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**“Constructing (ecosystemic) sovereignty on the high seas:**

**CCAMLR, the Ross Sea, and international politics beyond territory and species**

Introduction

If the efforts of an international groups of scientists and NGOs have their way, The Ross Sea, an Antarctic body of water touted as “the only large intact marine ecosystem remaining on the planet,”[[1]](#footnote-2) will be declared a no-catch marine protected area (MPA). Such a decision - if it were to be taken by the CCAMLR, an inter-state body governing humans and nonhumans alike in this remote jurisdiction on the high seas - would make this pristine marine ecosystem off-limits to human intervention outside scientific research. In other words, a consensual decision by a group of states would place a space in the no man’s land of international waters (and the creatures that inhabit it) outside the reach of both commercial interests and the sovereign clutches of any single state. The potential effect of such a decision would not only set a precedent for environmental protection, but would provide a conceptual challenge to IR theorists and scholars of environmental politics.

This paper, rather than dwelling on the internal politics of the CCAMLR, poses a number of broader questions. First, if we consider the high seas to exist in a state of political anarchy, how can we account for the development of preservation areas and their acceptance by states? Second, how can we conceptualize the potential protected area itself? In other words, what would it mean to establish a consensual preservation area outside the sovereign domain of any single state? And what would this mean for the primary agents affected, namely the marine species over and into whose very lives human sovereign governance is being extended? Finally, can we consider sovereignty in this form to be a furthering of human intervention in nonhuman nature or, perhaps, is some form of sovereignty necessary to prevent a market-driven maritime tragedy of the commons?

This paper seeks to answer these questions by engaging with the constructivist IR literature to explain sources and forms of norms which determine state action in the global commons (including the very idea of recognizing the global commons as such) and with the literature on sovereignty (and its critics) to theorize the nature of the relationship between human governance systems and marine species and ecosystems. Specifically, it suggests that while most debates about state behavior and sovereignty are highly anthropocentric, critics of sovereignty as it relates to animals and ecosystems reify these very ideas. As such, their radical critiques overlook the capacity of states to change their interests and behavior. By contrast, this paper suggests that recognizing the Ross Sea as a no-catch “Last Ocean” would not free the region from human intervention or sovereignty, but would rather suggest a contextually-situated change in the nature of sovereignty, as least as it relates to the Antarctic commons and its aquatic denizens.

The oceanic commons as extraterritorial anarchy

In the overwhelming majority of academic work regarding sovereignty, terra firma is taken for granted. Societies exist, states are formed, and sovereignty is claimed on and over territory and the (human and nonhuman) populations residing there. Sovereignty, Stephen Krasner reminds us, has classically “been understood as the Westphalian model: an institutional arrangement for organizing political life that is based on territoriality and autonomy States exist in specific territories. Within these territories, domestic political authorities are the only arbiters of legitimate behavior.”[[2]](#footnote-3) And, although Krasner argues that the Westphalian model “has never been an accurate description of many of the entities that have been regarded as states,”[[3]](#footnote-4) IR has consistently set disciplinary borders based around ontological and epistemological notions of the nature and purpose of the fixed territorial state.[[4]](#footnote-5) The above holds even though scholars - of different ideological and epistemological leanings - have argued that in a globalizing age the capacity of the state for decision-making and enforcement is increasingly diminished.[[5]](#footnote-6) Quite simply, it seems that territorial sovereignty requires territory.

The world’s seas and oceans present a theoretical and practical challenge, however, in that they are inherently extra-territorial. Under the United Nations Convention of the Law of the Seas (UNCLOS)[[6]](#footnote-7) states have exclusive rights to the seas (and seabed and “resources” contained in both of these) within 200 nautical miles of their borders. The rest, the *mare liberum* of Hugo Grotius’ political imaginary, is in theory open to all states and it therefore is also open to – and indeed necessitates – contestation. And yet this massive international commons, making up far more than half of the world’s surface (and the subject of voluminous legal and policy debate), receives short shrift in the voluminous IR and political theory literature. In a rare maritime reference, John Ruggie states that “politics is about rule” in the sense of “genuine dominion over a ‘spatial extension’.”[[7]](#footnote-8) Given his focus on extraterritoriality and non-exclusive sovereignties, however, Ruggie glosses over the high seas, stating that the “strategic consequences of the essential unity of the world’s oceans” are less important than other territorial concerns.[[8]](#footnote-9) The problem faced by Ruggie is that human interaction with marine environments and interstate interaction on the seas happens in what might be termed a state of anarchy. Given the absence of pre-exiting states on the high seas, terrestrial states have had to create their modes of interaction in extraterritorial waters.

Some of these play out in terms of individual states seeking to expand their own fields of security and resource extraction. This, at least to some extent, has been the case with the Arctic. As Richard Powell has argued, the Arctic has long been treated as a “resource hinterland,” an imaginary now growing with climate change opening up potential shipping routes and technological advances increasing the possibility of undersea resource extraction.[[9]](#footnote-10) Within this context, states are engaging in a politics of expansion of territorial sovereignty in the sense of “sovereign rights over … natural resources.”[[10]](#footnote-11) What is at play here is both traditional power politics and what Standsbjerg refers to as “cartopolitics” (namely the politics and practices of claims over the creation and extension of sovereign territory).[[11]](#footnote-12) It is beyond the scope of this paper to trace a genealogy of international legal and military contestation over the seas or even the Arctic, but the point is to show that some engagement with the high seas in indeed about effort to plant a flag on terra firma, even if that’s thousands of feet under the ocean surface (as comically evidenced by Russia’s planting of a flag on the North Pole’s seabed in 2007[[12]](#footnote-13)).

And yet, as evidenced by the creation of UNCLOS and various fisheries bodies, cooperation can take the place of zero-sum contestation. The proliferation of governance bodies addressing trade and fisheries is a case in point, as states, coming together in an anarchic realm, have created a patchwork management system that is based on consultation and (ideally) gives a important role to scientific inquiry in shaping human-nonhuman interaction.[[13]](#footnote-14) Indeed, zero-sum politics have long been accompanied by various systems and forums for consultative governance over various aspects of inter-state engagement on the high seas. The goals of such governance regimes, moreover, need not solely serve state’s material strategic interests, as is evident in the move toward conservationism and preservationism in the missions of some governance regimes.[[14]](#footnote-15) A prime example of such cooperation is the Antarctic Treaty.

After close to 200 years of over-exploitation of the Antarctic’s animal species (termed marine living resources – MLR - in the official and academic literature, a euphemism which speaks volumes about the role played by animals in human politics) and rival sovereign claims to Antarctic lands and waters, the Antarctic Treaty came into effect in 1961. Interpretations of the full range of motives behind the agreement vary[[15]](#footnote-16), but from a practical perspective, the governance of the Antarctic appears to be a success of neoliberal institutionalism. The Treaty, which has 46 signatories, is described as “minimalist, visionary and ﬂexible, which allows it to endure in a dynamic world.”[[16]](#footnote-17) Central to the Treaty is Article IV of its Convention, which posits that no state has claim to territory or autonomous legal jurisdiction below the 60th parallel.[[17]](#footnote-18) The Antarctic landmass is subject to interstate conventions and laws arrived at through a discursive process by states with interest in international cooperation. For some, this is a triumph, whereby the signature of the treaty “formally recogniz[es] Antarctica’s great international value as a region that should be protected from self interest and devoted to peace and science.”[[18]](#footnote-19)

Given that Article IV means states can interpret laws and conventions as they see fit within “the spirit and intent of the treaty,” commentators have argued that this “ambiguity actually builds stability, as no activities are inherently threatening while such a broad interpretation is available to the parties.”[[19]](#footnote-20) Indeed, cooperation and a preservationist ethic based on the notion of peaceful interaction and scientific inquiry “transforms the Antarctic into a de facto global commons.”[[20]](#footnote-21) Under the auspices of this extraterritorial governance network, no single state has sovereignty over either the decision-making process, the transient human population inhabiting Antarctica, or any undersea territory from which resources might be extracted. The revolutionary nature of this decision bears restating: sovereign states came to a common agreement about their mutual abstention from claiming sovereign control over the space or resources of a territory, to be mutually upheld in good faith.

In his seminal work on the nature of state interaction, Alexander Wendt (1992) argues that the process of interaction itself, rather than any inherent and fixed state identities, can lead to inter-state cooperation.[[21]](#footnote-22) Moreover, he posits that “identities and interests are endogenous to interaction” and that these identities and interests are not rooted in the anarchic nature of the world system.[[22]](#footnote-23) Given this fluid conception of state identity and interest, Wendt opens the door to the possibility of non-state actors including civil society, NGOs, and institutions to influence identity formation and knowledge sharing at the state and international level.[[23]](#footnote-24) In Wendt’s conceptualization of state interaction, state self-interest, be it related to security or economic gain, can be outweighed or at least tempered by the creation of new meanings, understandings, and commitments that arise from state interaction. Many scholars have taken up this analytical model as pertains to myriad aspects of international relations and governance

IR scholars studying environmental issues have been particularly amenable to a constructivist approach.

Robyn Eckersley, for instance, suggests that because “the prerogatives of sovereign states [have] changed over time” and the actions of numerous actors on the global stage – and especially NGOs – have placed environmental issues on the policy agenda, states can and should embrace “shifting norms” that would lead then in a more environmentally-friendly direction.[[24]](#footnote-25) States, she argues, can undertake gradual change at the level of “policy instruments,” “policy goals,” “policy paradigm[s],” and even “the role of the state” to align these with environmental concern at the domestic and international level.[[25]](#footnote-26) Litfin’s work presents a causal chain whereby the “popular pressure” exerted by nonstate actors influences how constituencies view states, which, in seeking public legitimacy, conform to and propagate new environmental discourses, which affect how they act in regards to their domestic environment and to the commons via international treaties.[[26]](#footnote-27) In the case of whaling, Charlotte Epstein has shown how norms and new discourses affect how states interact not only with each other and with human actors, but also with nonhumans, including in domestic and international institutional settings.[[27]](#footnote-28)

Marine species as sovereign subjects

But while notions and norms of sovereignty and cooperation regarding the commons are contested and consulted between states, the marine species who inhabit the commons have traditionally held the same pre-determined role as their land-lubbing counterparts: they have been considered resources. Sea creatures, as they have been historically, today continue to be hunted virtually indiscriminately to feed unsustainable global appetites. However, stock depletion and increasing scientific understanding of the broader ecosystemic effects of overfishing, have begun to force a norm change toward inter-state governance over the global fish industry.[[28]](#footnote-29) While the situation for most stocks has not been greatly ameliorated[[29]](#footnote-30) and fisheries regimes have been criticized for “failing” both to comply with internationally set performance standards or to curtail fishing deemed “unsustainable”[[30]](#footnote-31) the norm of inter-state engagement with regards to marine species has none the less changed to a more cooperative and consultative one.[[31]](#footnote-32) This is not to say, however, that the role of animals as resources (albeit to some extent protected ones), has changed; nor has the idea that humans have a “right to fish.”[[32]](#footnote-33)

Contemporary academic literature on the subject casts fish as “renewable ocean resources” over which states can claim “ownership rights.”[[33]](#footnote-34) Indeed, mutually agreed-upon ownership rights within governance regimes are seen as being necessary to avoid a “tragedy of the commons,” with the tragedy being not animal death or damage to marine biotic systems, but the depletion of a commodity.[[34]](#footnote-35) As Ainley and Brooks argue, “often throughout history, particularly when dealing with large international spaces, [Garret] Hardin’s analysis has shown humans to be incurable of their self-interested mentality.”[[35]](#footnote-36)

Fishing governance, embodied in myriad international agreements including UNCLOS, suggests that fishing rights may need to be applied not in terms of territory but in terms of fish stocks, making them systems of surveillance and control over animal life and death rather than over delimited space. As Scott argues, institutionally negotiated catch quotas can help fishing nations “not only harvest but manage the fishstock or biomass.”[[36]](#footnote-37) This line of reasoning is brought to its logical conclusion by Tsamenyi (1986), who argues that because migratory fish species escape human territorial systems by virtue of moving past imaginary lines on a map, they should come under human sovereignty at the level of species.[[37]](#footnote-38) Writing from a neoliberal institutionalist perspective, Tsamenyi argues that a fish stock “management”-based governance over animal species arrived at through inter-state consultation could lead to conflict avoidance and, by extension, improved long-term profitability for states. This logic, as the next section will demonstrate, applies to the governance regime within which the battle for the Ross Sea MPA is taking place.

Fisheries regimes and those addressing issues like maritime pollution fit with Wendt’s assertion that interstate interaction can create norms based on not “exploiting your friends” and that the trade-off involved in identity formation needs to include tangible (presumably material) benefits for participating states.[[38]](#footnote-39) Within commons, then, “goods [can be] non-excludable and free for the taking [or] commons resources may be collectively owned and managed by a community or unit in a common property regime.”[[39]](#footnote-40)

An example of the latter arrangement is the Antarctic Treaty System, consisting of the Treaty and the Commission for the Conservation of Antarctic Marine Living Resources. This multilateral regime is unique in that it specifically addresses the animal species that dwell in waters which lie outside any state’s exclusive economic zone.[[40]](#footnote-41) In effect, it represents the creation of a governance scheme in a space where no deep-rooted claims to sovereignty existed and where there were no antecedent governance structures.

The history of human exploitation of various Antarctic fish, bird, and sea mammal species already reads like a macabre catalogue of successive ecocide.[[41]](#footnote-42) Given that the Antarctic Treaty did not include “any language or specific measures that dealt with the exploitation of living resources” and faced with rapid proliferation of fishing interests in the Southern Ocean the signatories of the Antarctic Treaty established the Commission for the Conservation of Antarctic Marine Living Resources (CCMLAR), whose convention came into effect in 1982, in order to manage fishing and its effects on both targeted fish stock populations and on the ecosystem as a whole.[[42]](#footnote-43) Claimants in the Antarctic treaty therefore become *de jure* coastal states with some attendant fishing claims. As Brooks notes, CCAMLR is unique in at least two crucial senses. First, it is an international “science-based management body” where scientific understanding of aquatic species and ecosystems is, at least in theory, given pride of place. Second, it is a high seas fisheries management organization that includes a significant proportion of nations that do not fish, making it an exception to organizations made up of proverbial foxes consulting over access to the chicken coop.[[43]](#footnote-44) The CCMLAR, then, unlike other older fisheries regimes, is based on norms of ecological conservation over and above - or at the very least alongside - the goal of achieving “sustainable” fishing quotas. Using what it terms an “ecosystemic approach” which “considers the whole Southern Ocean to be a suite of interlinked systems,” the CCAMLR aims to protect not only individual fish stocks, but to maintain the integrity of the Antarctic marine ecosystem.[[44]](#footnote-45)

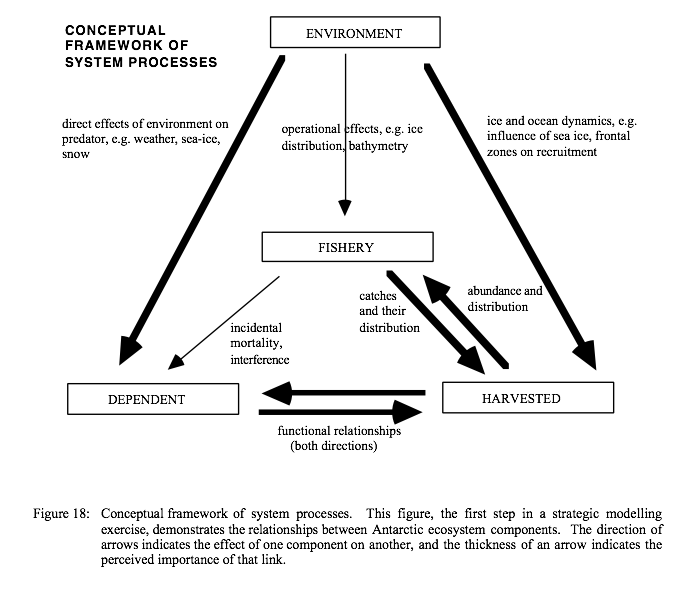
CCAMLR and No-Catch MPAs: the idea(l) of non-exploitative governance

CCAMLR has been deemed a defense mechanism against a literal tragedy of the commons occurring in the world’s oceans “evidenced by … excessive illegal, unregulated, unreported (IUU) fishing.”[[45]](#footnote-46) Indeed, given a global reality where deep sea fisheries have been likened more to mining operations than any kind of “traditional” fishing[[46]](#footnote-47), entities like CCAMLR seem necessary to avoid ongoing market-driven extinction events. CCAMLR is not, however, a preservationist entity. Article II of its Convention is clear that while the overarching goal is “the conservation of Antarctic marine living resources” this comes with the proviso that “the term ‘conservation’ includes *rational use*.”[[47]](#footnote-48)

As such, I argue that the CCAMLR, with its explicit purview of studying and controlling access to ecosystems and animals, exercises sovereignty and biopolitical governance over non-human life. The CCAMLR has the ability to control, based at least in part on scientific research, state lobbying, and civil society input, which animals will live and which will die (and in what quantities) and, by extension, what shape the ecosystem under its jurisdiction will take. Its task is literally what Youatt dubs, after Foucault, “the administration of bodies and the calculated management of life.”[[48]](#footnote-49)

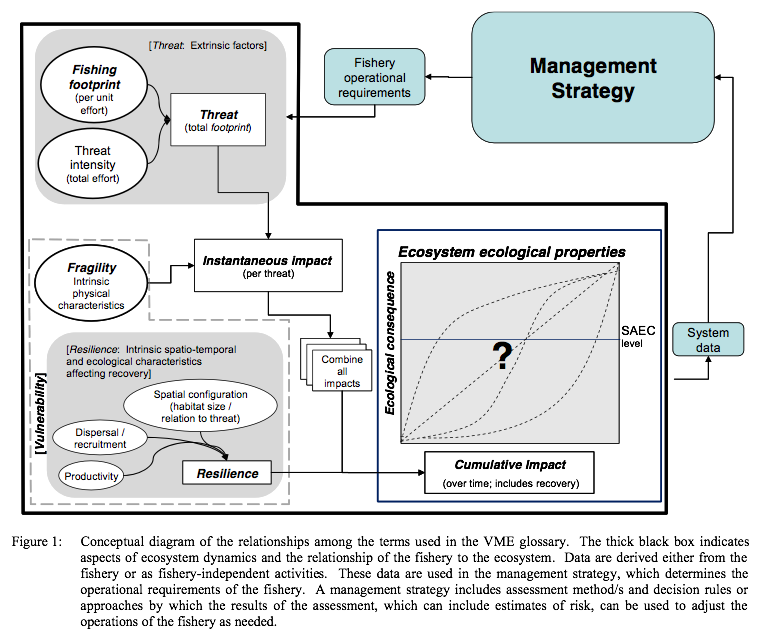
Part of CCAMLR’s stated objective, then, is to facilitate, albeit based on a conservationist ethic, the killing of animals, which are explicitly termed “resources.” In order to, in Foucauldian terms, determine who will live and who will die, CCAMLR must claim possession of the Antarctic ecosystem and its non-human inhabitants in order to, in a controlled manner, parcel out access to these creatures to fishing fleets. This, in turn, is accomplished through the deployment of networks of biopower rooted in scientific inquiry into the nature and lives of marine species. Biopower here is used not in the strict Foucauldian sense of ensuring the “good life” for a body of disciplined and auto-disciplining productive human subjects but rather, after Youatt (2008), as a “logic of eco-governance.”[[49]](#footnote-50) Within such a system, science becomes the arbiter of ecological meaning and the human “right” to engage with the ecosystem under its sovereignty.[[50]](#footnote-51) The ecosystem’s biological processes become translated into scientific models designed to predict future biological outcomes, as evidenced by Figures 1 and 2. This is telling as a heavy onus is placed on these models to meet the CCAMLR’s stated objective of “the prevention of changes in the marine ecosystems that are not potentially reversible in two or three decades.”[[51]](#footnote-52)

***Figure 1: CCAMLR’s conceptual framework of marine ecosystem processes***



*SOURCE: CCAMLR*

Figure 2: CCAMLR model for the development of a management strategy



*SOURCE: CCAMLR*

The CCAMLR could therefore be said, unlike traditional fishing regimes, to *regulate* rather than *facilitate* the “rational” extraction of marine living resources (recognizing that this jargon does not change the fact that the CCAMLR governs animal life and death). To achieve this end, it deploys a web of disciplinary and regulatory measures onto state and state-sanctioned actors to attempt to ensure compliance. These include:

“…port state controls (catch documentation—import, export, and transshipment); flag state controls (vessel licence [sic.] conditions—construction, design, equipment, and management, including vessel monitoring technologies); coastal state controls (harvest licence conditions—monitoring, observing and inspecting, hot pursuit, boarding, and arrest); and interstate cooperation that is supportive of these measures (information sharing—vessel identities, licences, movements, catches and non- compliance records, blacklists, and collective sanctions).”[[52]](#footnote-53)

This mechanism – which, some argue, minimizes illegal, unregulated, and unreported (IUU) fishing[[53]](#footnote-54) – creates a disciplinary regime based on observation, inspection, and documentation. The aim is not only overt enforcement and monitoring, but the development of self-monitoring on the part of states and fishermen. The ultimate aim is to change human behavior vis-à-vis the regime and nonhumans as both the CCAMLR’s rules and the ecosystemic approach itself are internalized. In the absence of an overarching power to ensure compliance – in other words, in the absence of sovereignty in the classical sense – new norms are established through scientific expertise (co-constituted by, but also weighed again, economic interests) that is at the heart of the multilateral regime. It is within this system that the MPA for the Ross Sea is being proposed.[[54]](#footnote-55)

While other no-catch MPAs have been established, very few have been attempted on the high seas, and none on the scale of the Ross Sea. As such, this proposal would be

the Ross Sea proposal would be precedent-setting for two primary reasons. First, unlike for instance the controversial Chagos Islands MPA, it is not tied to control over any physical territory and therefore “the environment” is not placed in contradistinction to the *local* interests of human populations.[[55]](#footnote-56) Second, unlike the existing South Orkney Islands Southern Shelf MPA which was established under the auspices of the CCAMLR, the proposed Ross Sea MPA would be not only much larger but directly interfere with ongoing fishing interests, specifically in highly lucrative toothfish.[[56]](#footnote-57)

The Ross Sea is, first and foremost, a human creation. It is water that flows through a given area, a part of the global oceanic system, home to certain species, and a transit route for more migratory ones. And yet it is defined as “bounded to the north by the 3 000 m depth contour and by the 69°S line of latitude; to the south by the permanent ice shelf; to the east and west by land, and the 160°W and 170°E meridians.”[[57]](#footnote-58) This area, bounded by imaginary lines, subject to the CCAMLR’s governance regime and to competing fisheries claims, is also among the global marine ecosystems least affected by human activities (be it through direct exploitation, pollution, or sustained human presence or activities).[[58]](#footnote-59) Given this unique nature and the region’s importance as a site of scientific study, it is an obvious candidate for being suggested as a marine protected area.

What does it mean, however, to declare a no-catch MPA in international waters governed only obliquely by consultative treaties and institutions? If ecosystems and marine species are granted protection from human intervention, they are in effect granted the “right” to develop and continue to exist as they would without destructive human intervention? While they are granted this space for biological self-determination, this does not mean they become self-determining or sovereign in a human political sense, nor does it mean they gain the capacity to defend their newly-received rights against human aggression.[[59]](#footnote-60) Even as norms change with regards to nonhuman nature, the anarchic character of the high seas would provide no insurance against self-interested incursion on the part of states or state-sanction actors.

Attractive as such an image might be to environmentalists, protected ecosystems do not coalesce into a (perhaps literal) Hobbesian leviathan. Indeed, the proposed Ross Sea MPA would entail a strict disciplinary regime aimed at the surveillance, evaluation, and shaping of state and commercial actors’ norms of behavior. It would also entail extensive surveillance and scientific intervention into non-human life for both non-human and human biopolitical purposes. Given that an MPA would entail specific power relations and practices that would involve both human and non-human actors and complicate interspecies relations, the proposed human-nonhuman interaction under a Ross Sea MPA as well as the human regulatory regime bear examining more closely.

While a preservationist ethic is generally construed, as it is by Wapner (2002), as “accepting the natural others’ ability to just be” and “entails allowing the unfolding of an entity’s existence free from significant human intervention,”[[60]](#footnote-61) in practice, and especially outside sovereign territory, such an approach would actually require considerable surveillance of and intervention into both human and nonhuman worlds.

There are two distinct dimensions to the argument made in favor of making the Ross Sea a no-catch MPA. The NGO and broad environmental civil society discourse take a tack similar to Wapner’s. Their call for a return to unspoiled nature echoes Mick Smith’s assertion that “the whole point of environmental ethics and radical ecology has always been to deny the claims of human sovereignty over the world.”[[61]](#footnote-62) The NGO focus is specifically on informing citizen-consumers about the dangers fishing poses to the Ross Sea (to impact on their consumer choices) and to call for national-level support for the MPA proposal.

For instance, The Last Ocean Project, a joint United States and New-Zealand-based non-profit, pitches its preservationist message as follows:

“The Ross Sea, Antarctica is the last intact marine ecosystem on earth. [It is] a living laboratory, providing our last chance to study and understand how a healthy marine ecosystem functions. But the natural balance of the Ross Sea ecosystem is now under threat. An international fishing fleet is targeting Antarctic toothfish, sold as "Chilean sea bass" in up-market restaurants around the world. There is still a chance to protect the Ross Sea. The international body providing governance for the waters around Antarctica has made a commitment to designate a network of Marine Protected Areas by 2012. … The Last Ocean endorses the establishment of a comprehensive no-take Marine Protected Area for the Ross Sea. We would like New Zealand, as the instigator of fishing in the Ross Sea, to lead by example - to phase out commercial fishing and encourage other member nations to do the same.”[[62]](#footnote-63)

  Supporting this mission statement, however, is an appeal to preservationist aesthetic and naturalist sentiments aimed at an environmentally-aware but not necessarily scientific audience.

The Ross Sea is described as an area where “top predators are still abundant [and] drive the system, shaping the food web below in a way that's totally unique.”[[63]](#footnote-64) It hosts “the richest diversity of Southern Ocean fishes, an incredible array of benthic invertebrates and massive populations of mammals and seabirds” as well as penguins, whales, seals, and orcas, as well as the commercially coveted toothfish.[[64]](#footnote-65) It is likened to World Heritage Sites like Lake Baikal in an appeal to precedent and socially-approved norms. Here and in other NGO discourse related to the Ross Sea, science is quoted alongside evocative description in support of full preservation.

The preservationist argument made by the scientists themselves within the structures of international governance, however, presents science rather than the ecosystem itself as the primary reason for establishing the MPA. The “Scientists’ Consensus Statement on Protection of the Ross Sea” being circulated by the Antarctic and Southern Ocean Coalition to drum up public support for the implementation of the no-catch MPA is explicit on this point. It bears quoting at length:

“Few large intact ecosystems remain in the world’s oceans. In the Southern Ocean we have a narrow window of opportunity to protect one of these special places: the Ross Sea. …

We, the undersigned scientists, believe that it is essential that the entire Ross Sea, including its shelf and slope, is [sic.] afforded protection by designating it as a fully-protected marine reserve. Only by adding fisheries to the already excluded minerals extraction, and ensuring that other significant human pressures are removed or minimised, can we preserve the intrinsic values and ecological integrity of the Ross Sea.

Its unique ecology, relatively undisturbed state, and long history of ongoing scientific research make the Ross Sea a ‘living laboratory’ essential for the study of marine ecosystems and of the effects of climate change independent of complicating factors.

Establishment of the Ross Sea Marine Protected Area by the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) would provide a crucial component of a comprehensive and representative network of marine reserves across the Southern Ocean. It would stand as a shining example for the rest of the high seas.”[[65]](#footnote-66)

Indeed, proposals made to the CCAMLR focus predominantly on both the need to continue scientific inquiry in the region and to use preservation instrumentally for a number of ends. A number of documents currently under consideration by the CCAMLR (which cannot be directly cited but are available online)[[66]](#footnote-67) claim that the pristine ecosystem should be preserved sui generis, but also that, by virtue of being pristine, the Ross Sea is the ideal setting to study the effects of climate change and other environmental disturbances. Moreover, these submissions recognize human fishermen as competing with natural predators and thereby imbricate humans in the biopolitical models of ecosystem management. Indeed, other reasons given for the creation of a no-catch MPA in the pro-preservation submissions is the notion of using the MPA as a sort of control area to understand fisheries impacts in areas of the Southern Ocean covered by CCAMLR but not granted full protection. Moreover, the proposed preservation area is presented as a potential living proof of human knowledge; the MPA would be a testament to the veracity of the theory of evolution and a model of biodiversity.

The implication is that the preservation initiative will be good for science, for humanity, and for ecosystems (and maybe even for fishing interests). While these findings are supported by recent publications,[[67]](#footnote-68) central here is the fact that the preservationist argument is not made in the sense of removing human activity entirely from the Ross Sea. Rather, the stated purpose is entrenching the human biopolitical presence and thereby imbricating the Ross Sea in broader circuits of knowledge and power. This, in turn, would be institutionalized through the CCAMLR and supported by the exercise of the various disciplinary mechanisms discussed earlier. In the no-catch MPA envisioned by the scientific community, sovereignty over the ecosystem would not be done away, but its purpose would change.

Both sides are attempting to push for what from outside seems like the same project, one working at the level of civil society and the state and the other at the level of institutional governance, and both are seeking to alter state behavior based neither on security arguments, economic appeals, or references to the state of the world system.

Currents of Preservationist Norms and Alternative Conceptions of Sovereignty

The proposed “Last Ocean” MPA scheme would mean the creation of a politically-delimited commons that would be (perhaps paradoxically in the terms we usually imagine a “commons”) off limits to anyone except scientists and the region’s nonhuman inhabitants. A central question the idea of a high seas MPA raises is the following: Why would states enter into a preservationist governance regime whose aim is primarily not the management of resource extraction or security interests, but rather outright environmental and species protection?

Critics of constructivism would argue that this question is not even the correct one to ask. Downs (2000), for instance, suggests that constructivist notions of identity and the role of civil society in crafting environmental regimes are overstated. Drawing implicitly on game theory, he posits that the true reason for states engaging in environmental governance is “the unspoken knowledge that one party’s violation will lead to a comparable relaxation of the agreed-upon standards by the other party.”[[68]](#footnote-69) This argument holds on to a traditional epistemology of the development of state behavior which not only disempowers non-state actors, but fails to account for the possibility of changing reasons of state. It fails to recognize, for instance, that states may take on norms that go against the Lockean ideal of claiming anything in the commons as property (even taking into account the potential of a Lockean Proviso) to an engagement with nature that is not primarily an acquisitive one.

A different explanation can be found in the work of constructivist thinkers like Finnemore and Sikkink (1998), Epstein (2006, 2008), and Eckersley (2004) Finnemore and Sikkink assert that “from a constructivist perspective, international structure is determined by the international distribution of ideas.”[[69]](#footnote-70) They argue that states or groups situated throughout society and state structures can take on the role of what they term “norm entrepreneurs,” who call attention to or “create” issues, thereby challenging “what is seen as natural or appropriate.”[[70]](#footnote-71) If norm entrepreneurs succeed in the contested market for ideas (in the case of the Ross Sea, they are opposed by fishing interests and their links in federal fisheries ministries), they can change identities and interests at the state level. Charlotte Epstein argues that this is precisely what has happened with the “scientization of nature discourses” and the proliferation of international norms pertaining to animal species.[[71]](#footnote-72) The development of concepts, backed by scientific knowledge, such as “endangered species” has led to the development of a sense of duty at the civil society and state level to protect certain animals, duties which have been enshrined in agreements like CITES. Changing norms also apply to the application of science itself. Epstein suggests that early marine resource management regimes and agreements like the International Whaling Commission (which was established by whaling interests) were rooted in a “Weberian rationalization of nature use on a global scale. This comprised two aspects: the utilization of natural resources was organized increasingly on a model of scientific rationality founded in a Cartesian domination of nature.”[[72]](#footnote-73) As evidenced by the Ross Sea MPA proposal, this has at least party changed. While science remains at the heart of the “management” dialogue, its purpose – if not its sovereign role – can shift to one of preservation, which in turn can shape governance regime and state actions. Epstein does not suggest that a change in norms ensures global adoption of those norms of compliance with the moral or legal frameworks that arise around them, but rather that to a lesser or greater degree there is an awareness of the legitimacy of new issues or meanings. Nor does she suggest that norms will entirely replace power politics, but rather that the two can coexist and that, by extension, within an anarchic system, norms can lead to the creation of new governance models and new reasons of state.

This is the argument taken up by Robin Eckersley in *The Green State*. She suggests that notions of legitimate state conduct can change, including ceding aspects of sovereignty to regimes and institutions that limit the scope of actions available to a state.[[73]](#footnote-74) She sees the potential for the emergence of “green evolutions in sovereignty” within states[[74]](#footnote-75) and for “binding external [presumably institutional] limits on the means by which domestic economic goals are pursued.”[[75]](#footnote-76) While Eckersley undervalues the role of NGOs and civil society in actually generating norms, her thesis is borne out in extensive state participation in various conversation and governance treaties as well as in unilateral initiatives that privilege ecological concerns over economic or security interests. It appears that such norms also lead to a feedback mechanism, whereby accepted practice is then re-analyzed and reinforced at various levels of discourse. For instance, preservationist arguments that have led to the creation of marine reserves are supported post-facto in academic commentary, thereby legitimating further application of the norm.[[76]](#footnote-77) “Greenness” is here nestled into state sovereignty because, as Eckersley argues, “the principle of state sovereignty is not a self-justifying norm but rather takes its meaning from the changing constitutive discourses that underpin it.”[[77]](#footnote-78)

Such ideas, leading as they do to more and deeper state involvement in (and enforcement of) environmental politics, are not without critics. Mick Smith argues that it suggests a “green state welfarism” dependent on a powerful state.[[78]](#footnote-79) He sees two problems here. First, that under modern global capitalism welfare states and state capacity in general are being weakened, and so a “green state” would have little power to do its duty or prevent itself from a neoliberal slide toward a focus of resource extraction. Second, drawing on the critiques of sovereignty and the state of Agamben and Schmitt, Smith argues a sovereign state not only holds the power to declare states of exception that can obviate politics, but also relies on systems that can strip some or all members of the population of the political capacities, reducing them to “bare-life.”[[79]](#footnote-80) In such a system, ecological crises may lead to emergency measures and technocratic solutions that are both counterproductive to the environment and to the very “ecological politics” that allowed its emergence.[[80]](#footnote-81)

The solution, then, might be either “imagin[ing] a world without sovereign power, without human dominion,”[[81]](#footnote-82) or, as some theorists have suggested, granting sovereignty (or something like it) to nonhumans. Goodin et al., for instance, argue that the notion of sovereignty is desirable for the protection of nonhumans but only if it is directly extended to (at least some of) them. They suggest that some great apes not only have the pre-requisites for self-determination but already display complex politics within their own societies; indeed, that simians are human enough to merit sovereignty. Based on the 1993 Declaration of Great Apes, they argue that simians should be granted sovereign “homelands.” Similarly, Kymlicka and Donaldson argue that “wild animals,” namely those who fall outside regular interaction with or reliance upon humans, should be granted sovereignty over both the territories they normally inhabit and potentially over the migratory paths they take through human territory. They root their idea not so much in animals’ capacities as in norms of international justice, wherein human citizens of sovereign states would “identify our obligations to wild animals.”[[82]](#footnote-83) This theory would disallow humans the right to intervene in or govern in wild animals’ territory, thereby setting up a basis for interspecies relations. Kymlicka and Donaldson argue that traditional views of sovereignty can be “rehabilitated”[[83]](#footnote-84) and that sovereignty here has a moral purpose.

These critiques are, however, slightly misplaced. Smith’s reading of Eckersley is imperfect as he falls into the trap pointed out by Litfin of “emphasiz[ing] the state’s autonomy relative to actors within its own borders.”[[84]](#footnote-85) Eckersley’s ideal – and, it bears underlining, in fairness, this is an ideal - “green state” is not an eco-authoritarian one, but rather a democratic one which does not exclude ecological politics or non-state ecological activism. The nature of “democratic” decisions, of course, varies from state to state, and this is not to suggest democracies cannot declare exception, but rather that the green state as suggested by Eckersley seems to suggest inclusive and multi-level environmental governance rather than centralization and the sort of technocratic securitization Smith associates with the work of James Lovelock. Indeed, the problem here is Smith’s totalizing and reified reading of the very nature of sovereignty, which he casts as a monolith of dominion representing the interests of global capital.[[85]](#footnote-86) Interestingly, Smith specifically cites the Antarctic Treaty as “an imperfect real-world example … of the (purportedly) indefinite suspension of the power to make a decision that turns entire continents into standing reserve.”[[86]](#footnote-87) And yet Smith reads this international decision not as itself a multilateral sovereign decision but rather as an exemplar with the “potential to be turned toward a weakening of the metaphysical ideal of sovereignty and dominion altogether.”[[87]](#footnote-88) Such a reading of a sovereign decision as being somehow extra-sovereign misses the real politics behind it and the underlying capacity of states to change their prerogatives. Indeed, and paradoxically much as the scientists and NGOs supporting CCAMLR’s decision, what Smith seems to be opposing is an unchecked capitalist market system rather than “sovereignty” as such.

But if sovereignty is “stretched” to include protection rather than exclusion of nonhumans, it can in some instances offer more secure protection than NGO- or speech-act-based ecological politics. Moreover, such sovereign protection need not be exploitative, but merely protective, as per various international models of national parks and protected areas. While I am not denying that states undoubtedly engage in environmentally destructive actions, this does not mean that sovereignty in and of itself is detrimental to the environment. Moreover, Smith’s appeals to non-state politics seem to offer little solution to actions like fishing, which are capital-intensive and happen far away from the sight (and imaginary) of most humans. How would one organize global resistance to fishing as a practice and generate the scientific knowledge to back these political actions? One option would be to suggest marine species are sovereign and that engaging with them *is* a form of international politics.

However, the sort of stretching of sovereignty suggested by Goodin et al or Kymlicka and Donaldson seems highly problematic. Both of these approaches not only attempt to anthropomorphize animal societies, but attempt to drag specific interpretations of animal societies into human political categories in which they do not fit. This is especially problematic since the authors do not suggest that animals are or can ever achieve full “personhood” and will therefore need human trustees as might “underage heirs [or] incompetent elders.”[[88]](#footnote-89) Goodin et al seek to soften this critique by arguing that “bifurcation of sovereignty is sometimes morally suspicious, smacking of the sort of apron-string ‘tutelary democracy’ practiced by colonial powers … [but] applied to the great apes … there is a clear and compelling reason for granting them internal but not external sovereignty-reasons to do with their clear capacity to exercise internal authority, conjoined with their clear incapacity to participate as full equals in international negotiations and adjudications.”[[89]](#footnote-90) But this set-up does not create an independent animal polity. What they are describing, then, is a system similar to that described by Jackson (1990) as one involving “quasi states,” one which paradoxically would seem to require the existence of the sort of green-minded states described by Eckersley. Moreover, there is a difference between governance in the sense of human inter-state relations and governance as it applies to nonhuman populations. As Rose and Milligan note, environmental governance “embraces coordination *between* actors”[[90]](#footnote-91) and “includes horizontal management activity that crosses institutional boundaries, utilizing cooperation between governmental managers as well as networks between them and other stake-holders...”[[91]](#footnote-92) Animals and ecosystems covered by such governance systems are not, however, agential participants in these processes. While animals might be granted “sovereign” space for biological self-determination, this does not mean they would necessarily gain the capacity to represent or defend their rights in human political settings. Finally, and perhaps most damningly, such proposals privilege animals over other parts of the ecosystems they inhabit, suggesting another taxonomic exclusion. These suggestions offer little tangible potential beyond that of well-managed conservation efforts or parks, which require human sovereign power to legislate into existence and protect.

Conclusion: The commons are what we make of them

If the proposed Ross Sea MPA is implemented, it will spell not the liberation of a marine ecosystem, but its imbrication – perhaps in perpetuity – in a specific, and malleable, form of sovereignty. But it would be one (arguably) “preferable” to the marine species it would protect. As Ainley and Brooks ask, “What could be more rational than setting aside a large area of Earth, including the ocean portion, for the sake of peace, science and future generations?”[[92]](#footnote-93) This sovereignty would be based not in the nature of the anarchic world system, or the anarchic nature of the high seas, but in international governance institutions and the norms to which these might adhere. These norms, in turn, are developed at various levels of society and by scientific interests operating within extra-democratic institutions.

The constructivist approach to the study of international relations helps us account for the very possibility of the emergence of preservation regimes that privilege ecosystems over economic interests and scientific inquiry over pure preservationist ideals. Cooperation between states cannot be guaranteed, and if sovereignty is to be used to preserve rather than conserve of exploit, it must be through changing civil society norms and challenges within existing institutions which will shape the interests and identities of states. The biopolitical account, on the other hand, demonstrates that preservation need not mean the granting of sovereignty or rights *to* nonhumans. Instead, it shows that specific forms of sovereignty lead to the entrenchment of interspecies relations that can become central to the very purpose of governance regimes and the identities of states.

New forms of sovereignty and new forms of environmental protection are possible, and the Ross Sea MPA presents the possibility of an unprecedented political experiment. Such an experiment could only have emerged through norm  
creation and systems of power outside traditional accounts of state responses to anarchy. But it also shows that while constructivism helps explain the emergence of new environmental regimes, it must take account of creation of new forms of power and sovereignty that go beyond current conception of ecological politics and the green state. CCAMLR is not a silver-bullet model; indeed, it is not only unique to its context and (extraterritorial space), but it has proven to be a flawed organization marked by a precarious balance of power between conservation and fishing interests. On the other hand, it provides a forum where science and preservationist interests can come to the table with – and speak against – the sort of acquisitive, purely economic interests that normally govern human interaction with aquatic species. Moreover, marine MPAs do not signify a teleological step forward in the very nature of how we engage with the nonhuman world or a holistic shift in the nature of sovereignty. Rather, they show that “ecological sovereignty” can be rooted in contested politics and that, faced with a real tragedy of the commons, some forms of sovereignty can be, from an ecological perspective, the lesser of two evils. The challenge going forward is to recognize that the commons are what we make of them (and, in doing so, to not lose sight of the fact that we are what the commons make of us).

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2. Krasner (1995). p.119 [↑](#footnote-ref-3)
3. Krasner. p.115 [↑](#footnote-ref-4)
4. See Guilhot (2008) on the roots of “classical” realist IR theory and Morgenthau (1946) and Carr (2001 [1939]) for exemplars of same; Jervis (1978) and Waltz (1990) for an exemplar and reflection on the move toward neorealist, state-as-rational-actor thought; Nye (1990) on treating non-coercive force as an implement of foreign policy and the start of thinking beyond (or within) the boundaries of the state [↑](#footnote-ref-5)
5. See Weiss (1997) for an overview [↑](#footnote-ref-6)
6. See http://www.un.org/depts/los/convention\_agreements/texts/unclos/closindx.htm, see Brooks et al (forthcoming) for a brief history of the emergence of this regime. [↑](#footnote-ref-7)
7. Ruggie, John. “Territoriality and beyond.” p.148 [↑](#footnote-ref-8)
8. Ibid. p.168 [↑](#footnote-ref-9)
9. Powell (2008). p.827 [↑](#footnote-ref-10)
10. Ibid. [↑](#footnote-ref-11)
11. Strandsbjerg. p.827 [↑](#footnote-ref-12)
12. Strandbjerg. p.822 [↑](#footnote-ref-13)
13. For details, see Ban et al (2013), Gjerde et al (2013) [↑](#footnote-ref-14)
14. See for instance the International Whaling Commission (IWC), the Convention on International Trade in Endangered Species (CITES), etc. [↑](#footnote-ref-15)
15. Scott (2011) argues that the Antarctic treaty is in part a tool of US hegemony in preventing other states from establishing sovereign claims to a territory which the United States uses but on which it would have weak legal claim for sovereignty. [↑](#footnote-ref-16)
16. Jabour and Weber (2008). p.35 [↑](#footnote-ref-17)
17. “The Antarctic Treaty.” www.nsf.org.gov/od/opp/antarct/anttrty.jsp [↑](#footnote-ref-18)
18. Ainley and Brooks. p.148 [↑](#footnote-ref-19)
19. Jabour and Weber (2008). p. GET THIS SOURCE [↑](#footnote-ref-20)
20. Ibid. p.38 However “re-establishes” would have been a far more apt word choice than “transforms.” [↑](#footnote-ref-21)
21. Wendt. p.392 [↑](#footnote-ref-22)
22. Ibid. p.394 [↑](#footnote-ref-23)
23. Ibid. pp.399-402 [↑](#footnote-ref-24)
24. Eckersley. pp.206-207 [↑](#footnote-ref-25)
25. Eckersley. p.208 [↑](#footnote-ref-26)
26. Litfin. p.175 [↑](#footnote-ref-27)
27. See Epstein (2008) [↑](#footnote-ref-28)
28. See Worm et al (2009) [↑](#footnote-ref-29)
29. See Osteblom and Bodin (2012) [↑](#footnote-ref-30)
30. Gjerde et al. (2013); see also Cullis-Suzuki and Pauly (2010) and Brooks et al (forthcoming) [↑](#footnote-ref-31)
31. see Osterblom and Bodin (2013), who show that members of various national and international groups targeting IUU fishing identify the practice as not only criminal but also one which “undermines our international obligations.” [↑](#footnote-ref-32)
32. see Brooks et all (forthcoming) for an argument rooted in international law that this “right” is accompanied by “duties” under the UNCLOS regime [↑](#footnote-ref-33)
33. Edwards, Stephen. “Ownership of Renewable Ocean Resources.” Marine Resource Economics. Volume 9, 1994. pp. 253 – 273. [↑](#footnote-ref-34)
34. Ibid. [↑](#footnote-ref-35)
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38. Wendt. p.419 [↑](#footnote-ref-39)
39. Jabour, Julia and Weber, Melissa. “Is it Time to Cut the Gordian Knot of Polar Sovereignty?” Review of European Community and International Environmental Law. 17(1), 2008. p.27 [↑](#footnote-ref-40)
40. The territory covered by CCAMLR does overlap with some states EEZs related to sub-Antarctic nationally-claimed islands. These, however, while managed by individual states, are expected to adhere to CCAMLR Conservation Measures. [↑](#footnote-ref-41)
41. Kock (2007), Ainley and Pauly (2013) [↑](#footnote-ref-42)
42. See CCAMLR Convention, Article II (3); see also Ainley and Brooks. p.149 [↑](#footnote-ref-43)
43. Brooks (2013). p.290, 294 [↑](#footnote-ref-44)
44. CCAMLR Convention Article II (3) [↑](#footnote-ref-45)
45. Ainley and Brooks. p.155 [↑](#footnote-ref-46)
46. Norse et al. p.308 [↑](#footnote-ref-47)
47. Ibid. My italics. [↑](#footnote-ref-48)
48. Michel Foucault quoted in Youatt (2008) p.400 [↑](#footnote-ref-49)
49. Youatt, Rafi (2008). p.401 [↑](#footnote-ref-50)
50. The CCAMLR uses five primary sources of data collection upon which to base its models and therefore policy recommendations: fisheries catch and effort statistics; biological information and data on by-catches of fish in commercial fisheries; seabirds and marine mammals caught during commercial operations and collected by national and international scientific observers; biological information collected during scientific and fishery-independent surveys; and biological information on the CCAMLR Ecosystem Monitoring Program. [↑](#footnote-ref-51)
51. Rose and Milligan (2009) [↑](#footnote-ref-52)
52. Rose, Gregory and Milligan, Ben. “Law for the Management of Antarctic Marine Living Resources: From Normative Conflicts towards Integrated Governance?” Yearbook of International Environmental Law. 20(1), 2009. p.70 [↑](#footnote-ref-53)
53. Osterblom and Bodin WITH PAGE NUMBERS [↑](#footnote-ref-54)
54. It is beyond the scope of this paper to engage with the massive legal literature on the Antarctic governance network and, while acknowledging its importance, I am focusing on the theoretical implications of the MPA rather than the legal particulars of the existing regime(s). [↑](#footnote-ref-55)
55. See Harris (2014). [↑](#footnote-ref-56)
56. Brooks (2013). p.282 [↑](#footnote-ref-57)
57. Pinkerton and Bradford-Grieve. DATE p.4 [↑](#footnote-ref-58)
58. See Halpern, B.S. et al. “A Global Map of Human Impact on Marine Ecosystems.” Science 319, 2008. pp. 948 – 952; Antarctic and Southern Ocean Coalition statement (2010) [↑](#footnote-ref-59)
59. Contra Goodin et al. (1997) [↑](#footnote-ref-60)
60. Wapner. p.181 [↑](#footnote-ref-61)
61. Smith (2009). p.108 [↑](#footnote-ref-62)
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63. The Last Ocean Charitable Trust. “The Ecosystem.” www.lastocean.co.nz [↑](#footnote-ref-64)
64. Ibid. [↑](#footnote-ref-65)
65. Antarctic and Southern Ocean Coalition. “Scientists’ Consensus Statement on Protection of the Ross Sea.” June 14, 2010. www.asoc.org [↑](#footnote-ref-66)
66. Available to view online at www.ccamlr.org [↑](#footnote-ref-67)
67. Norse et al, for instance, argue that “The great majority of deep- sea ﬁsheries are unsustainable unless governments consciously choose to … institut[e] precautionary regulation. In many cases, that likely means not ﬁshing inherently vulnerable populations and stringently enforcing such regulations.” Norse et al. p.316 [↑](#footnote-ref-68)
68. Downs, George W. “Constructing effective environmental regimes.” Annual Review of Political Science. 2000. pp.38-39 [↑](#footnote-ref-69)
69. Finnemore and Sikkink. (1998) p.894 [↑](#footnote-ref-70)
70. Ibid. p. 896-898 [↑](#footnote-ref-71)
71. Epstein (2006). p.40 [↑](#footnote-ref-72)
72. Ibid. [↑](#footnote-ref-73)
73. Eckersley. p.28 [↑](#footnote-ref-74)
74. Ibid. p.207 [↑](#footnote-ref-75)
75. Ibid. p.236 [↑](#footnote-ref-76)
76. Donna Christie writes, based on existing jurisprudence, that “the importance of marine reserves becomes clear as a means to conserve options, quality and access to marine living resources for future generations.” Christie (2004). p.434 [↑](#footnote-ref-77)
77. Eckersley. p.27 [↑](#footnote-ref-78)
78. Smith. p.103 [↑](#footnote-ref-79)
79. Smith. p.106 [↑](#footnote-ref-80)
80. Smith. pp.105-108 [↑](#footnote-ref-81)
81. Smith (2012). p.220 [↑](#footnote-ref-82)
82. Kymlicka and Donaldson. p.157 [↑](#footnote-ref-83)
83. Kymlicka and Donaldson. p.172 [↑](#footnote-ref-84)
84. Litfin. p.181 [↑](#footnote-ref-85)
85. Smith (2012). p.221 [↑](#footnote-ref-86)
86. Smith (2012). p.222 [↑](#footnote-ref-87)
87. Smith (2012). p.223 [↑](#footnote-ref-88)
88. Goodin et al. p.838 [↑](#footnote-ref-89)
89. Goodin et al. p.837 [↑](#footnote-ref-90)
90. Rose and Milligan. p.42 My italics. [↑](#footnote-ref-91)
91. Ibid. [↑](#footnote-ref-92)
92. Ainley and Brooks. p.154 [↑](#footnote-ref-93)