PANEL PROCEEDINGS:

Extended Jurisdiction - International and Domestic Implications

edited by
N. Bartlett Theberge

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EXTENDED JURISDICTION - INTERNATIONAL AND DOMESTIC IMPLICATIONS

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FORWARD

On April 13, 1976, President Gerald R. Ford signed into law the Fishery Conservation and Management Act of 1976 (16 USC 1801). This Act represents a turning point in domestic fisheries management and will prove equally significant in its effect on international relations. The Act contains two major features. One concerns the development of a domestic management regime. The other deals with the unilateral assertion of a fishery conservation zone extending seaward to a distance of 200 nautical miles from the baseline of the territorial sea. The passage of this act will create significant social, economic, legal, and political impacts throughout the fishing industry, the nation, and the world.

On March 18, 1976, several weeks before the signing of the Act, a group of experts representing various levels of government, fisheries management, economics, law, and science, convened for a panel discussion of extended fisheries jurisdiction. This panel discussion will undoubtedly be one of many such discussions seeking to understand and deal with the far-reaching domestic and international implications of extended fisheries jurisdiction.

It is hoped that the publication of these presentations will provide those interested in fisheries management with an understanding of events leading to the enactment of the Fisheries Conservation and Management Act of 1976 and an appreciation of its implications.

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SOME LEGAL IMPLICATIONS OF EXTENDED JURISDICTION

by
William Brewer
National Oceanic and Atmospheric Administration

Since my colleagues on the panel today are better qualified than I am to discuss the international and economic implications of extended jurisdiction, and to consider its effects on the states, I would like to discuss with you some of the background of H.R. 200, which will shortly be enacted by the Congress and will in all likelihood be signed by the President. I would like to discuss in very broad terms some of its provisions, and finally mention a few of the significant legal problems which I see arising out of the legal relationships which it creates.

Here, at the Virginia Institute of Marine Science, one does not need to go over the history of the fisheries as a common resource, nor the technical developments which have proliferated in the last ten years and resulted in the catching capacity of the world's fishing fleets exceeding the productive ability of most of the world's fish resources. It has become common knowledge that practically all of the marine species which are preferred by man are in greater or lesser trouble from fishing pressure. It is also common knowledge that, although the United States is a party to some 20 fishing treaties and executive agreements, with many similar arrangements existing between nations in other parts of the world, the depletion of our fish resources continues to accelerate. Many improvements have been made in the treaties to which we are a party, the International Convention on the North Atlantic Fisheries (ICNAF) being perhaps the most advanced, but even there the pace of agreement lags behind the problem.

Coastal nations themselves have been equally unsuccessful in dealing with the problem of conservation of marine fisheries. The 1958 Geneva Convention on Fishing, which became effective in 1966, permitted the coastal nation to take non-discriminatory action to conserve fish stocks off its coasts. But it suffered from two fatal defects: first, the failure of the important fishing nations of Japan and the Soviet Union to adhere to the treaty, and second, the requirement that such measures be non-discriminatory, in other words, that foreign fishermen be treated on the same basis as fishermen of the coastal nation. As a result, no nation has ever implemented this provision of the treaty.

A new and separate mode of dealing with the problem started with the Truman Proclamation of 1945, which asserted the ownership of the United States over the living and non-living resources of the continental shelf. This principle was taken and expanded by the west coast countries of South America by a unilateral claim to a 200-mile

territorial sea. Although recognition of their claim was withheld by the United States and most other countries, the trend was not to be denied, and it has resulted in near-agreement at the Law of the Sea Conference on a 200-mile exclusive economic zone, as well as the unilateral claim of 200-mile economic jurisdiction which is found in the bill which will soon be enacted by the Congress of the United States.

I think you are all aware that at present there is no general domestic fisheries management legislation. A number of measures do exist which deal with specialized areas. For example, our treaties and Executive agreements have generally been followed by implementing legislation. Examples of this are the Northwest Atlantic Fisheries Act of 1950, implementing ICNAF, and the Tuna Conventions Act of 1950, which implements the Inter-American Tropical Tuna Convention. Species which are endangered, and those which have captured our collective imaginations, receive special protection in the Endangered Species Act of 1973 and the Marine Mammal Protection Act of 1972. Foreign fishing has been prohibited, although not managed, in the three-mile territorial sea and in the exclusive fisheries zone extending nine miles beyond the territorial sea. The Bartlett Act, in addition to prohibiting such foreign fishing, makes it equally unlawful to take the living resources of the continental shelf, to which claim is laid by the Truman Proclamation, later enforced by the 1958 Geneva Convention on the Continental Shelf. Management authority, and indeed ownership, of the resources within three miles, which were originally claimed for the United States by the Supreme Court in 1947, have been given back to the states by the Submerged Lands Act of 1953.

An attempt at general fisheries management legislation was made in 1973 when Representative Dingell introduced a bill known as the High Seas Fisheries Conservation Act. This was of course applicable only to foreign fishermen in the nine-mile contiguous zone, but it was intended to lay the groundwork for future extension of jurisdiction. It failed because of a feeling on the part of the industry that American fishermen would be regulated beyond nine miles while foreign fishermen would not. A similar management measure was introduced by Senator Magnuson and others in the Senate in 1974, but this time it was coupled with the unilaterial assertion of 200-mile jurisdiction, and the bill was enacted by the Senate. It attracted strong Administration opposition because of the feared consequence to our negotiating position at the Third United Nations Conference on the Law of the Sea, which was then, and is now, in progress. These efforts were successful in preventing the bill from reaching the House of Representatives and it died with the end of the 93rd Congress. However, the strategy of combining 200-mile jurisdiction, which was desired by most if not all fishermen, with a management bill, which was generally disliked although grudgingly admitted to be necessary at some point, proved to be successful. There was little opposition to the combined bill from fishing industry sources.

In the 94th Congress starting in 1975 there was a tidal wave of support for 200-mile legislation. H.R. 200, introduced by Representative Studds of Massachusetts and co-sponsored by many other Representatives, passed in October by a vote of 208 to 101. The similar S. 961, introduced by Senator Magnuson of Washington and eighteen other Senators, passed in January of 1976 by a vote of 77 to 19. After the Congressional recess in early February, a committee of conference was appointed, and went promptly to work. Most of the major issues were settled by the conferees at two meetings on February 24th and 26th. A combined staff of half a dozen attorneys then began regular meetings to generate a conference text and to settle between them numerous other discrepancies and problems. At this point, the advice of the Executive agencies was solicited and was freely provided. I think it is fair to say that the advice of these agencies, and I can speak particularly for our own, has been helpful in foreseeing and eliminating many future problems, and there has been an excellent relationship between the staffs and the agencies in dealing with these problems. By and large, the technical advice of the agencies has been accepted except in cases where it conflicts with the clear political decision of the conferees. This is of course the way the conference committee should work. What may be the last meeting of the conferees was scheduled to take place on Wednesday, March 17th.

In this Congress the Administration's position on the bill changed quite markedly. If the Congress would delay implementation of the 200-mile provision until 1977, thus giving the LOS Conference a chance to reach agreement this year, the President would sign. This was agreed, and the bill now bears an effective date of March 1, 1977. Relatively little interest was taken by the Administration in the management provisions. However, Department of State, the Coast Guard in the Department of Transporation, and of course NOAA in the Department of Commerce, took a very lively interest, and I think we all contributed, as mentioned above, to the eventual shape of the bill. Each of these three agencies will be given important new responsibilities: State in negotiating and re-negotiating fisheries agreements, Coast Guard in enforcing the regulations in an area of ocean two-thirds as large as the United States, and Commerce in its general role as the fisheries management agency.

The bill as it emerged is really two measures in one: the assertion of a 200-mile exclusive fisheries zone, with provision for foreign fishing under certain prescribed circumstances, and a comprehensive fisheries management plan. Since I expect that one or more of my colleagues will discuss its international implications I would like to spend most of my time on the domestic aspects of the measure.

A fisheries conservation zone is created which extends 197 nautical miles beyond the boundary of the Territorial Sea. State regulation of fisheries within the three-mile zone, conferred upon the states by the Submerged Lands Act, is preserved, subject to certain preemption requirements which I will discuss further.

If a foreign nation desires to secure rights for its fishing vessels to fish within the fisheries conservation zone, it may negotiate a master agreement, which essentially acknowledges the jurisdiction of the United States over the zone, and makes provision for the issuance of permits to individual vessels. Once admitted, foreign fishing vessels will be subject to the same regulations as domestic vessels, except that the license fee payable by foreign vessels will differ and will be in most cases larger.

Certain species of fish receive special treatment under the Act. Anadromous species, primarily salmon, remain under U.S. management and ownership even when outside the U.S. fisheries zone. Whether this is consistent with existing international law remains to be determined. Highly migratory species, primarily tuna, are completely exempt from U.S. management authority in order to be regulated by virtue of international agreement. One exception to this statement is that existing state regulation of the tuna fishery conducted by the citizens of a particular state will continue to be permitted. Finally, the continental shelf fisheries, primarily lobster and crab, remain within the U.S. management authority even if they are located beyond the 200-mile zone. In fact the continental shelf does extend beyond 200 miles in a few places, primarily Alaska.

Apparently because of a feeling that the Administration would be likely to trade away fishing privileges for other national interests, the conferees were determined to retain a degree of Congressional oversight of international fishery agreements. Such agreements must be tabled for sixty days before becoming effective so as to allow Congressional action if desired. After toying with the idea of permitting implementation to be blocked by the action of a single House, wiser heads pointed out the constitutional difficulties involved, and it was settled that Congress must act by a bill or joint resolution if an agreement were to be terminated. The provision for tabling the agreement and for Congressional action applies only to Executive agreements, since it was felt that the advice and consent procedure would be sufficient check-and-balance with respect to fishing conventions.

In designing the management procedure itself, Congress, as well as the conferees, sought to achieve a system of checks and balances between federal and state power. While we are speaking primarily of fisheries in federal waters, it should be recalled that there is a long tradition of fisheries regulation by the states, primarily the western states, and very little if any tradition in the federal government. Note also the general shifting of the center of power toward state governments that seems to exist in 1976. As a result the bill may be somewhat more heavily weighted toward state authority than would have been the case, say, ten years ago. However, I believe the final program worked out is feasible, and aside from being somewhat cumbersome, does effectively represent the various interests involved.

Management plans for the various species will be prepared by Regional Fisheries Management Councils, of which eight have been created. They recognize the regional character of the fisheries. Councils will represent the New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf, Pacific, North Pacific, and Western Pacific regions. They vary in size, but the general pattern is that each state in the region will have its principal fisheries executive on the Council, together with at least one other member. The regional director of the National Marine Fisheries Service will also be a voting member. The Fish and Wildlife Service, Coast Guard, and the State Department will have non-voting representatives, and the executive director of the Marine Fisheries Commission will also be a non-voting member. Staff and support will be provided by the Department of Commerce.

When a management plan has been prepared, the Secretary of Commerce is charged with developing regulations under the plan. Both the plan and the regulations must be consistent with certain national fisheries regulations standards which are listed in the Act and are very general in nature. The Secretary has certain specified powers with respect to emergency plans and regulations, with respect to the plans which are not consistent with the national standards, and in cases where the council or councils cannot agree on a management plan.

If the stock of fish which is concerned is found in part within state waters, federal regulation can preempt state regulation under certain clearly defined circumstances where the state regulation is found to be inconsistent with the federal plan.

There are very broad penalty and enforcement provisions in the Act. Both civil and criminal penalties are provided for. In addition, there is an automatic forfeiture of catch in cases of violation. Forfeiture of both gear and vessel is permitted by normal judicial forfeiture proceedings. The institution of enforcement proceedings is a responsibility of NOAA, while the Justice Department will, as usual, handle the proceedings once the litigation stage is reached.

At sea, the primary responsibility for enforcement is in the hands of the Coast Guard, requiring the extended use of vessels and airplanes. Like NOAA, the Coast Guard has been at work for a period of at least two years attempting to anticipate the problems of Extended Jurisdiction and to plan for their additional equipment needs. It is obviously impossible to patrol every square mile of this large territory, so plans have been made to patrol selected fishing areas on a seasonal basis, thus getting maximum use from personnel and equipment. Even with this limitation, the Coast Guard has requested additional ships and airplanes for the task. Basically this means additional high-endurance cutters, and additional C-130 long-range aircraft. NOAA personnel will normally be on board the ships and aircraft engaged in enforcement work, as they are now in connection with enforcement under the various fisheries conventions.

Certain other fisheries acts have been repealed or amended to conform to H.R. 200. The Bartlett Act and the Contiguous Fisheries Zone Act have been repealed; the Marine Mammal Protection Act has been amended to extend its coverage to the 200-mile zone. The indemnity provisions for U.S. vessels under the Fishermens' Protective Act have been amended to provide that they will continue to be available under certain circumstances even though the United States may recognize the 200-mile jurisdiction claims of the foreign country involved.

This has been, of course, a very brief treatment of a long and complicated piece of legislation. It should already be apparent to you that there will be numerous, troublesome, legal problems arising under it. Perhaps we have averted some of them by careful attention to the Act during drafting and in conference. Let me suggest to you a few of the problems which I see arising, without venturing answers at this point.

On the international scene, the Act provides for a determination of the excess stock available for foreign fishermen. Despite careful drafting, I foresee difficulties and possibly litigation on the amount of this excess. The question of negotiation with adjacent States, primarily Canada, is difficult to fit within the framework of the statute, since fisheries which are shared are frequently managed under the provisions of special international agreements, sometimes by international commissions, and the determination of foreign fishing rights will equally have to be accomplished jointly. At present there exist slightly more than 20 fisheries treaties and agreements to which the U.S. is a party. The process of adjusting these as they expire or come up for renewal to the provisions of the Act is bound to be complicated and difficult. Finally, I have mentioned the difficulties which we may encounter under international law in asserting ownership and management of an anadromous species beyond the 200-mile zone.

On the domestic front, other problems are visible on the horizon. The relationship of the Secretary of Commerce to the Regional Councils, especially in situations where disagreement arises as to the content of a management plan, has been the subject of scrutiny by the conferees and their staffs and by ourselves, but I doubt if every problem has been worked out. Since management plans and management regulations are treated somewhat differently under the Act, there may be valid differences of opinion as to which is which, and again these may be exacerbated by different views on the part of the Secretary and the Councils. Limited entry programs are authorized under the bill, with the consent of a majority of the Council, but are certain to be opposed by fishing interests who desire to enter the fishery and are excluded in whole or in part. The question of preemption of state rights, even though spelled out carefully in the Act, might lead to litigation where state/federal views were markedly divergent. Finally, it is more than likely that the resources of money and people to enforce the Act on a fully adequate basis will be lacking, if for no other reason than because a

full-scale enforcement effort designed to cover all contigencies would probably cost more than any possible economic benefit. In this case, there will be uneven enforcement, and suits to require enforcement or to avoid enforcement on the basis of inequity can be anticipated.

I hope I am not taking too gloomy a view in this list of legal problems, but experience suggests that any new and complicated Act, reaching into new fields and affecting interests and people who have never been regulated before, is bound to generate controversy and litigation. Despite all this, those of us who are involved are moved by the sense of great adventure which I have alluded to in the title, the adventure of attempting to save a great national resource which would otherwise disappear, perhaps forever, and the hope of making it available on a self-sustaining basis to the United States and to some extent, to all of mankind.

MANAGEMENT IMPLICATIONS OF EXTENDED FISHERIES JURISDICTION

by
Dr. Jackson Davis
Virginia Institute of Marine Science

For the first time in the approximately 370 years of European settlement of North America the United States is attempting to address our fisheries problems in a concerted and organized fashion. This, despite the fact that fisheries were one of the features which originally attracted European colonists to this continent. St. John's Newfoundland, for example, has been continuously occupied by people of European origin since the late 1500's and that occupation has been based on fisheries. We are now approaching a new regime with all of its attendant problems and opportunities. Fisheries in the United States are at the dawn of a new era.

In considering the implications of extended jurisdiction, we might start by asking why the Congress is contemplating extending jurisdiction at all? One of the reasons is, perhaps, that several of our neighbors to the south have done so and we find ourselves out of style in the hemisphere. There are more cogent reasons than style, however. Many of these reasons occurred to our neighbors to the south sooner than they did to us, apparently. Most important among them, I think, is the fact that the present system, or lack of a system, has been unsatisfactory. The various international arrangements that bear on fishing problems have, in general, not satisfactorily addressed problems until they reached or passed the crisis stage. The International Whaling Commission is perhaps a good example; ICNAF is another. Both of these Commissions are now, I think, making very significant progress. However, neither was able to do so until a number of stocks were severely overexploited. Looking at the ICNAF situation, we see overfishing, largely by foreign distant water fleets, of haddock, herring, mackerel, and some other stocks. The domestic management has not really been any better and in some cases not so good as some of the international attempts at management. For example, turning again to the ICNAF area we see that yellowtail flounder stocks are overfished. This has been largely a domestic offense rather than a foreign one.

A difficulty with operating under current international law and custom and through various multilateral and bilateral agreements, is that these involve a certain "buying and selling"; a series of tradeoffs. The reason for this is that the interests of the participating

groups are rather diverse and there is no mechanism to force accommodation. Fishing strategies of the various countries differ, as do national and social goals and economic systems. The distant water fleets fishing off of our coast are concerned, of course, solely with food. They are, in the view of some of our people, interfering with recreational fisheries of considerable value both socially and economically to coastal residents of the U. S. It becomes very difficult to reconcile these differing social goals in a system in which each participant in the game has equal rights. No one is in a position to decide a disagreement other than by bartering or trading goods or concessions. So this is the difficulty in which we find ourselves. The fact is that attempts must be made to accommodate the increasing protein needs of the world population and the differing national and social needs to the potential yield of the fish stocks of the oceans. These have not been accommodated in the existing scheme. Therefore we are seeking something better.

To further visualize national differences in points of view consider, as an example, the situation of the Soviet Union, Poland or the GDR fishing on the continental shelf adjacent to the East Coast. They fish for mackerel and sea herring primarily, two species which have not been of great interest to the U. S. fisheries. In the course of their directed fishery on mackerel and sea herring the fishing vessels of these countries have incidentally, almost accidentally in some cases, made serious inroads into stocks that are of considerable interest to or that are the basis of economic life of some of our coastal fishermen and, in some cases, entire communities. These stocks, which are not very large, are looked upon by the large distant water fleets as being nusiance fish in their operations. They would prefer clean catches of only one or two species. The Soviets and the Poles must think we of the U. S. are the craziest people in the world to devote so much attention to a stock of fish capable of producing perhaps 20,000 tons a year. They are interested in stocks from which they can expect to take 100 to 200 thousand tons a year. These small stocks which are so important to the U. S. fishermen seem trivial to them.

The fishing strategies of coastal fleets and distant water fleets differ. The distant water fleets have, of necessity, a logistic system which allows them high mobility. They can go from place to place. They are not dependent upon maintaining in a viable condition a fish stock occuring in a particular geographic site. The Soviet Union in particular has adopted the strategy of "pulse fishing" in which they concentrate their efforts on one fish stock which is abundant at a particular place and time. They fish it down to the point that the catch no longer repays the harvesting costs and they then switch to another species and fish that one down. The biological theory behind pulse fishing (if there is any) is that if there are several species to run through, by the time the last is fished out, the first one will have recovered and will again support a fishery. Regretably this has not yet happened in the case of haddock which the Soviets overfished in 1965. Pulse fishing is not compatible with coastal fisheries which operate from the same ports trip after trip and year after year. As an example, if one of these highly mobile distant water fleets were to destroy (as they practically have) the stock of scup that the Hampton Roads trawl fishery has historically

operated on it would be of no great import to the distant water fleet; it could move on to another stock in another area. The domestic fleet, which is tied to a particular port of operation, could not move; it has nowhere else to go.

In order to reach solutions to such problems, the party which feels that its ox is being gored must be able to provide something of value to win concessions. The distant water fishermen are not violating any law, although they are economically damaging nearshore participants in the fishery. So, when the United States attempted, through bilateral agreements to alleviate some of its fishery problems we had to give something in return. The amount of suitable trading material is limited. If there are more problems than there are trading materials, when your pockets become empty, you are still left with a number of social problems and a number of fish stocks which are not producing at the level that would be most economical. Additionally some nations seemingly expected the U. S. to pay them to fish rationally. Thus the regime of freedom of the seas was not satisfactory. Under it coastal fisheries were being severely disrupted and several stocks were being overfished. Therefore, the U. S. is establishing a more effective regime. Undoubtedly the new regime will not solve all of the international and domestic fisheries problems. It will, however, make significant progress.

Foremost among the problems and implications of the new fisheries regime will be allocation of the limited resources among the many who wish to harvest them. This issue, how to "slice the pie", will be contentious both domestically and internationally. We can expect contention domestically over the question of whether or not there is a surplus of a stock which can be allocated to foreigners. This will be a critical problem. We can presume that there will be a tendency on the part of the United States industry to hold stocks to itself because the more dense a fish stock is, the cheaper it is to fish. The U. S. will be inclined to build up what will appear to the foreigners to be a large surplus. The foreigners, of course, will be placing pressure on us to make the largest possible quantity available for harvest.

Once we determine domestically that surplus in some stock is available off our coast, how will the United States, through the State Department, allocate this to foreigners? Will we take the altruistic point of view that in a world suffering from protein starvation, our surplus stock should be made available only to those countries that have a severe protein malnutrition problem? Will we, on the other hand, merely put it up on the auction block? Will we involve fisheries in various other trade-offs, commercial and political? Will access to fish be traded for so many cubic feet of natural gas or for access to certain military bases or for various other necessary inter-governmental arrangements?

A fisheries zone of 200 miles will necessitate negotiation of borders, not only with Canada and Mexico, with whom we share land borders, but also with a few other nations. Wherever a 200-mile zone

would impinge on the fisheries zone or other territory of another nation, a boundary must be negotiated. This aspect will involve dealing with Cuba and the USSR among others. This issue may become clouded by considerations other than fisheries. For example, petroleum and hard minerals may become involved. With regard to international allocation there are several problems that will be exciting and contentious to address.

As difficult as international allocation is going to be, I think domestic allocation will be even more problematic. We have chosen as our fisheries management goal optimum yield. Neither of the alternative goals, maximum sustainable yield or maximum economic yield, was politically viable. It was politically feasible to settle on optimum yield because the concept is so vaguely defined that each person contemplating it could interpret it as being favorable to his interests. It will be impossible to satisfy all interested parties. It will even be extremely difficult to have the various users of the resources equally dissatisfied, but perhaps that is the best that we can hope for.

By selecting optimum yield as our goal we have postponed making some difficult decisions. As we design and adopt management plans for the various fisheries we will find it necessary to more accurately define optimum yield in terms of allocations among user groups. Predictably, the fur will fly. In this question of allocation in fisheries management under the optimum yield goal the role of science will be smaller than it has normally been in fisheries. I refer primarily to international fisheries management in which the goal has been generally agreed upon to be maximum production of food. The goal has been relatively simple without involvement of a number of confusing social issues, and the strategy has been largely aimed at maximum sustainable yield of protein. With such differing economic schemes in different countries economic management has been little involved. I think that there will be a lessened role of classical fishery science in management. This, however, should not be looked upon as an undesirable development. The role will be reduced only relatively. Neither socio-economic factors nor political factors have played a large enough role in fisheries management to date and this has been one of the serious problems. The decisions to be made are indeed political in the best sense of the word. They are social decisions and therefore they must be made at the political level. There is no standard by which goals can be determined to be good or bad. A fishery can be managed for maximum sustainable yield. It can be managed to provide the maximum number of jobs. Similarly it can be managed in order that the participants reap a maximum profit. Conversely it can be managed so that maximum freedom of access is maintained. No one of these goals is inherently superior to the others politically, socially, or scientifically. Selecting from among the spectrum of goals requires, in my view, social decisions of the sort that should be made by political bodies. This is one of the things that disturbs me about the extended jurisdiction fisheries legislation now pending in the Congress. The hybrid bill that has emerged from H.R. 200 and S. 961 does not, in my view, set up a politically viable

mechanism for making some of the hard political decisions that must be made. I do not believe that the management councils which would be established have a broad enough social base to be capable, politically, of making these decisions.

Similarly there are social decisions to be made regarding limiting entry. Fisheries management never regulates what the fish do, it always regulates what the people do. Therefore the decisions are social and political. The number of participants who are harvesting a common property resource can be limited. This has been rarely done up to this point in time but it is indeed possible to limit entry. As the number of participants is adjusted upward or downward the money made by the participants will increase or decrease. Society thus has the opportunity to manipulate the earnings of the participants in a fishery in an attempt to provide for a reasonable rate of return on capital invested and reasonable compensation for the workers.

A new era in fisheries is upon us as a result of either or both of two actions now pending. The UN Law of the Sea Conference now in progress in New York is seeking a rational international regime. I doubt that agreement will be immediately forthcoming from this forum. It now appears that the pending Fisheries Management and Conservation Act will pass Congress and be signed into law by the President. Therefore, the domestic management procedure and international allocation problems will be with us and they will require thoughtful, patient people to work out solutions.

A STATE'S VIEW OF EXTENDED JURISDICTION

by
James E. Douglas, Jr.
Virginia Marine Resources Commission

Introduction

At the outset let me refer you to the title of this presentation and pointedly note that my remarks here today, both in the prepared text and any extemporaneous comments later, must be viewed in the light of my experience as Virginia's chief fisheries officer. My colleagues in other states might not share my views; and even if they did, I am sure their emphasis, priorities, and conclusions drawn are quite likely to differ from mine. In addition, let me note that there are many aspects of extended jurisdiction and, time being limited, I have chosen only those aspects that I consider most salient.

There is evidence of strong agreement among at least the East Coast states with regard to the principle of extended jurisdiction. In 1974 the Atlantic States Marine Fisheries Commission, consisting of 15 East Coast states from Maine to Florida, adopted a resolution calling for the passage of a bill that would extend the fisheries jurisdiction of the United States to 200 miles. While this resolution dealt with only one method of extending jurisdiction, namely unilateral Congressional action, I feel confident in using it as an indication of the collective wishes of those states for extended jurisdiction. In fact, the only state to demur in that resolution explained that they were in favor of the concept but disagreed with the vehicle. We could indeed spend considerable time discussing the merits of the various ways of achieving extended jurisdiction, but in the interest of time I shall not attempt such here. It will, however, be necessary to note that two different approaches are in progress at the moment.

First, however, consider the current legal and jurisdictional regime, wherein the United States adheres to a three-mile territorial sea. In short, the legal boundary of the United States extends three miles seaward; and this three-mile belt is considered also as the boundaries of the several coastal states. Thus Virginia's East Coast boundary, and of course jurisdiction, extend three miles seaward. In 1966 the Congress, via P.L. 89-658, added nine miles to the Territorial Sea, called it the Contiguous Fisheries Zone, and declared unilateral

United States management of fisheries within that zone. One must note that the coastal states do not share in any authorities in the Contiguous Fisheries Zone.

What is Extended Jurisdiction?

As mentioned, there are two approaches currently in progress. Each would extend fisheries management jurisdiction to 200 miles, but each takes a different tack through a different forum.

Unilateral extension is that term used to describe the Congressional action that has resulted in passage by both the Senate and House of separate bills that would create a new Contiguous Fisheries Zone to extend 197 miles seaward of the Territorial Sea. Add three to that and you get 200. These bills are very near their final massaging by the conference committee which is ironing out differences between the two versions. In fact, today's newspaper indicates agreement has been reached.

The second approach is much more complex in that a 200-mile Economic Zone, which would include fisheries management, is proposed by the United Nations Conference on Law of the Sea (LOS) to be the standing international law. While there is general agreement among the 150 nations at that conference that fisheries management should extend to 200 miles, the Conference is similarly dealing with so many other matters of intense concern that a comprehensive treaty may, indeed, be hard to come by.

The problem, as seen by the states.

In a word the problem was foreign fishing effort. Large fleets of efficient distant water vessels, led mainly by the Soviets, came to the northwest Atlantic off the shores of Canada and the United States, and with the highly predatory practice of "pulse fishing" on those historic high-yield areas, such as the Grand Banks of Newfoundland and George's Bank, soon began to deplete the stocks measurably. The United States first heard the cry from the New England fishermen, but as stocks became depleted in the Northwest the distant water fleets moved to the South. Evidence exists, and it was presented to the Congress, that Virginia's total landings, and landings per vessel, began to decline immediately after the foreign fishing effort moved into Virginia's off-shore waters. An even more dramatic example is the correlation between the increased catch of river herring by foreign fishing vessels and the decreased catch of that same species within the Chesapeake Bay.

But recognizing the threat presented by such unrestrained and irresponsible fishing was one thing; what to do about it was another! The United States fisherman found himself in a dilemma; he is quite independent and is opposed to governmental regulation; but without governmental help, the foreign fishermen would ruin the stocks upon which the domestic fisherman depends. Faced with the choices of certain

biological depletion and economic destruction or governmental jurisdiction over these stocks, he and the states wisely chose the only hope available, Extended Jurisdiction.

Although there is at present no extended jurisdiction of federal authority, the United States is not without certain vehicles that address the problem of foreign overfishing and conservation. These vehicles take the form of international agreements. Regrettably the success or failure of such agreements is directly proportional to the foreign nation's acceptance and understanding of the scientific data, and the degree of responsibility and willingness of the foreign nation to adhere to the terms of the agreement. Such agreements may be multi-lateral such as the eighteen-nation International Commission for the Northwest Atlantic Fisheries (ICNAF), or as bi-lateral agreements between the United States and one other nation. Several bi-lateral agreements are in existence, the most notable examples being those with the Soviet Union and Poland. My personal experience with ICNAF, and with some of the bi-laterals, is that we have made significant strides in gaining agreement and acceptance of scientific data, but little progress has been made in the field of responsible attitudes. Perhaps this is a kudos to the scientists who say, above all, they are objective. At any rate I am certain that my observation is indeed an indictment of the bureaucrats and political leadership in the fisheries ministries of these foreign nations.

If one finds no federal authority beyond 12 miles, other than that accorded by international agreement, then it comes as no surprise when I say there is no state jurisdiction either. But that is not altogether true. There are certain devices available to states such as landing laws and the limited control a state has over its residents beyond the Territoral Sea. Landing laws are the best present approach. Examples would include prescriptions on allowable sizes, total catch, and seasons. Any truly effective state-oriented scheme almost always involves the necessity for uniform laws or regulations among the several states, and this has been extremely difficult to achieve. The bottom line of any state regulation is that it can deal only with the actions of United States fishermen and cannot hope to approach a solution to the real problem of regulation of foreign fishing effort.

Thus I must conclude that none of the present approaches are capable of solving the problem. Mind you there is no inherent reason why international agreements could not be a solution, but a dramatic change in attitude would be required; and I do not see that as happening--at least I am unwilling to take that chance if there are better approaches available. Clearly the states, singularly or collectively, are unable to present any solution.

Extended Jurisdiction as the solution.

It must seem obvious to all of you by now that Extended Jurisdiction is designed to give us precisely what is missing--a legal regime that will cover most of the stocks important to United States domestic fisheries. I have no intention at this point to discuss the legal, ethical, or moral propriety of unilateral extension versus LOS extension. Indeed, I believe the difference between these two approaches is basically philosophical yet tempered with very real concerns over the most appropriate method and its impact on other United States' policies, and the policies of the other nation's toward the United States. At any rate I'll leave that subject for your noble minds to wrestle with in some of your informal discussions. When you all agree on the solution, I'm sure the Secretary of State would be interested in hearing from you.

Lets first examine unilateral extension and its considerable state involvment. The current bill, if it emerges as I truly believe it will, will establish a unique state/federal partnership. States harbor a considerable amount of data and expertise in fisheries management, not the least of which is in evidence right here at the Virginia Institute of Marine Science. Collectively the states have more expertise than the federal government; and so it is not without reason that the bill will establish several Regional Councils on which state representatives will have voting power. I was informed yesterday that the National Marine Fisheries Service Regional Director may also have a vote in the final version of the bill. While the make-up of these Councils will vary, the Middle Atlantic Regional Council, which will include Virginia, will be composed of nineteen voting members, of whom eighteen will be state representatives and one a federal representative. Management programs developed by majority vote of the Regional Council will be reviewed by the Secretary of Commerce who may exercise a right to veto. But provision is made to override the veto by a two-thirds vote. I'll hazard a guess that any management plan agreed to by less than two-thirds of a Council is a poor plan per se, and might well deserve a veto. At any rate, the key point here is the clear-cut authority given to the states through the Regional Councils to develop fisheries management plans in the newly expanded Contiguous Fisheries Zone.

Management plans having cleared this quasi-legislative route will then be translated into regulations and will run through the normal administrative procedures for federal rule making, and will thus become in effect federal law. Primary enforcement responsibility will fall to the Coast Guard, although there is talk of deputizing state law enforcement officials to assist.

But lets not lose sight of the problem--foreign fishing effort. It is not quite clear to me at this time how Regional Councils will approach this. There is general, but far from unanimous, agreement that the doctrines of "optimum utilization" and "coastal state's preference" will be the controlling doctrines ("state" as used here is synonomous

with nation). The United States would determine the total allowable catch of a species, assign to its domestic fishermen whatever portion of the total allowable catch they can take and use (it might be all), then assign the remainder to foreign users. In any event, whatever doctrine emerges, it is clear to me that it must serve to reduce foreign fishing effort and restore the depleted stocks to, at, or near a maximum sustainable yield level.

Several other key questions arise and serve to obfuscate the states' role in unilateral extension of jurisdiction. I have already mentioned the voting procedure, whereby it would be possible for several states to gang up on one or two states to pass a managment scheme that would regulate a species indigenous primarily to the minority states.

There is also a statement regarding the right of the Secretary of Commerce to prepare federal management plans when the states do not do so on a timely basis. This increasingly familiar caveat in federal law is particularly offensive to me in that for all practical purposes it serves to void any authorities granted to the states. Succinctly it says, "I will allow you to do it, so long as I am in agreement with the way you do it." Perhaps in the subject legislation, we have a better than usual system of checks and balances; and besides, my experience with fisheries management personnel in other states and at the federal level has been most cordial and most agreeable.

Embodied in the language is a strong hint that the Councils, or the federal government through its pre-emption provisions, will be able to regulate fisheries within the Territorial Sea, an area heretofore considered soley the state's domain. A state's interior waters, such as the Chesapeake Bay, will not be pre-empted so I am told. Whether this federal pre-emption in territorial waters is new via this bill, or has always been in existence, might be answered in a present case before the United States Supreme Court, styled James E. Douglas, Jr., Commissioner v. Seacoast Products, Inc. et al. You might wish to follow the Court's ruling should the case be accepted.

Another problem to be faced is how to handle the interim between the effective date of extended jurisdiction and the promulgation of management regulations for a given species or stock. Clearly no one expects the Councils to perform instantaneous management of all species. Already some thoughts are in progress to have ICNAF address this problem.

But what if the second alternative of international agreement via the Conference on Law of the Sea should become a reality? I am of the opinion that such a happening will change little, if any, of what I have previously discussed. First, the unilateral extension bills provide that it shall be the law until the United States ratifies any Law of the Sea Treaty that deals with extended fisheries management.

In modern day parlace, the law will self-destruct in favor of an LOS agreement. Secondly, and here I am subject to correction by counsel, I am of the opinion that the effect of an LOS treaty will be agreement by the nations that each coastal nation has a 200-mile zone for fisheries management and the right to regulate within that zone. It seems a simple parliamentary matter to transfer the same institutional arrangements from domestic regulation gained through unilateral extension to domestic regulation gained through LOS. But, this problem may be academic, for the President has indicated he wishes to delay the effective date of unilateral extension until after the present session of the LOS conference just begun this week. Thus an LOS solution might pre-empt any unilateral action.

Conclusions

Most domestic fishermen want unilateral extension. Most states have supported unilateral extension. I believe the reasons for this position are many-fold; but primary are 1) we understand domestic law better than international law, 2) we trust domestic law more than international agreements, 3) we feel domestic law is more adaptable and more quickly adjusted than international law or international agreements, and 4) domestic law is more likely in fact to occur than is a LOS treaty.

Under present unilateral extension bills, states will have the primary role in developing fisheries management plans; however there are prescribed checks and balances against both the states and the federal establishment.

Finally, and foremost, a legal regime will exist that will afford an opportunity to manage and conserve fish stocks adjacent to our nation's shores.

With so much of the world being dependent upon the oceans and seas as a source for much needed protein, it is an opportunity that we must not fail to grasp, and it is a situation for which we must not fail to find a solution.

INTERNATIONAL IMPLICATIONS OF EXTENDED JURISDICTION

by
Dr. Daniel Lecuona
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One addition I would make to Professor Theberge's words of introduction is that I am currently serving in the World Bank, an international institution which is probably best characterized as a financial arm of the United Nations system. This institution represents 130 nations, and its staff is made up of people from 80 different countries. So, in confronting the problem of freedom of speech, we arrived at a compromise: Whenever we speak, we have to alert you that we speak neither for 80 countries nor for 130 nations. In fact, I speak for nobody except for myself. As a result of which you may wonder what I am doing here I will try to provide some reasons for that. Having been preceded by three very scholarly discussions from distinguished Americans, I might discuss concepts that sound somewhat shocking or heretical. Perhaps the purpose of my presence here is to present the international aspects of today's topic from the perspective of an outsider who has seen many issues debated and defended from more than one side and who as an international civil servant, thinks it is his duty to try to reconcile those many sides into some common understanding.

Now I myself happen to be a lawyer who no longer practices law. Not that I had any problems with the bar; I'm just having more fun doing something else. As a former law student, it comes to my mind that some of you here may never hear about fisheries again and it is just as well; but others who will, whether as lawyers, or as officials of government agencies, or as representatives of fishing interests, will have to take sides and will have to make choices. In that process, any dedicated individual tends to identify with his own side much to the detriment of his perception of what is on the other side. Having served now for a number of years in an international institution has exposed me to that kind of situation and has given me the privileged opportunity to look at both sides all the time.

Any attempt at reconciling conflicting views has to begin with a realistic appreciation of the differences between the parties. In the matter at hand today, one of the greatest problems is that of reconciling what I would call almost isolated legal systems. The United States operates on what is known basically as the common law system which, though it may surprise you, puts your country in the minority of the world.

Most other nations, including the Soviet Union, operate under what is known as the civil law or Roman law system. That immediately produces a typical instance of the cultural gap in international law.

In the same fashion, one would have to take stock of factors that shape the law rather than being shaped by it. Fishing, though undertaken to produce food, is in its first stages a business activity, which means money to many people in different ways. The question of extended jurisdiction has a lot to do with war, which is a very primitive way of doing business. I am referring to an activity known in the late Middle Ages as privateering which was partially condoned by international law, provided it was done beyond three miles off the coast. One of the suspected origins of the three-mile rule is that as long as coastal defenses could reach a ship within three miles, all nasty business better be done beyond three miles. Such was business in those days. Naturally each country always looks first upon its own interest, and it might as well do so. Of course, the relative weight and might of each country adds a special significance to that attitude. Therefore, the conflict was not confined to the academic context in which we can discuss it today, but it took much more complicated forms. These factors have influenced international law from its very origins and cannot be ignored.

My co-panelists were generally happy that the United States is considering expanding its fisheries jurisdiction. You might be surprised to hear that, though speaking from an international viewpoint, I am also very happy. Most other internationalists will probably wail about the United States finally giving up hopes of developing international law on this matter and joining the club of "sea grabbers". I am happy for an entirely different reason. About eight years ago I was involved with the 200-mile claim of a small nation known as Ecuador, which was in the habit of seizing California tuna boats every January. The prevailing view in the United States at the time was entirely different from everything you have heard here today. Unilateral claims were naughty. The international law was a three-mile territorial sea and anyone making claims beyond three miles was violating international law. If one could not have uniform laws, the only way to solve the problem was through treaties. At that time, I wrote an article entitled "The Ecuador Fisheries Dispute" in which, much to the annoyance of some international scholars, I said that "in protecting their own interests, the larger maritime states would find it convenient to recognize the similar interests of smaller nations and from a practical viewpoint this may well be a possible avenue to mutual understanding". I am happy to see that some of the things which I predicted then are turning out to be true. Now, eight years later, we find the United States making an almost 180-degree turn on this matter. I do not think the United States has betrayed its own ideals, but rather that the circumstances intervening in those eight years have made the United States aware of certain things of which other countries, like Ecuador, had become aware twenty-four years earlier. The seething dispute of a few years ago may disappear now that both countries are claiming the same number of miles.

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Lecouna, The Ecuador Fisheries Dispute (A New Approach to an Old Problem) 2 JMLC 91 (1970).

Because of the cultural gap I cited before, I think the first order of business should be to ensure that the terms which we use every day are effective tools for thinking in common rather than the source of further misunderstanding. The terms are deceptively uniform; they can be translated from English into any other language and yet will not have the same meaning. If I am going to make a contribution to bridging that gap, I think it is only appropriate that I try to make you, my American hosts, aware of the inherent dangers of certain words.

Let me start with the term "sovereignty." If a country makes an exclusive claim to fisheries within a part of the high seas, is that claim tantamount to sovereignty or is it not? The Anglo-Saxon position adopted not only by the United States, but also by the U.K., Canada, Australia, and India, has been that this is not sovereignty. The U.S. has always referred to a "contiguous fisheries zone", first established in 1964, with a breadth of nine miles added to the three-mile territorial sea. Now the zone would be 197 miles wide, which is just the difference between 200 miles and the three miles of territorial sea. However, the International Court of Justice, in settling the Anglo-Norwegian fisheries case in 1951, said that any claim of jurisdiction over a certain area of the sea, of whatever extent or type, or any attempt to exercise that jurisdiction is an exercise of sovereignty. Therefore, whether it is an unqualified, generalized claim of sovereignty, or whether jurisdiction is asserted just to regulate fishing, pollution, or any other activity, sovereignty is being exercised. This is how most of the rest of the world envisages these claims and that is why sometimes other countries say they claim sovereignty over 200 miles. The American legal mind reacts with shock, arguing that sovereignty applies only to the three miles; over the remaining 197 miles it is just a fishing rights claim.

Another instance of certain words being fraught with inherent danger is found in the theory of natural resources conservation. As Mr. Brewer pointed out earlier, this theory started to become embedded in the body of the law with President Truman's conservation proclamation in 1945. It is amazing how topical his own words are today. It is worth remarking that in 1945 the United States claimed the right to establish conservation measures applicable to areas of the high seas well beyond its three-mile territorial sea. At best, if there were legitimate interests of other foreign fishermen, the United States would take them into account. Not surprisingly, this proclamation is one of the factors that led a number of other countries to start pushing their claims farther out. If the U.S. was doing it, why should not the others do likewise? Shortly thereafter, in 1949, the Northwest Atlantic Fisheries Convention was signed. Quite logically perhaps, the three Latin American countries with the largest fisheries resources followed suit with the 1952 conference in Santiago de Chile, attended by Chile, Peru, and Ecuador, where they established a common conservation zone, which was as long as their combined littoral and 200 miles wide. That is how the 200 miles became one of the new concepts of the dispute. I will return to the 200 miles figure later on.

There is also the question of the physical amount of space being claimed. Again the Anglo-Saxon system draws a distinction between the seabed and the water above it. Traditionally, it has been the United States' position that President Truman's 1945 proclamation over the continental shelf was not tantamount to a claim on the water above the shelf. And again that distinction was quite unintelligible and illogical to many countries in the rest of the world. Based on the Roman principles of property law, they accept the rather simplistic but very practical notion that property rights do not affect just a flat piece of the crust of the earth, but they go all the way below and all the way above that piece of land, creating a sort of imaginary cone from the outer reaches of the space to the center of the earth. How then could the United States claim that it owned the seabed and at the same time argue that it was not making any claim on the water above the seabed? There again develops a controversy where some people will say the United States is not sincere, is devious, or is trying to draw Byzantine distinctions for its own interest. In fact, the root of the dilemma lies with England's straying away from Roman Law in the Middle Ages.

Some funny things happen to the fish as well. With such distinguished company in this panel, I hope that if I incur some scientific error, I may be excused on account of being a lawyer. Scientists classify fish in two very large categories called necton and benthos; necton being those which float between the surface and the bottom, and the benthos those which normally rest on the bottom. For instance, the tuna fish swims and so it is necton, while the lobster and crab crawls and sits on the bottom. Therefore, he who claims rights on the continental shelf would have jurisdiction over the lobster and crab but not the tuna. Well, in the article I wrote, I cited two international agreements where lobster and crab are treated differently. There has been an agreement between the U.S. and Japan over Alaskan crab which were said to be benthos, and they were ruled by the law of the seabed. And there has been an agreement between France and Brazil where it was recognized that every now and then lobster took short leaps and since they are not in contact with the bottom they must swim and go by the law of the water above them. Obviously, all this gets very confusing for people from different backgrounds.

You may have read lately of another development; so-called "nodules" have been found on the seabed. These nodules are small accumulations of manganese which contain other minerals as well. Now, the technology has been found to scoop them up and exploit them commercially. If these nodules do not jump, do not swim, but sit on, rather than under, the surface of the seabed, then this should make you wonder what legal regime should apply? As I understand it, these minerals have been washed through the siltation process by river waters out of the mineral deposits in the continent. Some countries take the view that if manganese is leaking from their own mountains, it must be theirs, no matter how far in the sea it may be.

Now I would like to tackle another one of the great bones of contention; namely, what should be the breadth of the territorial sea? I have made some cynical remarks about the origins of the three-mile rule but somehow this rule was variously accepted as long as it could be enforced. The history of Northern Europe is full of incidents between Denmark and Russia and between Holland and Norway and between England and everybody else. Granted, some of these countries were so close to each other that there was not room for much more than three miles anyway. However, the consensus starts breaking down by the time of World War I. I will have to skip a number of specific cases, but when the first Geneva Convention on the Law of the Sea was convened in 1930, the reporter of the conference proceedings stated that it was obvious that there was no longer a consensus on what the breadth of the territorial sea should be under international law. As you see, the argument did not start yesterday, and it has been rather topical for the last 46 years. Beside President Truman's twin Proclamations of 1945, there is another precedent for the 200-miles concept. During World War II, the United States convinced the other countries of the Western Hemisphere to create a so-called "neutrality zone" which was a modern-day version of the Monroe Doctrine to keep the German U-boats out of continental waters. At that time, the zone's limit was established 300 miles away from the coast. This is how American nations started getting the notion that the three miles did not make sense anymore for one reason or another.

In 1958, another Geneva Conference managed to go as far as recognizing as a principle the right of the coastal state to protect its natural resources. However, when the Conference attempted to define how far that right should extend, it failed and there was no possible way of mending that. I have had the honor of working at one time for a distinguished American, Mr. Arthur Dean, who at that time served as the U.S. representative at the Geneva Conference. He summed up the American position very candidly when he said: "The American position consists in keeping the territorial seas as narrow as possible, and the high seas as broad as possible." From the viewpoint of a large maritime power like the United States, it could not make better sense. Of course, that conflicted with everybody else's view. Of late, and this has become evident in the third Conference on the Law of the Sea that started in Caracas in 1974, a new trend has developed: if we cannot agree among ourselves on the breadth of our national claims, instead of trying to work things outward from the shoreline, why not define a core of international waters to be internationally managed as the common heritage of mankind? To many people, this resembles one of those family reunions with the lawyer, after Papa passed away, where all the heirs are sitting and talking about how to divide up the estate. As in those reunions, it is the poor members of the family who say "Nothing of the sort. Because we know who is going to get the largest share." In my view, this is why the Caracas Conference could not reach agreement, why agreement was not reached in 1975, and why some people are making gloomy predictions about the new effort that started about a week ago in New York. I am still very optimistic however, because once people start perceiving things through a common lens, they will find new ways to agree. It is, however,

not until they sit next to each other and look through that same lens that they will start having a relatively common perception which will permit them to work towards something mutually acceptable.

Some people have been willing, in principle, to accept the notion of an economic zone extending many miles from the coast but have argued that 200 miles is exaggerated. Without trying to exhaust the subject, I would like to draw your attention to two facts. If people could agree to three miles, or even 12 miles, in the North Sea or in the Baltic Sea, it is because they have to coexist in a rather narrow maritime space. You could not possibly think of Denmark claiming 200 miles off its shores and jumping over Sweden. However, if you would look at the map and measure a claim of 200 miles off the west coast of South America, it is proportionately smaller than 12 miles around the coast of England. Therefore, the "sea grabbing" argument has very little base. The second fact is a modern development and that is the modern fishing fleet. This is a huge organization based on extremely advanced technology that can move and operate away from its home port for several months. I am not just talking about the traditional fishermen's journey like you read in the Bible. These fleets can stay at sea longer than a U-boat could in the Second World War. In the presence of that type of operation, 200 miles is nothing. Again, the 200 miles have to be looked at in relation to what modern technology permits today.

The nagging question remains, why 200 miles? What is so magic about 200 miles? Well, there is nothing magic about 200 miles. In the western coast of South America there happens to be a cold water stream called the Humboldt Current that runs northbound from the Antarctic. At about the latitude of Ecuador, there is a warm water current called the "Corriente del Nino" or the "Child's Stream". When the two streams come together and blend, there is a chemo-physical reaction which makes the Humboldt Current move towards the coast or away from the coast at different times during the year. Now, the maximum distance the Humboldt Current was found to move away from the coast was 200 miles. And it so happens that the tuna always swim into the Humboldt Current. So if a country were worrying about the tuna, it has to claim as far as the tuna or the Current would go. Hence the origin of the 200 miles claim. There is no reason why the rest of the world has now to claim 200, 188, 533 or any other number of miles. It has to be recognized that the 200-miles claim stem from the peculiar circumstances of three particular countries--Chile, Peru and Ecuador--which were concerned with a problem of their own. And this is why they always claimed they were doing nothing more than what the International Court of Justice said each country has the right to do; to fix its own zone based on the scientific and ecological realities of its own environment. If any of you have any doubts about the importance of the 200-mile zone for those three South American countries, let me add a bit of information. In 1968 the British weekly The Economist was discussing, as it periodically does, England's little war with Iceland over cod. And, although some statistics cited earlier today may contradict me, The Economist remarked then that the total catch on both the Atlantic and Pacific coasts of the United States was only 4% of the total world catch; whereas fishing off the coast of Peru, on the Pacific Ocean only and with a much shorter

shoreline accounted for 15% of the world catch. Little wonder then that fishermen and governments got so overheated about the 200-mile claims off the Peruvian, Chilean, and Ecuadorian coasts. I do not have to get into a big argument to demonstrate that people are getting hungrier by the day all over the world. Even in this privileged nation food is at a premium. As in many other instances in the history of mankind, there will be disputes. Lawyers will be called upon to sustain or to make a case for their countries and in this process they will be asked to justify 200, 300 or whatever number of miles is needed to preserve the catch for their own nations.

I have said before that I consider some current events felicitous. And I would like to repeat this assessment in the face of some pious wailing over the alleged collapse of the international law of the sea. Presumably, this "collapse" occurs because each country is now acting unilaterally instead of relying on treaties. I have always questioned whether, in fact, international law was truly reflected by treaties, or whether they are merely the only tangible evidence of international law. I am using the word "law" in its highest and most commendable sense; law as the embodiment of certain principles of justice, law as a set of rules by which all of us would like to be governed, not just statutes, or mere positive law. If any such law can be established internationally, are the treaties the best vehicle? Let me just point a few counter arguments to that. In the first place, since the Middle Ages there have been all sorts of treaties recognizing fishing rights over more than three miles, even though most nations were claiming three miles for sovereign purposes. The treaty is primarily an ad hoc arrangement to be used for the purpose of settling a specific problem at hand which concerns two or more parties involved in the treaty. Consequently, it has become a rather frequent practice to include in the treaties a disclaimer clause to the effect that regardless of the treaty's provisions they are without prejudice to the sovereign claims of the parties on the sea waters. Many times after I have finished reading one of those treaties, I draw the rather cynical conclusion that it settled nothing except the particular problem of the day. Of course, this is not really the embodiment of international law as so loftily defined earlier.

Another frequent source of treaties has been the well-known fact that people run out of ammunition or simply get bored with shooting at each other. Those treaties are no more than the legal consecration on a document of what the peculiar state of the war was when the beligerants held their fire. I hope we can all agree that is not a good method of making law. Otherwise, international law would merely depend on how much I can clobber you before we sit down and sign a treaty. However, I can cite a number of treaties that are held to represent the international law of the sea simply because they contain maritime clauses, even if these clauses were signed at gun point. Now, as everyone knows, that is not valid law in the U.S. or anywhere else. Whether agreement is reached with a knife at your throat or with a bomb on your capital city is only a difference of scale. Basically I would not consider such a treaty a good source of international law. On the other hand, there are a number of other treaties that are good sources of international law, and

I think there are a number of dedicated lawyers, scholars, and government officials throughout the world who deserve praise for having written or having strived to write good treaties, which are reflections of accommodating and approximating positions from which good law will emerge. What I would simply propose that everybody keep in mind is whether all treaties make good law, or whether this proposition is something to be taken with a grain of salt. I think this has a bearing on why countries like Ecuador and other small nations have a general attitude of mistrust towards treaties. Let me just give you two examples. In the North West Atlantic Fisheries Convention several large fishing powers sat together and, as early as 1949, agreed on conservation measures, fishing stock management, etcetera. The same year, the United States signed shrimp conventions with Mexico and Costa Rica which went no further than stating that there was much to be studied before agreeing on any conservation measures. It seems logical that some small countries developed the notion that unless they had a fishing fleet as powerful and as active as their counterpart, they really did not stand to gain much out of a treaty but rather the contrary.

This attitude deserves a little bit more attention and perhaps a broader scope of analysis. For instance, what is the attitude with which people approach these problems? Mr. Douglas has dwelt on this point and I would like to add a couple of thoughts to his. We have the coastal fishermen, typically the New England fishermen and the Ecuadorian fishermen; but there are also the international fishermen, i.e., the Russian fishermen as seen by the New Englanders or, from the viewpoint of the Ecuadorians, the California fishermen. As you can see, within the United States, your own compatriots will have two approaches depending on what kind of trade they are in. Now imagine when that is multiplied on an international scale. I referred earlier to the question of the means at one's disposal, the research that goes into developing a fishery, the technology that goes into exploiting it profitably, and the capital required to do it. Again, there is often a dismal disparity between countries which has nothing to do with their geographical location next to a valuable fishery. From this viewpoint, the "sea grabbing" approach has been a peacetime reflection of the same attitude one takes during war: let's grab as much as possible so that by the time we sit down to negotiate we will bargain from a position of strength. Of course, this depends very much on the means at one's disposal to enforce one's claims and this has been demonstrated throughout history. When Iceland started claiming 12 miles, she got into trouble with England who sent warships to waters Iceland claimed were hers. Iceland sent patrol boats, cut British nets and Britons and Icelanders shot at each other. That was until 1964, when England extended jurisdiction, excuse me, the "contiguous zone" to 12 miles and British complaints against Iceland stopped. Pretty soon though Iceland, again worried about overfishing, pushed the limit to 50 miles and the whole affair was reenacted.

In the case of Ecuador and the United States, the dispute took a completely different tack. Although there was a great disparity in naval power, the United States was not in the mood to send a naval squadron all the way to Ecuador to escort the San Diego tuna fleet. On the other hand, Ecuador did not have enough boats to patrol their 200-mile zone. This led, instead, to some funny stories. Let me just briefly refer to one where a fishing captain was seized and taken to court where he said: "Your Honor, I was exercising my right of innocent passage in the high seas and I cannot see the reason why I am detained." When it was the State's turn, the prosecutor called the captain of the patrol boat as a witness and he said: "Well, Sir, what happens is that the Ecuadorian Navy has such slow boats and poor training that it cannot check each trawler properly; instead, we have developed a number of assumptions in order to determine whether somebody is passing innocently or whether he is fishing. If we see a boat that looks like a trawler and it has net and other fishing gear out on the deck and a lot of birds flying behind, we assume the boat is fishing and we seize it. We do not have much time for inquiries." So much for innocent passage. You may by now have developed a feeling that a good deal of what I am saying is sprinkled with the usual Latin flair for the colorful and the picaresque. So, I would like to quote an Australian, Dr. R. D. Lumb, who should not be suspected of the same penchant for the colorful. He said: "There are a multitude of conflicting interests involved between developed and developing nations, between deep-sea fishing nations and those who rely on coastal fisheries, between strategically advanced nations and those with only a primitive form of naval capacity. The attainment of international solutions is dependent on finding areas of agreement even at the stage of organizing an agenda for a fishery or ocean bed conference." One wonders if he did not have a crystal ball when he wrote in 1969: "If the problems become really pressing, State inertia might be overcome and action may be speeded up to resolve the questions by resorting to international dialogue and, ultimately, reaching treaty commitments."

I would like to add something else. But, before I get into that I would like to apologize if what I say seems to have a certain offending ring. Because I feel a certain debt to the United States, I think it is only fair that you now be warned of certain problems into which you may run when this country extends jurisdiction to 200 miles. This is what I call fishing with a calculated risk. In 1954, Ecuador, Chile and Peru agreed on enforcement machinery and cooperation to implement their 1952 claim over the 200-mile zone. In 1968, the Merchant Marine and Fisheries Committee of the U.S. House of Representatives wrote a report on what had happened over those 14 years of conflict with those three nations. According to that Congressional report, it appears that in 14 years only 75 U.S. vessels were seized. The total fines imposed during that period by Columbia, Ecuador, Honduras, Mexico, Panama, and Peru amounted to less than $500,000. In addition, the apparent policy of the American Tunaboat Association based in California was to pay the registration and license fees only when it was necessary to secure the release of the seized boat. Again on the basis of that report, in the 1961-1967 period, the average

license fees paid every year amounted to $10,000 and these costs were reimbursed to the fishing industry by the U.S. Government under the 1954 Fishermen Protective Act. Now, compare these costs of trespassing with the return. According to the same report, the potential income of a tuna vessel ranges between $1,500 to $2,700 per day, so the median average income of a tuna vessel would have been about $2,100 per day. The 75 vessels which were seized over 14 years would have made, as a whole, $160,000 per day. The seized vessels were detained on average, for four to five days. As a result, the amount of fines paid over those 14 years represents the equivalent of about three days' income and the license fees paid per year would represent the equivalent of about .06 days' income of those 75 boats. That is what I call the theory of the calculated risk: even if you get caught, it may still pay off. I think that the United States may now be confronted with the same attitude by those fishing within the 200-mile American zone.

One additional reason to feel optimistic about international agreement is the remarkable closeness of the Ecuadorian arguments to those being invoked here today. First of all, there is almost no continental shelf on the Pacific Coast of South America, so Ecuador cannot rely on the shelf claims to protect its fisheries. Secondly, the interactions between oceanic streams which I have mentioned before produce this belt of 200 miles where nutrient substances are carried towards the surface of the sea because of the different temperatures in the water. The Ecuadorians say that the Humboldt Current creates an ecosystem in the adjacent sea while, at the same time, it creates very adverse geographical conditions in the coasts of northern Chile, Peru, and part of Ecuador, which are notably barren and deserted. Those who have been there compare them to a lunar landscape. The Ecuadorians also argue that one reason there are so many nutrients in the Humboldt Current is that the rivers coming down the steep slopes of the Andes are washing those nutrients into the Pacific Ocean because current climate conditions do not permit the land to retain them. In effect, they say, out of our mountains comes the food that feeds the fish that somebody else is catching from our waters. So, if we actually feed those fish, they are legitimately ours. Sounds similar to the theory of the salmon spawning grounds, does it not? At the same time, Ecuador claims it is relying on Mr. Truman's doctrines; and if he said it was all right to do it, then we are just doing the same. But, they are prompt to add, the Ecuadorian claims do not in any way prevent the exercise of rights granted to other nations under international law, inasmuch as such claims allow navigation and flight over the ocean, submarine exploration, scientific investigation and fishing operations subject naturally to corresponding regulations. In other words, since 1952 Ecuador has been repeating that claiming 200 miles for exclusive fishing rights is not a violation of international law.

In the end, you may wonder if my whole purpose in speaking was merely to demolish laboriously arrived at concepts. Was I simply trying to be facetious, to be funny, or to make fun of what other people regard seriously? Well, I have heard too much heated argument; I have seen too many countries retaliating against each other where it hurts the most, even in areas totally unrelated to fisheries. I have seen much tension and much harm done, all under a self-righteous banner of patriotism on the part of whoever is doing whatever he is doing to whomever he is doing it. I decided eight years ago, and still hold that view, to adopt a rather light and optimistic attitude, since no one is absolutely wrong. In the words of one of my country's poets: "I've never seen a farmer putting grain outside his bag." Everybody has to work for his country and that is his duty as a government official, as a diplomat, and as a law-abiding citizen. If everybody starts with the notion that everyone else around a negotiating table is doing his own duty as best he can, I think the tone of the debate will be calmer. Trading accusations and blaming each other for all sorts of naughty things will not take us anywhere. More than conflict, what faces us is a great deal of misunderstanding. After reflecting for some time, I have arrived at a few conclusions which I would like to share with you. Number one, international law as it concerns territorial waters and fisheries in particular has not evolved from rules of reason or from legal principles as much as it has from a struggle between national interests where big and small nations alike pursue similar goals with the different means at their disposal. In the second place, the positions adopted by several nations vary according to strategic and economic considerations and their relative maritime and naval power. Thirdly, the width of the territorial sea, fishing zone or whatever other name you give to it, is unquestionably an unsettled matter in international law. No legitimate claim can be made that international law prescribes any number of miles. Fourth, everybody has come to recognize that the coastal states have undisputed rights over the fisheries in the adjacent sea; but whether there is an international consensus as to the breadth of the area subject to such rights is still an open question.

I would invite all of us to look at the historic record of past disputes and I submit that such a record offers a reasonable prospect of future accommodation between the parties once the large and the small countries begin to recognize the legitimate interests of the other. As far as we in this room are concerned, we will undoubtedly be called upon to advocate the righteousness of our own country's cause, either as lawyers, government officials or scientists. In the absence of a higher international institution, widely accepted to adjudicate the issues, we ought not to forget that every one of those issues will always have more than one side to be looked at. I trust I am justified in concluding with an optimistic and hopeful note. Thank you very much.

AN ECONOMIC EVALUATION OF THE PROPOSED EXTENDED JURISDICTION LEGISLATION[1]

by
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The international acceptance of exclusive zone management, as expressed in the proposed extension of the U.S. fisheries zone, will inevitably create economic impacts throughout the fishing industry, the nation, and the world. This institutional change will fundamentally alter the customs of seafood production and result in new economic patterns, Incentives to produce, market channels and the composition of production are among the elements which will shift in response to extended jurisdiction. Although the changes will first appear only in the seafood industry, other industries will feel secondary impacts as they compete with fisheries products, provide capital to fishing firms or interact in a variety of ways. The entire international product flow will vary in the long run, and countries with small exclusive zones and substantial distant water fleets, such as Japan, will rely increasingly on other methods to provide their protein requirements.

The purpose of this paper is to investigate possible economic outcomes of the proposed extended jurisdiction (EJ) legislation and evaluate its economic merits. Two basic concepts, efficiency and income distribution, are employed as criteria to judge the merits of the legislation. Using the efficiency criterion, the first section contains a comparison of the exclusive zone approach (inherent in extended jurisdiction) with the current situation and management by a species approach (international agreements on individual species). These three alternatives are then examined in the second section with regard to their effects on the national and international distribution of income. In the concluding section, the author ventures the argument that adoption of the exclusive zone is a rational economic choice for the United States.

Before proceeding to the discussion, efficiency and distribution must be clearly defined. Distribution simply describes who receives income generated by production. An analysis of institutional change will generally suggest groups that are likely to benefit or suffer as a result of the change. Efficiency analysis asks whether production and distribution can be changed so as to monetarily benefit someone without monetarily injuring any other individual. An institutional arrangement is judged

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efficient if it generates production and distribution which cannot be reorganized to aid someone without injuring anyone else. The practical criteria employed for efficiency is whether consumers value the last unit produced as much as the last unit costs to produce. For the fishery, the question is whether consumers value the last ton of fish caught as much as it costs to catch, in terms of actual production costs and, most importantly, the effect on future stocks.

EFFICIENCY

Current Situation

Domestic fish stocks beyond the 12-mile contiguous zone can be classified as unmanaged or open-access resources. These coastal resources are the property of no one and management becomes at most a volunteer effort. During some portion of their life cycle, the majority of fish inhabit areas where vessels can operate free of regulation.

Within this economic climate, fishermen perceive their costs only in terms of operating expenses, disregarding the future costs that current landings imply. This is completely rational, for if one fisherman considers future effects there is no guarantee that other fishermen will do likewise. Even in the unlikely event that fishermen could reach consensus to decrease current landings, there are still enforcement problems and lack of legal barriers to prevent new entrants. Excess capacity, depleted fish stocks, and inefficient production are evident in the current situation.

The numerous cases of depleted fish stocks (National Marine Fisheries Service 1975:76) are examples of current inefficiencies and overcapitalization. It has also been estimated that Pacific salmon landings could be achieved with $50 million less effort (Crutchfield and Pontecorvo 1969:174) and North Atlantic cod with $50 to $100 million less effort (Christy 1973:17). There are few, if any, highly priced species that are not overexploited.

As an aside, it is noted that other serious institutional barriers exist which preclude efficient domestic seafood production. The U.S. Code (Title 46 §251 (a)), presumably in an attempt to preserve national shipbuilding capabilities, states that "no foreign-flag vessel shall,..., land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish processed therefrom..." As a result, domestic fishermen must buy U.S. built vessels and pay approximately 30% more, competing at a significant disadvantage. This law also effectively prohibits the growth of domestic processing and distribution facilities. Foreign vessels out-compete domestic vessels and land much of our coastal production (e.g. 88% of East Coast haddock). This raw product cannot be landed until routed through a foreign port, unnecessarily raising the price of domestic raw product and limiting the growth of domestic processing facilities. One must question whether the shipbuilding industry is aided (there are fewer U.S. vessels given the competitive disadvantage) and, more importantly, whether the benefits of the law outweigh its costs. There are also similar inefficiencies in the tariff structure which must eventually be addressed.

Species Approach

International dispute settlement is the primary obstacle to efficient production under a species approach. Although the responsibility for fishery management decisions rests with the coastal state, appeals on the decisions are referred to the World Court. Costly negotiations, determination of allocations, and continuing administration of appeals are a burdensome expense.

Secondly, the World Court recognizes the full utilization concept as an accepted practice using the species approach and could force U.S. into use of maximum sustainable yield (MSY) of a single species as its sole objective. For any species that is not harvested at MSY, the custom is for coastal states to avail the difference between MSY and the harvest to non-coastal states. This could force the U.S. into a single management objective, maximum sustainable yield, at a sacrifice of economic returns. A study of the New England yellow-tail flounder industry (Gates and Norton 1974:13) demonstrated that an additonal $5 millon in national income could be generated by regulating to achieve economic efficiency instead of MSY. That is, some of the capital and manpower that would be needed to catch MSY could be redirected into other activities that returned a higher dollar value ($5 millon in the yellow-tail case) to the nation.

Other costly inefficiencies arise from decisions based solely on full utilization of each species rather than a multi-species approach. Two examples, George's Bank haddock and California anchovy, illustrate this point. Despite the depleted status of George's Bank haddock stocks, a decision to fully utilize cod on George's Bank would imply that haddock stocks would never be restored. Incidental catch of haddock by vessels seeking cod prohibit sufficient restraint on the haddock stocks. The economically efficient solution might be to restore haddock stocks at the expense of current cod landings. Similarly, decisions based on full utilization of California anchovy would mean significant decreases in sport fish which forage on anchovy. Under the present concept of species management, there is no consideration of multi-species problems.

Exclusive Zone Approach

Sole ownership (Scott 1955) is the most commendable aspect of exclusive zone management from an efficiency standard. Responsibility for the determination and allocation of allowable effort, enforcement of rules and the appellate procedures rests entirely with the coastal state. Although it is possible to abuse this authority, an efficient use of the resources in the exclusive zone is also a possibility.

Coastal states cannot ignore the future costs created by current uses of fish stocks because these costs will be borne by them. The costs of depleted stocks are internal to the coastal state and prudent decision making will consider them.

Further, except for Constitutional considerations, there are no customs inherent in exclusive zone management that could restrict goals to narrowly defined objectives like MSY. Problems of multi-species management could conceivably be addressed by the coastal state.

Administration and enforcement costs should also be minimized by adoption of the exclusive zone approach. The costly administration of dispute settlement should be significantly reduced because decisions need not be reviewed in an international forum. Enforcement costs, especially those incurred when allocations are exceeded, may fall substantially. Furthermore, there is nothing to preclude consideration of enforcement cost in the determination of methods and goals of management.

An outstanding example of this form of management is the International Fur Seal Convention of 1911. Except for the poor publicity regarding the method of capture, the treaty has been judged to be very successful (Christy and Scott 1969) and even Wesley Marx in The Frail Sea stated "No other marine creature has been placed under such rewarding management." The U.S. and the Soviets simply share the exclusive zone and proceeds from the catch.

To an economist concerned about efficient use of marine resources, there is optimism about the exclusive zone concept--at least there is a possibility for rationality to prevail.

DISTRIBUTION

National Considerations

The enactment of exclusive zone management will provide windfalls to some individuals and may cause hardships to others. This section presents an analysis of those changes with emphasis on overall national gains and the regional aspects of the gains. To examine these issues, reference to a document prepared by the National Marine Fisheries Service from eight studies conducted for the federal government is frequently drawn. Due to the great uncertainties underlying the entire analysis, I would be remiss if I did not state that the values shown have wide variance.

To examine overall gains, it is useful to classify domestic landings according to species habitat: Coastal Domestic, Anadromous, Oceanic Distant Water and Coastal Distant Water. Coastal domestic species inhabit the region within 200 miles of U.S. coast (cod), anadromous species are spawned in domestic waters and outside 200 miles off the U.S. coast (salmon), oceanic distant water species migrate outside 200-mile zones (tuna), and coastal distant water species inhabit areas within 200 miles of other countries (shrimp). Within these classifications it is possible to see how the three institutions (Open Access, Species Approach, Exclusive Zone) might affect our annual national income (Table 1) by the year 1982.

TABLE 1

POTENTIAL NATIONAL GAINS OR LOSSES[1/]
(MILLIONS OF DOLLARS)

	Current Situation	Species Approach	Exclusive Zone
Coastal	0	52.5	890.5
Anadromous	-(35 to 50)	-(35 to 50)	-(35 to 50)
Oceanic Distant (Tuna)	-37.5	-37.5	-37.5
Coastal Distant (Shrimp/Lobster	-22.2	-14.8	-22.2

1/ Taken from Summary of The Impact of The Species Approach and Exclusive Zone Upon Major U.S. Fisheries. Pg. 5.

TABLE 2

POTENTIAL VALUE OF COASTAL RESOURCES
UNDER DIFFERENT REGIMES 1/, 2/

REGION	1972	Species Approach	Exclusive Zone	Surplus
North East & Middle Atlantic	116	141.0	285	169
South Atlantic & Gulf	230	253	445	215
Pacific Coast	47	52	513	466
Total	393	445	1,243	840

1/ Excludes menhaden, oysters, clams, and some crabs.

2/ Excerpts from Summary of The Impact of The Species Approach and Exclusive Zone Upon Major U. S. Fisheries. Pg. 11.

First, consider landings classified as coming from domestic coastal species. Here, value of landings are estimated to remain stable under the current regime; reductions in landings from overfishing are offset by discovery of new resources. My personal feeling is that this is an optimistic estimate. With the species approach, there is reason to believe that management will improve landings so that value of landings will rise by $52.2 million per year by 1982. However, the exclusive zone management through phase-out of foreign fleets will gain an additional $890.5 million annually. It is clear that national gains from coastal species are greatest under exclusive zone management.

The surprising fact is that the gains from exclusive zone management are equally distributed regionally (Table 2). Northeast and Middle Atlantic fishermen, the most pro-EJ group, may increase their landings under EJ by about $150 million. However, the South Atlantic Gulf region can gain in the order of $200 million and the Pacific coast about $450 million. The gains in the Northeast would come from hake, cod, flounder, mackerel, herring, and squid, in the South Atlantic from coastal pelagics, croaker, and spot, and on the Pacific coast from pollock, hake, anchovy, and ocean perch.

The anadromous stocks are likely to suffer substantial losses within any of these institutional arrangements (Table 1). The most important anadromous stocks are the Pacific coast salmon, which migrate far outside the 200-mile zone. Japanese or Soviet fleets can easily gain access to them now or in the future. Although there is an argument that Japanese fleets will be more prone to use fleets excluded from 200-mile zone for anadromous species, there is also reason to believe that these fleets will eventually seek anadromous stocks anyway. The exclusive zone might be advantageous from the standpoint that U.S. pollock stock under the extended zone could be traded to Japan for assurances against landings of salmon. Obviously the Pacific Northwest will be hurt the most by foreign landings of anadromous species.

All economically important oceanic distant water species are tuna. Because of the great range these species inhabit, it is unlikely that management can result without international agreement. The loss of $37.2 million (Table 1) is an estimate based on the premise that an international agreement will be reached and the U.S. will reduce tuna landings by about 1/3 regardless of our domestic regime. This is an extremely speculative estimate and is offered mostly for discussion.

The final category is coastal distant water species such as shrimp and lobster. U.S. fleets are currently operating in British Guianas and Brazil under a zonal approach, and it is likely that major changes will occur here. The Mexican situation is in flux and there is likelihood we would lose six to seven percent of total U.S. landings; this would occur in the Brownsville area causing a $22 million loss.

Potential national gains under EJ from the harvesting sector alone, even under most dismal assumptions, should be in the order of $200 million.

International Effects

Let me briefly touch on one major international consideration, the phase-out of countries with large distant water fleets. It is estimated that the Soviet Union has 37% of its protein diet supplied by seafood products, and the majority of those landings come from outside 200-miles off its coast. As these large fleets are forced from coastal states' exclusive zones, there must be severe repercussions within countries such as Japan and the Soviet Union.

One outcome of the phase-out will probably be foreign investment in coastal states, essentially a rush to get within the protected zone. This has happened already on the West Coast as Japanese firms have invested in many Alaskan processing facilities. Our distant coastal water fleets (shrimp) have also invested in Central America. It will heighten in the near future and undoubtedly bring outcries from domestic fishermen to place restrictions on foreign investment.

CONCLUSION

In conclusion, it is safe to say that extended jurisdiction offers the opportunity for potential economic improvement in domestic fisheries. However, this will only become a reality if an active, thoughtful management regime emerges from the legislation.

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