Opening a new ocean: Arctic Ocean fisheries regime as a (potential) turning point for Canada’s Arctic policy

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Abstract
This policy brief focuses on the opening of the Central Arctic Ocean and the subsequent questions this poses to regional governance. This change has the potential to radically alter the nature of Arctic governance as non-Arctic states will have to play a significant role in the rules that will apply in the Arctic high seas. Talks about a regional fisheries regime will define the future of this region. The creation of a coordinating agreement would have the benefit of not challenging Arctic states too fundamentally while at the same time incorporating non-Arctic states in a meaningful way in the regional governance infrastructure.

Keywords
Arctic governance, Canada’s Arctic policy, resource management, Arctic Council, Central Arctic Ocean

In our lifetime, we will experience a reality that no human being ever has: the opening of a new ocean. Indeed, with global warming, the receding ice cover in the Arctic Ocean (once thought eternal) will give way and allow for further human exploration and exploitation. This change carries the potential to profoundly alter Arctic governance by shifting fundamental geopolitical and economic realities. Moreover, circumpolar politics has so far centred on national jurisdictions and issues focused within the territorial seas or exclusive economic zones of coastal...
states. The opening of the Arctic Ocean introduces a new chapter in Arctic governance, one in which areas of high seas will be the focal point. This policy brief argues that, for Arctic coastal states like Canada, the opening of the Central Arctic Ocean marks a key turning point that could prove salutary providing that Arctic states let go of their traditional positions and reflexes in order to adopt a more mature approach tailored for this new reality.

**Fisheries in the Arctic Ocean**

Fisheries in the Arctic Ocean are both uncertain and limited, as only about 20 percent of the Arctic Ocean can be considered beyond national jurisdiction, hence calling for new governance mechanisms.\(^1\) Uncertainty is probably what most accurately characterizes the status of fisheries in the Arctic high seas. The multi-year ice pack has prevented comprehensive investigations of halieutic resources present in these waters. However, short term potential is low, as no significant fish stock is thought to be found in these areas: according to Oran Young, “most marine biologists are skeptical about the emergence of commercially significant fish stocks in the Arctic any time soon.”\(^2\)

On the other hand, climate change is likely to modify the equation. With warmer waters down south, certain fish stocks will migrate north in search of cooler waters. It is estimated that out of seventeen fish or shellfish stocks present in sub-Arctic waters, twelve are likely to move into Arctic waters as global warming progresses.\(^3\) Hence, we are not confronted with an urgent matter, but one which will slowly impose itself on the circumpolar agenda.

So far, numerous meetings have been devoted to fisheries in the Arctic Ocean. The most significant political development came from a sub-grouping often called the Arctic Five (A5), comprised of Arctic coastal states Russia, Canada, Denmark, Norway, and the United States of America, but excluding three other member states of the Arctic Council—Sweden, Finland, and Iceland. The A5 issued the Oslo declaration in 2015, a non-binding statement calling on states to refrain from taking part in commercial fishing in the Central Arctic Ocean until further scientific studies to assess the viability and sustainability of these fish stocks are performed. Often called the “precautionary approach,” the declaration steered away from the controversial notion of a moratorium, to instead focus on preventing unregulated high seas fishing.\(^4\) The Oslo declaration was issued and signed only by the A5

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states, excluding nations or associations that have long-distance fishing capability (China, the European Union, Japan, South Korea, and Iceland). These nations were added at a later time in meetings called “Arctic 5 + 5,” thus underlining the secondary role these actors were cast to play. As once noted by Zou, the A5 framed themselves as stewards of Arctic Ocean fisheries management, due to their unique geographical positioning.

This policy found roots in prior Arctic governance developments. Indeed, a similar approach was first expressed by these five Arctic states in the 2008 Ilulissat Declaration, which stated that

By virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address these possibilities and challenges. … This framework provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean.

This statement was issued at a critical juncture of circumpolar relations, at a time when controversies and unrest about territorial disputes were attracting international attention to the region, with some actors such as the European Union calling for additional treaties to strengthen a multilateral, rules-based governance of the Arctic. It should also be highlighted that the conference’s main intent was reassuring Arctic and non-Arctic states alike that the process of delimiting the Arctic continental shelf was orderly, and in accordance of the mechanisms laid out in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Members of the A5 were all states actively documenting their claims on the continental shelf. As such, the stewardship role of the A5 was closely linked to issues related to territorial disputes and sovereign rights.

The fact that Arctic states play a unique role and must have precedence over non-Arctic states in circumpolar governance was established as a dogma soon afterwards, when non-Arctic states, especially China and South Korea, applied to be granted observer status at the Arctic Council. Newly accepted observers had to recognize and profess the preeminence of Arctic states in the region’s governance. Canada, among others, pushed hard for this recognition and for these actors to pledge that they will respect national sovereignty. Canada and Russia were the most reluctant to accept non-Arctic states as observers at the 2013 Kiruna meeting.

Towards an Arctic fisheries regime

Of course, this emphasis on sovereignty has constituted an intrinsic element of Canada’s Arctic policy for decades. Passionate reactions to perceived or actual violations of the country’s Arctic sovereignty have punctuated decades of Canada’s Arctic policy. It is commonsensical to affirm that Canada must stand and assert its sovereign rights on its national territory, whether in the Arctic, Pacific, or Atlantic. It also makes sense to reaffirm and stress Canadian sensitivities to other governments on issues related to areas under Canadian jurisdiction. However, the issue of Arctic fisheries changes the nature of the debate; on this policy issue, to affirm that states must respect sovereign rights and UNCLOS means that all states have the right to be present and pursue commercial interests in international waters. In fact, to discredit or marginalize non-Arctic states on this issue would be counterproductive, as they would be within their rights to conduct such activities. Additionally, they have the capability, unlike Canada, to send long-distance fishing expeditions.

Arctic states must then engage with these countries in order to establish a rule-based, stable, and transparent fisheries regime, in which Arctic and non-Arctic states can discuss concerns of mutual interest. Discussions are already underway and at an advanced stage for such a regional arrangement. Multiple possibilities exist as to the desired form and structure for this new regime. At least two options emerge from this possible cooperation: as described by Oran Young, one possibility would consist of creating a subsidiary body such as a regional sea agreement (RSA). Other regions already have RSAs in place, such as the Baltic Marine Environment Committee of the Helsinki Commission or the Convention for the Protection of the Marine Environment of the North-East Atlantic. In terms of fisheries, such a development could lead to the creation of a regional fisheries management organization (RFMO). However, this type of arrangement creates a new structure, with all of the potential difficulties that such a process entails, and has a unique membership structure (all members are equal). Such an option could prove to be too severe of a departure from the current preeminent position of the A5. Even though Arctic states could be granted a privileged status in the new regime (imitating the Antarctica Treaty), such a strategy would be surprising. Antarctica represents a unique phenomenon, while the Central Arctic Ocean cannot be differentiated from the status of other oceans. Furthermore, Arctic states have discredited this option as they repeatedly highlighted in the past ten years that the Arctic region should not be treated like Antarctica; both regions are fundamentally different in their respective geographical and social properties.

For Arctic states, a compromised solution—one that would incorporate non-Arctic states, and especially nations with long-range fishing capability, while at the same time retaining structures favourable to Arctic states’ interests—is quite preferable. The plan proposed by Betsy Baker and Brooks Yeager embodies

8. Young, “Governing the Arctic Ocean,” 275.
such a proposal. Both authors argued that the Arctic Council could work as an umbrella body bringing both Arctic and non-Arctic states together under an Arctic Ocean Coordinating Agreement (AOCA).9 This AOCA would act as a convener, building systematic coordination between Arctic and non-Arctic states. Additionally, this arrangement would draw on existing institutions and treaties (UNCLOS or the 1995 agreement on straddling stocks, for example). Such multilateral agreements could then be tailored to the regional specificities of the Arctic region and concentrate their efforts on specific policy areas such as fisheries. An AOCA would also render more stable, efficient, and transparent the first objective of the 2015 Oslo Declaration. Indeed, the declaration asked nations to restrain from exploiting halieutic resources before sound science and knowledge are generated on existing fish stocks present in the Central Arctic Ocean. Hence, efforts in the near future will be focused on documenting such phenomena. Non-Arctic states are likely to play an important role in this scientific endeavour, as states such as South Korea and China have advanced polar scientific programs and resources. In the case of South Korea, Arctic fisheries combine two policy goals stated in their first Arctic policy document, A Master Plan for Arctic Policy, published in 2013. Scientific and economic policy goals are clearly outlined, stressing that South Korea was already ready and willing to adopt a master plan for research into fishing resources in the Arctic.10

The AOCA would provide a venue for non-Arctic states to participate and contribute to the regional governance apparatus. Ultimately, however, this compromise would inexorably lead to a greater role for non-Arctic states in regional governance. Canada and other Arctic states should not look at this development from a negative viewpoint. Non-Arctic states are already called upon to be active contributors to Arctic issues in order to obtain observer status; in itself, requirements are quite elevated for would-be observers, in comparison with other international or regional organizations. An AOCA would only provide these actors with a venue to prove their usefulness and commitment to circumpolar governance. As Baker and Yeager argued, such an arrangement would “build trust by addressing mutually agreed challenges before moving on to more nuanced and complex issues.”11 It would also further prove to the international community that the Arctic is a rule-based and orderly region, rooted in constructive multilateralism—far from the common perceptions that the region is in a state of heated competition.

Canada’s Arctic policy

However, the creation of an AOCA should not conceal the fact that the establishment of fisheries is bound to happen in the Central Arctic Ocean. An AOCA or a RFMO would grant more influence to non-Arctic states, although they would already have the right to act unilaterally; multilateral arrangements (even of a limited nature) are highly preferable. Consequently, it is imperative for Canada to change its outlook on non-Arctic states’ involvement in the region. However, there is hope. The issue of non-Arctic states was a salient one under the Harper government from the late 2000s to 2015. Canadians were also reluctant about greater cooperation with some non-Arctic countries. According to the 2011 “Rethinking the top of the world” poll, China was the least preferred partner to deal with on Arctic issues.12

However, the great reluctance displayed by the Conservatives and Canadians downplayed the contributions that non-Arctic states could bring to strengthen Arctic governance: investments, scientific resources, and funding for working groups at the Arctic Council, to name a few.13 Additionally, while China is one of the long-range fishing nations, many other natural Canadian allies (such as the European Union) are as well. Though Canadians were wary of China’s involvement in Arctic issues, they saw cooperation and partnership with other Asian states, namely Japan and South Korea, in a more favourable light.14

From a Canadian perspective, an arrangement in which non-Arctic states are given more responsibilities and are more deeply engaged would not undermine the preeminent status of Arctic countries on other issues. The delimitation of the continental shelf, which is the original reason to formulate this idea of preeminence, is still considered to be the prerogative of coastal states; no state has adopted a revisionist policy seriously questioning the legitimacy of the UNCLOS process on the delimitation of the Arctic shelf. There is no reason to believe that the Arctic is any different from other oceans; after all, freedom of navigation in the high seas does not translate into contestation of the continental shelf by non-coastal states.

The creation of an AOCA would also support long-held policy goals, shared by successive Liberal and Conservative governments for the past twenty years: the strengthening of the Arctic Council as the primary forum for circumpolar relations. This has been considered a priority in key policy documents, from the 2000 Northern Dimension of Canada’s Foreign Policy to the 2009 Canada’s Northern Strategy. The emphasis on multilateral organizations by the Trudeau government suggests that this position will not evolve any time soon. The multiplicity of forums

(for example, the Arctic change and Arctic Frontiers) dealing with Arctic issues and convening relevant stakeholders (businesses, civil society, academics, both national and sub-national governmental entities) has rendered Arctic governance more complex. On the other hand, the Arctic Council and its eight member states seemed poised in recent years to use the Council in order to coordinate state efforts to reach multilateral agreements. Such cooperative endeavours were seen in 2011, with an agreement on search and rescue jurisdictions, and in 2013, with the signing of an agreement tackling marine oil pollution.

There has been hope in recent meetings that Arctic and non-Arctic states have begun to earnestly negotiate a fisheries agreement. Successive meetings of the Arctic 5 + 5 in the United States of America (winter 2015), Canada (summer 2016), Faroe Islands (fall 2016), and Iceland (spring 2017) have made the expectations of different nations converge towards common understanding. Additionally, these discussions have contributed to the much-needed integration of non-Arctic states in circumpolar governance. The agreement reached between these ten states at the Washington meeting on 30 November 2017 represents the culmination of this process.

States seem now to realize that a regional fisheries regime will be implemented in the future. The latest statement from the Reykjavik meeting of the Arctic 5 + 5 highlighted that “most delegations view [fisheries discussions] as part of a ‘stepwise’ process in advance of establishing in the future one or more additional regional or sub-regional fisheries management organizations or arrangements for this area.”

The AOCA proposal detailed in this policy brief would constitute a gradual step in the process of reaching this objective.

More generally speaking, a cursory look at the history of Canadian foreign policy practices informs us of the centrality of multilateralism in Canada’s international relations. “Might makes right” has never favoured a middle power like Canada: the country’s active partaking in the construction of international laws and norms has always been a central tenet of Canada’s approach to the world. The Arctic fisheries regime issue is no different: other states have the capability to go unilateral or to impose their preferences without asking permission. To deny them this right would undermine key understandings on sovereignty and territorial boundaries that are the cornerstones of the stability of the international system through UNCLOS. Fortunately, non-Arctic states have publicly stated their wish for a rule-based maritime order in the Arctic. Arctic states must capitalize on this opportunity and build on the cooperative environment that has served the region so well for the past three decades.

The time has come for a more mature Arctic policy, free from unrealistic considerations about sovereign rights. The discussions held on Arctic fisheries have the potential to fundamentally change Arctic governance. The mechanisms that the

Arctic 5 + 5 will agree on will be pivotal for the future of the region, laying a foundation for how the Arctic will be governed. This “new” ocean will only open once; we must get it right.

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