



Arctic: Legal and Policy Consequences FARO will be asked

ASSW, March 27 – April 1, 2011, Seoul, Korea

Keynote 2 by Paul Arthur Berkman:

Environmental State-Change of Sea Ice in the Arctic Ocean: Legal and Policy Consequences for the Global Community

Arctic Science, International Law and Climate Change 17-18 March 2011, Berlin: Arctic research in practice: at sea, on land, from the air

Procedures to get access to the Arctic for Marine Scientific Research

FARO is one of the institutions that will be asked

PART XIII

MARINE SCIENTIFIC RESEARCH (MSR)

SECTION 1. GENERAL PROVISIONS

Article 238

Right to conduct marine scientific research

All States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research subject to the rights and duties of other States as provided for in this Convention.

Article 56.

Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

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 sea-bed and of the sea-bed 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 sea-bed and subsoil shall be exercised in accordance with Part VI.

Part XIII LOS Convention

Article 246

(2) “MSR in the EEZ and on the continental shelf shall be conducted with the consent of the coastal State” (art. 245 same for Terr. Sea)

(3) “Coastal States shall, in normal circumstances, grant their consent” which shall not be delayed or denied unreasonably (Article 252)

After four months, consent is implied

(realistically, no operator/scientist wants to test this)

adapted from Baker, IARC workshop, 2009

Norwegian legislation follows

closely the provisions of LOS Part XIII.

Norway's procedures (Norway 2009, § 9) reference application forms which in turn are based on the Draft Standard Forms developed by the United Nations Division of Ocean Affairs and Law of the Sea pursuant to Part XIII of the Convention (UN 1991).

Consent required from Directorate of Fisheries (DF)

Norwegian Directorate of Fisheries grants permits

Six month lead time unless DF allows shorter time limit for individual application

Two months reply (normal response time)

If requested, Norwegian authorities shall be provided with

- **(1) access to all data and samples from the project** and copies/samples, if division won't be detrimental
- **(2) assessment of data, samples, etc. or** with help in assessing them.

In April 2009 the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Advisory Body of Experts on the Law of the Sea (ABE-LOS) published survey results regarding MSR permissions requested and granted by all coastal states from 1998-2002 (Tirpak 2009-a, 2009-b, 2009-c). The results for the five Arctic Ocean littoral states (all waters, not just the Arctic Ocean) appear in Table 1.

Table 1: MSR permission requests received and approved by Arctic littoral states (all waters)

1998-2002 MSR Permissions*	Canada	Denmark	Norway	Russian Federation	United States
Requests received annually	103	200	68	106	70
Percent Approved	98%	95%	99%	78%	100%

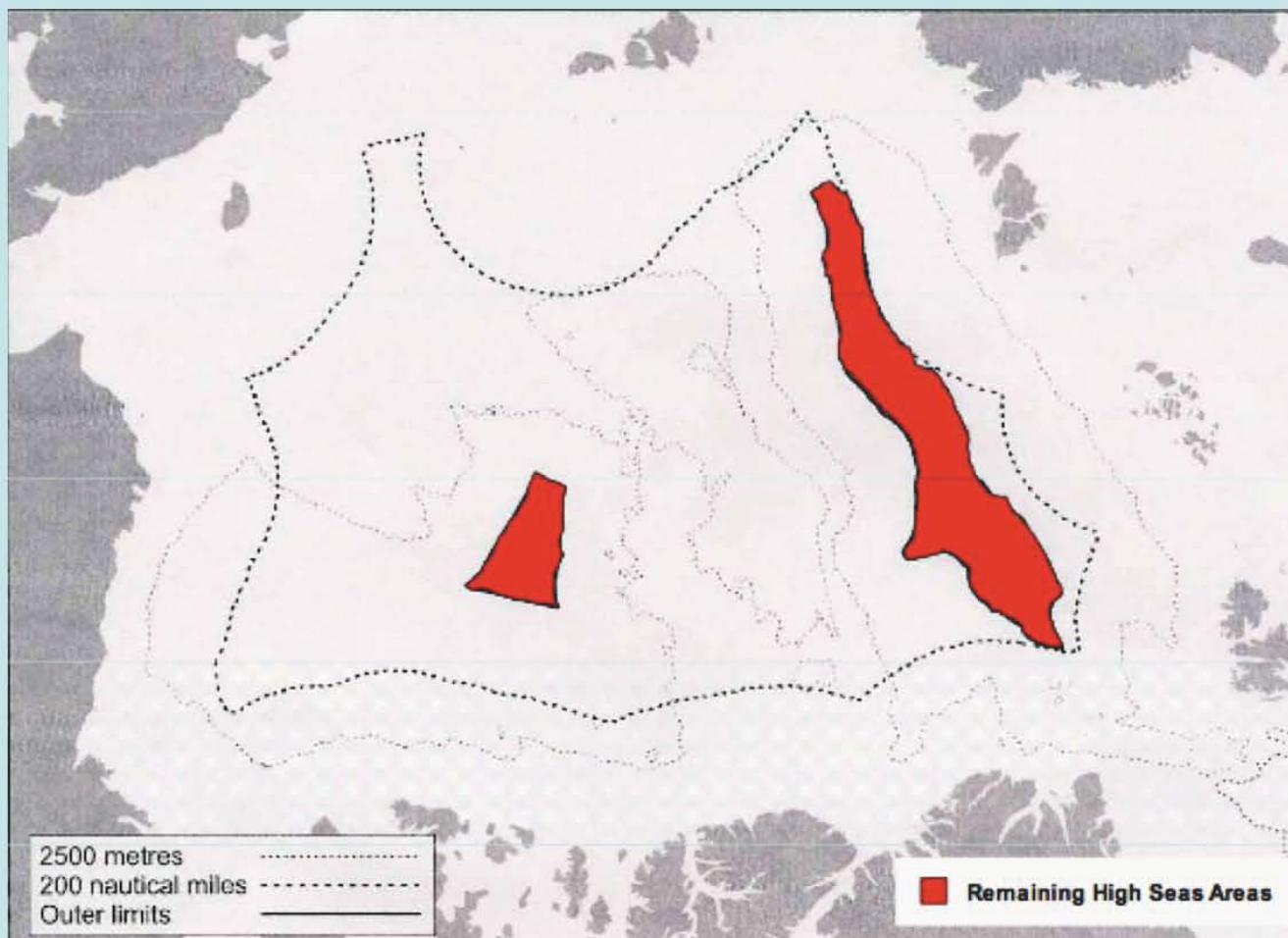
*Statistics shown are for **all** adjoining waters of each state, not just for the Arctic Ocean.

Figures for the Arctic Ocean only are not separately published.

Source: Tirpak 2009-a, IOC Survey of the Practice of States with Respect to Part XIII LOS Convention

„...anecdotal reports indicate a growing concern specific to the Arctic about declining reliability of MSR access to the Arctic Ocean. ...“

Estimated Remaining International Waters



From Ron Macnab - Geologic Survey of Canada (retired)

MSR can be conducted in the territorial sea, EEZ or on the continental shelf only with consent of the Coastal State

MSR is not defined in the treaty:

- Not all activities are MSR
(e.g. within US: MSR consent not required for hydrographic survey but other rules may apply),
distinction in Article 21 between MSR and hydrographical surveys
- Ice tethered moorings and seagliders
- Indigenous people

adapted from Baker, IARC workshop, 2009

If there is no freedom for research and we have no access to the Arctic without permissions, whose receipt could be in question, we will not be able to do

- ecological studies
- sea ice studies
- oceanography
- marine geophysics
- global tectonics

without data no numerical models
without models no predictions of changes

FARO asks IASC to approach the Arctic Council that stewardship should with respect to the global common heritage comprise freedom for science in the Arctic

FARO asks IASC to approach its member states to foster a process that results in harmonized procedures to get permissions for Marine Scientific Research in the Arctic



Thank you