

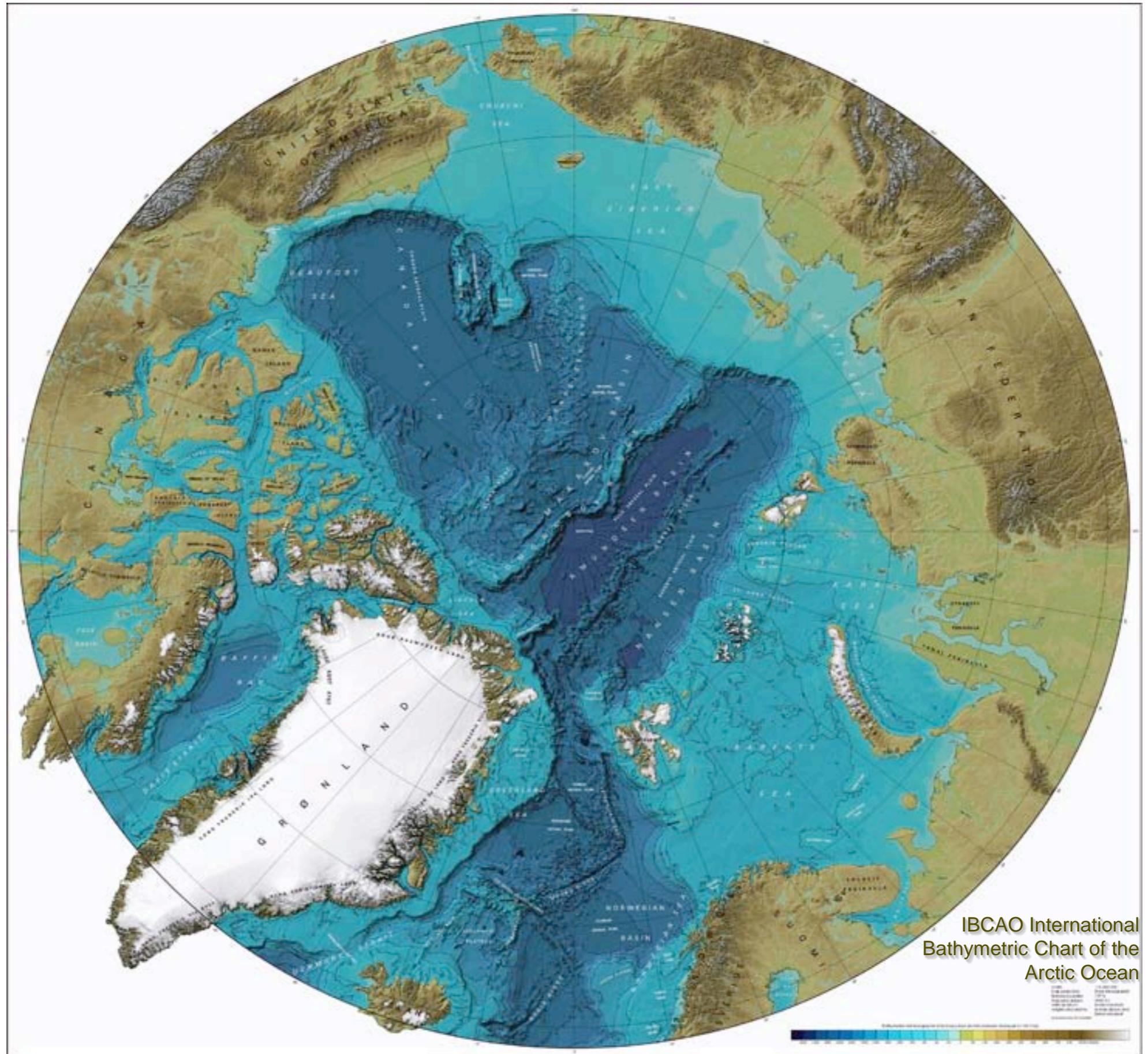
# Who's covering what?

A quick tour of  
international law  
and cooperation  
relevant to

## Resource Development in the Marine Arctic

NOAA Brown Bag Series  
Silver Spring MD  
12-12-2012

Betsy Baker  
Vermont Law School



IBCAO International  
Bathymetric Chart of the  
Arctic Ocean

# Towns and industrial activities in the Arctic

Cartographer: Riccardo Pravettoni, UNEP/GRID Arendal

[http://www.shell.com/home/content/innovation/meeting\\_demand/arctic/exploration\\_production/](http://www.shell.com/home/content/innovation/meeting_demand/arctic/exploration_production/)

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

**GREEN=SETTLEMENTS**  
**RED=EXTRACTION FIELDS/PIPELINES**

## Major towns in and around the Arctic

Thousands people



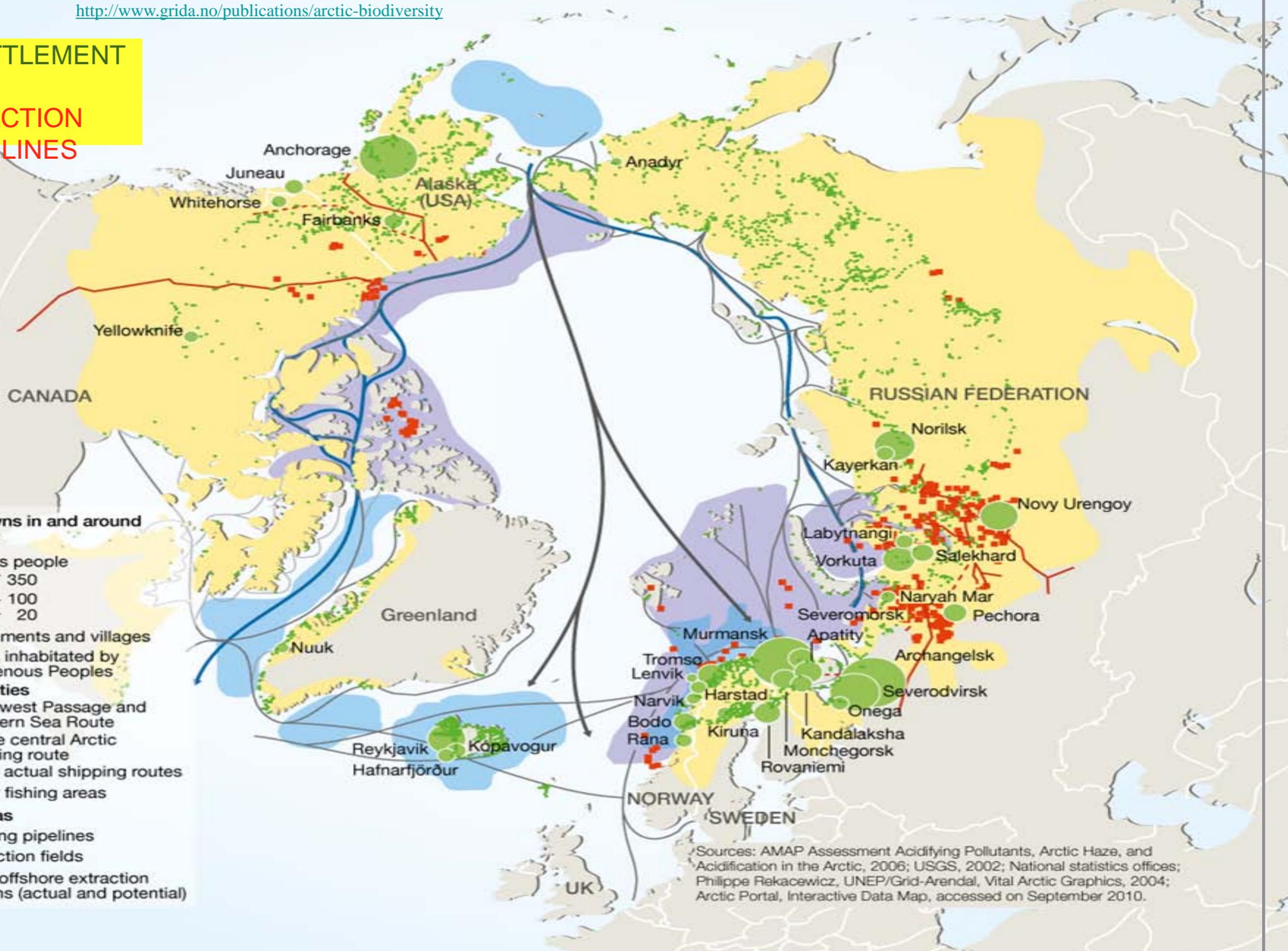
- Settlements and villages
- Areas inhabited by Indigenous Peoples

### Sea activities

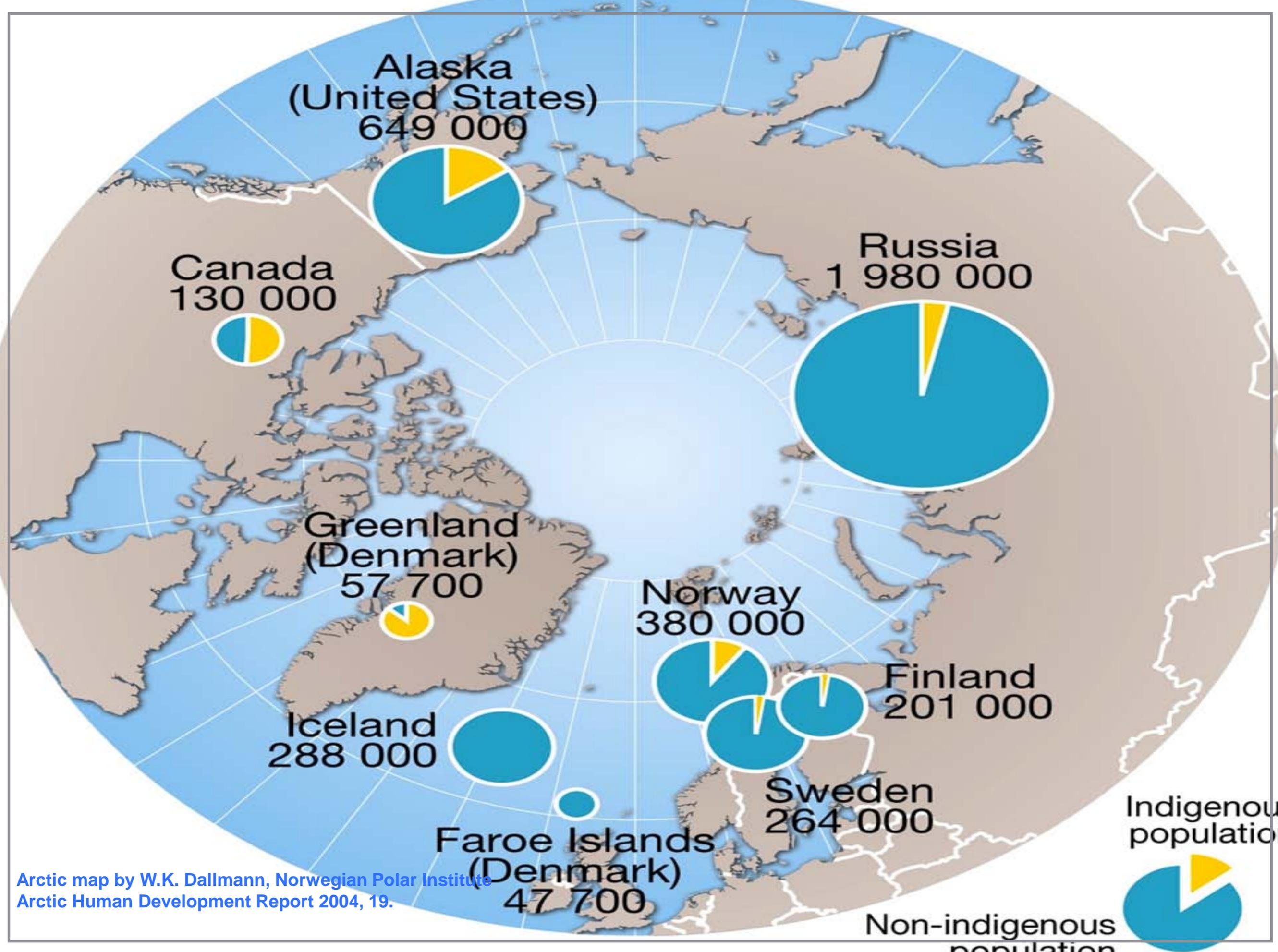
- Northwest Passage and Northern Sea Route
- Future central Arctic shipping route
- Other actual shipping routes
- Major fishing areas

### 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.



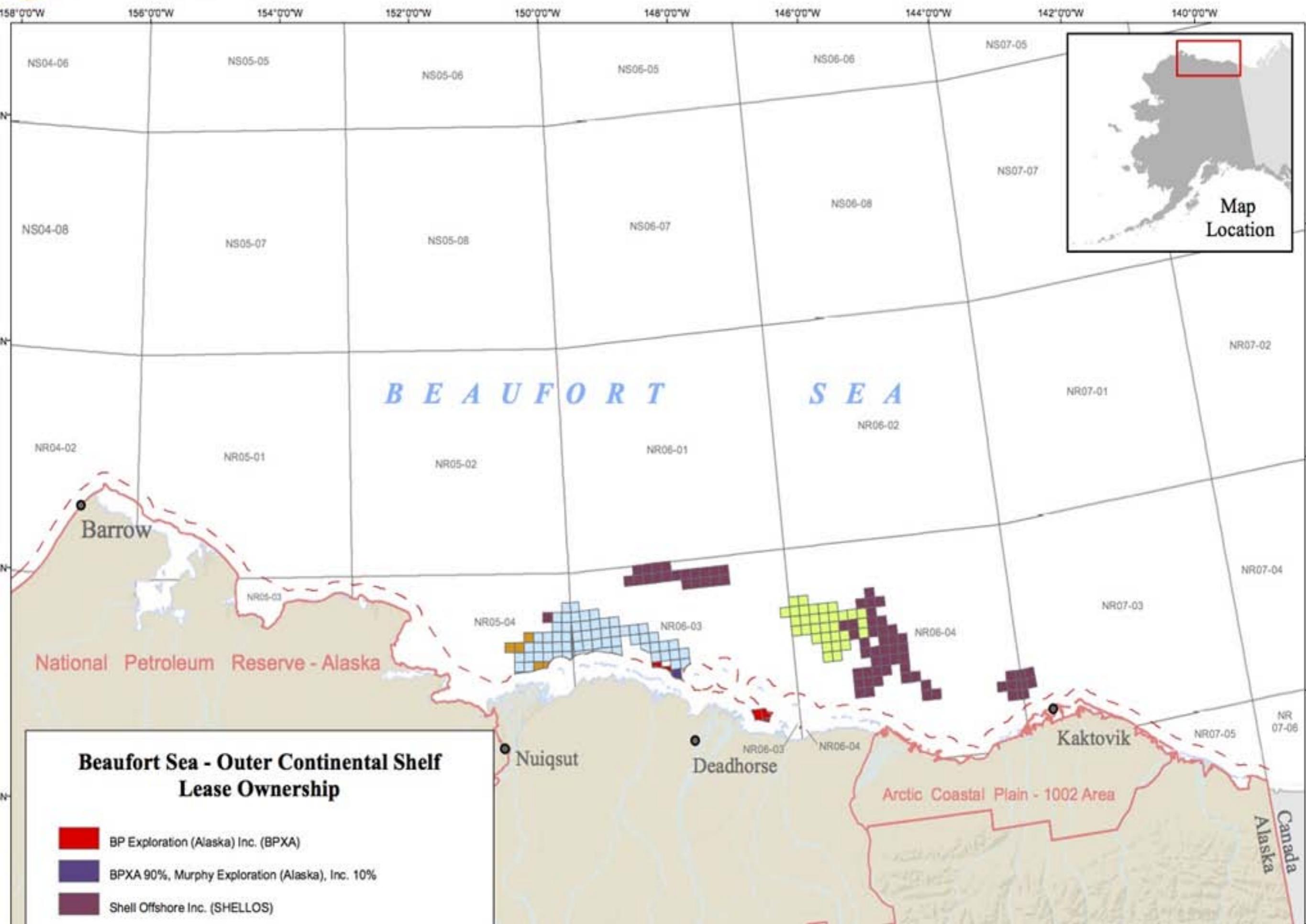
Arctic map by W.K. Dallmann, Norwegian Polar Institute  
 Arctic Human Development Report 2004, 19.

Indigenous population

Non-indigenous population



Text



**Beaufort Sea - Outer Continental Shelf  
 Lease Ownership**

- BP Exploration (Alaska) Inc. (BPXA)
- BPXA 90%, Murphy Exploration (Alaska), Inc. 10%
- Shell Offshore Inc. (SHELLOS)

- 
- An aerial photograph of a ship's deck, showing a large, irregular hole in the ice. The hole is dark, suggesting a deep opening in the ice. The surrounding ice is white and blue, with some smaller ice chunks scattered around. The ship's deck is visible at the bottom of the frame, with a white cylindrical object and some equipment on the left side.
- **States/LOS Convention:** Solid Foundation
  - **Domestic Laws & Regulations:** Harmonization?
  - **International Instruments:** Adequacy?
  - **Arctic Council/PAME:** Arctic Ocean Review

- 
- An aerial photograph showing a ship's deck in the foreground, with a large, dark, irregular hole in the ice. The ice is broken into large, white, jagged chunks. The water in the hole is dark, and the surrounding ice is a mix of white and light blue. The ship's deck is visible at the bottom of the frame, with a white railing and a red pipe. A white cylindrical object, possibly a lifebuoy or a container, is visible on the left side of the deck.
- Domestic Laws & Regulations: [Harmonization?](#)

# 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 ...

## *Harmonization ≠ making all rules identical*

- Harmonization = information sharing; common approaches; reducing direct conflicts
- Begin bilaterally; aim to identify best practices
- Canada-United States Regulatory Cooperation Council 2011 - “alignment” in targeted areas (incl. Environment and Marine Transportation)

# *What to harmonize?*

- How states implement performance based regulation: share lessons learned in moving from prescriptive to performance based regulation for offshore.
  - Role of industry standards in Safety and Environmental Management Systems
    - *US incorporates by reference*
    - *Canada no longer does so*
  - How states monitor baseline information: geo-physical, oceanographic or biological; possible efficiencies in information sharing.
- ... are all possible candidates for harmonization; national regulators to decide which areas are best suited.*



- Domestic Laws and Regulations: *Harmonization?*

- International Instruments: *Adequacy?*

- Arctic Council/PAME: *Arctic Ocean Review*

# Two main Gaps in International Instruments for offshore Oil and Gas

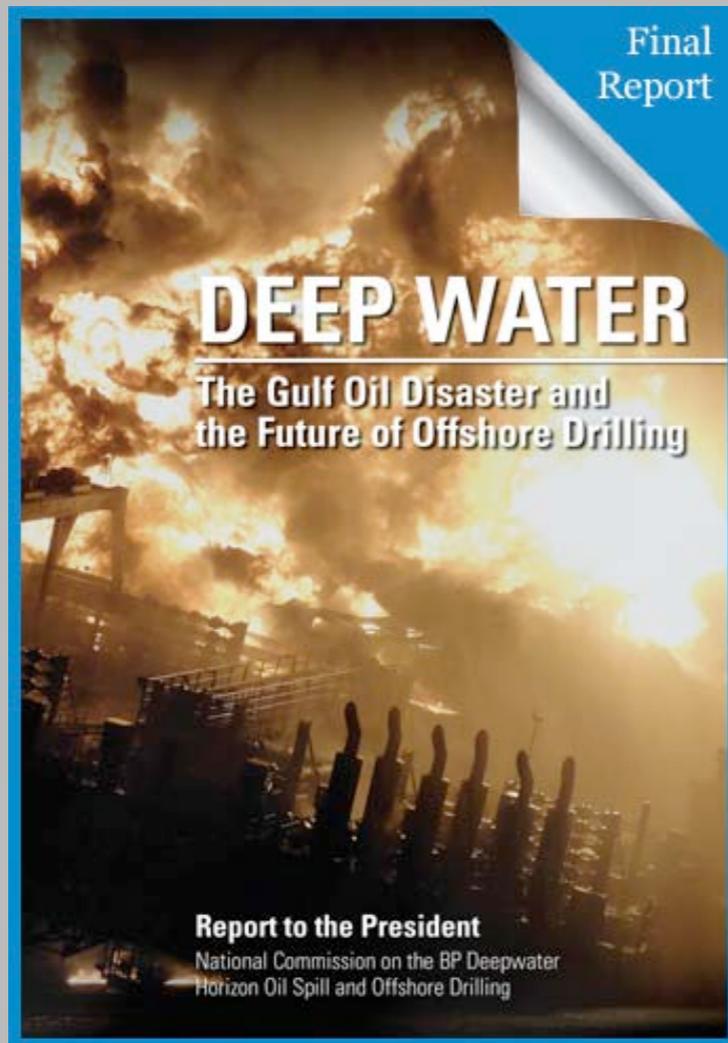
*Lucien Chabason, Institute for Sustainable Development and Int'l Relations*

- 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.

# Potentially Relevant International Norms and Guidelines

- UN Convention on the Law of the Sea
- International Maritime Organization (IMO) Conventions: MARPOL, SOLAS, London Dumping Convention, Load Lines, Oil Spill Liability and Fund; \*Convention on Oil Pollution Preparedness, Response and Co-operation, others? Codes: 2009 Polar Code for vessels
- Other agreements: 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?]
- Agreements under Arctic Council auspices: Arctic Search and Rescue 2011; Arctic Marine Oil Spill Preparedness and Response 2013 (anticipated)
- UN Declaration on the Rights of Indigenous Peoples - prior informed consent?
- Inuit Circumpolar Council: Circumpolar Inuit Declarations 1) on Sovereignty in the Arctic and 2) on Resource Development Principles in Inuit Nunaat.
- ISO - International Organization for Standards

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



The United States should

“[I]lead 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

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- Domestic Laws & Regulations: *Harmonization?*
  - International Instruments: *Adequacy?*
  - Arctic Council/PAME: **Arctic Ocean Review**

# Arctic Council



The Arctic Council is a “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 Ocean Review

PAME/Arctic Council

2009-2013

- Arctic Council Ministers initiated the AOR in 2009, under PAME leadership.
- Support in Arctic Marine Strategic Plan 2004  
*“Periodically review the status and adequacy of international/regional agreements and standards that have application in the Arctic marine environment, new scientific knowledge of emerging substances of concern...”* (Strategic Action 7.3.4)
- Phase I – 2011 Survey existing instruments
- **Phase II – 2013 Analyze gaps and opportunities**

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# Other Arctic Council Initiatives

- PAME Arctic Offshore Oil and Gas Guidelines 2009
- EPPR RP3 – Recommended Best Practices 2013
  - Gradual move toward international standards
  - Binding? Non binding?



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

The CCGS Louis S. St.-Laurent breaks ice for the USCGC Healy  
Arctic Ocean, September 2008 - Photograph courtesy Steve Roberts, UCAR/LD  
Heli-view courtesy Canadian Coast Guard