

Fish and Continental Shelves: Maritime Security, Sovereignty, and Stewardship in the Polar Regions

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THE MARITIME AREAS OF THE Arctic and Antarctic are attracting ever more attention from communities, states, and interests within and beyond their respective circumpolar regions. The reasons for such an increase in public and political engagement are varied and intersect with local, regional, and global agendas pertaining to indigenous politics, climate change, resource exploitation, shipping, environmental conservation, and maritime security.¹

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The Polar Regions are usually defined by some combination of latitude (either the Arctic Circle or Antarctic Circle); bio-geographical indicators (such as the Antarctic Convergence); and treaty area of application (such as 60 degrees North for the 1959 Antarctic Treaty).² Traditionally, the Arctic and Antarctic were barely given a second glance, and those aforementioned geographical and legal markers perpetuated a sense that they could be treated as regional containers that barely intruded into the wider political, economic, or cultural circuits of global life. There is a growing consensus that the Arctic and Antarctic, with their highly dynamic and fluid terrestrial, glacial, atmospheric, and maritime dimensions, are not “containerized.” As citizens and governments around the world are increasingly appreciating, what happens in the Arctic and the Antarctic does not stay there.³ Rather, they will demand our collective attention increasingly in the coming years, as President Obama acknowledged in his speech ad-

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addressing the aptly named GLACIER conference hosted in Anchorage, Alaska.⁴ The President noted, “The actual name of the conference is much longer. It’s a mouthful, but the acronym works because it underscores the incredible changes that are taking place here in the Arctic that impact not just the nations that surround the Arctic, but have an impact for the entire world, as well.”⁵

As geographical spaces, the Arctic and Antarctic are attracting an often-contradictory set of demands from a variety of observers that we better understand them, save them, exploit them, protect them, legally define them, or continue to inhabit them. These demands, however, are not straightforward, given that there has been substantial historical evidence of struggles and scrambles to administer, exploit, and inhabit the Arctic and Antarctic.⁶ In the present day, there are disagreements aplenty as to whether, for instance, the maritime Arctic ought to be exploited further and how the fates of the Arctic and Antarctic are being decisively shaped by human intervention. This intervention ranges from illegal, unregulated, and unreported (IUU) fishing, marine pollution, permafrost melting to ocean acidification, and historic levels of sea ice loss.⁷ The existence of intergovernmental forums such as the Arctic Council, established in 1996, however, attest that cooperation is also possible. Recent events involving Russia and the Ukrainian crisis and its continued aftermath have placed stresses on that continued aura of cooperation and goodwill amongst the eight Arctic states (Canada, Denmark/Greenland, Finland, Iceland, Norway, Russia, Sweden, and the United States).

The first section of this article discusses the Arctic and Antarctic as complex geographical spaces. Despite their appearances, the polar regions have been and continue to be homelands, resource frontiers, scientific laboratories, military testing grounds, and wildernesses of great importance. There is also great diversity, especially in the Arctic, in terms of ecosystems, climates, resource exploitation, and population density and distribution. The second section of the article outlines three political-legal dimensions—security, sovereignty, and stewardship—and their intersections. By understanding these registers, we are in a better position to understand how states and other parties such as nongovernmental organizations, indigenous communities, and campaign groups respond to the polar oceans, both currently and in the future. Thereafter, I explore the competing demands and pressures confronting the polar regions by using two examples: fish and the underwater continental shelves off the coastlines of the islands and continental margins of the Arctic and Antarctic. The continental shelves refer to the underlying geology beyond the coastline and to where international law allows coastal states to claim sovereign rights to exploit and manage

the seabed, including any resources that might be found on and below the seabed. While there are rules and procedures that help to determine the geographical extent of those sovereign rights to the continental shelf, the outer portions of the continental shelves are often subject to negotiation involving international agencies and other coastal states. It is a time-consuming and expensive business and one that is politically charged because the seabed beyond the outer limits of the continental shelf falls under the purview of the international community and the International Seabed Authority, a UN agency. Beyond the exclusive economic zones of coastal states lie high seas, and this is again an area of common concern to the international community. In these negotiations, the focus is on the marine Arctic and Antarctic where there are economic, legal, and political encounters between the coastal states, their communities, and extraterritorial parties including China and the European Union.

While at first glance a quixotic choice, two objects—fish and rock—illustrate the ongoing contest for how the Arctic and Antarctic are imagined and managed. My intention is to think of these marine regions as volumetric and, in so doing, to take into account both the surface level and the roles of depth and volume in understanding these regions.⁸ The high (and at times uncertain) mobility of fish highlights how the polar oceans and seas have attracted controversies and speculation over fisheries' management. Disagreements over marine protection areas (MPAs) in the Southern Ocean and the central Arctic Ocean reveal the challenges posed.⁹ The ongoing identification and delimitation of continental shelves, under the guiding provisions of the United Nations Law of the Sea Convention (UNCLOS), provides a counterpoint to the mobility of fish. In this case, an assemblage of security, sovereignty, and stewardship is grounded in place. The final part of the paper advances the case that whatever the future facing the Arctic and Antarctic, we need to better understand the dynamic intersections between security, sovereignty, and stewardship because they offer insights into how there are scrambles for these regions—attempts to gain greater scientific knowledge, to access resources, to strengthen sovereignty and security interests, to protect the interests and wishes of indigenous and northern communities, to prevent further environmental damage, to insulate the regions from international tension elsewhere (e.g., Russia and the Ukrainian crisis), and to achieve and secure mobility through the regions.¹⁰ These scrambles do not neatly align with one another. An array of states, corporations, regional organizations, international organizations, and nongovernmental organizations are complicit in these situations.

We need to have a more sophisticated view of the Arctic and Antarctic,

rooted in neither a naïve view of their apparent simplicity as remote and “containerized” spaces nor in an acceptance that geographically proximate states (whether Arctic coastal states or Antarctic claimant states) are going to play a dominant role in shaping international forums such as the Arctic Council and Antarctic Treaty System. Science and scientific cooperation, while important, are not magic bullets for avoiding conflict and dissent over how the polar regions are administered and managed.

ARCTIC AND ANTARCTIC/SOUTHERN OCEANS

Counties such as the United Kingdom have seen the Arctic and Antarctic as distinctly cold places that are analogous to one another, while others in Arctic states such as Canada have resisted such a comparison because of the variations in established indigenous and northern communities and histories that inhabit and shape the Arctic.¹¹ The Antarctic has never had an indigenous human presence and permanent settlement, though a network of research stations dates from the 1940s onward. It is perhaps more helpful to think of the polar regions as dominated by exceptionality, as places that are said to possess extraordinary qualities, some of which may be related to environmental, socialcultural, political, and legal intricacies. For example, the 1959 Antarctic Treaty and associated legal instruments are cited as exceptional for suspending the sovereignty claims of seven claimants—Argentina, Australia, Chile, France, New Zealand, Norway, and the United Kingdom. Russia and the United States are “semi-claimants” because they have reserved the right to make a claim in the future. There is even one part of the Antarctic (the so-called Pacific sector), which has never been subject to any form of territorial claim.¹²

In terms of their physical geographical qualities, the Arctic and Southern Oceans are different even though they share common characteristics, such as the extensive presence of ice and snow.¹³ This apparent similarity marks substantial seasonal and geographical differences in the nature and extent of ice and snow. In the Arctic, a semi-enclosed ocean surrounded by continental landmass effectively traps sea ice, depending on wind and ocean currents.¹⁴ As a consequence, sea ice is typically thicker in the North American and Greenlandic parts of the Arctic Ocean. This was enormously significant during the Cold War when U.S. and Soviet scientists, supported by their respective militaries, were eager to better understand the implications of sea ice distribution and thickness for the underwater and surface mobility of their vessels (and the corresponding potential for evasion and detection). The legacy of Cold War vigilance continues to

this day, as Canada and Russia continue to invest in surveillance technologies (including drones) in a concerted effort to detect the movement of others in the waters off their respective national territories.¹⁵ Sea ice is less mobile than that in the Southern Ocean, which is an open body of water surrounding a polar continent. Antarctic sea ice drifts into contact with the warmer waters of the Atlantic, Indian, and Pacific Oceans and melts to a far larger extent than Arctic sea ice does. The pattern of sea ice distribution is more symmetric and not skewed toward any particular area of the polar landmass or the northern edge of the Southern Ocean. In the case of the marine Arctic, where human activity in the form of resource extraction and destination-based shipping has been far greater, the distribution and thickness of sea ice continues to influence activities. In the Russian Arctic, the Northern Sea Route (NSR) attracts far greater interest than the Northwest Passage through the Canadian Arctic, in part because sea ice is considered to be less of an obstacle to the progress of destination and trans-oceanic forms of shipping.

Sometimes, comparative polar analysis can be controversial and even unpopular. In 2008, a number of elected representatives of the European Parliament expressed support for the development of an Arctic Treaty, modeled on the provisions of the Antarctic Treaty System. This parliamentary resolution provoked the ire of the Arctic Ocean coastal states—Canada, Greenland/Denmark, Norway, Russia, and the United States—and indigenous communities, who reacted angrily to the suggestions that the Arctic region needs a new governance regime and that the uninhabited Antarctic should necessarily serve as a source of inspiration. Provoked by the febrile media coverage in the aftermath of the planting of a Russian flag on the bottom of the central Arctic Ocean, this parliamentary intervention appeared to reflect a political and legal ignorance of the region. Within the year, the five Arctic Ocean coastal states issued a declaration reinforcing the role of the “Law of the Sea” in shaping the maritime governance of the Arctic and roundly rejecting any proposals for a nascent Arctic Treaty.¹⁶ Indigenous groups followed

up with a 2009 Circumpolar Inuit Declaration on Sovereignty in the Arctic, which poured further scorn on the suggestion that the Arctic was either devoid of sovereignty or lacking in governance.¹⁷ With the European Union seeking permanent observer status to the Arctic Council—an ongoing process since 2009—the European Commission and European External Action Service have been at pains to acknowledge the sovereignty of the five Arctic Ocean coastal

The wider international community has legitimate interests in the Arctic region.

states and the three other Arctic states: Finland, Iceland, and Sweden. This process has made clear that the wider international community has legitimate interests in the Arctic region, including its high seas and the seabed beyond the sovereign rights of the coastal states (dubbed The Area). The European Union is a major investor in Arctic science and member states are active participants in Arctic activities including fishing, oil and gas exploration, and shipping.¹⁸

Over time, international law has encapsulated the polar oceans and arguably tempered earlier understandings of the Arctic and Southern Oceans as too remote, too inaccessible, and too marginal. In the case of the Antarctic, for example, the prior existence of the 1959 Antarctic Treaty raised the prospect of whether the Southern Ocean (below 60 degrees South) was excluded from the provisions of the Law of the Sea Convention (UNCLOS). However, within the Treaty there is reference to the “high seas” (Article VI), serving as a reminder that the U.S. negotiators at the Antarctic Treaty conference were adamant that customary international law not be excluded from the extreme southern latitudes. In the midst of the UNCLOS negotiations in the 1960s and 1970s, Canada, supported by the Soviet Union, was at the forefront of the development of what was later termed Article 234, which addressed the special characteristics of “ice-covered waters” and the authority of coastal states to apply further environmental protection measures. Beyond Article 234 and its reference to “ice covered waters,” there was no explicit reference to polar oceans or seas.¹⁹

This paucity of explicit reference to the polar oceans in UNCLOS created opportunities for claimant states in the Antarctic to position themselves as putative coastal states, which would be highly significant if—and it is a big if—their claims to Antarctic land territory and seas were ever accepted as legitimate by the wider international community. The UNCLOS allows coastal states to establish and delimit territorial seas, exclusive economic zones (EEZ), and continental shelves, all of which greatly extend the sovereign rights of the coastal states into the marine environment. For states with extensive coastlines, the implications of this zonation are substantial. Thousands of square kilometers of sea and ocean can be enrolled into the sovereign domain of coastal states, thus making resources such as oil, gas, and fish available for potential exploitation. As other areas such as the South China Sea illustrate, control over apparently remote and uninhabited rocks is not inconsequential, and plans to inhabit rocks are informed by a desire for these spaces to be recognized as islands with EEZ and continental shelves.

The recognition of coastal states in Antarctica would be deeply disputed by the rest of the international community. The seven claimant states are not

recognized, but that has not prevented claimants such as Australia and Argentina from actively assembling claims to maritime sovereignty. In the case of Argentina, the then government decided to submit materials pertaining to the outer continental shelf (under Article 76 and 77 of UNCLOS) to the UN Commission on the Limits of the Continental Shelf (CLCS), which included the Argentine Antarctic Territory. Other claimants have collected scientific material on Antarctic outer continental

shelves, but they have asked the Commission not to consider them out of respect for the provisions of the Antarctic Treaty and the

provisions of Article IV. The Commission will not consider such materials because of the disputed nature of Antarctic maritime territory. In Australia, successive governments have argued that there is an Australian Whaling Sanctuary that stretches some 200 nautical miles from the coastline of the Australian Antarctic Territory. This has been an important element in Australian-Japanese tension over “scientific whaling” in the Southern Ocean. In 2010, the Australian government brought a case to the International Court of Justice (ICJ) contesting Japan’s right to continue its scientific whaling, and in March 2014 the ICJ issued a judgment ordering the Japanese government to halt its whaling program. This continues, however, to be a source of tension between the two countries.²⁰ In essence, therefore, there are no internationally recognized Antarctic and Southern Ocean coastal states. Thus in contrast to the Arctic region, attempts to regulate and manage the marine Antarctic are more sensitive matters than those taking place in the northern waters.

The takeaway point to all of this is, like those in the South China Sea, states in Antarctica are acting as if they were coastal states (in the cases of Australia and the United Kingdom), while still contesting and resisting such identification and understanding of Antarctica (in the cases of China and Japan). The United States, as a semi-claimant state, has reserved the right to make a claim to Antarctica in the future while being prepared to work with claimant states such as the United Kingdom, New Zealand, Norway, and Australia when their collective interests align in conserving the Antarctic Treaty System and associated legal instruments.

In the Arctic context, the UNCLOS has become increasingly important in consolidating the legal and political authority of the five Arctic Ocean coastal

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states (A5). This is in sharp contrast to the Antarctic/Southern Ocean context in which the claimant states have not been able to garner recognition as Antarctic and Southern Ocean coastal states. In May 2008, the A5 issued what was termed the Ilulissat Declaration and declared that the “Law of the Sea” provided a framework for the governance and management of the Arctic Ocean.²¹ The Declaration made clear that they were confident that the Law of the Sea provided the necessary legal framework to settle any outstanding maritime claims, whether at the surface or subterranean level. Over the past seven years, the A5, alongside other Arctic states in the Arctic Council and beyond, have been pivotal in developing further agreements over matters of mutual concern such as search and rescue (2011), oil spill response (2013), and the interim management of fisheries in the central Arctic Ocean (2015).

The UNCLOS has been far less controversial in the areas around the sub-Antarctic islands. With the exception of the disputed territories of South Georgia and the South Sandwich Islands (Argentina disputes U.K. sovereignty), a collection of states including Australia, France, New Zealand, Norway, South Africa, and the United Kingdom has been active in managing regional fisheries and submitting claims to outer-continental shelves to the CLCS. These Southern Ocean coastal states, alongside others including the United States and Russia, also collaborate with one another in the regional fisheries organization, Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). Using conservation measures and other mechanisms for regulation, inspection, and control such as port state jurisdiction, CCAMLR has been able to institutionalize an ecosystem-based approach to fisheries conservation and exploitation in the Southern Ocean.

Finally, the polar regions are addressed explicitly by the International Maritime Organization’s Polar Code, which is expected to be operational in January 2017. The Code was inspired by a recognition that the polar oceans were likely to become increasingly accessible (especially in the Arctic context) and that there needed to be greater attention given to standards regarding polar vessels, training and navigation, and pollution controls. It was also noted that there are inconsistencies in other pieces of international legal instruments. For example, under the International Convention for the Prevention of Pollution from Ships (MARPOL), the Southern Ocean is acknowledged as a “Special Area,” but the same is not noted for the Arctic Ocean. Arguably, however, the Arctic Ocean faces more immediate pollution-related challenges, and MARPOL needs further updating to address the challenges posed by marine pollution in challenging operating environments where search and rescue facilities might be sparse. The

central Arctic Ocean, an area beyond national jurisdiction, will present further challenges in terms of marine pollution, protection of biodiversity, and safety of shipping, especially if a central Arctic shipping route becomes feasible in the future.

THREE DIMENSIONS: SECURITY, SOVEREIGNTY, AND STEWARDSHIP

Before turning to two issues garnering increased attention in the realm of the polar oceans, we might pause and think about how the registers noted here—security, sovereignty, and stewardship—help our understanding of how the Arctic and Antarctic have become embroiled in polar geopolitical struggles to imagine, inhabit, and manage these regions. Thinking of how these registers operate and intersect highlights how the polar oceans are shaped by discursive and material interventions. On the one hand, the polar oceans have been frequently defined by their remoteness and inaccessibility, while on the other hand, they have been defined by their material qualities as spaces filled with water, snow, and ice punctuated by extreme winds and oceanic currents.²² Their discursive and material qualities come to the fore in discussions about sea ice, which have provoked a series of U.S.-based authors, from Charles Ebinger and Evie Zambetakis to Oran Young, to muse about the geopolitical and security implications of Arctic sea ice extent.²³ Less sea ice appears to cause increased anxiety over security and sovereignty for Arctic Ocean coastal states and opportunities for extraterritorial states and interests to move into open polar waters, and potentially exploit, pollute, and occupy them. The A5, however, have used stewardship as a countermeasure (e.g. 1970/1985 Arctic Waters Pollution Prevention Act), especially in the case of Canada, to protect their perceived interests in the Canadian Arctic and the disputed waters of the Northwest Passage.

The three registers help us to better understand contemporary manifestations of polar geopolitics.²⁴ First, security is understood as something that states in particular do when they develop a series of spatial strategies explicitly designed to watch, monitor, and, if required, project military assets in order to protect and secure specific territories, routes, and access/choke points. In the Arctic region, Cold War policing and security patrolling were a routine and routinized element to the behavior of NATO and Soviet military forces. This legacy continues through military exercises (such as NATO's biennial Exercise Cold Response and Russia's snap-drill Arctic exercise in March 2015 involving 40,000 personnel, 50 ships and 110 planes) and expressions of concerns about what others are doing with regard to the maritime and aerial domains of the

Arctic region.²⁵ For the last decade, for example, Arctic states such as Canada have expressed repeated concerns about Russian overflights and violations of national airspace, as well as the prospects of greater mobility of others in open polar waters. The Ukrainian crisis and earlier annexation of Crimea hardened fears that contemporary Russia might unsettle the post-1991 trend toward greater cooperation in the Arctic region.

Second, the sovereignty register is preoccupied with the role and regulation of states and their sanctioned agents' carrying out activities and prevention of others' unwanted activities in national territories and maritime areas, such as

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the 200 nautical mile exclusive economic zones. All the Arctic states, including the United States, have spent millions of dollars mapping and surveying their outer continental shelves and, in some cases, hoping and expecting that their sovereign rights over the seabed extend all the way to the North Pole. Expressions of sovereign authority are particularly problematic in the Antarctic context,

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however, where the Antarctic Treaty and other legal instruments support an Antarctic Treaty System underwritten by deferral of earlier sovereign claims and the promotion of international scientific cooperation. The seven claimant states in Antarctica (Argentina, Australia, Chile, France, New Zealand, Norway, and the United Kingdom) have had to negotiate their sovereign claims—both as land-based claimants and nascent coastal states—with a wider community of states that reject the international legal standing of those claims.

Finally, stewardship can and does function as a proxy for sovereignty and security agendas and interests. In the highly disputed South West Atlantic and Antarctic region, the U.K. government places considerable importance on their stewardship credentials such as managing fisheries, heritage, science, and tourism-related activities. In the Arctic, coastal states such as Russia and Canada have used Article 234 of the UNCLOS to present themselves as Arctic stewards acting to protect the ecosystems and sea-lanes of the Northern Sea Route and Northwest Passage, respectively. Australia in the Southern Ocean has appealed to “environmental authority” to make the case that it has a duty to protect whales from Japanese whaling vessels operating in the Australian Whaling Sanctuary.

When assembled, the three registers help explain why the polar oceans have attracted increasing levels of legal and political attention and tension. While the

relevance and applicability of international legal frameworks vary in intensity, a coastal state such as Canada and a claimant-coastal state such as Australia articulate similar visions for their maritime territories based on territorial sovereignty; relative proximity; social and cultural associations and connections; resource utility; national pride; and a determination to restrain, where possible, the accessibility of other states. What makes the Arctic and Southern Oceans intriguing is how their geophysical and meteorological qualities have facilitated, and at times frustrated, the exercise of security, sovereignty, and stewardship. Thinly populated areas with remote access hinder the capacity of others while challenging those claimant-coastal states to devise strategies to exercise their sovereignty and sovereign rights over the surface and depths of the polar oceans.

MARINE LIVING RESOURCE MANAGEMENT IN THE ARCTIC OCEAN AND SOUTHERN OCEAN

For the purposes of our investigation, the management of living marine resources occupies center stage, as this is a topic common to both polar oceans. Nonliving resource exploitation is currently banned in the Antarctic and Southern Ocean under the terms of Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty. In the Southern Ocean, commercial fishing began in the 1960s at approximately the same time that commercial whaling began to lose economic significance in the region. The fishing of fish and krill commenced prior to any international agreement for their regulation.

Fearing further exploitation, especially by Soviet fishing fleets, the claimant-coastal states, including Australia and the United Kingdom in conjunction with the United States, were eager to develop a regional fisheries management organization. The adoption of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) in 1980 established a precautionary and ecosystem-based approach to fishing, and its terms of reference extended to cover the biologically significant Antarctic convergence, which extends north of the Antarctic Treaty's area of application. Over the decades, CCAMLR has been active in addressing illegal, unreported, and unregulated (IUU) fishing, and Southern Ocean coastal states such as Australia and France have advanced their sovereignty and security agendas by sharing maritime surveillance and implementing the enforcement of CCAMLR conservation measures. This has been carried out, however, north of the Antarctic Treaty area of jurisdiction.

IUU fishing is a major challenge for global fisheries management, but what has arguably been a more divisive issue in recent years is the complex topic of

marine protected areas (MPAs). MPAs—areas where human activities such as fishing are limited or prohibited—are seen by advocates as an invaluable stewardship policy tool. Their size, policing, and longevity can be highly controversial, however. There are provisions for MPAs in the convention of CCAMLR, and in 2002 parties to the convention committed themselves to establishing a network of MPAs following the World Summit on Sustainable Development. They later reaffirmed this commitment after the announcement of the Aichi Biodiversity Targets (2010). In 2009, the first Southern Ocean MPA was adopted in an area south of the South Orkney Islands. It is a no-take marine reserve, but it was also a MPA, which was forced to take into account prevailing fishing interests of other CCAMLR parties. In 2012, proposals were made for three more MPAs. One for the Antarctic Peninsula did not survive initial negotiations, and the two others for the Ross Sea (supported by New Zealand and the United States) and the East Antarctic (supported by Australia, France, and the European Union) proved controversial.

Pitted against supporters of MPAs were other parties to CCAMLR who were suspicious of how a stewardship agenda might be disguising the sovereignty and security interests of claimant states and their close allies. Unlike the South Orkney MPA, the two others would interfere with current and future fishing activities. “Fishing states” such as Russia, China, Korea, and Ukraine

now outnumber the more conservationist-minded members of CCAMLR, a challenge that proves all the more difficult when those fishing states consider the Southern Ocean to be high seas and CCAMLR to be a fisheries agreement, rather than

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an ecosystem-based conservation agreement. The Southern Ocean is considered by the Food and Agricultural Organization (FAO) to be the most underexploited fishing region in the world.

The supporters of MPAs, in contrast to countries such as China and Russia, are also fishing states and perhaps find it easier to support MPAs in other parts of the Southern Ocean because they manage profitable fisheries around sub-Antarctic islands such as South Georgia (United Kingdom), Kerguelen (France), and Heard and MacDonald Islands (Australia). The Australian-led proposal for an Eastern Antarctic MPA fueled the suspicions of others when it emerged that the boundary for the MPA followed the historic boundaries of the Australian

Antarctic Territory. Russia, as a semi-claimant, was adamant that it was not going to allow MPAs to be used as a sovereignty tool for claimant states. The Ross Sea MPA proposal also followed the boundary of New Zealand's claim to a Ross Dependency and earlier New Zealand plans to turn the Balleny Islands into a special managed area were rejected in 1999. Again, other CCAMLR parties suspected that stewardship was being used to promote a sovereignty agenda.²⁶ More broadly, it serves as a reminder that marine protected areas and other regional sea agreements are always shot through with sovereignty and security concerns and that marine and fisheries science can be rapidly politicized within negotiations regarding such agreements.

The Central Arctic Ocean (CAO), as a global commons, faces challenges that bare some similarities with the Southern Ocean. There are neighboring coastal states with extensive EEZs, and there are high seas and seabed zones extending beyond those exclusive economic zones and extended continental shelves of the Arctic Ocean coastal states (A5). These areas, which are far smaller than the Southern Ocean, are called "donut holes."²⁷ The largest by far is the CAO, which is estimated to be over one million square miles in area (i.e. the high seas beyond the EEZ of the Arctic 5).²⁸ Its legal existence has attracted global attention from extraterritorial actors, including China and the European Union, as well as a phalanx of environmental campaign groups.

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As a global commons, the CAO has faced varied calls requiring that it be declared either a marine protection area or a place demanding collective resource management. Some campaign groups such as Greenpeace have called for it to be "saved" as a wilderness area. Other smaller areas of Arctic high seas include a zone in the North Pacific and one in the Barents Sea. In both of those cases, Russia is one of the nearest neighbors, and in all three cases, the Arctic states are not sympathetic to calls for these areas of the Arctic Ocean and neighboring seas to be "saved" in the manner envisaged by Greenpeace.²⁹

As a consequence of its high seas status, the CAO, as a global commons, has stimulated discussion on the future possibility of fishing and seabed mining. Under UNCLOS, the International Seabed Authority (ISA) would be responsible for the management of the CAO seabed regime. More intriguing, and much more immediate, is the interest in developing a fisheries regime as evidence grows that oceanic and atmospheric change is provoking a migratory shift in fish populations. There are good reasons to be concerned about the eventual fate of the CAO, as Arctic waters have recently witnessed fish stock collapse, resulting in one case of a moratorium being placed on the North Pacific or "Arctic donut."

The A5 have recognized that, despite their self-identification as Arctic

Ocean stewards in May 2008, they are incapable of regulating the high seas of the Arctic Ocean in isolation.³⁰ The United States has led on this issue and for the last eight years has brought it up within and beyond the A5.³¹ In February 2014, the A5 secured agreement in Greenland for a common approach—including the use of interim measures such as restraining their national vessels from exploiting fishing—to the CAO and were subsequently involved with China and the EU in further discussions. One issue that is high on the agenda is avoiding the initiation of illegal, unregulated, and IUU fishing, which has plagued the Southern Ocean at times. Progress on the issue has faltered due to the political fallout associated with the Ukraine crisis, which compromised plans to develop a Ministerial Declaration in June 2014. There was, however, consensus amongst the A5 that the North–East Atlantic Fisheries Commission could start to play a role in adopting fisheries conservation measures for at least some parts of the CAO.

The A5 clearly believe, as the Arctic Ocean coastal states declared in the official record of their 2014 meeting, “that it is appropriate for the States whose exclusive economic zones border the high seas area in question to take the initiative on this matter.” While recognizing that indigenous communities should be consulted on the matter, these states also “reaffirmed that other states may have an interest in this topic and [that they] look forward to a broader process involving additional states beginning before the end of 2014. The purpose would be to develop a set of interim measures, compatible with the Ministerial Declaration that would include commitments by additional states. The final outcome could be a binding international agreement.”³² The A5 could act as stewards but in the role of facilitators rather than sovereign agents. Other Arctic and non-Arctic states and regional organizations such as Iceland, China, Korea, and the European Union, respectively, have acknowledged the role of the A5 and their leadership on central Arctic Ocean fisheries. This was, however, carefully balanced by the fact that Shanghai hosted the central Arctic Ocean fisheries conference in January 2015, where coastal and non-coastal state representatives and scientists met to discuss the challenges facing an international agreement.³³ In other words, the involvement of “near-Arctic” states such as China and Korea in any future living resource negotiations was recognized.

Securing wider agreement over the central Arctic Ocean will clearly be important, and appeals to stewardship will clearly matter as extraterritorial states and organizations enroll in claims to exercise environmental authority. This has arguably become easier as the Arctic Ocean has been subject to a series of agreements on fisheries and maritime boundary delimitation involving Norway

and Russia, in particular in the Barents Sea. There is, however, no Arctic marine living resource organization or framework such as the one that exists in the case of the Southern Ocean (CCAMLR). There are subregional bodies, such as the North East Atlantic Fisheries Commission (NEAFC), which address parts of the North Atlantic that intrude into the Arctic Ocean region. Understandably other areas of the Arctic Ocean are not part of its remit, and other bodies such as the North Pacific Fisheries Commission do not extend further than the waters south of the Aleutian Islands in southern Alaska. The establishment of a Central Arctic Ocean Fisheries Commission seems to be an essential element in any future negotiations, but the experience of CCAMLR offers a warning to negotiators. As they have pushed for a more explicit focus on rational use in the Southern Ocean, China and Russia have found themselves in disagreement with other parties such as the United Kingdom and the United States. The broader dispute is whether such commissions are driven first and foremost by conservation-minded agendas.

CONTINENTAL SHELVES AND COASTAL-CLAIMANT STATES IN THE POLAR OCEANS

The outer continental shelf, under Articles 76 and 77 of UNCLOS, is an area where coastal states may submit materials to the CLCS regarding a possible extension of sovereign rights to resources lying on and under the seabed. Every coastal state enjoys, under the terms of UNCLOS, a potentially realizable continental shelf stretching 200 nautical miles from the coastal baseline. Under Article 76, there is the possibility of extending sovereign rights even further. Depending on the technical criteria selected by coastal states, the outer limits of continental shelves might extend beyond 350 nautical miles if there is sufficient evidence relating to the topography and composition of the seabed. This extension can be significant: in the case of the central Arctic Ocean, this would mean that coastal states such as Denmark and Russia could claim that their sovereign rights extend all the way to the seabed under the North Pole. National leaders, such as Vladimir Putin of Russia and Stephen Harper of Canada, have placed great store in such a possibility and have reminded us that even the remote seabed contributes to a popular geopolitics of the Arctic.³⁴

The legal and political status of the outer continental shelves in the polar oceans has been a topic of academic, political, and popular interest. Russia made the first submission to the CLCS in 2001 and garnered little international attention at the time. The CLCS asked the Russian government to resubmit at a later date after being asked to clarify some further scientific details. It was

later asked to submit further materials, especially as it related to the Arctic outer continental shelf. By 2007, with world attention addressing the visual spectacle of the Russian flag planted at the bottom of the CAO, the status of the Arctic continental shelf beyond 200 nautical miles became higher profile. A year earlier, Norway made a submission to the CLCS, and other Arctic states such

Mapping, defining, and delimiting the seabed of the Arctic Ocean is the most important development affecting coastal states and non-coastal states alike.

as Denmark and Canada followed suit between 2012 and 2014. The Russian, Canadian, and Danish submissions are arguably the most interesting because their submissions overlap in the highly symbolic area of the North Pole. The United States, as a non-party to UNCLOS,

has collected continental shelf data suitable for an eventual submission to the CLCS but cannot make a formal submission at present. As a technical-scientific body, the CLCS can issue recommendations regarding the outer continental shelf but has no legal authority.³⁵ Coastal states will ultimately have to negotiate with one another where there might be overlapping interpretations of the limits of the outer continental shelf. This will be highly pertinent to the central Arctic Ocean.

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In the Southern Ocean, by way of contrast, the situation is more complicated because of the unsettled sovereignty politics. Claimant states believe that there are *de facto* coastal states that could make formal submissions to the CLCS. For example, Australia, the largest claimant state, collected geological and other data off the coastline of the Australian Antarctic Territory but has asked the CLCS not to consider such data for the time being. As with other claimant states, they wanted to formally acknowledge the process for such outer continental shelf delimitation without formally requesting a recommendation. New Zealand and the United Kingdom have reserved the right to make future submissions, and those countries possessing sub-Antarctic territories have asked the CLCS to examine materials pertaining to islands, such as the South Georgia and Heard and MacDonald Islands. Non-claimants such as Russia, India, and China have made it clear, publicly and privately, that the provisions of the Antarctic Treaty (specifically Article IV) do not allow claimant states to assert sovereign rights off the coastline of the polar continent. The Southern Ocean is, in effect, high seas. It is very unlikely that the CLCS will issue any recommendations for the Antarctic outer continental shelf.

The CLCS as a technical-scientific body will not get involved with highly

disputed territories, which can then present incentives for coastal states to negotiate with one another, as in the case of Russia and Norway in the Barents Sea. In the case of the CAO; Denmark, Canada, and Russia will need to negotiate with one another, as their submissions regarding the outer continental shelf overlap. There has been evidence of cooperation in the mapping and surveying exercise with Canadian-Danish cooperation in the CAO. What might make that process easier is that predictions regarding the Arctic Ocean's undiscovered resource potential tend to focus on waters within 200 nautical miles of coastline, rather than further afield. However, even apparently modest areas of outer continental shelf are capable of nourishing polar nationalisms and explicit sovereignty agendas. In Canada, Prime Minister Stephen Harper ordered Canadian experts to redraft the submission to the CLCS so that the North Pole would be considered part of the Canadian continental shelf.³⁶

Mapping, defining, and delimiting the seabed of the Arctic Ocean is the most important development affecting coastal states and non-coastal states alike. There are some areas of controversy, however. This mapping exercise is not, and never has been, politically innocent. There are uncertainties regarding the central Arctic Ocean and the Norwegian archipelago of Svalbard. In terms of the latter, Svalbard is Norwegian territory under the terms of the 1925 Spitzbergen Treaty, but there might be arguments from other signatories over how Norway might exercise its sovereign rights over the continental shelf. The treaty governing Svalbard allows for other signatories, such as Russia, to exploit resources in an equal manner to any Norwegian individual or enterprise. But does the treaty applied beyond 200 nautical miles from the Svalbard baseline do the same? Norway believes that the continental shelf appurtenant to Svalbard is Norwegian territory and that it enjoys sovereign rights.³⁷

In the case of the CAO, the three main parties—Canada, Denmark, and Russia—will have to wait for their submissions to be examined by the CLCS, and this might take years given the backlog of submissions that have to be processed and evaluated. Any submarine areas beyond national jurisdiction—beyond outer continental shelves of the Arctic Ocean coastal states—will in effect become “the area,” and any resources, with the exception of non-mineral resources, found on the seabed or sub-soil belong to the international community. The International Seabed Authority will act on behalf of the international community, and any value derived from such resources is to be shared among its members. It is likely that “the area,” in the context of the Arctic Ocean, may be physically modest given the desire of the coastal states to extend, as far as legally possible, their sovereign rights to the seabed.³⁸ However modest the area

might be in geographical scope, it reminds us that by being far removed from world politics, it is a part of the world where global processes and outcomes literally come to rest on the bottom of the central Arctic Ocean.

CONCLUSION

The polar oceans are increasingly being taken under the purview of the Law of the Sea and other international legal instruments. In large part, this is because these regions are no longer defined by their exceptionality. Increased accessibility and usage, combined with greater legal, political, and technical interest and capabilities, mean that the Arctic and Southern Oceans are the subject of far greater global scrutiny. Where there is tension and even conflict (e.g. Australian-Japanese whaling and the direct action of campaign groups such as Sea Shepherd Society), conflict arises because of disputed understandings and practices of security, sovereignty, and stewardship.

Coastal states, non-coastal states, nongovernmental organizations, corporations, and regional and international bodies are complicit in these struggles. For example, protestors in Seattle recently sought to prevent the Anglo-Dutch oil company Shell, which had the approval of the U.S. government, from conducting oil exploration off the shore of Alaska. While the potential of Alaskan oil and gas resources might be one element in U.S. energy security politics, the resource potential of offshore Alaska is caught up in competing stewardship agendas led and framed by both environmental organizations and indigenous communities. While Alaskan political leaders urge greater federal investment and support for the sovereign territory of the northern United States, the protestors utilizing their kayaks and climbing equipment seek to block the movement of an oil support vessel. For a commercial company such as Shell, the resource potential of offshore Alaska, even if never exploited in the future, plays a part in securing and sustaining its future as a public company.

However, as the Shell protests exposed, there is also a more imaginative dimension at play. The framing of the marine environment in the Arctic lies on a spectrum encapsulating normal versus exceptional, accessible versus inaccessible, empty versus inhabited, and conservation versus exploitation. Material changes that affect polar environments are also playing their part, most notably in the distribution and extent of ice-covered waters of the Arctic Ocean. Campaigners argue that oil and gas exploitation in polar waters will never be safe, while proponents argue that diminishing sea ice might facilitate further exploitation. New shipping routes and possible future fishing activity in the northern latitudes

will bring additional pressures to coastal states eager, and even anxious, to protect their territorial and resource interests.³⁹ As the U.S. experience demonstrates, the future of resource activities in Alaska will be a strongly contested affair. In August 2015, weeks before President Obama traveled to Alaska to convene a conference in Anchorage on climate change, his administration gave permission to Shell to carry out oil exploration in the waters north of the Alaskan coastline.

He also became the first president to travel north of the Arctic Circle and deliver a warning in the town of Kotzebue about the challenges and dangers posed by ongoing

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climate change to the Arctic region. Environmental critics noted that the presidential speech made no reference to the Shell drilling operations, revealing some of the difficulties faced by an administration determined to balance initiatives such as clean energy plans with domestic energy security.

There is, however, another aspect of Obama's focus on Alaska that is noteworthy. While not party to UNCLOS, the United States adopts customary international law with regard to the sovereign rights of coastal states in its exclusive economic zones. What the United States cannot do, as a non-party, is submit materials to the CLCS, which is an integral part of UNCLOS. Established in 2003, under the George W. Bush administration, the U.S. Extended Continental Shelf Project is contributing to "the process to determine the outer limits of the United States. ECS requires the collection and analysis of data that describe the depth, shape, and geophysical characteristics of the seabed and sub-sea floor...U.S. agencies have been engaged in gathering and analyzing data to determine the outer limits of the United States."⁴⁰ Despite collecting relevant scientific information, the United States cannot, at the moment, ask the CLCS to help determine sovereign rights to the Alaskan outer continental shelf. Shell's operations in the Alaskan EEZ, nonetheless, serve as a powerful reminder to both international audiences and perhaps domestic audiences (in particular the U.S. Senate) that the United States is committed to securing its sovereign rights in the waters to the north of Alaska, in accordance with international law.

The sovereign rights of the coastal states to outer continental shelves and the international community's interest in the high seas and deep seabed of both polar oceans remain a legal and political work in progress. They are remote areas far removed from the everyday lives of citizens, yet as the case of the South

China Sea shows, they can also be rapidly transformed into areas of potential contestation. The central Arctic Ocean will attract further international attention, and how the Arctic states handle interested parties such as China and the European Union will be crucial.

The role of the International Seabed Authority in the polar oceans will expand further in the twenty-first century as outer continental shelves are delimited between coastal states. This reminds us that the legal geographies of the polar oceans are a process rather than an outcome and that the intersection of security, sovereignty, and sustainability will determine whether that outcome is characterized by conflict and tension.

My prediction for the future of the Arctic and Antarctic is that international cooperation will become more difficult as resource and sovereignty agendas become ever more explicit. While lately agreement has been forthcoming on central Arctic Ocean fisheries, this could change quickly if assessments of resource potential change. Ongoing climate change is profoundly challenging received wisdom about these areas in terms of the distribution and stability of ice, the composition of polar waters, and the circulation and interaction of polar environments with the wider globe. We do not know when the Arctic Ocean might be ice-free in the summer season, but we do know that it is likely to occur some time in the twenty-first century. Political cooperation is fragile in the Arctic and Antarctic. While we have international bodies and forums at work, there continues to be potential for a weakening of goodwill and détente. The ongoing crisis involving Russia and Ukraine is a good example of a factor possibly limiting Arctic Council cooperation that has played a part in coloring some of the dramas over the status of marine protected areas in the Southern Ocean. If the U.S. chairmanship of the Arctic Council (2015–2017) helps to weather such turbulence, it will be a considerable achievement. Nonetheless, there will be future challenges ahead for the Arctic. 

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NOTES

1. As noted by authors such as Alan Anderson.
2. Donald Rothwell, *The Polar Regions and the Development of International Law* (Cambridge: Cambridge University Press, 1996); Michael Byers, *International Law and the Arctic* (Cambridge: Cambridge University Press, 2014); Donald Rothwell and Tim Stephens, *The International Law of the Sea* (Oxford: Hart Publishing, 2015).
3. One empirical test of that observation is to note how many times, in the last few years, one can find articles with titles such as “What Happens in the Arctic Does Not Stay in the Arctic.” For example, see: Kåre R. Aas et. al, “What Happens in the Arctic Does Not Stay in the Arctic,” *Huffington Post*, May 26, 2015.
4. Klaus Dodds and Mark Nuttall, *Scramble for the Poles: Contemporary Geopolitics of the Arctic and Antarctic* (Cambridge: Polity, 2015).
5. Barack Obama, “Remarks by the President at the GLACIER Conference—Anchorage, AK,” The

White House, September 1, 2015.

6. John McCannon, *A History of the Arctic* (London: Reaktion Books, 2012).

7. For example, see: Arctic Council, *Arctic Ocean Acidification Overview Report* (Oslo: Arctic Council Arctic Monitoring and Assessment Programme, 2014).

8. For a longer conceptual treatment, see: Stuart Elden, *The Birth of Territory* (Chicago: University of Chicago Press, 2014).

9. Erik J. Molenaar, "Arctic Fisheries Management," in *The Law of the Sea and the Polar Regions: Interactions between Global and Regional Regimes*, ed. Erik J. Molenaar, Alex G. Oude Elferink, and Donald R. Rothwell (Leiden, The Netherlands: Martinus Nijhoff Publishers, 2013), 243–66.

10. This paper draws on: Klaus Dodds and Alan Hemmings, "Polar oceans: sovereignty and the contestation of territorial and sovereign rights," in *Handbook on Ocean Resources and Management*, ed. Hance D. Smith, Juan Luis Suarez de Vivero, and Tundi S. Agardy (Abingdon, United Kingdom: Routledge, 2015).

11. An example of this comparative tradition would be the creation of the Scott Polar Research Institute at Cambridge University in the United Kingdom in the 1920s and the development of the *Polar Record* journal. See: Richard C. Powell and Klaus Dodds, *Polar Geopolitics? Knowledges, Legal Regimes and Resources* (Cheltenham, United Kingdom: Edward Elgar, 2014).

12. Klaus Dodds, *The Antarctic: A Very Short Introduction* (Oxford: Oxford University Press, 2012).

13. Henry Pollack, *A World Without Ice* (New York: Avery Publishing, 2010).

14. Paul Berkman, "Geopolitics of Arctic Sea Ice Minima," *Brown Journal of World Affairs* 19, no. 1 (2012): 145–53.

15. For example, Canada has invested in a Northern Watch Program, designed to enhance surface surveillance in the Northwest Passage region of Canada. For an account of the Program, see: Adam Lajeunesse and Bill Carruthers, "The ice has ears," *Canadian Naval Review* 9 (2013): 4–9.

16. Paul Berkman and Oran Young, "Governance and environmental change in the Arctic Ocean," *Science* 324, no. 5925 (April 17, 2009): 340–42.

17. Oran Young, "Arctic politics in an Era of Global Change," *Brown Journal of World Affairs* 19, no. 1 (2012): 165–75.

18. The recent history of the EU's application for permanent observer status to the Arctic Council was initially caught up in a dispute with Canada over a seal products trade ban and most recently a casualty of the diplomatic fallout from the worsening of relations with Russia over the Ukraine crisis.

19. David Meren and Bora Plumptre, "Rights of Passage: The Intersecting of Environmentalism, Arctic Sovereignty, and the Law of the Sea, 1968–82," *Journal of Canadian Studies* 47, no. 1 (2013): 167–96.

20. The International Whaling Commission addresses Southern Ocean whaling and does so under the terms of 1946 International Convention for the Regulation of Whaling (ICRW).

21. The reference to the "Law of the Sea" was deliberate because the United States is not a party to UNCLOS.

22. On the importance of regional policy framing, see: E. Carina Keskitalo, "Setting the Agenda on the Arctic: Whose Policy Frames the Region?," *Brown Journal of World Affairs* 19, no. 1 (2012): 155–64.

23. Charles K. Ebinger and Evie Zambetakis, "The geopolitics of Arctic melt," *International Affairs* 85, no. 6 (2009): 1215–32; Oran Young, "Arctic Politics in an Era of Global Change."

24. Franklyn Griffiths, Rob Heubert, and P. Whitney Lackenbauer, *Canada and the Changing Arctic: Sovereignty, Security and Stewardship* (Waterloo, Ontario: Wilfrid Laurier University Press, 2011).

25. "Russia starts nationwide show of force," *Reuters*, March 16, 2015, <http://www.reuters.com/article/us-russia-military-exercises-idUSKBN0MC0JO20150316>.

26. Cassandra Brooks, "Competing values on the Antarctic high seas: CCAMLR and the challenge of marine-protected areas," *The Polar Journal* 3, no. 2 (2013): 277–300.

27. The central Arctic Ocean would cease to be a global commons if, and only if, the Arctic Ocean coastal states could advance a case that the region falls within their collective exclusive economic zones. There has been no evidence of that being likely. For further reflections, see: J. Ashley Roach, "The Central Arctic Ocean: Another Global Commons," *Global Policy* 3, no. 1 (2012): 82–84.

28. Seamus Ryder, "The Nuuk Meeting on Central Arctic Ocean Fisheries," *K.G. Jebsen Centre for the Law of the Sea* (blog), October 15, 2014, <https://site.uit.no/jclos/2014/10/15/the-nuuk-meeting-on-central->

arctic-ocean-fisheries/.

29. The Greenpeace MV Arctic Sunrise, and the subsequent jailing of the “Arctic 30,” in 2013 illustrated Russian determination to ensure that their resource and territorial security was not compromised by Greenpeace’s appeals to stewardship in the Russian Arctic region.

30. The A5 have held meetings on fisheries management in the Arctic Ocean from 2008 onwards. See: Njord Wegge, “The emerging politics of the Arctic Ocean: Future management of the living marine resources,” *Marine Policy* 51 (January 2015): 331–38.

31. The United States has been active in Arctic fisheries management and acted in the case of the Alaskan EEZ to prevent and prohibit fishing.

32. Chairman’s Statement Meeting on Arctic Fisheries (Nuuk, Greenland, February 24–26, 2014), cited in: Seamus Ryder, “The Nuuk Meeting on Central Arctic Ocean Fisheries.”

33. Scott Highleyman, “Protecting the Central Arctic Ocean: From Nuuk to Shanghai,” *Pew Charitable Trust*, January 27, 2015.

34. On the popular geopolitics of the Arctic with reference to Iceland as an example, see: Klaus Dodds and Valur Ingimundarson, “Territorial nationalism and Arctic geopolitics: Iceland as an Arctic coastal state,” *Polar Journal* 2, no. 1 (2012): 21–37.

35. UN Division for Ocean Affairs and Law of the Sea, Commission on the Limits of the Continental Shelf.

36. “Harper orders new draft of Canadian seabed claim to include North Pole,” *Globe and Mail*, December 4, 2013, <http://www.theglobeandmail.com/news/politics/harper-orders-new-draft-of-arctic-seabed-claim-to-include-north-pole/article15756108/>.

37. Ted L. McDorman, “Setting the Stage: The Continental Shelf and Marine Science in the Arctic Ocean,” *International Law and Climate Change* 235 (2012): 119–39.

38. Timo Koivurova, “The Actions of the Arctic States Respecting the Continental Shelf: A Reflective Essay,” *Ocean Development and International Law* 42, no. 3 (2011): 211–26.

39. On polar nationalism, see: Alan D. Hemmings et. al, “Nationalism in today’s Antarctic,” *The Yearbook of Polar Law* 7 (2015).

40. For further information see the website of the U.S. Extended Continental Shelf Project, <http://www.continentalshelf.gov/>.

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