

# Trade in Fishing Services and Coastal State Rights

Stephen Cunningham and Gordon  
Munro

NAAFE Forum 2015

# Introduction

- This presentation will be a bit different from the others on this panel, because in terms of “rights”, the focus will be on rights at the coastal state, rather than the individual fisher, level
- It arises from a World Bank report , *Trade in Fishing Services*, released last December on distant water fishing state (DWFS) operations within coastal state EEZs – Foreign Fishing Arrangements (FFAs)
  - FFAs to be found in about one half of world EEZs
    - our presentation will be introductory. We hope that we will be able to give one or more detailed presentations at IIFET 2016

# TRADE IN FISHING SERVICES

## Emerging Perspectives on Foreign Fishing Arrangements



# The Issue

- With the coming of the 1982 UN Convention of the Law of the Sea (UNCLOS) and the EEZ regime, DWFSs blocked from automatic access to many major fisheries
- But under UNCLOS (or so it is believed), coastal states obligated to grant DWFSs access to their EEZs, under certain circumstances
  - of particular importance to developing coastal states
- How can such coastal states gain the most from resultant FFAs asks the report? –to answer this question, we need to bring to bear both Law and Economics
- But why **Trade in Fishing Services (TIFS)**? – comes from this combination of Law and Economics

# The Report's Approach

- Develop a robust analysis of the legal and economic principles underpinning TIFS
- Although TIFS is poorly documented, it is happening. Commissioned a set of case studies to look at some of the key issues in various places around the world
- Attempt to draw some generic lessons and recommendations from the principles and practice.

# The Case Studies

- Alaska Bering Sea Pollock Fishery – James Wilen
- Western Pacific (Pacific Island Countries) – Les Clark
- Areas Beyond National Jurisdiction (using Western Pacific example) – Tom McClurg
- Foreign Fishing Arrangements in Morocco – Mohammed Rouchdi
- Small-scale fishers – Robert Arthur
- EU “Northern” Agreements – Suzannah Walmsley
- China’s Distant Water Fishing – Tabitha Mallory
- New Zealand’s experience with chartering – Philip Major
  - note the **very important** first case study

# The Legal Question and the Surplus Principle

- The legal obligation of the coastal state to grant access to DWFSs comes from UNCLOS, Article 62(2), which sets forth the **Surplus Principle** and states:
  - ----where the coastal State does not have the capacity to harvest the entire allowable catch, it shall-----pursuant to paragraph 4 [of Article 62], **give other States access to the surplus of the allowable catch**----- - this raises two questions(i) determination of capacity; and (ii) allowable catch
- UNCLOS clearly states that the coastal state (CS) is to determine its own harvesting capacity. What about setting the allowable catch? We draw heavily upon the work of William Burke, a leading world authority on international law applied to fisheries
- After a painstaking review of the relevant UNCLOS articles, Burke concludes that the CS's power to set the allowable catch is “**sovereign and non-reviewable**” –i.e. the CS can set the allowable catch as it pleases!

# The Empty Surplus Principle

- BUT, if the CS is to determine both its harvesting capacity *and* the allowable catch , then it follows that the rational CS will declare a surplus, ***if and only if***, the CS deems it to be in its interest so to do.
  - Burke: “----the short of the matter is that the treaty [UNCLOS] contains no restriction on coastal State authority to forbid access to foreign fishing” .
- Further, if the CS does declare a surplus, and grants “other states” access to the surplus, it can impose upon these states a broad set of terms and conditions. It cannot be overemphasized that the CS is called upon to give away nothing for free.
- A fundamental conclusion of the TIFS report: **the Surplus Principle is Empty**
  - this is not at all well understood. Widespread belief that the Surplus Principle is valid.



# Why Declare a Surplus?

- Why on earth, then, would a CS ever declare a surplus? Response of many CS: why indeed!
- It would make sense for a CS to declare a surplus, if by so doing it could increase the net economic returns (resource rent) from its fishery resources
- This brings us into the realm of Economics

# Principles and Agents

- The CS, as effective owner of the intra-EEZ fishery resources, is to be seen as a Principal. If it grants access to these resources to one or more DFWSs, the DFWSs are to be seen as Agents of the CS.
  - P-A analysis, with imperfect monitoring, uncertainty, asymmetric information, agency costs, fits perfectly
- By definition, the DFWSs, from the perspective of the CS, are foreign. Therefore, if the CS Principle grants DFWSs Agents access, CS is to be seen as **importing** DFWS fishing services – hence TIFS
  - services: harvesting, and/or processing, and/or marketing

# International Economics and Fisheries

- Why would a rational CS import DWFS fishing services?
  - because the DWFS has a **comparative advantage** in providing such services. Argument for importing such services is essentially the argument for free trade.
    - this applies even in the case of so-called “fee fishing” arrangements with DWFSs, although this is far from obvious
- Arguments against such importation, even where DWFSs have a comparative advantage, immediately recognizable as arguments for protection, including the “legitimate” infant industry argument
  - a prime example of application of the infant industry argument: Alaska Bering Sea Pollock Fishery

# Success with FFAs

- The experience with FFAs, throughout the world, has varied enormously. Among developing CSs, the Pacific Island Countries (PICs) of the western Pacific are the stars –far, far ahead of any other group of developing CSs.
- Among developed CSs, we would put New Zealand, which has a habit of getting it right with respect to fisheries management, in the lead
  - NZ talks explicitly in terms of “free trade in fishing services”
  - we argue that NZ’s system of rights based (catch share) fisheries management greatly enhanced its ability to make use of FFAs to its best advantage – what holds true for NZ could hold true for others



**Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.**

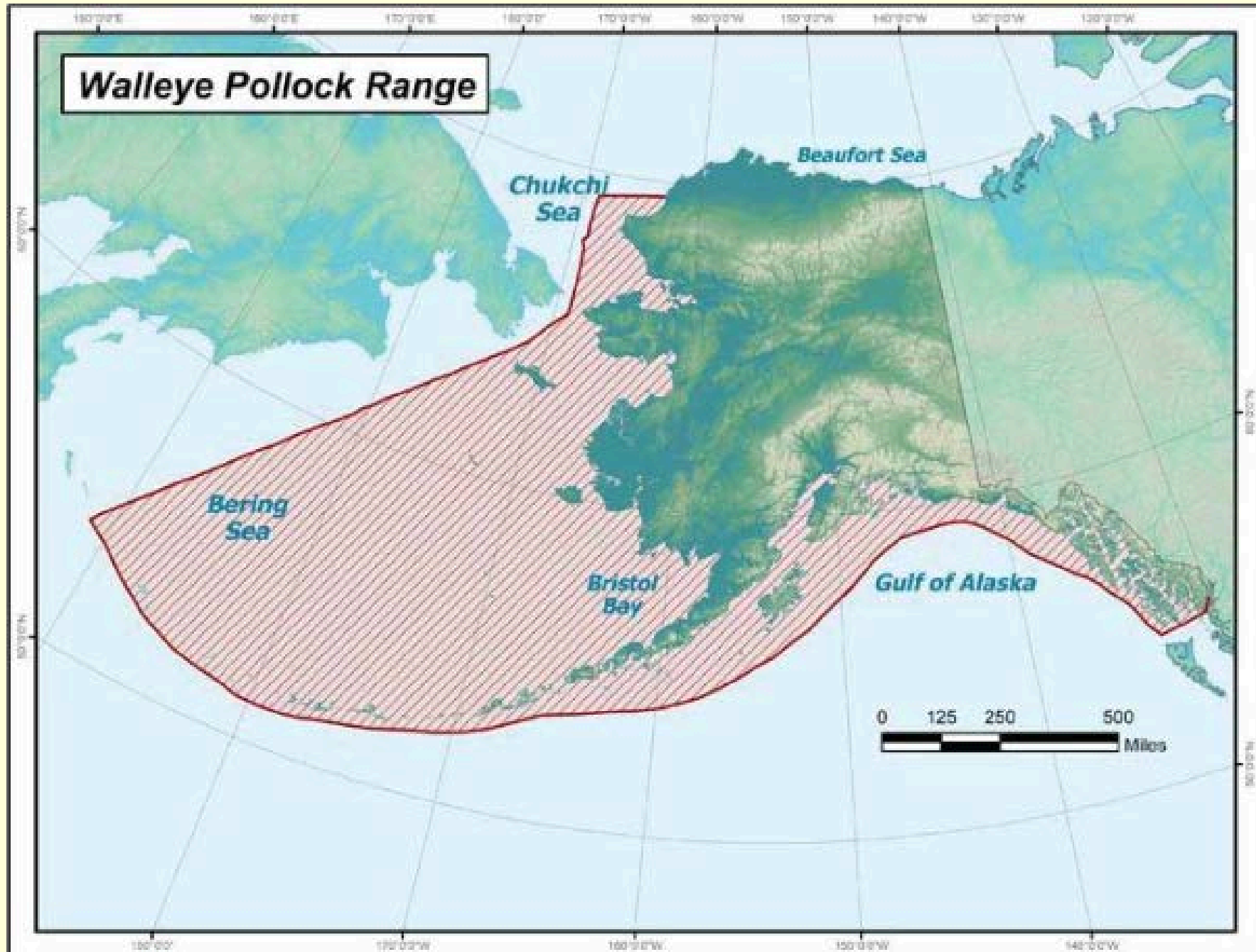
— Convention limits (Article 3)

■ Archipelagic waters

# A Few Conclusions

- The TIFS report has a string of recommendations, which we cannot go through, in the time allowed. There is one, however, that we would like to stress.
- The success of developing CSs, with respect to FFAs, will obviously depend vitally upon their resource management capacity. Enhance this capacity, not just through north-south cooperation, but through south-south cooperation as well
  - enable the PIC “stars” to transfer their skills and knowledge to other groups of developing CSs, e.g. West Africa.
- Finally, to our fellow economists. The economics of TIFS is still in a rudimentary stage. A wealth of research opportunities await you.

# Walleye Pollock Range



0 125 250 500  
Miles

