

From: Nygård, Kristina Kvamme
Sent: Wednesday, 5 November 2014, 10:44
To: Finbak, Christine <Christine.Finbak@mfa.no>
Cc: Johansen, Therese <Therese.Johansen@mfa.no>; Jervell, Kristian <kristian.jervell@mfa.no>
Subject: Sedentary species - literature

A few excerpts from the literature below. It does not necessarily provide more clarity, but there are some references to sources that may be helpful.

Handbook on Ocean Politics & Law (1992)

James C. F. Wang

Excerpts from page 60:

[...] The exclusive right of coastal state to explore and exploit natural resources on the shelf not only extends to minerals and other nonliving resources, such as oil and gas, but includes those living resources belonging to “sedentary species” that are immobile or unable to move, except in constant contact with the seabed and subsoil. the 982 LOS Convention of “sedentary species” has caused controversy among scientist and has given rise to international disputes. While crabs are included within the meaning of the Convention under Article 77(4), lobsters are not considered to be sedentary species. Thus, the United States- Japan dispute over the king crab in the Bering Sea, the lobster war between France and Brazil, and the Soviet Union-Argentina dispute over king crabs have been historic cases. The establishment of the 200-nautical-mile exclusive economic zone made these disputes less likely to occur, since the EEZ grants the coastal states the right to exploit all resources within the zone. But the question as to what is considered “sedentary species” still give rise to disputes when these resources are found on the continental shelf beyond 200 nautical miles. By definition, the superjacent water beyond 200 nautical miles is a part of the high seas. [...]

Filling Regulatory Gaps in High Seas Fisheries

Yoshinobu Takei

Excerpts from pages 49-50:

[...] Organisms belonging to sedentary species may be found both within and beyond the outer limit of the continental shelf determined in accordance with Article 76 of the LOSC. Is the any distinction in law between the harvesting of organism belonging to sedentary species and that of other marine living resources in areas beyond the outer limit of the continental shelf. Is the former regulated by the regime of the Area?

At the outset, it should be mention that the term 'sedentary species' is not used in any context outside the continental shelf in the LOSC; is in note used in either Part CII or Part CI.⁷³ It is not even clear, in the context of the Area, whether it is adequate to use the term 'sedentary species' to refer to organisms which, at the harvestable stage, either are immobile or on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.⁷⁴ Nevertheless, for the sake of convenience, the term 'sedentary species' is employed in this section to mean such organisms, whether within or beyond the limit of the continental shelf.

The scope of the species covered by the term 'sedentary species' is not without controversy. While the term is defined in the CSC and the LOSC, disputes have arisen to whether a particular species falls under the biological character defined in the treaties. Moreover, recent interest in bioprospecting for marine genetic resources has further complicated the classification of marine living resources. In this regard, it is interesting to note the following comments made by the Secretary-General: “[t]he extent of which the definition of sedentary species under 77 covers the complex and symbiotic web of deep-sea ecosystems may need to be addressed in order to clarify whether such ecosystems and organisms belong to the regime of the continental shelf or of the water column above it.”⁷⁶

73. the concept of sedentary species has been primarily developed in association with the regime of the

continental shelf. See also T. Scovazzi, 'Mining, protection of the Environment, Scientific research and Bioprospecting: Some Considerations on the Role of the International Seabed Authority', 19 International Journal of marine and Coastal Law (2004), at pp. 400-401.

74. A. G. Oude Elferink, "The Regime of the Area: Delineating the Scope of Application of the Common Heritage principle and Freedom of the High Seas", 22 International Journal of Marine and Coastal Law (2007), at p. 151; Scovazzi, "Mining, Protection of the Environment, Scientific Research and Bioprospecting", at p. 401.

75. Disputes include those concerning king crab between the United States and Japan, lobster between Brazil and France, an Icelandic scallop between Canada and the United States, See E.H. Beck, U.N. Convention on the Law of the Sea: Living Resources Provisions, CRS report for Congress, Updated January 7, 2004.

76. Oceans and the Law of the Sea, report of the Secretary-General, A/62/66, 12 March 2007 at para. 193.

From: Nygård, Kristina Kvamme
Sent: onsdag 5. november 2014 10:44
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Cc: Johansen, Therese <Therese.Johansen@mfa.no>; Jervell, Kristian <kristian.jervell@mfa.no>
Subject: Sedentære arter - litteratur

Et par utdrag fra litteratur nedenfor. Det gir ikke nødvendigvis mer klarhet, men det er noen referanser til kilder som kan være nyttige.

Handbook on Ocean Politics & Law (1992)

James C. F. Wang

Utdrag fra s. 60:

[...] The exclusive right of coastal state to explore and exploit natural resources on the shelf not only extends to minerals and other nonliving resources, such as oil and gas, but includes those living resources belonging to “sedentary species” that are immobile or unable to move, except in constant contact with the seabed and subsoil. The 1982 LOS Convention of “sedentary species” has caused controversy among scientist and has given rise to international disputes. While crabs are included within the meaning of the Convention under Article 77(4), lobsters are not considered to be sedentary species. Thus, the United States-Japan dispute over the king crab in the Bering Sea, the lobster war between France and Brazil, and the Soviet union-Argentina dispute over king crabs have been historic cases. The establishment of the 200-nautical-mile exclusive economic zone made these disputes less likely to occur, since the EEZ grants the coastal states the right to exploit all resources within the zone. But the question as to what is considered “sedentary species” still give rise to disputes when these resources are found on the continental shelf beyond 200 nautical miles. By definition, the superjacent water beyond 200 nautical miles is a part of the high seas. [...]

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ecosystems may need to be addressed in order to clarify whether such ecosystems and organisms belong to the regime of the continental shelf or of the water column above it.”⁷⁶

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