

Analysis

US-Russian Bering Sea Marine Border Dispute: Conflict over Strategic Assets, Fisheries and Energy Resources

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Abstract

Despite the universal implementation of the Law of the Sea principles in defining national sovereignty over coastal waters and the end of the Cold War, Russia continues to press marine border disputes with several neighboring countries. The most important conflicts are with the United States, Norway, and Japan. Fortunately, these are not military confrontations, but political disputes over the economically and strategically important marine regions claimed by all four countries. At stake are strategic considerations, abundant fish resources and large oil and gas deposits at the bottom of the sea. This article discusses the history of the US-Russian conflict, the viewpoints of both sides, and the impact of this dispute on access to marine living resources of the area.

Historical Overview

In 1867 the United States purchased the territory of Alaska, acquiring nearly 600,000 square miles of new territory. The land was purchased for \$7.2 million or approximately 2 cents per acre. The purchase agreement defined a marine boundary between Russia and the newly acquired US territory. This boundary was readdressed in a 1990 treaty, commonly known as the Baker-Shevardnadze Agreement, between the United States and the Union of Soviet Socialist Republics (USSR).

With the collapse of the USSR, the Russian government has taken the position that the Baker-Shevardnadze Agreement was invalid since USSR Foreign Minister Eduard Shevardnadze did not effectively represent Russian interests. Consequently, Russia refused to ratify the agreement, thus placing the United States in the position of negotiating in order to seek a modified treaty. One of Russia's key demands in revising the treaty is its desire to secure cross-border fishery quotas for its vessels, particularly gaining access to Alaska's Pollock stocks. However, the US ultimately rejected this Russian request. From the Russian perspective, there is no definitive agreement defining the marine border between the two countries although international law favors the US position. Absent ratification of the 1990 agreement or other arrangements, this conflict in the Bering Sea will continue.

Russian-American Dispute over the Bering Sea Marine Boundary Line

When the United States purchased Alaska from the Russian government, mutually accepted marine claims were limited to a narrow band of the coastal zone. However, the 1867 Treaty contained language

which defined a boundary between the two nations through the Bering Sea. Over time, and in particular when the Law of the Sea principles started to govern the world's oceans, the 1867 Treaty line became the most contentious marine boundary in the world. Unfortunately, the language of the purchase agreement between Russia and the US is silent on the type of line, map projection and horizontal datum used to depict this boundary. Further, neither country has produced the original or other authenticated maps used during the negotiations to resolve the issue. Differences in defining this line fuel the continuing conflict.

Cartographers normally use two types of lines to delineate marine boundaries. These are rhomb lines and geodetic lines (also known as great circle arcs) that are used on two common map projections, Mercator and conical. Depending on the type of line and map projection used, lines will either appear as straight or curved lines. For example, a rhomb line will be a straight line on a Mercator projection, whereas a geodetic line is curved. Because each country interpreted the line described in the 1867 Treaty as a straight line, the Soviet Union depicted the Bering Sea marine boundary as a rhomb line on a Mercator projection whereas the US used a geodetic line on a conical projection. While both appear as straight lines on their respective map projections, each country's claim maximized the amount of ocean area and seafloor under their respective control. Figure 1 overleaf depicts marine borders between the Russian Federation and the United States showing the differences resulting from the different interpretations of the borderline in this sea area.

When the United States and the Soviet Union implemented 200 nautical mile Exclusive Economic Zones (EEZ) in 1977, they exchanged diplomatic

* This study was prepared using the research findings and studies of School of Marine Studies' graduate students Mr. Jeff Randall, Mr. Greg Cassad and Mr. Artur Soule under the aegis of the University of Washington courses "Russian Ocean Policy" and "Comparative Marine Business in the North Pacific: Russia, Japan, Canada and the United States" jointly listed by the Russian, East European and Central Asia Studies Center and School of Marine Affairs, University of Washington. Both courses are offered by Prof. Vlad Kaczynski.

notes indicating their intent “to respect the line set forth in the 1867 Convention” as the limit to each country’s fisheries jurisdiction where the two hundred nautical mile boundaries overlapped. Shortly thereafter the differences in each country’s interpretation of the 1867 Treaty became apparent, placing an area of nearly 15,000 square nautical miles in dispute. While

tries in 1990. The 1990 agreement split the difference between the US claim to a geodetic line and the Soviet claim to a rhomb line as shown on a Mercator projection. It also created several “special areas.”¹ Although both countries ceded territory from their previous claims, the US still controlled a far greater amount of area in the Bering Sea than if the new agreement had

Figure 1 – Depiction of the Differences Between the Bering Sea Marine Boundary Using Rhomb and Geodetic Lines on a Mercator Projection



been based on the equidistant line principle normally used in international boundary disputes.

Marine Resources

The 1990 Agreement “represents a very favorable outcome in terms of US strategic and resource interests...” and was quickly ratified by the US Congress, which was eager to begin the sale of offshore oil and gas leases. The US Minerals Management Service recently estimated the potential oil and gas reserves in the Bering and Chukchi Seas at 24 billion barrels of oil and 126 trillion cubic feet of natural gas. In addition, fish harvests from this region are vital to the fishing industries of both countries. US fisheries alone harvest over two million metric tons of fish from the Bering Sea each year and it is the dispute over access and harvesting rights to these fisheries resources which have fueled much of the rising dissent within Russia towards the 1990 Agreement.

the two countries agreed to continue respecting each other’s interpretation of the 1867 Treaty as an interim measure, negotiations began in the early 1980s to resolve the differing interpretations. Soviet negotiators had specific instructions from the Politburo to “insist on a straight line boundary.”

Although the U.S. quickly ratified the 1990 Agreement, the Soviet Union, prior to its collapse, did not ratify the Agreement.

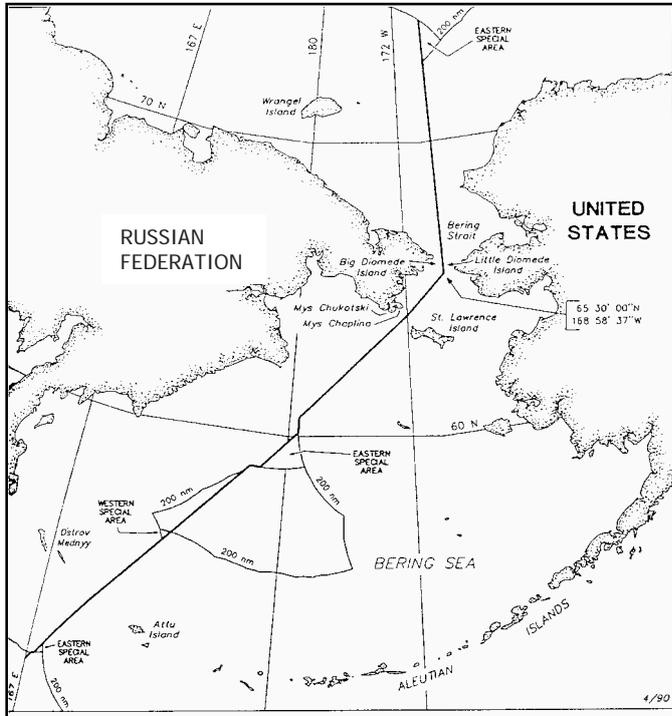
Some authors speculate that Soviet negotiators may have ceded territory in the Bering Sea to the US in order to quell the US objections the Soviet Union’s proposed division of territory north of the Bering Strait. Following nearly a decade of negotiations, a new agreement was reached between the two coun-

The US and Russian Positions

When the agreement was signed, provisional arrangements were made by each country to abide by its terms until ratification, but resistance to the ratification of the 1990 agreement has continued to rise within Russia along with accusations of conceding to American interests. The *Moscow Times* stated that Gorbachev, in his enthusiastic pursuit of good

1 Special areas were areas on either country’s respective side of the 1867 marine boundary but beyond 200nm from the baseline. There were three such areas on the United States side of the marine boundary called “eastern special areas” and one on the Russian side called the “western special area.” In the language of the 1990 Marine Boundary Agreement, Russia ceded all claims to sovereign rights and jurisdiction in the eastern special areas to the United States and conversely the United States ceded all claims to sovereign rights and jurisdiction in the western special area to Russia.

Figure 2 – Map Showing the 1990 Marine Boundary Line with the Special Areas



bilateral relations with the US, rushed into signing the 1990 agreement. Other claims suggest that Foreign Minister Shevardnadze exceeded his authority by signing the 1990 agreement with the US. Many accuse Gorbachev and Shevardnadze of ceding Russia's rightful fishing areas in their haste to negotiate a deal for signature at the 1990 White House Summit. "Russian parliamentarians understood perfectly well that the agreement infringed upon Russia's interests and therefore the document has never been ratified by the Russian parliament," these critics say. Other Russian officials have voiced their opposition to the treaty not only because of lost fishing opportunities, but also due to the loss of potential oil and gas fields and naval passages for submarines. Many seek a new treaty "that would settle claims and protect Russian fishermen."

Russian Far East fisheries industry stakeholders assert that 150,000 metric tons of fishing quotas from US waters should be given to Russian fishermen as compensation for the area lost in the 1990 agreement and to earn their support for ratification of the treaty. A senior Russian Consulate officer stated:

"I don't remember figures, but as far as I remember there was something said about 150,000 tons of Pollock compensation in an annual quota from the American side if the treaty is to be ratified."

Personal communications with Russian sources indicate that this figure may have arisen from estimates of fish abundance or Russian harvests in the disputed area between the two countries in the 1980s. However, given that most Bering Sea fish stocks are considered fully utilized or even depleted, it is unlikely that this quota demand will be granted.

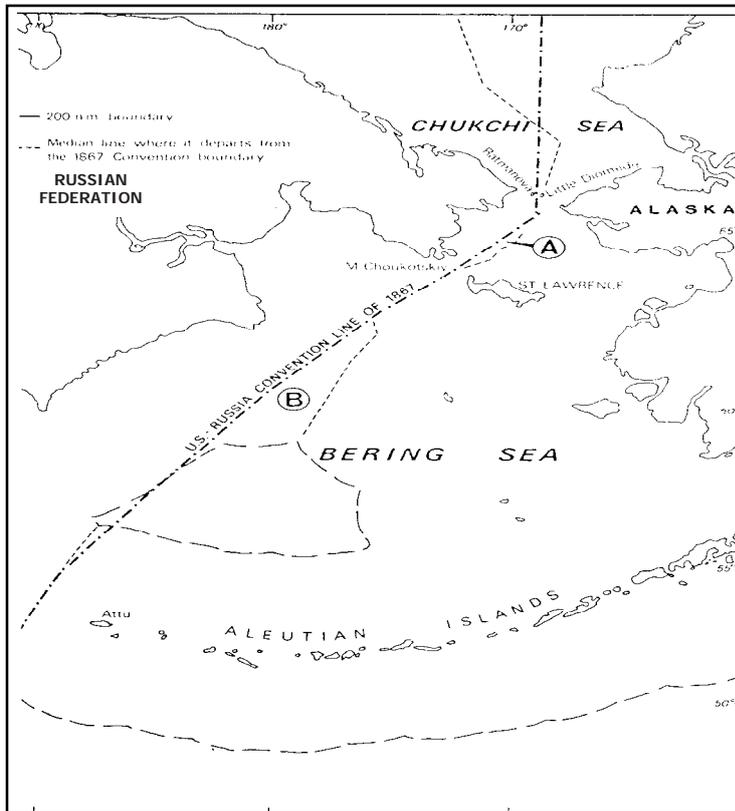
From the Russian viewpoint, the 1990 agreement remains in limbo. Efforts to ratify it have raised dissent and opposition, making the boundary set forth in the 1990 agreement more fragile as time progresses.

However, the US has steadfastly continued to abide by and enforce the provisions of the 1990 agreement. The US position may provide evidence of a continued "general state practice" and a basis under customary international law that the boundary delineated by the 1990 agreement is the actual marine boundary between the two countries. Determination of a state practice in customary international law requires evidence of "general state practice" and "*opinio juris*" – a sense of obligation to comply with the practice. The United States' continued position and enforcement of the boundary prescribed by the 1990 agreement builds evidence of the general state practice that the 1990 agreement is the marine border between the two countries.

Challenging Russian Activities

However, the recent actions of Russian fishing vessels are destabilizing the situation. From April through November of each year, dozens of Russian fishing vessels fish along this boundary to intercept Pollock migrating from US waters. The number and harvesting capacity of the fishing vessels operating along this border raises serious concerns among US fisheries managers that the Pollock stock is being over-exploited by Russian fishermen. While near continuous Coast Guard aircraft and vessel patrols attempt to protect the integrity of the U.S. EEZ, the belligerence of the Russian fishing vessels towards US enforcement efforts continues to increase. In one notable case, more than a dozen Russian fishing vessels surrounded a Coast Guard vessel while it was trying to seize the Russian fishing vessel GISSAR for illegal fishing. The Russian fishing vessels threatened to ram the Coast Guard vessel if it tried to seize and escort the GISSAR off the fishing grounds. Many Russian vessels simply refuse to submit to Coast Guard inspections when caught inside the US EEZ. The situation has become so enflamed that the US is contemplating the use of

Figure 3 – Map Showing Difference Between 1990 Marine Boundary Line and Equidistant Line



naval gunfire, in the form of warning and disabling shots, against non-compliant vessels. Such a resort to violence may only further destabilize the situation.

Searching for Solutions

Against this background, talks between the US State Department and Russian officials have begun in an attempt to resolve the issue. However, the United States maintains its staunch position that the 1990 agreement is binding and constitutes the marine border between the two countries. While there was an offer to concede some fish quotas to the Russian Federation as an incentive for ratification in 1997, this offer has recently been withdrawn. From the Russian perspective, there is no definitive agreement regarding the marine border between the two countries although international law favors the US position. However, absent ratification of the 1990 agreement or other arrangements, this conflict in the Bering Sea will likely continue.

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Further Reading

- Vlad M. Kaczynski, "Ocean Policy Toward Russia and the Pacific Fisheries: The U.S. and Western Countries' Perspective"; in Harry N. Scheiber with Kathryn J. Mengerink, eds., *Multilateralism & International Ocean Resources Law*, The Law of the Sea Institute, Earl Warren Legal Institute, University of California, Berkeley, 2004. (<http://www.lawofthesea.org>)
- "Integrative Analysis of Human Impacts on the Ocean and Coastal Environment," in *Economic Globalization and Environmental Policy*, Adam Budnikowski and Maciej Cygler, eds., Warsaw School of Economics, 2006.