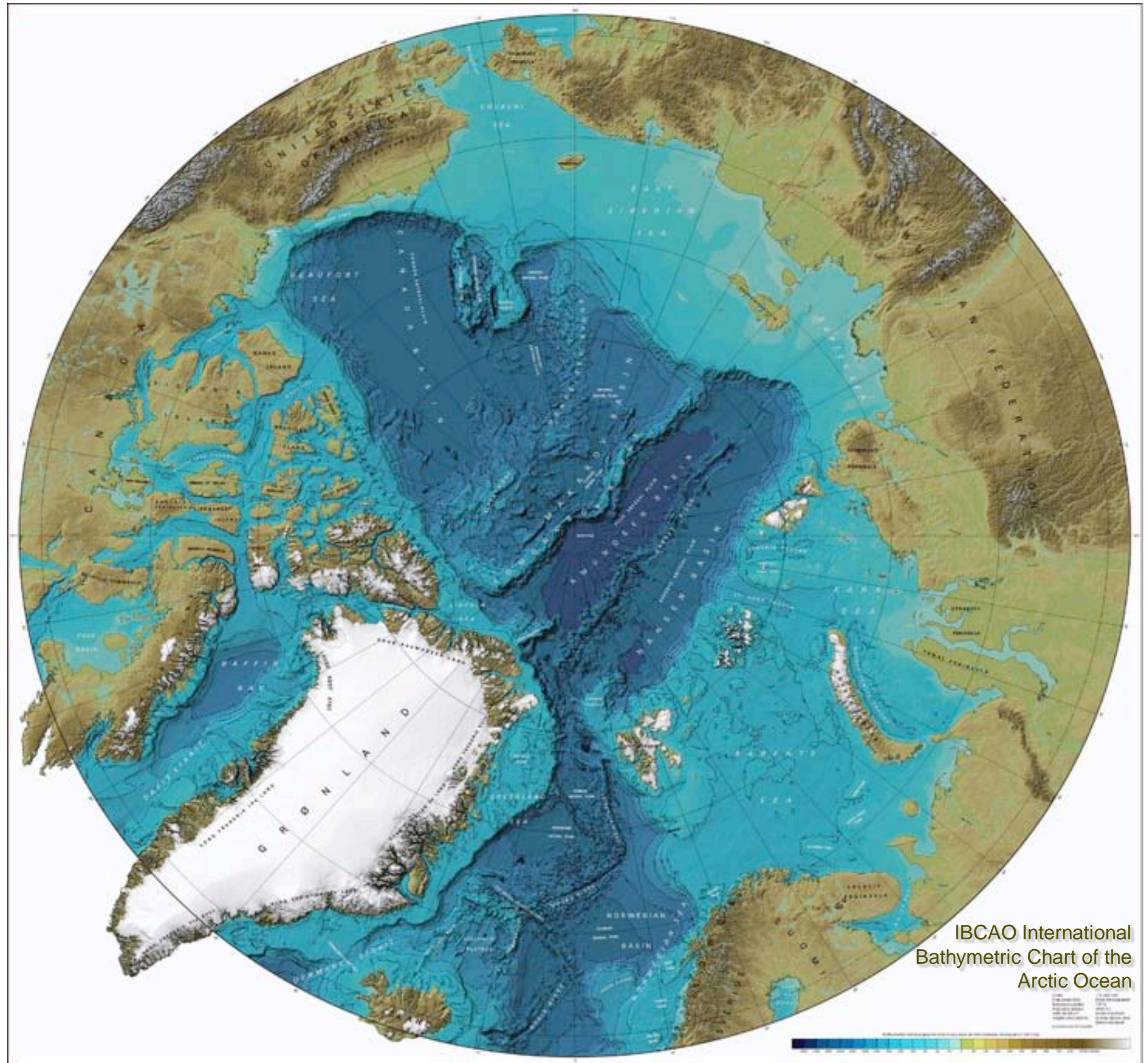
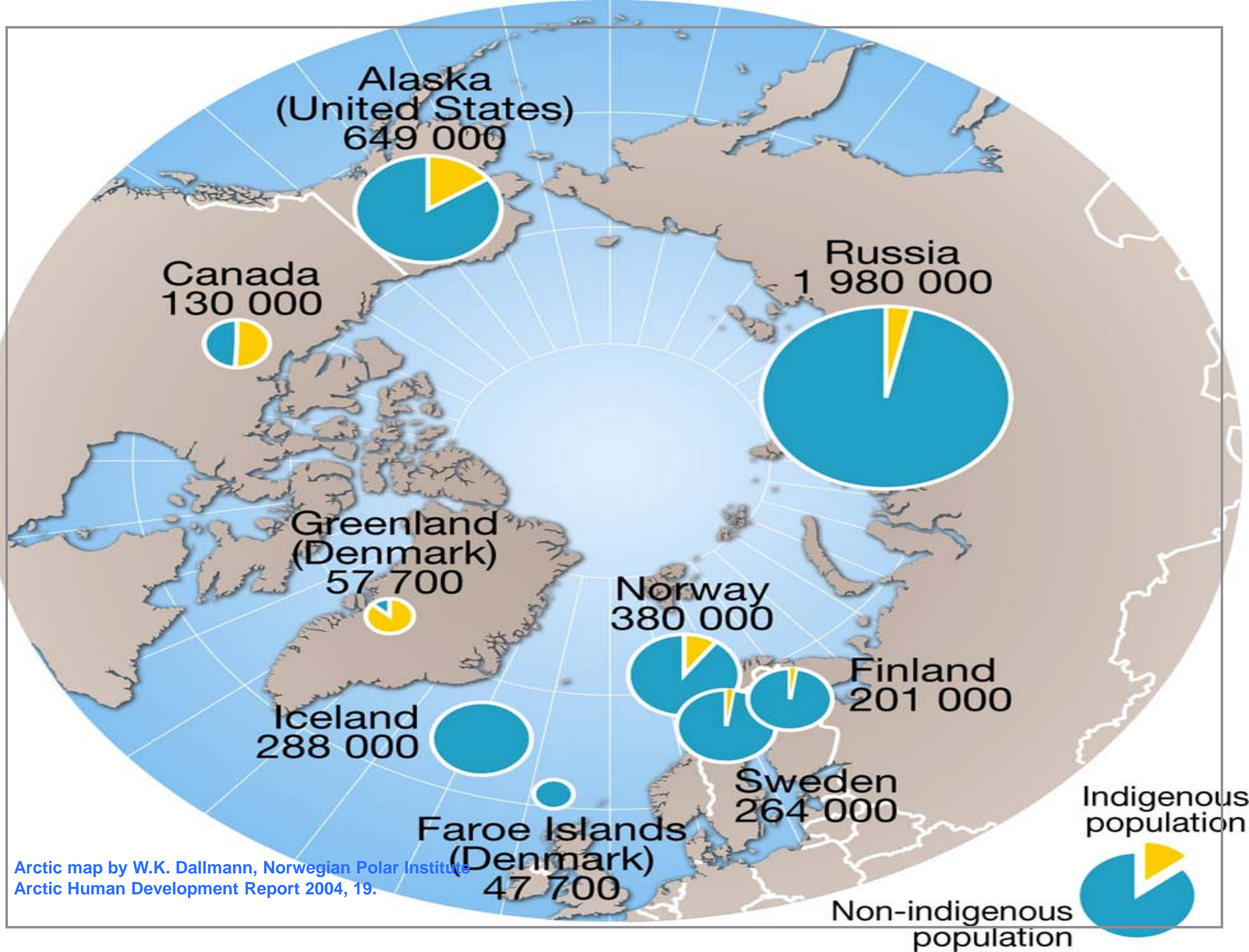


Regulating Resource Development in the Marine Arctic

Roger Williams University
School of Law
9th Marine Law
Symposium
Bristol, RI

Betsy Baker
Vermont Law School
14 November 2012





Arctic map by W.K. Dallmann, Norwegian Polar Institute
Arctic Human Development Report 2004, 19.

Governing the Marine Arctic

- States/LOS Convention: Solid Foundation
- Arctic Council: Participation?
- International Instruments: Adequacy?
- Domestic Laws & Regulations: Harmonization?

Arctic Council



States

Canada
Denmark (Greenland/Faroes)
Finland
Iceland
Norway
Russian Federation
Sweden
United States

Permanent Participants

- [Aleut International Association \(AIA\)](#)
 - [Arctic Athabaskan Council](#)
- [Gwich'in Council International](#)
- [ICC](#) - Inuit Circumpolar Council
 - [Raipon](#) - Russian Association of
 - Indigenous Peoples of the North
 - [The Saami Council](#)

The Arctic Council is “high level forum” to promote “cooperation, coordination and interaction among the Arctic States with the involvement of the Arctic indigenous communities.”

Ottawa Declaration 1996

Arctic Council



Non-State Observers

Inter governmental and Inter-Parliamentary Organizations

NGOs

[International Federation of Red Cross & Red Crescent Societies\)](#)

[International Union for the Conservation of Nature \(IUCN\)](#)

[Nordic Council of Ministers \(NCM\)](#)

[Nordic Environment Finance Corporation \(NEFCO\)](#)

[North Atlantic Marine Mammal Commission \(NAMMCO\)](#)

[Standing Committee of the Parliamentarians of the Arctic Region](#)

[United Nations Economic Commission for Europe \(UN-ECE\)](#)

[United Nations Development Program \(UNDP\)](#)

[United Nations Environment Program \(UNEP\)](#)

[Advisory Committee on Protection of the Seas](#)

[Arctic Circumpolar Gateway Association of World](#)

[Reindeer Herders \(AWRH\) Circumpolar](#)

[Conservation Union \(CCU\) International Arctic](#)

[Science Committee \(IASC\) International Arctic](#)

[Social Sciences Association \(IASSA\) International](#)

[Union for Circumpolar Health International Work](#)

[Group for Indigenous Affairs Northern Forum](#)

[University of the Arctic \(UArctic\) World Wide Fund](#)

[for Nature-Global Arctic Program \(WWF\)](#)

Arctic Council



Permanent Observers

Observer States (Current)

France

Germany

The Netherlands

Poland

Spain

United Kingdom

States/groups interested in observer status:

e.g. Peoples Republic of China

European Union

Italy

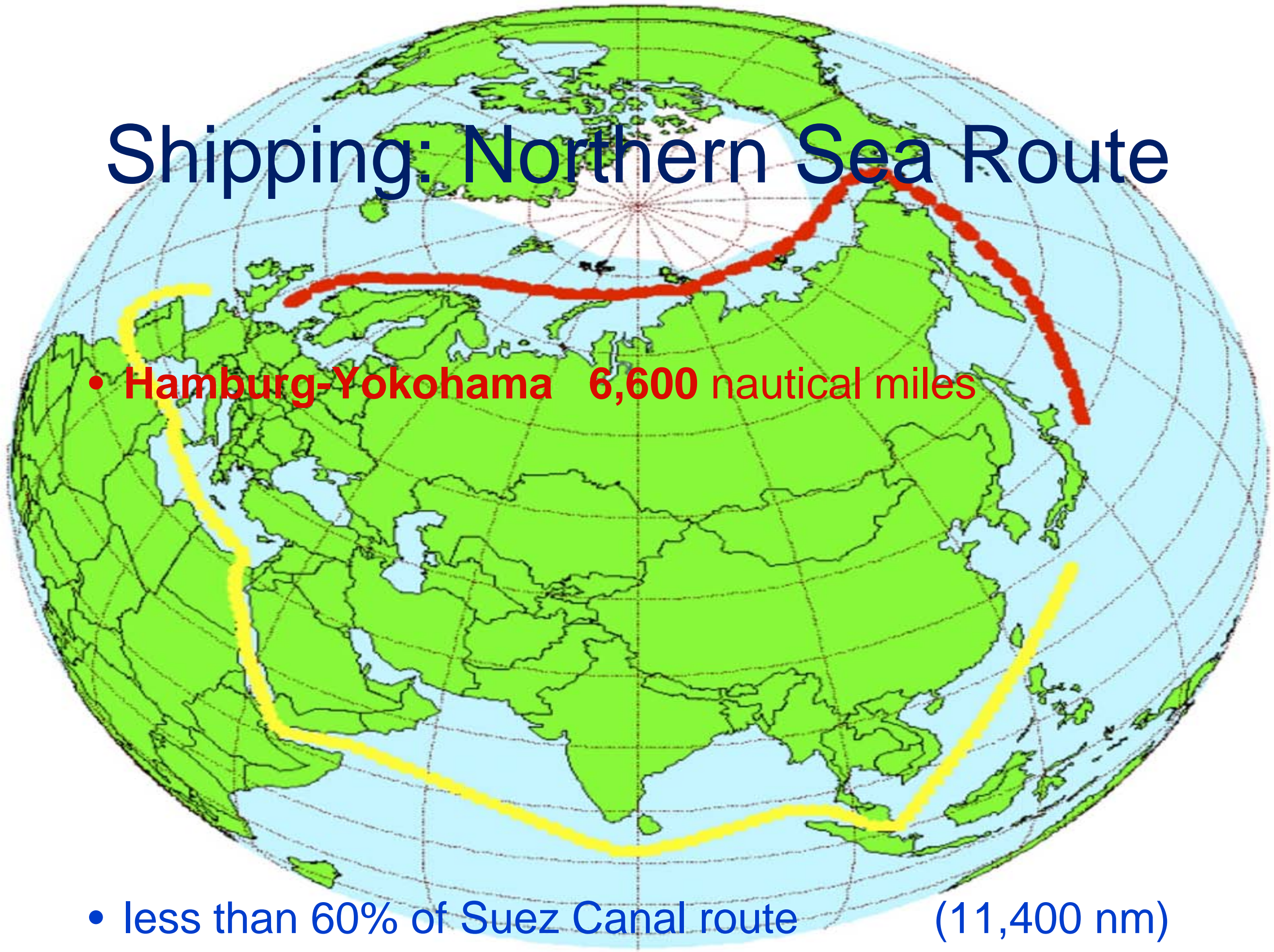
South Korea

**NOTE: Not all have formally applied -
Rules for Observer Status are being
reformed**

Shipping: Northern Sea Route

• Hamburg-Yokohama 6,600 nautical miles

• less than 60% of Suez Canal route (11,400 nm)





- Arctic Council:

Participation?

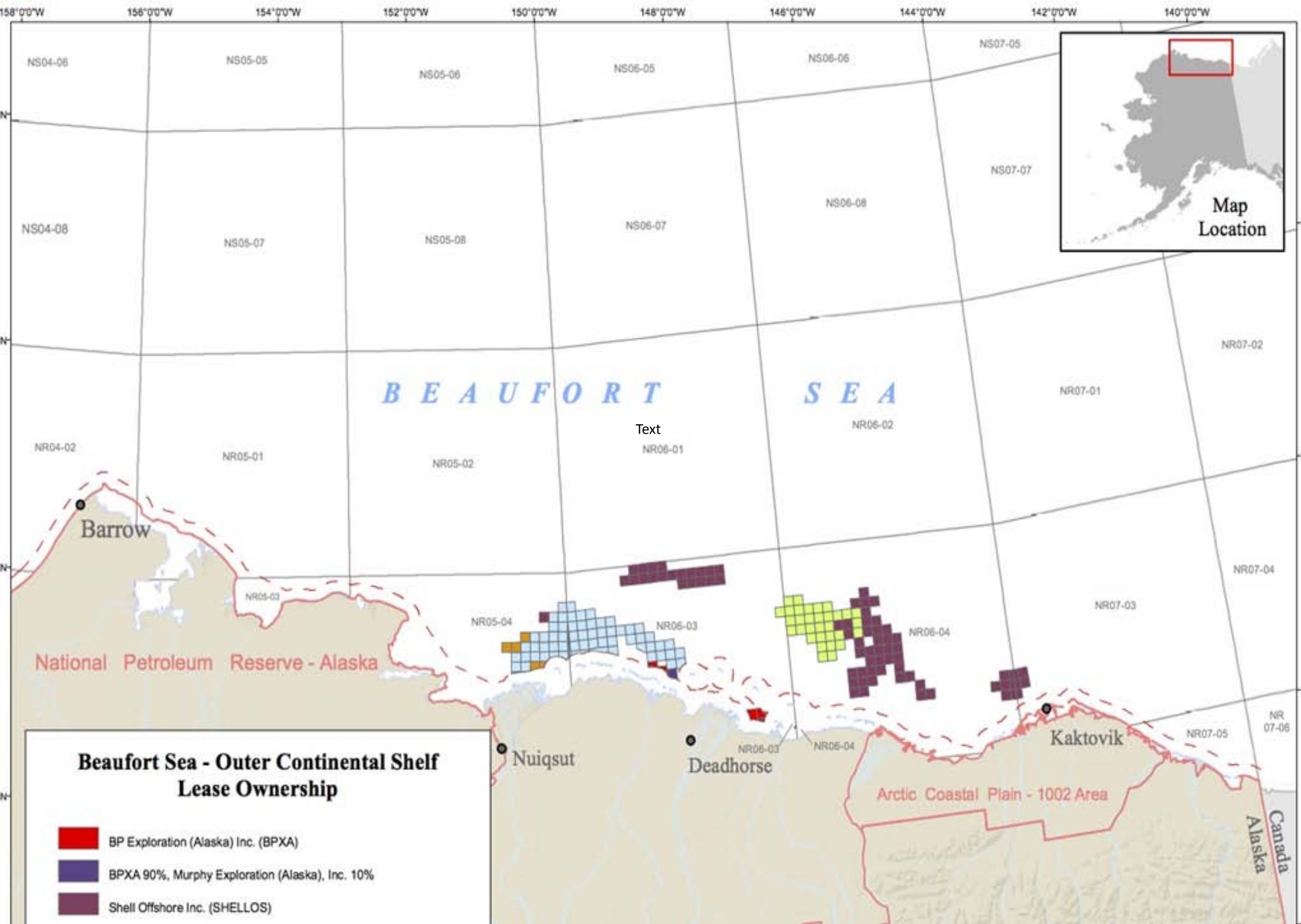
- International Instruments:

Adequacy?

- Domestic Laws & Regulations:

Harmonization?





Towns and industrial activities in the Arctic

Cartographer: Riccardo Pravettoni, UNEP/GRID Arendal

<http://www.grida.no/publications/arctic-biodiversity>

http://www.shell.com/home/content/innovation/meeting_demand/arctic/exploration_production/

GREEN=SETTLEMENTS
RED=EXTRACTION
FIELDS/PIPELINES

Major towns in and around the Arctic

Thousands people



Settlements and villages

Areas inhabited by Indigenous Peoples

Sea activities

Northwest Passage and Northern Sea Route

Future central Arctic shipping route

Other actual shipping routes

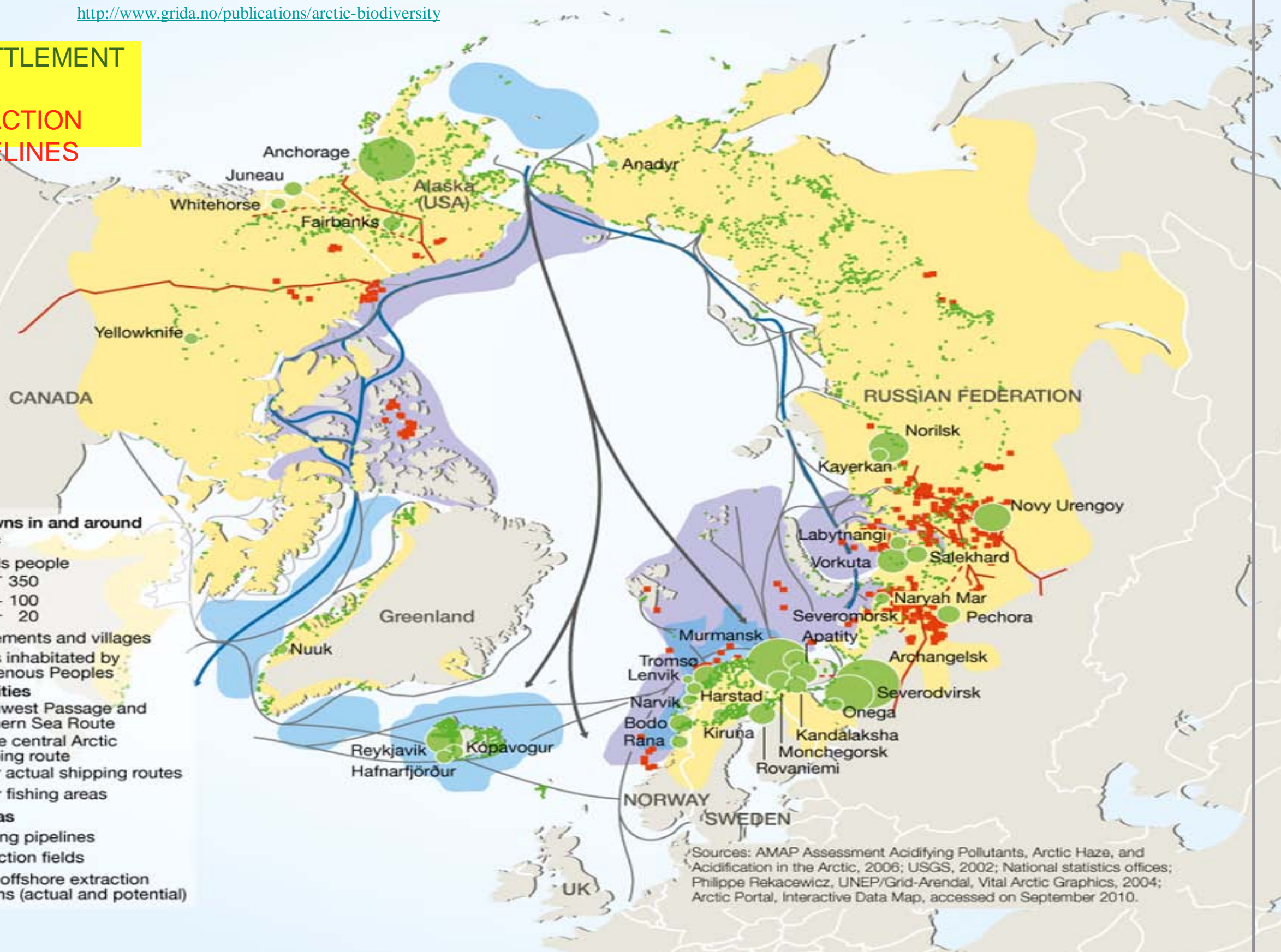
Major fishing areas

Oil and gas

Existing pipelines

Extraction fields

Main offshore extraction regions (actual and potential)



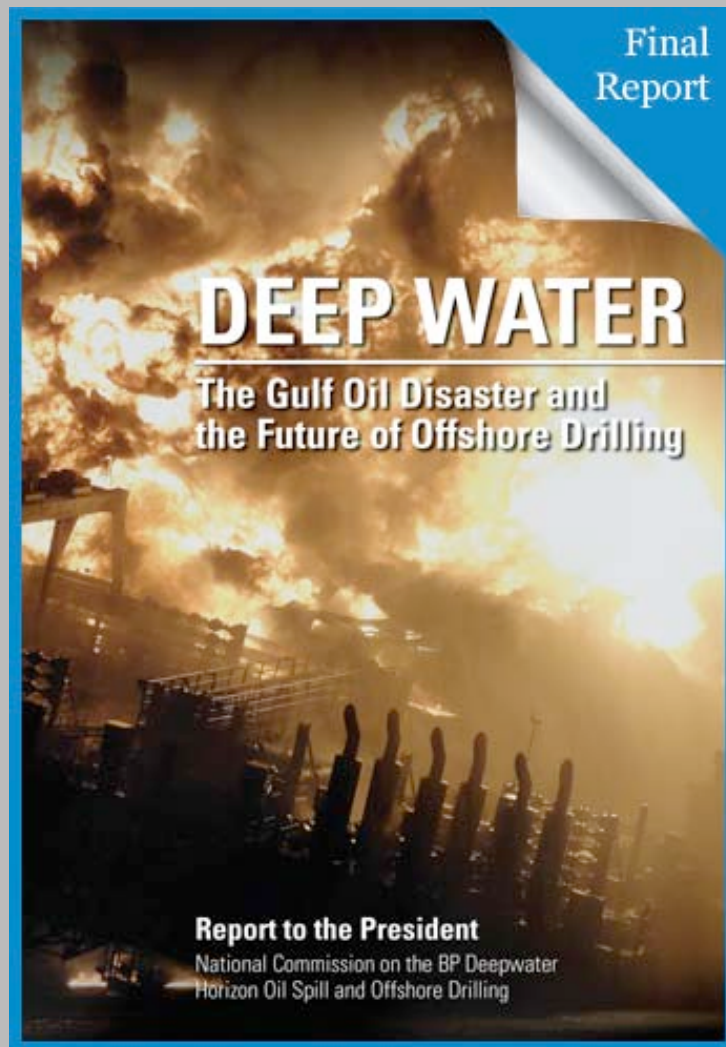
Sources: AMAP Assessment Acidifying Pollutants, Arctic Haze, and Acidification in the Arctic, 2006; USGS, 2002; National statistics offices; Philippe Rekacewicz, UNEP/GRID-Arendal, Vital Arctic Graphics, 2004; Arctic Portal, Interactive Data Map, accessed on September 2010.

Two main Gaps in International Law for offshore Oil and Gas

Lucien Chabason, Institute for Sustainable Development and Int'l Relations

- 1) “Upstream”-- No treaty on authorizing and monitoring offshore exploration/exploitation (because coastal states have primary jurisdiction)
- 2) “Downstream” -- No treaty on responsibility and liability for industrial offshore oil and gas activity, e.g. MODUs (vs. tanker transport of oil, which does have an effective regime). Past efforts have failed.

- Final Report of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling



The United States should

“[I]ead in the development and adoption of shared international standards, particularly in the Gulf of Mexico and the Arctic.

Transparent information and data sharing within the offshore industry and among international regulators is critical to continuous improvement in standards and risk management practices.”

Recommendations, p. 6

Potentially Relevant International Norms and Guidelines

IMO Treaties: MARPOL, SOLAS, London Dumping Convention, Load Lines, OPRC*, Oil Spill Liability and Fund; others? IMO Codes: 2009 Polar Code for vessels

*Convention on Oil Pollution Preparedness, Response and Co-operation

- Other treaties: e.g. Russia/Norway Barents Sea Agreement
- Arctic Council Reports and Guidelines: Arctic Marine Shipping Assessment 2009, Offshore Oil and Gas Guidelines 2009; EPPR Recommended Best Practices [2013?]
- Treaties under Arctic Council auspices: Arctic Search and Rescue Agreement 2011; Arctic Marine Oil Spill Preparedness and Response Agreement 2013 (anticipated)
- UN Declaration on the Rights of Indigenous Peoples - prior informed consent?
- Inuit Circumpolar Council: A Circumpolar Inuit

Article 208 LOS Convention

(applies to seabed/continental shelf)

- 1. Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction....
- 4. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.
- 5. States, acting especially through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment
...

A photograph of a sunset over a body of water. The sun is a bright, glowing orb in the center of the horizon, casting a long, shimmering reflection across the water. The sky is a gradient of colors, from a pale blue at the top to a warm orange and yellow near the horizon. In the foreground, there are numerous ice floes of various sizes, some of which are reflecting the light from the sun. The overall scene is serene and cold.

Text

- Arctic Council: Participation?
- International Instruments: Adequacy?
- Domestic Laws & Regulations: Harmonization?



Joint US-Canada ECS Mapping: September 10 - 27, 2008
August 7 - September 16, 2009
August 2 - September 6, 2010
August 18-September 28, 2011

The CCGS Louis S. St-Laurent breaks ice for the USCGC Healy
Arctic Ocean, September 2008. Photograph courtesy Steve Roberts, USAP/IDEQ

THE ARCTIC OFFSHORE: MARITIME ZONES



C.S. up to 200 nmi: coastal state “exclusive, sovereign rights” to explore, exploit, protect resources of the seabed (coterminus w/ EEZ water column)



Outer Continental Shelves: near-total coastal state rights to resources of the seabed



The Area: resources of seabed and subsoil= “Common Heritage of mankind” ISBA

Hydrocarbon potential in the Arctic Ocean



<http://geomaps.wr.usgs.gov/capabilities/energy.html>

- United States Geological Survey (USGS) 2008 survey estimates:
- 90 billion barrels of undiscovered oil
- cf. 3.78 billion barrels proven reserves of crude oil in Gulf of Mexico, US Waters
http://www.eis.gov/special/gulf_of_mexico/data.cfm#year_end_crude_gl_reserves
- 1.668 trillion cubic feet of undiscovered natural gas lie beneath the Arctic's waters and ice,
- ca. 13 percent of the world's undiscovered oil
- most is within 200 nm