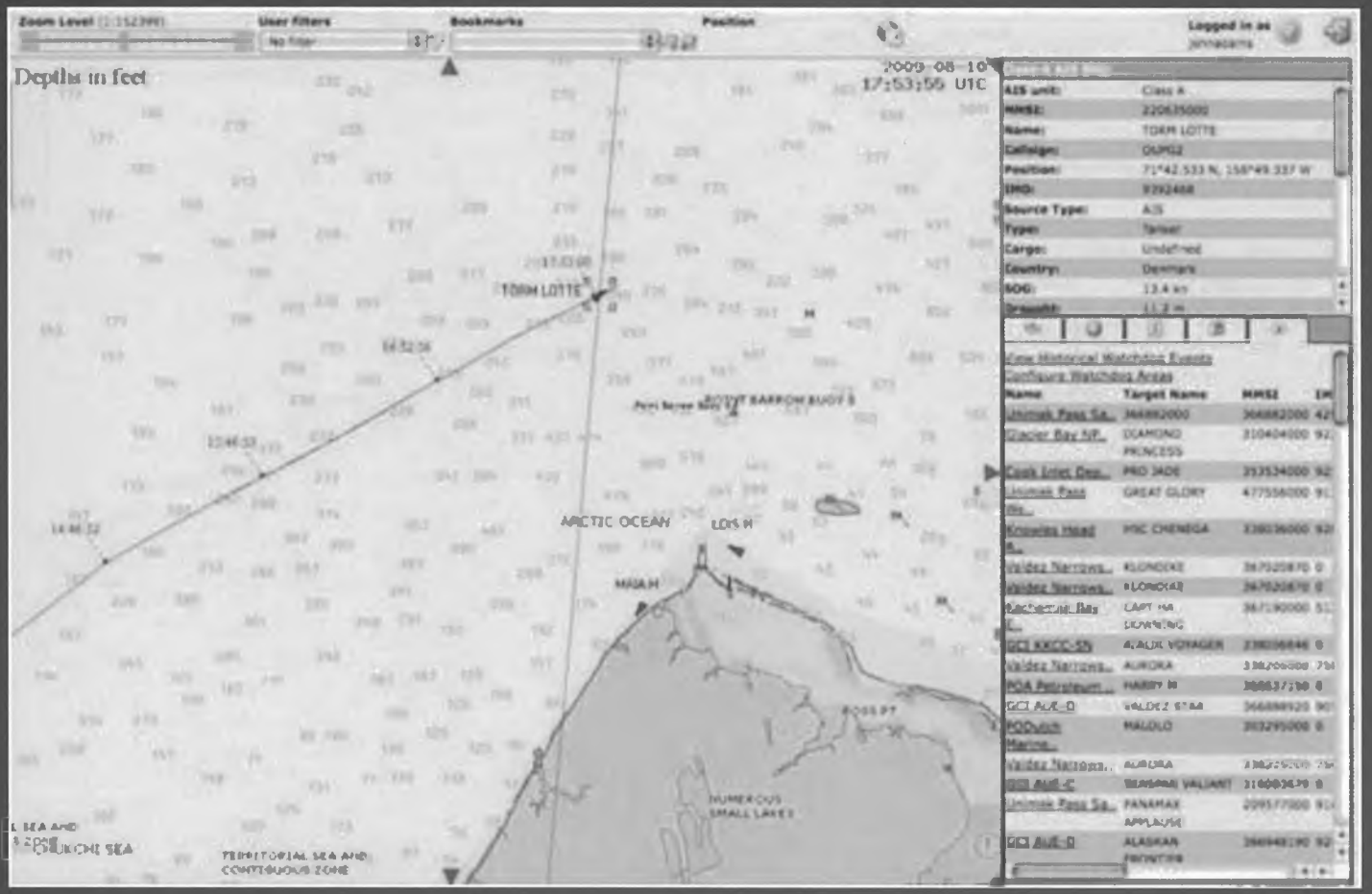


Foreign Tankers Sailing off Alaska Destined to Foreign Ports

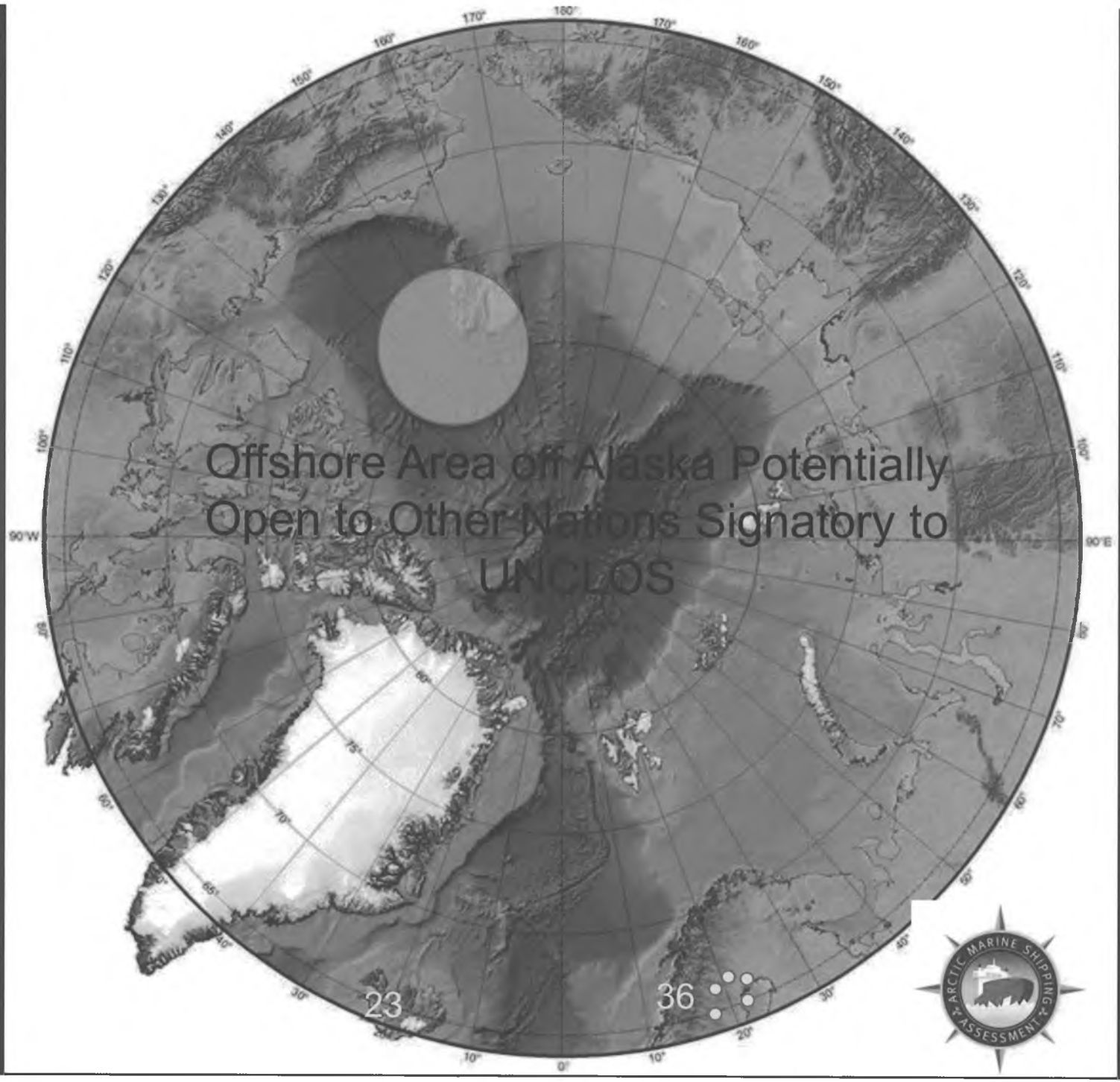




Marine Exchange of Alaska

www.mxak.org

Track of Foreign Tanker
Torm Lotte on voyage from San Francisco to Canadian Arctic


Offshore Area off Alaska Potentially Open to Other Nations Signatory to UNCLOS
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ARCTIC MARINE SHIPPING ASSESSMENT