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LEGAL IMPEDIMENTS TO THE USE OF INTERSTATE AGREEMENTS IN COORDINATED FISHERIES MANAGEMENT PROGRAMS: STATES IN THE N.M.F.S. SOUTHEAST REGION

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Louisiana State University
Office of Sea Grant Development
Sea Grant Legal Program

September 28, 1973

This study was made in cooperation with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration, United States Department of Commerce), under Contract No. 03-3-042-28. Assistance was also provided by the Louisiana State University Sea Grant Program, a part of the National Sea Grant Program (National Oceanic and Atmospheric Administration, Department of Commerce).

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Outline and Index

LEGAL IMPEDIMENTS TO THE USE OF INTERSTATE AGREEMENTS IN COORDINATED FISHERIES MANAGEMENT PROGRAMS: STATES IN THE N.M.F.S. SOUTHEAST REGION

H. Gary Knight *

T. Victor Jackson **

I. INTRODUCTION.

Mandate. This study is the product of a contract between the Louisiana State University Center for Wetland Resources and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration, Department of Commerce) entered into on May 18, 1973, entitled "Study of Legal and Institutional Feasibility of Uniform or Reciprocal State Regulation of Fisheries." The objectives of the study are (1) to identify and analyze existing impediments to coordinated interstate fisheries management agreements among coastal states in the N.M.F.S. Southeast Region, and (2) to identify and analyze alternative methods for developing a system of coordinated fisheries management among those states. The study is limited exclusively to marine fisheries and does not cover fresh water fishery management problems although much contained in the study would be equally applicable to fresh water fisheries.

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** Third year law student, Louisiana State University Law Center; Member of Staff, Louisiana Law Review.

Personnel. The study was directed by H. Gary Knight. Assisting him was Mr. T. Victor Jackson. The L.S.U. Sea Grant Legal Program, funded through the National Sea Grant Program (National Oceanic and Atmospheric Administration, Department of Commerce), has an ongoing program of research concerning legal and political issues involved in the management of coastal and marine resources. In the fisheries management field, Professor Knight had, during the year prior to initiation of this study, developed a proposal for a revision of the Louisiana Shrimp law and had written a working paper for the "Working Group on Living Marine Resources" of the American Society of International Law concerning international fisheries management. Thus the base of expertise developed under Sea Grant auspices was available for the study, given the requisite financial support from the National Marine Fisheries Service.

Methodology. During May and June, 1973, Mr. Jackson developed "briefing" memoranda on the coastal fisheries management systems of each of the eight states in the N.M.F.S. Southeast Region. These formed the basis for Professor Knight's early July, 1973, on-site discussions with resource managers and attorneys in each of the states.[1/] The purposes of the on-site discussions were: (1) to gain a better understanding of the state's coastal fishery management system (from both an administrative an a substantive viewpoint), and (2) to seek new ideas as well as comments on old ideas relating to the use of interstate agreements in coastal fisheries management programs. While Professor Knight conducted those interviews and prepared the state-by-state analyses of selected issues, Mr. Jackson developed special memoranda on topics related to the broader implications of the study, viz., the general use of interstate agreements, the

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1. The names and affiliations of all the persons consulted during the conduct of this study are set forth in Annex A. This list includes persons with whom telephone conversations and written correspondence were had as well as those with whom personal interviews were conducted.

requirement of Congressional consent to interstate agreements, and an analysis of the United States Supreme Court decision in Skiriotes v. Florida. He also performed numerous other legal research tasks connected with the study.

During August the basic draft report was written, based on the research memoranda prepared by Mr. Jackson, the on-site discussions and subsequent analyses prepared by Professor Knight, and extensive research and discussion of the issues involved in the study. Where appropriate, calls were made to persons knowledgeable in the various subjects covered in the study. The draft of material relating to each individual state was transmitted to the resource managers and attorneys in each such state for review and correction prior to inclusion in the draft report. Comments on the draft report received during the first two weeks of September formed the basis for its revision.

Format. Part II is introductory in nature, describing the present fishery jurisdictional arrangements and noting problems in fisheries management which have arisen from those arrangements.

Part III consists of an identification and analysis of several issues involved in developing a coordinated interstate fishery management program. Alternative methods of approaching the problem are also identified and discussed.

Part IV contains an analysis of the fishery management systems in each of the coastal states in the N.M.F.S. Southeast Region with a view toward indicating impediments to participation in coordinated interstate management agreements relating to marine fisheries.

Part V consists of recommendations which we believe could facilitate the use of interstate agreements in a coordinated fisheries management program.

II. THE JURISDICTIONAL SETTING.

The necessity for coordination of state fishery management

efforts and the consideration of interstate agreements as a means of achieving that coordination are functions of present jurisdictional arrangements concerning regulation of marine fishery resources. Accordingly, an examination of these subjects must begin with a brief overview of present National and international jurisdictional arrangements and the problems which they generate.

A. Present National Jurisdictional Arrangements.

Jurisdiction with respect to marine fisheries off the coast of the United States is divided into three zones at the present time. Such resources in the first zone, extending three nautical miles from the coastline (possible exceptions for Texas and Florida are discussed below), are subject to state jurisdiction. Such resources in the second zone, extending three to twelve nautical miles from the coastline, are subject to Federal jurisdiction. Such resources in the third zone, extending beyond the twelve nautical mile limit, are within high seas and are not subject to the jurisdiction of any nation.

1. State Jurisdiction. Although judicial decisions had long upheld state jurisdiction over fisheries in the United States territorial sea, it was not until 1953 that Congress expressed its intent in this regard. The Submerged Lands Act, passed in 1953, grants to coastal states "title to and ownership of . . . natural resources" in lands beneath navigable waters and within such waters, including the "right and power to manage, administer, lease, develop, and use the said lands and natural resources . . . in accordance with applicable State law."[2/] Natural resources are defined in the Act to include, without limitation:

> [O]il and gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life . . . .[3/]

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2. Submerged Lands Act, 43 U.S.C. §§1301-1315 (1964) (originally enacted as Act of May 22, 1953, ch. 65, 67 Stat. 29), §1311(a).

3. Id., §1301(e).

The extent of the grant is subject to complex statutory provisions which have been (and continue to be) interpreted in a chain of United States Supreme Court decisions. For purposes of this study, however, it is sufficient to note that state jurisdiction extends to a distance of three nautical miles from the coastline[4/] except with respect to Texas and the Gulf coast of Florida where the grant, pursuant to litigation, was determined to extend three marine leagues (nine nautical miles) from the coastline. The issue whether Texas and Florida's jurisdiction extends to fishery resources in the additional two marine leagues is presently before the United States Supreme Court[5/] and it may be that these two states will also be limited to three nautical miles as a result of the Court's decision. States bordering on the Great Lakes were granted jurisdiction over fishery resources to the international boundary with Canada.

The United States Supreme Court has also held that states may exercise jurisdiction with respect to their own citizens engaged in fishery activities even though those activities take place beyond the territorial limits of the state on the high seas.[6/] This matter will be discussed further in Section III.D.1.

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4. The "coastline," for purposes of the Submerged Lands Act, has been held by the Supreme Court to be identical with the "baseline" as that term is defined in the Convention on the Territorial Sea and the Contiguous Zone [done April 29, 1958, 15 U.S.T. 1606 (1964), T.I.A.S. No. 5639, 516 U.N.T.S. 205, in force September 10, 1964]. United States v. California, 381 U.S. 139 (1965). The normal baseline is "the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State," and exceptions thereto are provided for bays and other irregular coastal configurations, permanent harbor works, islands, low-tide elevations, and river mouths.

5. United States v. State of Florida and Texas (U.S.S.Ct., No. 54 Original). The Federal Government's contention, in brief, is that it could not have relinquished to Texas and Florida what it did not itself possess, and that in 1953 -- thirteen years before the adoption of the Exclusive Fisheries Zone Act (post note 7) it did not have jurisdiction over fishery resources beyond the three mile limit, an authority gained only in 1966.

6. Skiriotes v. Florida, 313 U.S. 69, reh. den. 313 U.S. 509 (1941).

As will be noted later (Section III.B.2), the Federal Government almost certainly has constitutional authority to regulate fishery resources within the area granted to the states by the Submerged Lands Act, but it has never chosen to exercise that authority and the states have thus been virtually autonomous in regulating fishery activities within their respective state boundaries. The coastal fishery management systems in force in the eight states subject of this study are set forth and discussed in Section IV, below.

2. Federal Jurisdiction. Although continuing to adhere to its traditional territorial sea breadth claim of three miles, the United States in 1966 adopted the Exclusive Fisheries Zone Act[7/] which extended United States fisheries jurisdiction to twelve nautical miles from the coastline, thus creating an additional nine nautical mile belt of National jurisdiction. As of the present writing, the Federal Government has not attempted to regulate fisheries in this contiguous zone except to exclude or regulate foreign fishing vessels and, in fact, has no enabling legislation upon which to predicate such regulation (there is no doubt, however, that Congress possesses the Constitutional authority to enact such legislation if and when it sees fit to do so). Legislation for this purpose is being considered in the first session of the ninety-third Congress and will be discussed in Section III.D.1, below.

3. The High Seas. The zone of jurisdiction which begins at the seaward limit of the United States exclusive fisheries zone is subject to the international law rule of freedom of the high seas which was codified in the Convention on the High

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7. Exclusive Fisheries Zone Act, 16 U.S.C.A. §§1091-1094 (1966) (originally enacted as Act of October 14, 1966, 80 Stat. 908). The Act established a fisheries zone contiguous to the territorial sea of the United States in which this Nation exercises "the same exclusive rights in respect to fisheries . . . as it has in its territorial sea."

Seas[8] as follows:

> The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal states:
>
> . . .
>
> (2) Freedom of fishing;
>
> . . .
>
> These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.[9]

Acceptance of this principle involves recognition that the fishery resources situated in the high seas are res nullius -- the property of no one -- and are therefore subject to ownership by he who first reduces them to his possession. Under such a regime, there exist no restrictions on access to the high seas or to the resources thereof, and the international law rule concerning the exploitation of fishery resources on the high seas has thus become one of unregulated competition among nations and fishermen. However, two or more nations may agree among themselves to restrict or regulate fishing activities in a particular area of the high seas or with respect to a particular species on the basis of an international agreement, but such agreements are not binding on states which are not parties to the agreement. Unless a state gives its consent through an international agreement, it cannot be restricted from fishing any area outside of a validly recognized exclusive national fisheries zone.

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8. Convention on the High Seas (done April 29, 1958, 13 U.S.T. 2312 (1962), T.I.A.S. No. 5200, 450 U.N.T.S. 82, in force September 30, 1962).

9. Ibid., Art. 2.

Although the international problems associated with fishing activities beyond the twelve mile limit will be alluded to again in the following section and the subsequent discussion of the "High Seas Fisheries Conservation Act" (Section III.D.1), primary attention in this study is devoted to the area within twelve miles of the coast and particularly the portion thereof subject to state jurisdiction.

B. The Current International Law of the Sea Negotiations and the Third United Nations Conference on the Law of the Sea.

1. Setting. In August, 1967, the United Nations General Assembly began consideration of the so-called "seabed question" (technically, the question of the regime to govern the extraction of non-living resources of the seabed beneath the high seas beyond the limits of national jurisdiction).[10/] These deliberations resulted in the creation of the United Nations Seabed Committee[11/] which, meeting semi-annually, has attempted to lay the groundwork for an international conference on a wide range of topics concerning the use of ocean space. In December, 1970, the General Assembly called for the convocation of the Third United Nations Conference on the Law of the Sea ("Third Conference") whose mandate is to develop international agreements on a list of issues which encompasses virtually every ocean resource and use of ocean

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10. For a concise history of the seabed question in the United Nations through 1971, see G. Knight, "The Draft United Nations Convention on the International Seabed Area: Background, Description and Some Preliminary Thoughts," 8 San Diego L. Rev. 459, 477-486 (1971).

11. United Nations Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, established by United Nations General Assembly Resolution 2467 (XXIII). The Seabed Committee originally consisted of 42 nations, but membership was expanded to 86 in December, 1970 [G.A. Res. 2750-C (XXV) (1970)] and to 91 (including the People's Republic of China) in 1971 [G.A. Res. 2881 (XXVI) (1971)].

space.[12/] In addition to the "seabed question" the "List of Subjects and Issues Relating to the Law of the Sea," which comprises the agenda of the Third Conference includes, inter alia, matters relating to the territorial sea, the contiguous zone, straits used for international navigation, the continental shelf, exclusive economic zones beyond the territorial sea, coastal state preferential rights over resources beyond the territorial sea, the high seas, preservation of the marine environment, scientific research in the oceans, artificial islands and installations, and a host of less significant items. The Third Conference is now scheduled to begin with a procedural session to be held concurrently with the 1973 meeting of the General Assembly in New York, and to initiate its substantive work in April-May, 1974.

International fisheries management, of course, is one of the major issues being considered by the delegates to the Seabed Committee. The context in which the international fisheries management issue is being considered is important, for it has become clear that with the large number of nations involved and the extensive range of issues being negotiated, it is inevitable that "trade-offs" will be necessary in order to accommodate the major national interests of the countries participating in the Third Conference. Thus, the fisheries management issue will likely not be considered on its merits alone, but in conjunction with the other significant issues concerning the use of ocean space on the agenda of the Third Conference.

2. Issues/Proposals. The principal issues being negotiated in international fisheries management relate

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12. General Assembly Resolution 2750-C (XXV) (1970) specifies that the Third Conference should be held sometime during 1973 unless postponed by the twenty-seventh session of the General Assembly in 1972 on grounds of insufficient progress of preparatory work. By General Assembly Resolution 3029-A (XXVII) (1972) the Seabed Committee was instructed to hold two more preparatory sessions during 1973.

to the two fundamental aspects of conservation and allocation of living marine resources. Traditionally, conservation has been based on maximum sustainable yield and it seems likely that this will remain the standard through the current negotiations. However, at least one proposal before the Seabed Committee -- that of the United States -- has suggested a conservation standard based on maintenance or restoration of the "maximum sustainable yield, taking into account relevant environmental and economic factors."[13/]

Of more significance in the current negotiations, however, is the question of what political entity -- national regional, international -- will make the management and, most importantly, allocation decisions concerning coastal species. The proposals made to date in the Seabed Committee fall into three principal classes: (a) economic resource zones; (b) species management; and (c) proposals offering some advantages to distant water fishing states.

The most numerous of these proposals relate to the creation of economic resource zones in which each coastal state would have management authority and a preferential or exclusive right to harvest all of the living resources within 200 miles of the coastline. Proposals to this effect have been submitted by Kenya[14/]; Colombia, Mexico, and Venezuela[15/]; Iceland[16/]; Uruguay[17/];

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13. "United States Revised Draft Fisheries Article," U.N. Doc. A/AC.138/SC.II/L.9 (4 August 1972), Article IV(A).

14. "Draft Articles on Exclusive Economic Zone Concept," U.N. Doc. A/AC.138/SC.II/L.10 (7 August 1972).

15. "Colombia, Mexico and Venezuela: Draft Articles of Treaty," U.N. Doc. A/AC.138/SC.II/L.21 (2 April 1973).

16. "Jurisdiction of Coastal States Over Natural Resources of the Area Adjacent to Their Territorial Sea," U.N. Doc. A/AC.138/SC.II/L.23 (5 April 1973).

17. "Uruguay: Draft Treaty Articles on the Territorial Sea," U.N. Doc. A/AC.138/SC.II/L.24 (3 July 1973).

Brazil[18]; Ecuador, Panama, and Peru[19]; China[20]; Argentina[21]; Canada, India, Kenya, and Sri Lanka[22]; Afghanistan, Austria, Belgium, Bolivia, Nepal, and Singapore[23]; Algeria and thirteen other African nations[24]; Uganda and Zambia[25]; Malta[26]; and Australia and Norway[27]. Although differing in particulars, all subscribe to the notion that coastal states should be accorded some special privileges with respect to management and harvesting of marine fisheries within a 200 mile zone (or other functional

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18. "Brazil: Draft Articles Containing Basic Provisions on the Question of the Maximum Breadth of the Territorial Sea and Other Modalities or Combinations of Legal Regimes of Coastal State Sovereignty, Jurisdiction or Specialized Competence," U.N. Doc. A/AC.138/SC.II/L.25 (13 July 1973).

19. "Draft Articles for Inclusion in a Convention on the Law of the Sea," U.N. Doc. A/AC.138/SC.II/L.27 (13 July 1973).

20. "Working Paper on Sea Area Within the Limits of National Jurisdiction," U.N. Doc. A/AC.138/SC.II/L.34 (16 July 1973).

21. "Argentina: Draft Articles," U.N. Doc. A/AC.138/SC.II/L.37 (16 July 1973).

22. "Draft Articles on Fisheries," U.N. Doc. A/AC.138/SC.II/L.38 (16 July 1973).

23. "Draft Articles on Resource Jurisdiction of Coastal States Beyond the Territorial Sea," U.N. Doc. A/AC.138/SC.II/L.39 (16 July 1973).

24. "Draft Articles on the Exclusive Economic Zone," U.N. Doc. A/AC.138/SC.II/L.40 (16 July 1973).

25. "Draft Articles on the Proposed Economic Zone," U.N. Doc. A/AC.138/SC.II/L.41 (16 July 1973).

26. "Preliminary Draft Articles on the Delimitation of Coastal State Jurisdiction in Ocean Space and on the Rights and Obligations of Coastal States in the Area Under Their Jurisdiction," U.N. Doc. A/AC.138/SC.II/L.28 (16 July 1973), Arts. 81-91.

27. "Working Paper Submitted by the Delegations of Australia and Norway Containing Certain Basic Principles of an Economic Zone and on Delimitation," U.N. Doc. A/AC.138/SC.III/L.36 (16 July 1973).

limit) off their coasts. As can be determined by the geographical and political diversity of the nations sponsoring these proposals, it seems clear that the economic resource zone concept now commands the appreciation of a vast number of states, probably in excess of the 2/3 majority required to adopt treaty articles at the Third Conference.

The "species approach," advanced by the United States,[28] consists of the following elements:

(1) Coastal states would have regulatory (conservation) authority over and preferential rights to all coastal species off their coasts, to the limits of their migratory range. The same same principle would be applicable to anadromous species, with the preference going to the state in whose fresh water they spawn.

(2) Coastal states would be obligated to provide access by other states to any portion of such resources not fully utilized by the coastal state with appropriate priorities to states which have traditionally fished the resource, or states in the region, including landlocked states.

(3) Coastal and anadromous resources which are located in or migrate through waters adjacent to more than one coastal state would be regulated by agreement among the affected states (the revised United States proposal contains sections on enforcement and dispute settlement to provide the framework for this cooperative process).

(4) Highly migratory oceanic resources (tuna, whales, etc.) would be regulated by international fishery organizations.

The United States species approach has not been received in the Seabed Committee with any degree of enthusiasm to date and it seems unlikely at present that this approach will be adopted by the delegates to the Third Conference.

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28. See "Draft Articles on the Breadth of the Territorial Sea, Straits, and Fisheries Submitted by the United States," U.N. Doc. A/AC.138/SC.II/L.4 (30 July 1971), Art. III: and "United States Revised Draft Fisheries Article," U.N. Doc. A/AC.138/SC.II/L.9 (4 August 1972).

Finally, the distant water fishing states -- principally Japan[29/] and the Soviet Union[30/] -- are advocating proposals which would afford extensive coastal state preferences to developing countries but would permit continued foreign fishing off the coasts of developed countries, particularly the United States. These states are attempting a difficult balancing act between their economic investment in distant water fisheries and their desire to support the national objectives of developing countries and regions. It does not seem likely, however, that if the economic resource zone concept were adopted, it would be applied to less than all the world's coastal states.

3. Possible Outcome. At the present time, then, it seems extremely likely that the outcome of the Third Conference with respect to fisheries issues will be the adoption of some form of preferential or exclusive fishing zone extending 200 miles from the baseline. Although the United States is not likely to act unilaterally in this regard before the Third Conference is concluded[31/] (a position not adhered to by many Latin American and African states which have already promulgated 200 mile fisheries or resource zones), it is clear that the United States is prepared to go along with agreement on such a regime. The effect on domestic fisheries would be to afford the United States regulatory authority over distant water fishing fleets out to a distance of 200 miles, jurisdiction which does not now exist in the absence of bilateral or multilateral international agreements.

Insofar as United States distant water fishing efforts under such a regime are concerned, two issues would arise. First, the United States will unquestionably insist upon a separate

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29. See "Proposals for a Regime of Fisheries on the High Seas," U.N. Doc. A/AC.138/SC.II/L.12 (14 August 1972).

30. See "The Union of Soviet Socialist Republics: Draft Articles on Fishing," U.N. Doc. A/AC.138/SC.II/L.6 (18 July 1972).

31. There is strong support in the United States Senate as well as in the domestic fishing industry for immediate unilateral adoption of a 200 mile exclusive fishing zone by this Nation. See, e.g., H.R. 200, H.R. 9136, S. 380, and S. Con. Res. 10 (all 93d Cong., 1st Sess., 1973) for different expressions of this support.

international agreement for tuna, exempting them from the jurisdiction of coastal states, before accepting an economic zone concept. Second, the United States has recently negotiated an acceptable access arrangement with Brazil for the shrimp industry and this would likely set the pattern for future access under internationally recognized 200 mile zones.

C. Management Problems Presented by Current Jurisdictional Arrangements.

Management problems presented by present fisheries jurisdictional arrangements fall into two basic categories -- national and international. First, present national jurisdictional arrangements present an obstacle to coordinated fisheries management because of the plethora of state jurisdictions involved. For example, a coastal species such as menhaden may migrate during its life cycle off the coasts of all five states bordering the Gulf of Mexico. Without an effective device for coordinating the management systems in these states with respect to the conservation and exploitation of menhaden stocks, there can be no assurance of a rational system of management or allocation. The split of jurisdiction between the coastal states and the Federal Government at the three mile limit creates an additional jurisdictional problem where fish migrate between areas subject to state and Federal control. States cannot enforce their regulations beyond their own territory (except with respect to their citizens' fishery activities) even though activities there may have an adverse effect on their near shore management programs. Should Federal regulations be adopted in the contiguous zone, a problem will arise concerning consistency between the state and Federal regulations.

Second, at the international level, the United States possesses no jurisdiction over nationals of other countries beyond the limit of the twelve mile exclusive fisheries zone, except in cases where international agreements have been entered into. Where agreements cannot be reached, no basis exists for regulating activities of these fishermen whose activities may have an adverse

effect on the management programs of the several states or the Federal Government. Another category of problems arises with respect to the activities of fishing fleets (tuna and shrimp) which operate from United States ports but exploit resources off the coasts of other nations. Where these nations adopt extensive exclusive fishery zones, problems will occur concerning the right of access of United States fishermen to these traditional fishing grounds.

All of these problems are being addressed at the present time by various agencies of the United States government. The Inter-Agency Law of the Sea Task Force is currently developing and negotiating United States oceans policy which will hopefully result in an acceptable solution or solutions to international fisheries management problems. Contemporaneously, the National Marine Fisheries Service is addressing problems presented by the fractured jurisdictional system in the United States with a view toward developing both a state-Federal cooperative management program and a basis for interstate fisheries cooperation. The remainder of this study is devoted to the latter effort, the international problems having a minimal effect upon the state-Federal and interstate agreement progress.

III. ISSUES INVOLVED IN THE INTERSTATE COOPERATIVE PROCESS.

A. Objectives of Fisheries Management in a Coordinated Interstate Effort.

In order to analyze and evaluate alternative approaches to management, and particularly to determine the usefulness of interstate agreements therefor, it is desirable to know what goals or objectives are sought to be achieved through the activity. To provide a framework for analysis in the next section in which alternative approaches to a coordinated fisheries management program are described and discussed, we have identified below what we believe to be a valid set of objectives for a coordinated fisheries management program. This enumeration

of objectives is not, however, intended to restrict consideration of other objectives, to foreclose assessment of the validity of the objectives presented, or to establish the relative weight to be accorded any given objective in the process of optimizing a blend of such objectives.

By definition, one objective of the system must be the effective coordination of the several states' fishery management regimes in order to permit rational management of fisheries on a biologically and economically sound basis. "Coordination" can be brought about by creating a single jurisdiction for management purposes (e.g., Federal regulation of all coastal fisheries) or by developing a mechanism whereby separate jurisdictions work in concert toward a common objective. The goal in either case is to treat coastal fisheries on a species basis, considering only the biological territories involved and not the political jurisdictions. "Coordination" should not be confused with "uniformity." Indeed, a particular coordinated management system might require different management practices in different states (e.g., different opening dates for seasons in different areas) in order to produce optimum results. The objective is not uniformity but rather that state efforts be undertaken with a braoder context in mind than what is happening within the boundaries of a single state. The term "effective" refers to a coordinated management system which works -- i.e., which has the capability to respond to new scientific or technical developments and which gives the assurance of that response within a reasonable time. For example, a system in which states' commitments to action were purely voluntary probably could not be considered particularly "effective," for there would be no assurance of coordination on a given plan or problem.

A second objective is that such an effectively coordinated management system be responsive and flexible with respect to local phenomena, both natural and political (human). Changes in climatic conditions, in the location or temperature of ocean currents, and in other natural phenomena can have substantial

effects on fishery stocks, and any management plan must be able to respond to such changes with reasonable rapidity. This flexibility and speed of response not only involves matters of bureaucratic logistics, but also of field (research) activities and the monitoring of fish stocks and their environment. Knowledge of local conditions and the ability to affect existing management systems quickly are necessary to achieve the responsiveness and flexibility required.

The system must be equally responsive to political (human) phenomena. Factors involved would include social, political, and economic changes which affect the coastal fishery industry and the people engaged in it. Developments in technology, local economic conditions, and legislative modifications and judicial interpretations of an existing management system, all can have beneficial or adverse effects on the system depending on how effectively the management program can respond to such changes.

Given these "procedural" objectives, one can then pursue "substantive" objectives such as optimization of biologic, economic, or social yields from the fishery. We will not reiterate those objectives in this study, since there exists ample material on the subject elsewhere.[32/]

In sum, the principal objective of the type of system to which this study is devoted is an effective, coordinated, and responsive management system for coastal fisheries.

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32. See, e.g., T. Clingan, ed., National and International Fisheries Management Policy, University of Miami Sea Grant Program (Ocean Law), Special Bulletin No. 5 (January, 1972) at 6; D. Bromley, and V. Arnold, "Social Goals, Problem Perception, and Public Intervention: The Fishery," 7 San Diego L. Rev. 469 (1970); J. Crutchfield, "Economic and Political Objectives in Fishery Management," 102 Transactions of the American Fisheries Society 481 (1973); W. Herrington, "Management of Fishery Resources for Optimum Returns: Would It Work in the Gulf of Mexico?" in Proceedings of the 24th Annual Session of the Gulf and Caribbean Fisheries Institute (1972) at 33.

B. State Versus Federal Regulation.

1. Advantages and Disadvantages. One preliminary question which must be answered in evaluating any management regime is whether the primary locus of regulatory authority should lie with the Federal Government or with the respective state governments. The use of interstate agreements would naturally be more important in a management system based on state regulation, yet even within the framework of a Federal management regime there might be some utility in interstate agreements. There are several advantages and disadvantages to locating this regulatory jurisdiction exclusively with either the Federal government or the state governments.

Probably the strongest argument in favor of Federal regulation would be that it could result in a coordinated program since there would be only one regulatory authority with power to promulgate and enforce fishery regulations in United States coastal waters. Equally persuasive is the argument that without Federal regulation there is less assurance that coordinated fishery management agreements will be developed by the several states. There is, of course, a small possibility that coastal states might be willing to enter an interstate agreement which would make their cooperative effort mandatory rather than voluntary. Assuming, however, that this unlikely event does not transpire, Federal management would appear to be the principal method available for ensuring coordinated fisheries management. A third reason advanced in support of Federal jurisdiction is the states' past ineffectiveness in managing migratory species. As noted in Our Changing Fisheries:

> Progress in developing the catching segment of the U. S. fisheries is . . . limited by a maze of laws that States and local governments have enacted to regulate fisheries in the waters over which they have jurisdiction. Many of the laws were passed without biological or economic considerations.

> Too much of the legislation has been of a political nature and has been the offshoot of conflicts between fisheries.[33]

Anyone with experience in state fisheries management knows full well the truth of this statement and the degree to which fisheries management can become a highly political issue. Although removing the management function to the Federal government would have the effect of eliminating these state political factors from the regulatory system, it could also result in the introduction of National political elements which might be even less compatible with the development of a sound fisheries management system. It was often pointed out during our onsite discussions that although the United States fishing industry as a whole, and certain species in particular, had been steadily declining (economically and biologically, respectively), there had been no instance of an effective interstate cooperative system over the past twenty or thirty years.[34] In fairness, it should also be pointed out that some suggested that the absence of any interstate cooperation to date was caused by a lack of specific stock management problems which were only now beginning to achieve proportions demanding such cooperation.

Against these arguments there are persuasive arguments in favor of state regulation. First, it was suggested that Federal management would remove the process from the people and from local areas and thus render the system unresponsive to local natural conditions as well as human and political conditions. This argument is weakened somewhat by the fact that under a Federal regulatory system it is likely that existing state fishery resource agencies would be utilized as the management arms within states and localities, and that it is highly unlikely that an

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33. Sidney Shapiro, ed., Our Changing Fisheries (National Marine Fisheries Service, 1971) at 12-14.

34. Reference is here being made to actual "management" programs, not to the consultative and advisory efforts of the Atlantic States Fisheries Commission, the Gulf States Marine Fisheries Compact, and similar groups.

entirely new Federal bureaucracy would be spawned by this effort. Nonetheless, many feel that with the final decision-making authority resting in Washington, D. C., a non-responsiveness will develop, whether from bureaucratic inertia or lack of sensitivity to local natural and political conditions, or both.

A second argument in favor of state management -- and the opposite of one urged in support of Federal management -- is the poor track record of the Federal government in managing fisheries under its jurisdiction. One example frequently cited was the Alaskan salmon fishery which for years had been the subject of Federal management efforts. However, it should be pointed out that most of the fisheries under Federal jurisdiction have problems arising from the open access character of the high seas and the necessity for dealing with fishing fleets of foreign nations without an adequate jurisdictional base upon which to predicate a sound resource management system.

A third argument cited in favor of state regulation was the improved technical capacity of states in the fisheries management field over the past twenty years. It was also asserted on several occasions during our onsite discussions that a Federal management system might well serve the National interest but that overall National objectives might be incompatible with certain state or local objectives. Under a Federal management system these local issues could be subordinated to National interests. Under a state management system, supposedly, more diversity of objectives could be tolerated.

Finally, less significant arguments put forward in favor of state management included: (1) political unacceptability of Federal management; (2) lack of assurance of valuable inputs on the management issues from state personnel; (3) lack of enforcement personnel and other capability in the Federal government; and (4) lack of consistent funding for fisheries programs in the Federal government in the past.

It is not the function of this report to decide these arguments on the merits or to make recommendations concerning them.

It is our observation that there are sound -- even compelling -- reasons in support of both positions. Further, it is often desirable in such situations to devise a system which will combine the two alternatives, utilizing the most advantageous provisions of each and hopefully eliminating the disadvantages of each.

It is necessary at this point to devote some space to one additional topic, viz., the legal basis for Federal regulation of coastal fisheries now subject to state ownership. If there is no such legal basis, then, given present political attitudes on the part of resource managers in coastal states and their probable impact on Congressional action on the subject, there is little reason to keep the concept of Federal regulation under active consideration. On the other hand, if a legal basis does exist which could be upheld by the court system, then the alternative must be viewed as a realistic one, to be dealt with in the process of shaping a rational coastal fisheries management system in the United States.

2. The Legal Basis for Federal Regulation of Coastal Fisheries Subject to State Ownership. Historically, regulatory control over fisheries within the three mile zone has been the responsibility of the individual states. Several reasons have been formulated as justifications for state regulation. First, the states may possess this power in their sovereigh capacity -- a power reserved by the Tenth Amendment to the United States Constitution. Second, the states have been said to own the wildlife within their respective borders as trustee for the people.[35] Third, in at least one Supreme Court decision it was recognized that the states have "supreme control" over fish in their waters.[36] Whatever the reason, the Federal government has never sought to regulate the fisheries within state jurisdiction. There remains,

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35. Greer v. Connecticut, 161 U.S. 519 (1896); LaCoste v. Department of Conservation, 263 U.S. 545 (1924).

36. Bayside Fish Flour Co. v. Gentry, 297 U.S. 422 (1936).

nevertheless, a common thread running through the jurisprudence that suggests the Federal government has the power to do so.

a. The Commerce Power. In Manchester v. Massachusetts,[37] a fisherman was charged with illegally setting purse seines for the purpose of taking menhaden in a Massachusetts bay. In upholding the power of the state to regulate the fisheries within its jurisdiction, the Supreme Court left open the question "whether or not Congress would have the right to control the menhaden fisheries which the Statute of Massachusetts assumes to control." The Court stated:

> [W]e mean to say only that, as the right of control exists in the state in the absence of the affirmative action of Congress taking such control, the fact that Congress has never assumed the control of such fisheries is persuasive evidence that the right to control them still remains in the state. 139 U.S. 240, 266.

Since the Manchester decision the courts have often expressed the view that, absent conflicting Federal law, regulatory authority over coastal fisheries remains with the states. In Alaska v. Arctic Maid,[38] the Supreme Court of the United States reiterated the proposition that a state "has the power to regulate and control activity within her territorial waters, at least in the absence of conflicting Federal legislation.[39]

Congressional intent that control over the coastal fisheries should remain with the states is supported by the Submerged Lands Act.[40] Section 1311(a) of that act provides:

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37. 139 U.S. 240 (1891).

38. 366 U.S. 199 (1961).

39. See also, Toomer v. Witsell, 334 U.S. 385 (1948); Skiriotes v. Florida, 313 U.S. 69 (1941); Hardin v. Jordan, 140 U.S. 371 (1890); United States v. Tyndale, 116 F. 820, 822 (1902); Organized Village of Kake v. Egan, 174 F. Supp. 500, 504 (D.C. Alask. 1959); Corsa v. Tawes, 149 F. Supp. 771 (D.C. Md. 1957) aff'd 355 U.S. 37 (1957); LeClair v. Swift, 76 F. Supp. 729, 733 (E.D. Wisc. 1948); Glenovich v. Noerenberg, 346 F. Supp. 1286 (D.C. Alask. 1972).

40. Supra note 2.

> It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof . . . vested and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States . . . .

Section 1301(3) defines "natural resources" as including "fish, shrimp, oyster, clams, crabs . . . and other marine . . . life." In Corsa v. Tawes,[41] upholding a Maryland statute prohibiting the use of purse nets for taking menhaden, the court declared that "Congress . . . has been content to leave the matter [of coastal fisheries regulation] to local authority and has recently made this intention explicit in the Submerged Lands Act." Undoubtedly, Congress has the power to amend that act to exclude control over the fisheries from the states. However, it has not deemed such action appropriate or necessary to date, and it is extremely unlikely that it would be politically feasible to do so at the present time.

The Submerged Lands Act also includes the following provision:

> The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purpose of commerce . . . which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are

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41. 149 F. Supp. 771 (D. Md. 1957), aff'd 355 U.S. 37 (1957).

> specifically . . . assigned to the respective States . . . . (Emphasis added). 42/

A recent report concluded from the above language that "Congress has not relinquished the power to regulate interstate commerce" and "could assert regulatory powers pursuant to the [c]ommerce [c]lause if it found that the failure of the States to manage the marine fisheries imposed an undue burden upon interstate commerce."43/

Although not deciding the issue, the decisions cited appear to support the view that Congress does have the power to regulate the coastal fisheries under the commerce clause. There are two possible approaches to the matter: (1) Congress has the power to protect the instruments of commerce; and (2) the commerce power reaches activities affecting commerce, notwithstanding their intrastate nature.

It is well settled that an activity need not be commercial in nature before subjected to regulation by the Federal Government. Commerce is said to include any "intercourse" between the states.44/ In United States v. Southeastern Underwriters Association45/, the Supreme Court described the pervasiveness of the term "commerce" as follows:

> Not only, then, may transactions be commerce though noncommercial; they may be commerce though illegal and sporadic, and though they do not utilize common carriers or concern the flow of anything more tangible than electrons and information.46/

The passing of lottery tickets between states,47/ the transporting of women across state lines for purposes unrelated to commercial

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42. Submerged Lands Act, supra note 2, §1314.

43. Panel Report of the Commission on Marine Science, Enginerring and Resource, Marine Resources and Legal-Political Arrangements for Their Development, Pt. VII, at 75 (1969).

44. Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824).

45. 322 U.S. 533 (1944).

46. Ibid., at 549-550.

47. Champion v. Ames, 188 U.S. 321 (1903).

endeavors,[48] and the flow of polluted air from state to state,[49] have all been held subject to regulation by the Federal government under the commerce clause.

Although it has never been held that fish migrating across state lines constitute commerce, it would take little judicial extension to support such a result. In Thornton v. United States,[50] it was contended that the Federal Bureau of Animal Industry lacked the authority to inspect cattle ranging across state lines on the grounds that ranging cattle are not commerce. The Court rejected the contention, stating:

> It is argued . . . that when the cattle only range across the line between states and are not transported or driven, their passage is not interstate commerce. We do not think that such passage by ranging can be differentiated from interstate commerce.

Migratory fish, like ranging cattle, are not concerned with artificial boundaries and their movement across territorial waters may constitute an analogous movement of commerce. The conclusion that fish, as well as lottery tickets, pollution, women, electrons, and cattle, may be objects of interstate commerce appears persuasive.

Prior to the Migratory Bird Treaty,[51] a Congressional act was passed to regulate the killing of migratory birds. In two Federal District Court decisions this act was struck down as being beyond the power of Congress to enact.[52] In McCullagh the court emphasized that "[i]f the

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48. Caminetti v. United States, 242 U.S. 470 (1917).

49. United States v. Bishop Processing Co., 287 F. Supp. 624 (D.C. Md. 1968).

50. 271 U.S. 414 (1926).

51. 39 Stat. 1702 (1902).

52. United States v. McCullagh, 221 F. 288 (D.C. Kan. 1915); United States v. Shauver, 214 F. 154 (E.D. Ark. 1914).

state . . . once permits game to come under the authority of the commerce clause of the national Constitution, then all state authority thereover of necessity must cease to exist, and its trust title for the common good of all the people of the state must be cut off and destroyed."[53/] In Missouri v. Holland,[54/] the Supreme Court upheld an identical act, this time pursuant to a valid treaty, as a proper measure of Federal power under the supremacy clause of the Constitution. The Court in Missouri v. Holland did not, however, decide the issue whether Congress could have constitutionally passed Act absent a treaty. The Court did state that "it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found." Thus, the language in Missouri v. Holland may also support the conclusion that Congress has the power, even in the absence of a valid treaty, to regulate migratory fish. Moreover, lower court decisions subsequent to Holland indicate a rejection of the rationale in McCullagh and Shauver. In Cochran v. United States,[55/] the Seventh Circuit stated:

> We are likewise persuaded, in view of the decisions of the Supreme Court since the announcement of the two District Court decisions [McCullagh and Shauver] . . . that Congress may lawfully legislate, under the Commerce Clause . . . to protect the game, nongame, and insectivorous birds which migrate with the changing seasons.[56/]

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53. United States v. McCullagh, supra note 52, at 292.

54. 252 U.S. 416 (1920).

55. 92 F.2d 623 (7 Cir. 1937).

56. Ibid.,at 627. In accord, Gerritos Gun Club v. Hall, 96 F.2d 620 (9 Cir. 1938).

Although the case is thus relatively clear for species of fish which migrate off the coast of two or more states, there remains the question whether the migration of species from state into Federal or international waters and back constitutes movement subject to the commerce clause. Under the Exclusive Fishery Zone Act,[57/] the United States extended its jurisdiction over fishery resources out to a twelve mile limit. That law also provides that "[n]othing in the Act shall be construed as extending the jurisdiction of the states to the natural resources beneath and in the waters within the fishery zone . . ." If the three to twelve mile zone is considered subject to Federal jurisdiction, then the movement of migratory fish in and out of the zone may be commerce, for that situation would appear to be no different than the movement of migratory fish across waters contiguous to the District of Columbia to the territorial waters of Virginia. If so, they may constitute a proper subject of regulation under the commerce power. Moreover, should the fish move beyond the twelve mile zone into international waters, Congress would appear to possess regulatory power under the "foreign commerce" clause of the Constitution.

There remain for consideration species, principally shellfish, which at all stages of their life cycle remain within the jurisdiction of a single state. Although there clearly exists no movement which would subject these species to Federal jurisdiction under the commerce clause, there nonetheless do exist at least two other persuasive reasons supporting Federal jurisdiction thereover, viz., the "affection" interpretation of the commerce clause and the National public trust doctrine.

b. The Affectation Doctrine. The affectation doctrine permits Congress to regulate activities otherwise intrastate, if the activities have a substantial impact on interstate commerce. The affectation doctrine has

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57. Supra note 7.

been utilized to regulate wages and hours of intrastate labor[58] and to prohibit the use of intrastate extortion in collecting wholly intrastate loans.[59] In Wickard v. Filburn,[60] the doctrine was used to regulate the quantity of wheat that a farmer might grow for his own consumption. In the latter case, the Supreme Court reasoned that "even if the appellee's activity be local, and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce." The Court found that the farmer's "contribution" in conjunction with others "similarly situated" to be "far from trivial."

The impact on interstate commerce of the United States fishing industry appears extensive. The United States is a coastal nation and a substantial number of its states are contiguous to the sea. As a result, the commercial fishing industry in the United States is big business. Fishermen annually spend substantial sums of money for vessels, fishing gear, and other supporting equipment. Of course, much of the needed materials must travel through commerce. Citizens of landlocked states frequently come to the coast in order to enjoy marine sport fishing. They travel on interstate highways, use large quantities of gas, oil, and food, thereby augmenting the commerce impact. Fish foods must be processed, packaged, and shipped to various destinations. Interstate advertisement of fish related products likewise produces an effect upon interstate and foreign commerce. Viewed in this perspective, Congress might well conclude that the impact is of such magniture as to constitute a necessary and proper subject of Federal regulation.

c. The Concept of the Public Trust. In McCready v. Virginia,[61] the Supreme Court, citing the case of Martin v. Waddell,[62]

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58. United States v. Darby, 312 U.S. 100 (1941).
59. Perez v. United States, 402 U.S. 146 (1971).
60. 317 U.S. 111 (1942).
61. 94 U.S. (4 Otto) 391 (1876).
62. 41 U.S. (16 Pet.) 367 (1842).

concluded that "the States own the . . . fish [in coastal waters] so far as they are capable of ownership while running."[63] However, the Court in Martin v. Waddell qualified the statement with the proposition that such ownership was "subject only to the rights since surrendered by the Constitution to the general government." In Greer v. Connecticut,[64] the Supreme Court took the position that the states owned the wildlife within their borders as trustees for the general public. Although some judicial decisions appear to have attempted to elevate the concept to proprietary status,[65] Supreme Court decisions subsequent to Greer seem to have clarified the concept. Mr. Justice Holmes exposed the state ownership fallacy in Missouri v. Holland as follows:

> [T]rue that as between a state and its inhabitants the State may regulate the killing and sale of such birds, but it does not follow that its authority is exclusive of paramount powers. To put the claim of the State upon title is to lean upon a slender reed. Wild birds are not in possession of anyone; and possession is the beginning of ownership.[66] 252 U.S. 416, 434 (1920).

Moreover, the Court in Toomer v. Witsell,[67] viewed the theory as "a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource."[68] Thus, the concept of state ownership appears to provide an expedient rationale for controlling the coastal fisheries within the territorial limits of the states. As stated by the District Court in Organized Village of Kake v. Egan,[69] the McCready theory of ownership has been partly repudiated and "the modern concept contemplates

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63. McCready v. Virginia, supra note 62, at 394.

64. 161 U.S. 519 (1896).

65. People v. Zimberg, 312 Mich. 655, 658, 33 N.W.2d 104, 106 (1948).

66. Missouri v. Holland, supra note 54, at 434.

67. 334 U.S. 385 (1948).

68. Ibid., at 402; see also Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948).

69. 174 F. Supp. 500 (D. C. Alaska 1959).

that state control is founded upon the power to regulate in the protection of these resources for all the people."[70] Thus, the concept of public trust appears firmly embedded within the jurisprudence.[71] The court in LeClair v. Swift,[72] aptly describes the interest of the state as follows:

> It is not only the right, but the duty of the State to preserve for the benefit of the general public, the fish in its waters from destruction or undue reduction, in numbers, whether caused by improvidence or greed or any interests. As trustee for the people, in the exercise of this right and duty, the State may conserve fish and wildlife by regulating the taking of the same, as long as such action does not violate any organic law of the land . . . [A] State . . . may control the fish . . . within its borders, and may regulate or prohibit such fishing . . . subject however to the absence of conflicting legislation. (Emphasis added.)[73]

Should it be found that the states have breached their trusteeship, by neglect or inability to properly perform the responsibility, Congress may step in and regulate the coastal fisheries as a necessary means of eliminating the burden on commerce. Moreover, if the states have failed in their duty, the Federal government may have the obligation to rectify the disruption to the national interest.[74]

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70. Ibid., at 504.

71. Glenovich v. Noerenberg, 346 F. Supp. 1286, 1291 (D.C. Alask. 1972); Metlakatla Indian Com. Annette Res. v. Egan, 362 P.2d 901 (S. Ct. Alask. 1961); LeClair v. Swift, 76 F. Supp. 729 (E.D. Wisc. 1948); Maddox v. International Paper Co., 47 F. Supp. 829 (D.C. La. 1942); Mirkovich v. Minot, 34 F. Supp. 409, 411 (N.D. Cal. 1940); Pavel v. Pattison, 24 F. Supp. 915 (W.D. La. 1938); State v. Monteleone, 171 La. 427, 131 S. 291 (1930).

72. 76 F. Supp. 729 (E.D. Wisc. 1948).

73. Ibid., at 733.

74. Foster-Fountain Packing Co. v. Louisiana, 278 U.S. 1 (1928).

d. The Issue of Federal Preemption.

Assuming Congress has the power to regulate fisheries within the three mile zone, such legislation may preempt state regulation under the supremacy clause of the Constitution. Regulation of coastal fisheries appears to fall into the category of concurrent jurisdiction,[75] although the subject has not been deemed one requiring single uniformity to the extent of state preclusion. Rather the subject of coastal fisheries control is one where both the Federal and state governments have an interest. In the absence of conflicting Federal legislation, the states may permissibly regulate the fisheries. As the court in United States v. Tyndale[76] stated, jurisdiction of "sea-coast" matters "is of a mixed nature, as to which the state may act until and except so far as the United States intervenes."[77]

Moreover, even if the Federal government established regulatory measures in the coastal fisheries area, state regulation in all probability is "superseded only where the repugnance or conflict is so 'direct or positive' that the two acts cannot 'be reconciled' or consistently stand together,"[78] or when "Congress has unmistakably so ordained."[79] The Paul decision involved the validity of a California statute barring avocados not meeting the state's content of oil requirement, even though the Florida avocados in issue had been certified in accordance with a similar Federal requirement. In a 5-4 opinion, the Supreme Court upheld the state requirement as against the claim of Federal preemption, concluding that:

> The principle to be derived from our decision is that Federal regulations of a field or commerce should not be deemed preemptive of state regulatory

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75. Cooley v. Port Wardens of Philadelphia, 53 (12 How.) 299 (1851).

76. 116 F. 820 (1st Cir. 1902).

77. Ibid., at 822.

78. Kelly v. Washington, 302 U.S. 1, 9 (1937).

79. Florida Avocado Growers v. Paul, 373 U.S. 132, 142 (1963).

> power in the absence of persuasive reasons -- either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.[80]

The Paul majority distinguished the decision of Campbell v. Hussey,[81] which had held a state law barred by the Federal Tobacco Inspection Act on the basis of Federal preemption, finding that the Act involved in Campbell contemplated a single uniform standard, while the instant Federal regulation concerned only Federal minimum standards.

It is thus possible that state and Federal coastal fisheries regulation may co-exist, unless the state regulation "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,"[82]

and there is no evidence of Congressional intent to preempt the field. Be that as it may, Congressional action via the commerce power "may override countervailing state interests whether these be described as 'governmental' or 'proprietary' in character."[83]

C. Mandatory Versus Voluntary State Regulation.

One of the principal issues involved in analyzing any approach to a system of interstate cooperative fisheries management is whether the participating states are to be involved on the basis of purely voluntary action commensurate with their jurisdictional autonomy, or whether the system should contain a device whereby regulatory systems may be imposed on

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80. Ibid. at 142.

81. 368. U.S. 297 (1961).

82. Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

83. Maryland v. Wirtz, 392 U.S. 183, 193 (1968). See also, Rice v. Santa Fe Elevator Corp. 331 U.S. 218, 229-30 (1947); Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 11 (1824). cf. Perez v. Campbell, 402 U.S. 637 (1971); Zschernig v. Miller, 389 U.S. 429 (1968).

states through some democratic or technocratic process.[84] In short, is state participation to be voluntary or mandatory? There are a number of arguments in favor of voluntary state participation, all of which are based essentially on the existing jurisdictional autonomy of the states and the desire of political institutions in such states to maintain sovereignty over activities which take place within their territorial limits. If the voluntary approach were to be adopted, states would enter into interstate management agreements only if the plans were deemed entirely satisfactory by the appropriate decision-makers in the states. One of the principal weaknesses of this voluntary method of management is, of course, that it does not ensure a rational management system, owing to a lack of legal basis upon which to compel a reluctant state to participate. Further, and equally important, the voluntary approach permits political as well as social and economic factors which are external to the fisheries management effort to enter into the decision-making process of the state. The introduction of such externalities may result in imposing additional costs on the management system and will very likely result in decisions not entirely responsive to the biologic/economic data upon which a sound management system must be built.

The advantage of a system of mandatory participation is of course, that, through some democratic or technocratic process, a management system will be imposed upon the fisheries stocks regardless of the existing autonomous jurisdictional arrangements. One

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84. A "democratic" decision-making process would be one in which an agreed majority of states (e.g., one-half plus one, 2/3 etc.) could adopt action binding on all states in the program. A "technocratic" decision-making process is one which relies on scientific and technological expertise for decisions. Such a system might take the form of recommendations from a board of technical experts which would become binding on all states in the program unless overruled by a substantial majority of participating states (e.g., 2/3 or 3/4). For an example of the latter system, see the analysis of coastal fishery management in Mississippi, Section IV.F.5.c below.

might argue that it is better to have some form of management system -- even one which is not totally acceptable to all of the political and industrial entities involved -- than to have no management system at all. If this in fact the desiderata, then a system of mandatory state participation would seem preferable to a voluntary approach. The disadvantage is a practical one -- how to convince states to agree in the first place to a mandatory management system.

Absent assertion of Federal regulatory authority over coastal fisheries, states possess complete jurisdictional authority with respect to fisheries within the three-mile limit, and thus would have to agree at the outset to be bound through a subsequent process. From discussions with resource managers and attorneys in eight states in the N.M.F.S. Southeast Region, we are of the opinion that it is politically naive to expect states to give up substantial elements of their sovereignty or power to regulate fisheries within their territory or territorial waters except upon an ad hoc, voluntary basis.

Of course, if the Federal government were to indicate that the only alternative to a system of mandatory state cooperation is outright Federal regulation, the states may choose to concede elements of their sovereignty to some democratic or technocratic decision-making process rather than permit the Federal government to regulate these fisheries. As long, however, as the choice is between voluntary and mandatory cooperation, we believe that the states will uniformly opt for voluntary arrangements.

D. Alternative Approaches to Interstate Cooperation in Marine Fisheries Management.

It is not our function in this paper to attempt to identify the entire range of alternative approaches to interstate fisheries management cooperation. Rather, we have chosen to look at four possibilities -- the "High Seas Fisheries Conservation Act," because it is now before Congress; Federal management, because there does exist a legal basis for it; interstate agreements,

because that is the focus of this study; and state-Federal cooperative management, because that appears to us to be the most logical and effective alternative available at the present time. Our object in this section is twofold: (1) to indicate the range of problems associated with attempts to utilize interstate agreements on a voluntary basis as the foundation for a coastal fishery management program; and (2) to indicate some of the problems and values associated with other options.

1. The "High Seas Fisheries Conservation Act."

a. General Analysis. One approach to alleviating the problem of the plethora of jurisdictions for fisheries management off the United States coasts is the "High Seas Fisheries Conservation Act of 1973" ("Act" hereinafter in this Section).[85] This proposed legislation would authorize the Secretary of Commerce to promulgate regulations governing fishing in the exclusive fisheries zone (three to twelve miles) as well as in areas of high seas beyond the contiguous zone with respect to vessels flying the flag of a nation party to an international fishery agreement with the United States, the latter regulation being limited to the purposes of such an agreement.[86] In promulgating such regulations the Secretary is required, to the extent practicable, to consult, inter alia, with other Federal agencies and with the interested coastal states.[87] More importantly, however, the Secretary is authorized to adopt as Federal regulations the regulations of any state or group of states regarding fishing adjacent to such state or states in the contiguous zone or the area of high seas seaward of the contiguous zone provided that such regulations are deemed by him to achieve the objectives set forth elsewhere in the Act (and taking into account uniformity

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85. S. 1069 and H.R. 4760 (93d Cong., 1st Sess., 1973). A hearing on the Act was held on May 17, 1973, before the Subcommittee on Fisheries and Wildlife Conservation of the House Merchant Marine and Fisheries Committee. The proceedings of the hearing had not been published at the time of publication of this report.

86. Id., §3(a).

87. Id., §3(c)(i).

with other regulations).[88] The objectives of the Act include (a) fulfillment of the international obligations of the United States under any international fishery agreement, (b) conserving and managing the fish in such waters in a matter as the Secretary determines will result in the optimum overall nutritional, economic, and social benefits, and (c) controlling or prohibiting the taking of fish which are determined to be unsanitary.[89] A procedure is established in the Act whereby a state or group of states may submit regulations to the Secretary for adoption, and the procedure includes provision for a public hearing.[90] Further, the Act contains a statement of Congressional consent to any compact or agreement berween two or more states for the purpose of preparing regulations for submission to the Secretary in accordance with the Act.[91] Enforcement within the contiguous zone is to be carried out by the Coast Guard.[92] The Act also contains a provision that nothing in it shall restrict the authority of any state to regulate its citizens regarding fishery matters where such regulation is not contrary to regulations adopted pursuant to this act.[93] The latter provision is important since it does not -- in the absence of incompatible Federal regulations -- disturb the states jurisdictional authority over their citizens engaged in fishery activities on the high seas pursuant to Skiriotes v. Florida, considered below.

In discussing the Act with representatives of the coastal states in the N.M.F.S. Southeast Region, the most common criticism was its apparent failure to deal with problems related to fishing fleets of other nations operating beyond the twelve mile limit off the United States coast. However, this problem

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88. Id., §5(a).

89. Id., §3(b).

90. Id., §5(c).

91. Id., §5(d).

92. Id., §8.

93. Id., §9(a).

is not one which can be cured by the Act, but is rather a function of the international law regime of open access discussed in Sections II.A.3 and II.B., above. Possible solutions to the international fisheries problem off the United States coast include: (1) unilateral assertion of a broad exclusive fishing zone (200 miles or more) by the United States; (2) agreement by the international community on broad exclusive fishery zones; or (3) development at the Third Conference of a comprehensive international or regional fisheries management system acceptable to the United States.

The first and third alternatives are unlikely at the present time and, as noted above, within three to five years it seems almost certain that the problem will be partially solved by the existence of an internationally agreed 200 mile exclusive fishing zone. In the interim, the only course of action is for the United States to enter into bilateral or multilateral agreements with the nations whose vessels fish off our coasts in an attempt to curb stock depletion, gear congestion, and other problems which arise from such activities. Thus, the Act can have very little effect on the international problem and, indeed, only authorizes the Secretary to promulgate regulations consistent with international agreements negotiated and executed by the United States.

Leaving the international aspects aside, we now discuss how the Act purports to solve some of the national jurisdictional problems identified earlier in this paper. In the first place, in would not affect the jurisdictional autonomy of the several coastal states in the three mile belt adjacent to their coasts. The plethora of state jurisdictions would remain,and the Act would have no direct effect upon this situation.

Within the contiguous zone, however, the Federal government would for the first time possess legislative authority to promulgate fishery regulations. These regulations could be issued without regard to the management systems in force in adjacent state waters. However the Act requires Federal consultation with

representatives of affected state agencies, thus assuring some interface between the Federal government and the states and inputs from the states to the Federal regulation-making process.

More importantly, however, each coastal state could -- alone, or in concert with other states -- write regulations to be adopted as Federal regulations in the contiguous zone. If this in fact occurred on a state-by-state basis (without any interstate cooperation or consultation) the net effect would be simply to extend existing state regulations an additional nine miles into the sea. The problem of diverse regulatory regimes would thus not be ameliorated but would in fact be exacerbated. To this point, then, the Act would seem to afford little assistance to the management problems associated with multiple jurisdictions and, indeed, would almost seem designed to worsen the situation.

However, one cannot overlook the indirect effects of the type of management system proposed. As noted above, the Act provides that the Secretary may adopt state regulations as Federal regulations if he finds they will achieve stated objectives "taking into account, as he deems appropriate, uniformity with other regulations."[94/] This latter phrase could provide an indirect method of achieving coordination of state regulations in the contiguous zone, for Federal approval of state proposed regulations could be withheld unless the regulations were uniform within a particular region or area. Further, Federal approval could be conditioned on the state's willingness to revise its regulations within the three mile belt in accordance with a coordinated management plan.

If the Federal government were to adopt regulations on a species basis for the contiguous zone, if several coastal states were to develop a cooperative management plan which would require coordination of regulations in force in state waters and adjacent Federal waters, and should these state regulations within the three mile belt be modified to conform to such a system, then the desired

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94. Id., §5(a).

coordination of coastal fisheries management would come to pass. As can be readily discerned, this is a very iffy proposition.

There is nothing in the Act to compel a recalcitrant state to participate (at least as to waters under its jurisdiction) in any such regime. On the other hand, the presence of a coordinated fisheries management policy by adjacent neighbors and the Federal government would undoubtedly exert pressure for the state to conform to the system decided upon by its sister states in concert with the Federal government. Thus the Act could have the indirect effect of unifying or coordinating state fishery laws.

Most state representatives indicated that it would be helpful to have state regulations applicable in the three to twelve mile zone. For example, off South Carolina's coast the state has an interest both in shrimp management and the use of recreational reefs between the three and twelve mile limits. There have been some complaints concerning shrimping by vessels of other states after closure of the season in South Carolina which could have an adverse effect upon those resources.

It was also noted that the "species" approach to management would be more desirable within the framework of the Act than a blanket cooperative system due to the political difficulties involved in committing states to that sort of overall enterprise. It was suggested that the problem should be approached on a "need" basis with states having their proposals adopted as Federal regulations as particular needs arise. This, of course, represents the traditional ad hoc management approach rather than a coordinated interstate approach.

Another important facet of the Act is that the provision for adoption as Federal regulations of state regulations is limited to the twelve mile exlcusive fishing zone. Such a limitation is necessary at the present time because that is the extent of exclusive fishing jurisdiction off the United States coast. However, and as noted above, it seems likely that a 200 mile

exclusive fishing zone or something similar thereto will be agreed upon internationally within the next three to five years. Thus it is suggested that §2(g) of the Act be amended to define the "fishery zone" as not only including the present contiguous zone but also any additional contiguous fishery zone which may be adopted by the United States or the interntional community at any time in the future. Several states indicated an interest in being able to have state regulations adopted as Federal regulations even in the area beyond twelve miles when that would become internationally legally possible. This matter is particularly significant in Florida where the shallow continental shelf extends great distances from the coast.

In summary, then, the Act is a rather limited step in the direction of coordinating fisheries regulation off the United States coasts, with no assurance that the adverse effects of a plethora of jurisdictional regimes would be eliminated. Nonetheless, this does constitute one alternative -- the one which has been furthered most in terms of concrete legislative proposals -- and cannot be dismissed out of hand as a means for effecting a coordinated fishery management program.

b. Applicability of Skiriotes v. Florida. In Skiriotes v. Florida,[95] the Supreme Court of the United States held that Florida could properly regulate the taking of commercial sponges by its citizens through diver equipment restrictions beyond the state's territorial limits. This authority, it should be emphasized, extends only to citizens of the state and does not afford states the competence to regulate activities of citizens of other states or nationals of foreign countries beyond their territorial limits. Further, it should be noted that the states' regulatory power would be subordinate to any Federal regulations adopted in the area in question or any international agreement

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95. Skiriotes v. Florida, 313 U.S. 69, reh. den. 313 U.S. 509 (1941).

entered into by the United States and other nations with respect to areas of high seas. There are three questions which this study will address briefly in connection with the Skiriotes holding: (1) is that holding still valid in view of the adoption of the Exclusive Fisheries Zone Act of 1966; (2) how would that doctrine be affected by adoption of the "High Seas Fishery Conservation Act of 1973:" and (3) is there any method by which Skiriotes could be interpreted or expanded in its application in order to provide more extensive or better coordinated state regulation of coastal fisheries.

(i) Continued Validity of Skiriotes. We have concluded that the Exclusive Fisheries Zone Act ("Act" hereinafter in this subpart) does not affect the opinion handed down in Skiriotes and that the Act does not constitute a preemption of state regulation in the absence of promulgation of Federal regulations in the contiguous zone. Further, and because the reasoning of Skiriotes is based upon the "objective territorial" principle, the Act itself would not appear to have affected the state's right of control of its citizens' activity beyond the twelve mile limit. Thus, the coastal states may still regulate the fishing activities of their citizens beyond their territorial jurisdictions, at least to the extent that such regulation is not subordinate to Federal regulations or international agreements.

(ii) Effect of the "High Seas Fisheries Conservation Act" on Skiriotes. The principal effect of the Act on Skiriotes would be to permit preemption of state regulation of its citizens with respect to fisheries in the contiguous zone, for the Act would provide a basis for Federal regulation of fishery activities in this area which regulations might be inconsistent with state regulatory objectives.

The Act would not change the situation of states vis-a-vis their own citizens beyond the twelve mile limit, unless the

Federal government adopted preemptive regulations there pursuant to an international agreement between the United States and another nation concerning fisheries off the United States coast.

(iii) Use or Extension of the Skiriotes Doctrine for More Extensive State Management.

One thought which was discussed with representatives of various coastal states was the possibility of having coastal states enter into agreements whereby each state would agree to treat the citizens of the other as its own citizens for purposes of fisheries regulation beyond the jurisdiction of state waters. Each state in such agreements would also consent to the treatment of its citizens as citizens of other states for purposes of the latter state's enforcement of fishery regulations beyond its territorial waters. The net effect of such an agreement would be to make Skiriotes applicable to non-citizens as well as citizens, thus affording a coastal state the opportunity in effect to regulate fishing activities of its citizens and citizens of other states beyond the twelve mile limit to the extent that they were engaged in fishing activities. It is clear that this authority would not extend to foreign nationals fishing in this area but only to citizens of the state seeking to regulate its citizens and those non-citizens which might be brought within the purview of Skiriotes by the type of reciprocal agreement described above.

However, there are grave constitutional and legal impediments to this approach, principally the ability of the state to concede jurisdiction over its citizens to another state without those persons actually being present within the territory of that state. Our research to date does not allow us to make a firm statement about viability of this approach and it is mentioned here only as a remotely possible alternative which would, even without further Federal action, permit states to regulate fisheries which had a substantial impact on their state economies beyond the limits of state territorial jurisdiction in an effective manner,

i.e., with respect to all U.S. citizens engaged in the fishery rather than just that state's own citizens.

2. Federal Management. This alternative would envision management of all coastal fisheries from the low tide line seaward by an agency or agencies of the Federal government. The legal basis for Federal regulation of fisheries located within the existing territorial boundaries of coastal states has already been discussed in Section III.B.2, above. Thus, little more need be said here than to observe again that it is virtually certain that a legal basis for Federal regulation of fisheries within state waters does exist, and that if sufficient political pressure is brought to bear because of declining fisheries stocks or the unwillingness of states to adopt effective and rational management plans, then Federal regulation will likely be forthcoming. Clearly, states cannot ignore the possibility of Federal regulation in reviewing the various alternatives for coordinated fisheries management. There are, of course, arguments both in favor of and in opposition to Federal management of fisheries which were outlined in Section II.B.1, above. These positions will not be reiterated here.

3. Interstate Agreements.

a. Introduction. An approach to fisheries management which takes a more direct route to the coordination of diverse state management regimes than that envisioned in the "High Seas Fisheries Conservation Act" is the use of agreements between two or more states with a common interest in a particular management matter. In the past, such agreements have been entered into on a voluntary basis, have tended to deal with very specific problems on an ad hoc basis, and have been utilized principally to provide reciprocal access to the shrimp fishery of states bordering the Gulf of Mexico and to establish uniform licensing fees with respect to residents and non-residents.

The use of interstate agreements to solve particular problems first requires legislative authority for the states to enter into such agreements. Without specific legislative

authorization for the appropriate administrative agency to enter into agreements with respect to fisheries management matters, any such agreements would be void and would be held unenforceable by a court upon challenge by an affected fisherman. As noted in Section IV, two states in the N.M.F.S. Southeast Region -- South Carolina and Texas[96/] -- do not have legislative authority to enter into reciprocal agreements concerning coastal fisheries and thus could not at present utilize this alternative. Appropriate legislative action could cure this defect, and we suggest that the language used in the Georgia or Mississippi reciprocal agreement authorization statute would be a suitable model upon which to base such legislation (see also Section V containing our more detailed recommendations on this point).

Further, and as also noted in Section IV, the authorizing legislation for interstate agreements in three states -- Florida, Alabama, and Louisiana[97/] -- limits the subject matter which may be covered by such agreements to matters of reciprocal access. These types of authorizing statutes would not be helpful if the interstate agreement process was desired to be utilized for broader management objectives. Again, reference to the Georgia or Mississippi legislation might provide an appropriate method for remedying these defects (see also Section V).

Provided proper state authority exists for the execution of interstate fishery management agreements, there remain several other issues to be considered in determining the utility of such an approach to resource management. For purposes of analysis, we have categorized interstate agreements in three ways: (1) agreements to consult, (2) agreements to agree, and (3) substantive agreements. Other issues discussed below include the requirement of Congressional consent to interstate agreements, and methods for their termination and enforcement.

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96. For a discussion of the South Carolina law, see Section IV.B.1, below; and for Texas see Section IV.H.1.

97. For the Florida provision, see Section IV.D.1, below; for Alabama, see Section IV.E.,.; and for Louisiana, see Section IV.G.1.

b. Agreements to Consult. Interstate agreements may be utilized by states with a common interest in some subject matter in order to provide a forum for discussion of mutual solutions. Such arrangements are usually referred to as "compacts," and in the fisheries management field two such compacts exist with respect to coastal fisheries operations within the N.M.F.S. Southeast Region, viz., the "Atlantic States Marine Fisheries Compact"[98/] and the "Gulf States Marine Fisheries Compact."[99/] In-depth analysis of these entities is not required for purposes of this study although information on these and other compacts is readily available.[100/] The objective of the two previously mentioned compacts is "to promote the better utilization of the fisheries, marine, shell and anadromous of the Atlantic [Gulf of Mexico] seaboard by the development of a joint program for the promotion and protection of such fisheries and by the prevention of the physical wastes of the fisheries from any cause." The powers granted by the compact are, however, restricted to recommending action to the several states and do not include direct performance of management functions. It would appear then that insofar as the use of interstate agreements to develop agreements to consult is concerned, this has already been achieved by the development of the two compacts cited above, and that further efforts in this area would not be necessary. However, it must be reiterated that there is no direct management function in these types of agreements and that they do provide essentially only for a forum in which managers may develop an interface with representatives of industry and their counterparts in other states and the Federal Government for the purpose of better understanding the resource and its environment.

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98. 56 Stat. 267 (1942), as amended, 64 Stat. 467 (1950).

99. 63 Stat. 70 (1949).

100. See, e.g., W. Barton, "A Case Study of the Atlantic States Marine Fisheries Compact," unpublished Masters thesis, Florida State University, August, 1963; W. Barton, Interstate Compacts in the Political Process (1965); R. Leach, "The Federal Government and the Interstate Compacts," 29 Fordham L. Rev. 421 (1961).

If in fact interstate agreements cannot be utilized themselves to modify existing statutory or regulatory regimes (see subsection "d" below) then the use of agreements to consult -- establishing such entities as the compacts -- may be the principal utility of the interstate agreement approach. However, if a state-Federal management system were developed or if some form of interstate agreement were utilized in a direct management function, the compacts would still provide a vital service by affording a discussion forum where representatives of states, the Federal government, and industry could discuss their mutual problems and make recommendations to the new management entities, whatever they might be.

c. Agreements to Agree. The use of interstate agreements to bind states to particular management actions ("agreements to agree") would first involve negotiations leading to the initialing of an agreed text indicating the desired management regime to handle a particular problem or problems. Each state would then undertake to secure proper execution of the agreement so that it would become a binding obligation of the state. Subsequently, those responsible for fisheries management in the respective states would, pursuant to the obligations imposed on the agreement, be required to pursue the appropriate legislative or regulatory changes in order to conform the state's regulatory system with that proposed in the agreement.

One can question the utility of reducing such a management plan to the form of an interstate agreement. There will obviously be time and effort consumed in the process of securing ratification of the agreement by the appropriate agencies in each of the states concerned. Additional delay could be involved if Congressional consent is required to such agreements (see subsection "e" below). Further, and as noted above, two states in the N.M.F.S. Southeast Region do not have authority to enter into such agreements at all with respect to fisheries

management and three others are limited to agreeing on matters of reciprocal access. Thus only three states are presently empowered to enter into broad management type agreements of the type which would be necessary for the purposes being considered in this study. Even if this authorization hurdle could be overcome, still the agreement itself would not purport to be a management vehicle, but only a promise on the part of the states to use reasonable efforts to conform their respective management systems to the agreed model.

Rather than proceed with the "agreement to agree" an alternative would be to reduce the essence of the management plan agreed upon by the state resource managers -- whether in informal consultations or through such media as the compacts -- to "shirt cuff" notes. The procedure would then be for each representative to return to his state and attempt to secure the appropriate legislative or regulatory changes. This alternative would avoid the time and energy involved in attempting to secure formal state ratification of an interstate agreement setting forth the management plan and, possibly the delay involved in securing Congressional consent (see subsection "e" below).[101/] Unless there exist distinct advantages to reducing the agreement to formal interstate agreement status, the extra time alone would seem to militate against use of this approach.

The only discernable benefit of the "agreement to agree" process is that it would create a binding obligation on the states to conform their respective statutory and regulatory system to the plan set forth in the agreement. The "shirt cuff" summation of a management plan would not impose such an obligation. To the

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101. Just as contracts do not always have to be in writing to be valid, enforceable documents, so interstate agreements would not necessarily have to be in writing. "Back room" agreements among fishery managers to pursue certain courses of action might therefore be considered interstate agreements requiring the consent of Congress. However, to the extent that such "agreements" did not comport with the technical requirements of execution specified by the respective states' laws and regulations, the agreement could be considered ultra vires, and therefore not requiring Congressional consent because it was not a binding obligation.

extent that the agreement only required a given state to modify its regulatory system, and if the same entity which executed the interstate agreement has responsibility for altering the regulatory scheme, then an obligation would exist on the part of that agency which could be enforced by the United States Supreme Court in an original action brought by other states against a non-conforming state. To the extent, however, that legislative action is required, it is likely that only a good faith effort on the part of the agency executing the interstate agreement would be required, for it is inconceivable that the United States Supreme Court would require legislative action of a state contrary to the will of that state's legislature even though a particular administrative agency has committed to modify its statutory regime for the management of coastal fisheries.

Even if authority to enter interstate agreements is lacking, of course, states could act individually on the basis of action recommended by an informal gathering or an existing interstate compact. As William F. Anderson, Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources put it:

> [E]ven though the [Alabama] law does not apparently provide for reciprocal management regulations . . . it is an easy matter for us to write a regulation for any jointly agreed on management policy. This was the case with the menhaden season agreed on by the GSMFC which we promulgated as a regulation within two weeks after the committee had adopted the season.[102]

Thus, agreements to agree -- enforceable as they are, and providing a binding obligation on the states party thereto -- may provide a desirable means for approaching a regional management plan with respect to a particular species of marine fish.

d. Substantive Agreements. A third use of interstate agreements would be to attempt to utilize them

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102. Letter dated August 16, 1973, from William F. Anderson to H. Gary Knight.

to actually alter state fishery management systems through the medium of the interstate agreement. This differs from the approach of "agreements to agree" in that the latter only impose an obligation on the state to take appropriate measures to conform its regulatory system to that set forth in the agreement. The use of substantive agreements would envision utilizing the interstate agreement itself as a sort of supra-state law which, when in force, would automatically change the fishery management systems in the several states.

It should be observed at the outset that if interstate agreements cannot be utilized to change state laws or regulations, they they serve little more purpose than "agreements to agree." In short, the only reason for utilizing an interstate agreement rather than a "shirt cuff" informal approach would be to create the binding obligation discussed above. If, on the other hand, interstate agreements can alter existing state management regimes, then a number of advantages accrue, including (1) the rapidity with which a management system could be aodpted, (2) the assurance of coordination, and (3) the assurance of participation by all states party to the agreement.

The critical question is, of course, whether the interstate agreement process can be utilized to amend statutes or regulations of states party thereto. We have reached the conclusion in the research conducted pursuant to this study that interstate agreements cannot have that effect and that therefore the maximum which can be expected of an interstate agreement is that of imposing obligations on the state to conform its statutory or regulatory system to the regime outlined in the agreement.

As has been recognized by the United States Supreme Court, there exist several similarities between an interstate compact or agreement and an international treaty.[103/] Especially relevant to our concern however, is the pivotal distinction between an interstate agreement and a treaty with respect to the

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103. Edye v. Robertson, 112 U.S. 580 (1884). The Court there stated that a treaty was a "compact between independent nations depending on the honor of the governments which are parties to it."

immediate impact of each upon the status quo. Article VI, paragraph 2, of the United States Constitution mandates that a valid treaty "shall be the supreme law of the land." The treaty is thus accorded equal weight with an Act of Congress. Owing to its nature, the treaty may be self-executing[104/] -- it may take effect in and of itself -- even absent Congressional action. As a result of the treaty's high position in the legal hierarchy, there has arisen a judicial principle that when provisions of a Federal statute and a treaty are irreconcilable the later in time takes precedence.[105/] Thus, a later expression of Congressional will may supersede a prior treaty or vice versa. Unlike a valid treaty, however, an interstate agreement or compact is not considered the "supreme law of the land," and is not self-executing. An interstate agreement is executory in nature; the substance of the agreement has no immediate effect on the existing law of the signatory state prior to its execution. All necessary legislative or administrative procedures must be followed just as is the case of any other statutory enactment or administrative promulgation. The legislative grant of authority to an agency enabling the latter to enter into interstate agreements neither suspends a state's law-making procedures nor dilutes individual rights. In short, the interstate agreement is simply a contract, executory at its inception, which results in creating an obligation upon the signatory state to in good faith effectuate the substance of the agreement. Thus, an agreement between the fishery agencies of two states setting up a uniform season for menhaden does not per se effectuate the agreed season. The signatory states must then proceed in the manner provided by law to establish the season as a part of its laws. This may entail the modification of an existing rule or regulation, or the amending of an existing statute.

It is clear that the agreement alone cannot modify existing state law. Otherwise, an administrative agency could,

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104. Foster v. Neilson, 27 U.S. (2 Pet.) 254 (1829).

105. Chee Chan Ping v. United States, 130 U.S. 581 (1889).

by the vehicle of an interstate agreement, make laws that the legislature, in its wisdom, may not otherwise have been willing to enact. This would constitute a usurpation of the legislative function in direct violation of the doctrine of separation of powers. Moreover, it appears unlikely that a legislative body could grant an administrative agency the power to modify an existing statute, even in the interest of conservation, without being labeled an unlawful delegation of legislative power.

Accordingly, and as noted above, the maximum benefit which can be derived from use of interstate agreements in the area of coastal fisheries management is the creation of binding obligations on states party to such an agreement to undertake the legislative and regulatory changes necessary to conform the state's fishery management regime with that outlined in the agreement.

e. Requirement of Congressional Consent. In addition to absolutely prohibiting a state from entering into "a treaty, alliance, or confederation," the United States Constitution provides:

> No State shall, without the consent of Congress . . . enter into any agreement or compact with another State, or with a foreign power . . .[106] (Emphasis added.)

Despite the clear language of the Constitution, there exist judicial precedents to the effect that Congressional consent may not always be required. In this light, we are presented with the issues (1) whether all interstate agreements relating to marine fisheries management msut have Congressional approval; (2) whether an interstate agreement lacking the requisite consent is void or voidable; and (3) what general means are available for the procurement of consent.

As early as 1842, the United States Supreme Court interpreted the compact clause exactly as it reads, and declared

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106. United States Constitution, Art. I, Sec. 10, cl. 3.

that Congressional consent was required for all interstate agreements and compacts irrespective of form or substance.[107] Some fifty years later, the Court, in dictum, appeared to move away from the literal approach, and attempted to carve out an area where consent was not necessary. In Virginia v. Tennessee,[108] the Supreme Court declared that "[t]here are many matters upon which different states may agree that can in no respect concern the United States."[109] Just what the "many matters" entailed, the Court left unresolved. Instead, the opinion offers the oft cited criterion that consent is required where an agreement might "encroach upon or interfere with the just supremacy of the United States."[110] The Court's language in Virginia v. Tennessee has perhaps been more a legal problem than a blessing. As one commentator aptly expressed it, "those persons who have undertaken to advise the states with respect to the applicability of the compact clause to particular arrangements have done as well as is possible under the handicap of the inherent ambiguity of the enigmatic rule of Virginia v. Tennessee; certainty simply is not possible under that rule." (Emphasis added.)[111] One year after Virginia v. Tennessee was decided, the Supreme Court in Wharton v. Wise,[112] recognized that consent of Congress is necessary where an agreement's stipulations "might affect subjects

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107. Holmes v. Jennison, 39 U.S. (14 Pet.) 540 (1842).

108. 148 U.S. 503 (1893).

109. Ibid., at 518.

110. Ibid.

111. D. Engdahl, "Characterization of Interstate Arrangements: When is a Compact Not a Compact?" 64 Mich. L. Rev. 70, 71 (1965). We wish to note that this language is not cited as an excuse for our own inability to reach a definitive answer on the issue, but only to point out that virtually everyone agrees that a definitive answer based on Supreme Court decisions is not possible.

112. 153 U.S. 155 (1894).

placed under the control of Congress, such as commerce and the navigation of public waters . . . ."[113] The Wharton rationale could arguably be interpreted to have placed coastal fisheries matters within the category of subjects requiring Congressional consent. Moreover, in a recent opinion of the Court, it was stated in somewhat matter-of-fact terms that Congressional consent is required "for all compacts."[114] Thus, the only proposition that appears settled is that if the interstate agreement tends to interfere with a national interest or might unduly injure the interest of a non-signatory state, consent is required. The determination of whether the subject matter involves a national interest is a Federal question.[115] Since the Federal government does have an interest in the commercial coastal fisheries by virtue of the commerce power interest[116] interstate agreements relating to marine fisheries will likely need Congressional consent, unless there exists no chance of interference with any Federal interest.

Outside the judicial arena, there exists historical precedent for the submission of interstate conservation compacts to Congress.[117] One authority concludes that "[a]t least since 1893 . . . the custom has become firmly established that all

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113. Ibid., at 171. Emphasis added.

114. West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 27 (1951).

115. Petty v. Tennessee-Missouri Bridge Comm., 359 U.S. 275 (1959). In Delaware River Joint Toll Bridge Commission v. Colburn, 310 U.S. 419 (1940), the Supreme Court held that it had certiorari jurisdiction over state cases construing the substance of an interstate compact. The Court reasoned that "the construction of compacts sanctioned by Congress . . . involves a federal 'title, right, privilege or immunity' which when 'specially set up and claimed' in a state court may be reviewed here on certiorari . . . ."

116. See the discussion of Federal regulations on coastal fisheries, Section III.B.2.a., above.

117. See Council of State Governments, Interstate Compacts, 1783-1970: A Compilation (1970).

compacts are automatically to be submitted to Congress for consent."[118/] In the area of fishery compacts in particular, history supports the consent requirement where an interstate commission is created,[119/] or where two states agree to preserve fish stocks by agreement not to change their fishing laws without the other's consent.[120/] Nor does it seem that the mere labeling of an interstate contract as an "agreement" or "compact" should produce any distinction with respect to consent. The Constitution includes both within its terms. Moreover, the Supreme Court has noted that the distinction between a compact and an agreement is that the former is more formal in nature.[121/] In 1939, President Roosevelt vetoed a joint resolution of Congress which would have given several coastal states authority to make agreements in fisheries management. Because of its language, especially the assumption that any agreement requires consent, it is deemed worthy of quotation. The President stated:

> I have withheld my approval of Senate Joint Resolution 139, 'to authorize compacts or agreements between or among the States bordering on the Atlantic Ocean with respect to fishing in the territorial waters' . . . . This joint resolution is not in conformity with the usual and accepted method of granting the consent of the Congress to the execution of interstate compacts or agreements, in that it lacks a provision requiring the approval by the Congress of such compact or agreement as may be entered into before it shall become effective. (Emphasis added.)[122/]

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118. R. Leach, "The Federal Government and Interstate Compacts," 29 Fordham L. Rev. 421, 428 (1961).

119. Atlantic States Marine Fisheries Compact, 56 Stat. 270 (1942).

120. For example, the consent of Congress was granted to an agreement between Washington and Oregon in 1918 [40 Stat. 515 (1918)].

121. Virginia v. Tennessee, 148 U.S. 503 (1893).

122. 76th Cong., 1st Sess., 84 Cong. Rec. p. 10, 11175 (1939)

Thus, it would seem that most, if not all, coastal fisheries agreements between the states require consent of Congress. However, there may be some interstate agreements which have such a minimal impact upon a Federal interest as to fall short of the need for Congressional approval. This will likely depend upon the particular subject matter of the agreement, the relative degree of national and local interest, the customary action taken in a similar case, and the particular scope of the supra-state activity. Thus, Congressional consent may not be required should two states enter into a reciprocal agreement concerning access to menhaden in each other's coastal waters. Reciprocal agreements of this type, in other areas, have been upheld against attack on grounds of lack of Congressional consent.[123/] On the other hand, Congressional consent would be necessary for an agreement among the five Gulf coast states delegating responsibility for fisheries management to a supra-state agency. It is unclear whether Congressional consent is necessary for an agreement among the several coastal states to establish a certain season for a particular species. Although the agreement is regulatory in nature, it involves only the establishment of a particular phase of fisheries management. It does, however, involve a number of states. There is no separate entity being created, and enforcement will remain with each signatory state. Moreover, it concerns a matter of narrow range -- to set up a uniform season for one type of fish. Since an administrative agreement of this sort is designed to effectuate fisheries resource management by means of a joint state effort without utilization of an independent agency, and is one which individual states could undertake on a less effective plane, Congressional consent may not be required.

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123. In Landes v. Landes, 135 N.E.2d 562, appeal dismissed, 352 U.S. 948 (1956), the New York Court of Appeals upheld a reciprocal agreement between New York and California which involved the enforcement of a husband's liability to support his dependent children. The court rejected the argument that the agreement was invalid for lack of consent of Congress. Cf. Bode v. Barrett, 344 U.S. 583 (1953) where it was held that a reciprocal agreement between states to exempt residents of one state from the payment of a license tax was not violative of the compact clause.

As a practical matter, it would seem desirable for the states to submit any and all interstate agreements to Congress to assure the agreements' validity. If an interstate agreement is not submitted for Congressional approval, it may be void or voidable. The resolution can be critical in terms of any rights affected by the contract. In Florida v. Georgia,[124] involving a boundary dispute between the respective states, the Supreme Court noted that "a question of boundary between States is . . . a political question . . .[and] any compact between them would have been null and void, without the assent of Congress."[125] In discussing the issue of interstate agreements and compacts, [one] legal commentator concluded that "[p]erhaps the true rule is that all compacts or agreements which increase or decrease political power are void, but that all others are voidable . . . at the option of the national government . . . ."[126] This theory was cited with approval by the Missouri Supreme Court in Ivery v. Ayers.[127] In holding that the state uniform support of dependents law was not an agreement or compact requiring Congressional consent, the Court stated that even if the law did constitute "a compact with another state, it does not increase or decrease political power, and hence is not void but at the most voidable." Thus, we may surmise from the above decisions and commentary that interstate agreements relating to marine fisheries management, absent the requisite consent, are voidable at the option of Congress.

In granting its consent, Congress may utilize a formal legislative act or a joint resolution. All interstate agreements submitted to Congress must also be approved by the President,

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124. 58 U.S. (17 How.) 478 (1854).

125. Ibid., at 494.

126. A. Bruce, The Compacts and Agreements of the States with One Another and with Foreign Powers, 2 Minn. L. Rev. 500 (1918).

127. 301 S.W.2d 790 (Mo. 1957).

and thus are susceptible to the executive veto.[128] Moreover, Congressional consent need not always be express; it may be inferred from subsequent Congressional action.[129] The general procedure followed in obtaining consent is to submit the compact or agreement to Congress for approval. However, advance consent has occasionally been given by Congress.[130] Another approach utilized is that after the interstate compact or agreement is submitted to Congress, and it has not been disapproved within a stipulated period, consent is considered granted.[131]

It would indeed be most beneficial from the viewpoint of the several coastal states if interstate marine fisheries agreements were without the scope of the compact clause. This would obviate the need to parade up to Capitol Hill in each instance where a state desired to secure agreement on some fishery management matter, with the resultant loss of time and the introduction of external political factors. However, we have seen that most interstate agreements need consent of Congress for their validity.

Congress could grant the coastal states consent in advance where an interstate agreement would have a minimal impact on the national interest. On the other hand, the requirement of consent may provide a useful means of Federal review of supra-state activities. Congress is accorded the duty to protect the national interest and the interest of non-signatory states, and thus close scrutiny of most interstate agreements should be undertaken prior to consent. In the past, Congress has conditioned its consent by requiring annual reports[132] to be submitted to a relevant Congressional committee, limiting the life of the compact,

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128. See text accompanying note 122, supra; see also President Roosevelt's veto of the Republican River Compact, H.R. Doc. No. 690, 77th Cong., 2d Sess. (1942).

129. Virginia v. West Virginia, 78 U.S. (11 Wall.) 39 (1870); Green v. Biddle, 21 U.S. (8 Wheat.) 1 (1823).

130. See, e.g., the Bolder Canyon Project Act, 43 U.S.C. §617. Congress has also granted advance consent to the states for the purpose of entering into compacts to prevent crime (4U.S.C. §112).

131. Civil Defense Act, 64 Stat. 1249 (1951).

132. Atlantic States Marine Fisheries Compact, 56 Stat. 270 (1942).

and including a provision which reserves to it the right to "alter, amend or repeal" the interstate agreement.[133/] In the fisheries area, such conditioned consent might be utilized to develop a format of approval in which certain guidelines would be required to be met (coordination, effective management, uniformity, etc.) before the requisite consent would be forthcoming.

f. Withdrawal from Interstate Agreements. From our discussions with representatives of the various state resource management agencies, we find it unlikely -- as noted above -- that states will be willing to part with too great an amount of soverignty with respect to their jurisdiction over fishery resources within their territorial boundaries. It is therefore very likely that any interstate agreements concerning regional fisheries management would have to contain a "withdrawal clause" which would afford any state the opportunity to terminate its participation in the regime upon provision of notice and the expiration of a suitable amount of time. Without such a provision, there would be no way the state could withdraw from the agreement because of radically changed circumstances, and this sort of rigidity could be a fatal defect. Providing some amount of flexibility in order to ensure that no state suffers prejudice as a result of natural calamities or other factors would seem to be a desirable approach. We would also recommend that in any clause providing for withdrawal upon notice and following a particular grace period that states be required to consult in an attempt to reform the agreement to take into consideration the subsequent developments. Given this sort of flexible approach, interstate agreements can be expected to have much greater longevity than if a rigid approach were taken. Such a withdrawal clause might read as follows:

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133. This provision appears unnecessary, since even in the absence of such a reservation Congress should have the power to "alter, amend, or repeal." It is settled that signatory states to an interstate agreement must assume all conditions Congress feels necessary as a condition to granting its consent. Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275 (1959).

> (1) Any state may withdraw from this agreement only (a) if a fundamental change of circumstances has occurred with regard to those existing at the time of conclusion of the agreement, (b) if the existence of those circumstances constituted an essential basis of the consent of the state to be bound by the agreement, and (c) if the effect of the change is to radically transform the extent of obligations still to be performed under the agreement.
>
> (2) Such withdrawal shall not be effective except upon notice duly provided to all other states party to the agreement, and upon the expiration of 100 days from the time of transmittal of such notice.
>
> (3) States party to such an agreement shall, within 60 days of receipt of such notice, meet in an attempt to modify or otherwise reform the agreement in order to avoid undue hardship to the withdrawing state.
>
> (4) If the agreement is one which contemplates the participation of all parties thereto for its validity, the legal withdrawal of any one party shall constitute a termination of the agreement.

4. State-Federal Cooperative Management Programs. From the preceding discussion of alternative approaches to coordinate state fisheries management, it appears (1) that the "High Seas Fisheries Conservation Act" contains little of direct value in terms of coordinating diverse state fishery management programs, (2) that Federal management although certainly an effective coordinating device, is probably politically infeasible and substantively undesirable for a number of reasons, and (3) that interstate agreements, through providing some basis for binding states to particular courses of agreed action, do not provide a comprehensive framework for ensuring coordination among diverse state fishery management programs. It may be, therefore, that only a completely new administrative structure encompassing elements of both state resource management agencies and similar agencies of the Federal government can achieve

the desired objectives set forth in Section III.A above. State-Federal cooperative management systems are at present only in the discussion stage, no concrete legislative proposals having been presented to Congress.

The essence of such programs is that the states would be encouraged to develop coordinated management programs on a species by species basis for which the Federal government would provide technical assistance and, most importantly, the financial support for the operation of the management system. Such a "carrot-stick" approach would be designed to use the "bait" of Federal funds to coerce the states into solving problems on a bi-state or regional basis rather than upon the basis of state jurisdictional autonomy within their own boundaries. Any such system to be effective would, of course, have to possess some mechanism for ensuring compliance by the coastal states with the management plans agreed upon, and even more fundamentally, for ensuring that particular problem areas were in fact dealt with by cooperative management systems. The absence of concrete proposals makes it difficult to critique this approach at the present time. However, three projects are already underway within the National Marine Fisheries Service in an attempt to develop some format for regional cooperation. These relate to the lobster management program for the Atlantic coast, the shrimp conservation program for the southeast Atlantic states and the menhaden project for the Gulf coast states. It may be that through the use of interstate agreements these sorts of programs can be developed in sufficient formality to provide the basis for a future, more institutionalized regime. Some practice with the system is probably desirable before it is reduced to a legislative proposal.

IV. STATE IMPEDIMENTS TO RECIPROCAL OR COORDINATED INTERSTATE FISHERIES MANAGEMENT AGREEMENTS -- STATE BY STATE ANALYSIS.

This portion of the study consists of a state-by-state analysis of the marine fisheries management systems of the eight coastal states in the National Marine Fisheries Service Southeast Region. The management arrangements in each state are reviewed under the following subheadings:

Authority to Enter Reciprocal Agreements. In this subsection the statutory authority permitting agencies of the state to enter reciprocal agreements with other states concerning the management of coastal fisheries is identified and examined. This is, of course, a critical factor if reciprocal agreements or multiparty interstate agreements are to be the vehicle for coordinated coastal fisheries management. Without specific authorization any such agreement would be void and therefore legally unenforceable against those for whom it was designed to be applicable.

Administrative Organization and Flexibility of Management. This subsection deals with the administrative structure within the state for the management of coastal fisheries and emphasizes the location within the legal hierarchy (constitution, statute, regulation, administrative discretion) of the principal coastal fisheries management regulations and rules. Naturally, the further down the hierarchy, the more flexible and responsive the system can be to an interstate or reciprocal agreement. If, for example, the season for menhaden is specified in a statute without the possibility of flexibility in those dates, then a much longer process (statutory amendment) is involved in adapting to a coordinated management system which desires to use different season dates than would be the case if that season could be set in the discretion of the director of the appropriate coastal fisheries agency. Thus, this section is designed to determine the flexibility and responsiveness of coastal state fisheries management systems to interstate cooperative fisheries management systems.

Criteria for Resource Management. This section is designed to identify the guidelines for resource management by the appropriate agencies in the several coastal states. Particular emphasis was placed on determining whether or not there was any existing constitutional or statutory impediment to or basis for management of coastal fisheries on an exclusively economic basis. Naturally, virtually all coastal states provide a "conservation" or "biologic" criteria, but beyond this the states vary widely in the scope of authority delegated to coastal fishery management agencies.

Limited Entry. This subject will not be dealt with for every state, but only with respect to those which have had a court decision or other experience with limited entry in the fisheries or an analogous industry. The object is to point out any existing legal impediments to the imposition of a limited entry scheme in coastal states based on past precedent.

Data Concerning Rule Adoption and Modification. This section will contain a brief summary of the requirements for modification of the constitution, adoption or amendment of statutes, and adoption or amendment of administrative regulations. The object is to provide a method for the reader who has determined where in the legal hierarchy the matter with which he is dealing rests to determine the time frame and legal requirements for the particular modifying action which is required. For example, if it is determined that the modification of the menhaden season will require a statutory amendment, this subsection will indicate the frequency of meeting of the legislature, the quorum and majoirty voting requirements of the legislature, the requirement vel non of gubernatorial assent, the veto and veto override procedure, and the like. By way of further example, if it should be determined that the regulation sought to be changed is one promulgated by an administrative agency, then this subsection would provide the notice and hearing requirements, the quorum and voting majority requirements of the

board or administrative commission authorized to promulgate the regulations, the method of filing or posting such regulations, and the effective date thereof.

Other Matters. This section is reserved for problems unique to a given coastal state and will deal with special impediments or problems which do not require consideration in each state.

A. North Carolina.

1. Authorization to Enter Reciprocal Agreements. General authority for agencies of the State of North Carolina to enter reciprocal agreements concerning coastal fisheries matters is contained in N. C. Gen. Stat. §§113-223 and 113-181 which provide respectively:

> Subject to thespecific provisions of §§113-153 and 113-161 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Board [of Conservation and Development] is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this subchapter.134/ Pursuant to such agreements the Board may modify provisions of this subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources. [§§113-223].

> It is the duty of the Department [of Natural and Economic Resources] to administer and enforce the provisions of this subchapter135/ pertaining to the conservation of marine and estuarine resources. In the execution of this duty, the Department may . . . enter into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; . . . . [§§113-181(a)].

Since coastal fisheries are defined in N. C. Gen. Stat. §113-129 as encompassing "[a]ny and every aspect of cultivating,

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134. N. C. Gen. Stat., Chapter 113, Subchapter IV ("Conservation of Fisheries Resources"), Articles 12-24, §§113-127 through 113-321.

135. Id.

taking, possessing, transporting, processing, selling, utilizing, and disposing of fish taken in coastal fishing waters, whatever the manner or purpose of taking," the reciprocal agreement authority would clearly encompass any management function with respect to coastal fisheries lawfully vested in the appropriate agencies of the State of North Carolina. Further, because the Board of Conservation and Development has substantial flexibility in the management of coastal fisheries in North Carolina (as will be noted in the next section) these provisions provide North Carolina with an effective device for interstate cooperative efforts. It should also be noted that the criteria set forth in N. C. Gen. Stat. §§113-223 ("overall best interests of the conservation of marine and estuarine resources") provides further latitude for the scope of such reciprocal agreements.

Finally, N. C. Gen. Stat. §113-161 also provides:

> Upon recommendation of the Commissioner [of Commercial and Sports Fisheries], the Director [Department of Natural and Economic Resources] may take reciprocal agreements with other jurisdictions to authorize persons in such other jurisdictions to exercise licensed privileges within this State upon such terms and conditions that may be agreed on as mutually beneficial, provided that such jruisdictions accord privileges or similar nature or value to holders of North Carolina licenses.

This is a more limited authorization than that contained in the two previously quoted sections becuase it restricts the agreement-making power to matters concerning reciprocal access and does not authorize agreements on general fisheries management issues. However, unlike the previous two sections which require Board and Department action, respectively, reciprocal licnesing agreements under N. C. Gen. Stat. §113-161 can be executed by the Director of the Department, which would appear to be a more flexible process.

2. Administrative Organization and Flexibility of Management. The agency charged with fishery resource management responsibility in North Carolina is the Deparment of Conservation and Development ("Department" hereinafter) which, for management purposes pursuant to government reorganization, is subsumed within the broader "Department of Natural and Economic Resources." The policy-making body affiliated with the Department is the Board of Conservation and Development ("Board" hereinafter) whose staff is headed by the Director of Conservation and Development ("Director" hereinafter) and, with respect to coastal fisheries, his Division of Commercial and Sports Fisheries ("Division" hereinafter), the latter being headed by the Commissioner of Commercial and Sports Fisheries ("Commissioner" hereinafter).

The Board, aided by its staff, has jurisdiction over "all activities connected with the conservation and regulation of marine and estuarine resources" in North Carolina [N. C. Gen. Stat. §113-132(a)]. The Board consists of twenty-four members [N. C. Gen. Stat. §113-4] appointed by the Governor [N. C. Gen. Stat. §113-5] and meets a minimum of four times per year [N. C. Gen. Stat. §113-6].[136/] It has control of the work of the Department and the duty of enforcing all laws relating to the conservation of marine and estuarine resources [N. C. Gen. Stat. §113-8].

There exists within the Board a Commercial and Sports Fisheries Committee ("Fisheries Committee" hereinafter) [N. C. Gen. Stat. §113-6], the staff for which consists of personnel from the Division, headed by the Commissioner. This staff prepares proposed regulations and submits them to the Fisheries Committee which makes recommendations thereon to the full Board. Thus, the Commissioner, relying on the recommendations of his technical staff, initiates the process by which fisheries regulations are promulgated in North Carolina.

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136. Procedures for adoption of regulations by the Board, as well as for statutory modifications by the Legislature, are set forth in subsection 5 below.

The specific authority of the Board with respect to regulation of coastal fisheries is set forth in N. C. Gen. Stat. §113-182 as follows:

> (a) The Board is authorized to authorize, license, regulate, prohibit, prescribe, or restruct all forms of marine and estuarine resources in coastal fishing waters with respect to:
>
> (1) Time, place, character, or dimensions of any methods of equipment that may be employed in taking fish;
>
> (2) Seasons for taking fish;
>
> (3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold or given given away.
>
> (b) The Board is authorized to authorize, license, regulate, prohibit, prescribe, or restrict:
>
> (1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment or as to other activities within the jurisdiction of the Department; and
>
> (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.

North Carolina coastal fisheries management is extremely flexible, with virtually all regulatory responsibility being placed either in the Board, the Director, or the Commissioner. The only substantive matters dealt with in the statues concern enforcement, licenses and license fees, taxes, record keeping, and oyster and clam leasing procedures. All other matters, including legal sizes and limits, seasons, gear restrictions, and management matters relating to shrimp and shrimping, crabs, clams, scallops, and oysters are contained in regulations promulgated by the Board.

Further, the Director has specific powers pursuant to the regulations which may be exercised without Board action. These include the temporary suspension of regulations [Regulation A-2; 1972 Compilation of North Carolina Fisheries Laws and Regulations for Coastal Waters, at 25];

> The Director, upon the recommendations of the Commissioner, is authorized to suspend, in whole or in part, until the next meeting of the Board, or for a lesser period, the operation of any regulation of the Board regarding coastal fisheries which may be affected by variable conditions.

Finally, the Director (acting upon the advice of the Commissioner) is authorized to establish open and closing dates for seasons relating to shrimp [Regulation D-2], crabs (with respect to the use of crab pots) [Regulation E-1-], clams [Regulations F-2-b and F-2-c], scallops [Regulation G-2], and oysters [Regulation H-1], based essentially on biologic data (date parameters are specified for taking crabs through the use of crab pots and for oysters).

It thus appears that North Carolina has an administrative structure which is extremely flexible and that the State would be in a position to respond quite rapidly to any interstate management plan which required modification of existing practices. In this regard, North Carolina should be viewed as a model for other states to emulate insofar as they seek an administrative system which can be responsive to regional or interstate coastal fishery management arrangements or plans.

3. Criteria for Resource Management. The criteria for coastal fisheries management in North Carolina appears to be essentially biologic. The duties of the Department include "the promotion of the conservation and development of the natural resources of the State" [N. C. Gen. Stat. §113-3(a)(1)] and "promoting the development of commerce and industry" [N.C. Gen. Stat. §113-3(a)(3)]. Further, the Board has the power to "take such measures as it may deem best suited to promote the conservation and development" of resources [N.C. Gen. Stat. §113-8]. Still

further, the Department is given jurisdiction over the "conservation of marine and estuarine resources" as well as over all activities connected with the "conservation and regulation and marine and estuarine resources" [N. C. Gen. Stat. §113-132(a)]. Finally, the Department is charged with the duty of administering and enforcing the provisions of the subchapter relating to coastal fisheries "pertaining to the conservation of marine and estuarine resources." [N. C. Gen. Stat. §113-181(a)].

With the one exception relating to promotion of development of commerce and industry quoted above, the criteria for management would appear to be limited to biologic factors in accordance with the generally understood meaning of the word "conservation." However, N. C. Gen. Stat. §113-131 provides that:

> The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Commission are charged with stewardship of these resources. (Emphasis added.)

The term "stewardship" generally implies a larger field of responsibility than simply ensuring a renewable supply of a given resource. It is more akin to the term "management" which implies an obligation to ensure not only renewability of a resource but its wisest and most economical use. Thus, there would seem to be some grounds on which to assert that the Board and other agencies of the State of North Carolina concerned with coastal fisheries management possess the power to regulate the taking of fisheries there on both economic and biologic grounds.

In at least one instance the Board has adopted a regulation based solely on economic criteria, viz., the authority vested in the Director to open the shrimp season when the samples indicate shrimp have reached "commercial size," and to close such season when the shrimp are "undersized" [Regulation D-2]. It is well known that restricting the catch of shrimp on the basis of size has no biologic or conservation function, but rather is geared entirely to optimizing economic return to the shrimpers. Thus

there is precedent in at least one case for the use of economic criteria in coastal fisheries management in North Carolina and, as noted above, some justification in statutory interpretation to support economic criteria in addition to biologic criteria.

4. Limited Entry. If there is in fact a basis for economic management then in the absence of other restraining influences (whether legal, political, or social) a basis exists for utilizing limited entry in order to optimize net economic return to a particular segment of the coastal fishing industry. However, the North Carolina Constitution contains a provision [Art. I, §1] which specifies that among the inalienable rights possessed by citizens of North Carolina are "life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness" (emphasis added). In addition to the usual due process and equal protection clauses, the North Carolina Constitution also provides [Art. I, §24] that any "special act or resolution of the General Assembly . . . regulating labor, trade, mining, or manufacturing" is a nullity, and also that "no person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services" [Art. I, §32]. In the case In Re Certificate of Need for Ashton Park Hospital, Inc. 193 S.E.2d 729 (1973) the North Carolina Supreme Court struck down a statute authorizing a state agency to deny permits to build hospital facilities if in the agency's opinion there were a sufficient number of facilities in the area at present to fulfill the needs of the community. The court stated that:

> The right to work and to earn a livelihood is a property right that cannot be taken away except under the police power of the state in the paramount public interest for reasons of health, safety, morals, or public welfare.

In view of this decision, and the above quoted language of the North Carolina Constitution, it seems unlikely that a limited

entry scheme based upon optimization of economic return to a segment of the coastal fishing industry would be sustained.

5. Data Governing Rule Adoption and Modification.

a. Constitution. After introduction as a bill in the General Assembly, a proposed Constitutional amendment must be passed by a 3/5 majority in each house of the Assembly. Following adoption by the Assembly, the amendment must be approved by majority vote of the people at the next general election.

b. Statutes. The North Carolina General Assembly is composed of a House (120 members) and a Senate (50 members). Members are elected every two years. The regular session of the Assembly convenes on the first Wednesday after the first Monday in February subsequent to the election of the members [N. Const., Art. II, §2]. The Assembly may be called into extra session at any time by the Governor "by and with the advice of the Council of State" [N. C. Const., Art. II, §9].

Both houses need a quorum consisting of a majority of all its members to transact business [N. C. Const., Art II, §2]. The usual manner of voting is by voice vote; however, the method of counting is available and in some cases necessary. It takes a majority of those voting in both the House and the Senate to pass a particular bill. There is no veto power in the State of North Carolina; enactments do not go to the Governor for his signature or veto.

c. Regulations of the Board of Conservation and Development. All regulations of the Board, which are adopted by majority vote, must be filed with the Secretary of State and become effective on the date of filing [N. C. Gen. Stat. §113-221(a)]. Such regulations are also filed with the clerk of the superior court of each of the coastal counties of North Carolina [Id.]. However, regulations adopted by the Board which will, in the judgment of the

Baord, "result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment" are to be given a future effective date so as to "minimize undue potential economic loss to fishermen" [N. C. Gen. Stat. §113-221(d)].

6. Other Matters.

a. Regulation by Incorporation.

N. C. Gen. Stat. §113-228 provides that:

> To the extent that the Department is granted authority in this subchapter over subject matter as to which there is concurrent federal jurisdiction, the Board in its discretion may by reference in its regulations adopt relevant provisions of federal laws and regulations as State regulations. To prevent confusion or conflict of jurisdiction in enforcement, the Board may provide for automatic incorporation by reference into its regulations of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Department.

The applicability of this provision to a system of coordinated fishery management under present jurisdictional arrangements is problematical, but it does afford a vehicle for expediting adoption and modification of Federal regulations should a concurrent jurisdictional arrangement, such as that contemplated in the "High Seas Fisheries Conservation Act" (discussed above, Part III.D.1) be adopted at some future date.

b. Modification of Statutory License Fees and Other Matters. As noted above, N. C. Gen. Stat. §113-223 provides in part that:

> Pursuant to [reciprocal] agreements in the Board may modify provisions of this subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources.

Affording an administrative agency the power to modify statutory law is an unusual practice and it is unclear precisely what the

legal import of such a provision is. The present Commissioner is of the opinion that should North Carolina enter a reciprocal agreement with another state concerning the amount of license fees to be charged the states' respective citizens (or any other matter in the subchapter), then the statutory provisions would be modified as between participating citizens of the contracting states. However, as stated in Section III.D.3.d., above, we are of the view that interstate agreements are not self-executing and cannot therefore modify existing state legislation. We are of this view even though the legislature -- as in the North Carolina case -- has so authorized the agency in question for, as also stated in Section III.D.3.d., above, this appears to be an unconstitutional delegation violative of the separation of powers doctrine.

B. South Carolina.

1. Authorization to Enter Reciprocal Agreements. There is at present no general authorization for the South Carolina Department of Wildlife and Marine Resources or any subdivision thereof to enter into reciprocal agreements with other states concerning the management of coastal fisheries. There are several specific authorizations in which the Department is given the power to negotiate reciprocal agreements with the State of Georgia concerning fresh water fishing [see, e.g., S. C. Code §§28-1254 (1972 Supp.), 28-1301 (1972 Supp.), 28-1257, 28-1294, and 28-1297]. The text of agreements entered into pursuant to these types of authorities are set forth at pp. 504-505 of Volume 17 of the Code of Laws of South Carolina and pp. 468-70 of the 1971 Cumulative Supplement to Volume 17.

As noted, however, it would appear that the South Carolina legislature would have to enact specific reciprocal agreement authority with respect to coastal fisheries. This could be done either on a blanket basis as is the case in North Carolina and other states, or on a specific subject matter basis as the need arises. However, without express statutory authorization, the Department's agreements would be void and could not form the basis for a reliable system of reciprocal fisheries management.

2. Administrative Organization and Flexibility of Management. The agency charged with marine fisheries resource management responsibility in South Carolina is the Wildlife and Marine Resources Department ("Department" hereinafter). The head and governing board of the Department is the Wildlife and Marine Resources Commission ("Commission" hereinafter) which is composed of nine members [S. C. Code §28-93, 1972 Supp.]. Within the Department there exists the Marine Resources Division ("Division" hereinafter; formerly the Division of Commercial Fisheries, the name having been changed by internal Commission reorganization) which serves as the staff for the Commission [S. C. Code §28-97]. The Division has jurisdiction over:

> [A]ll salt-water fish, fishing and fisheries, all fish, fishing and fisheries in all tidal waters of the State and all fish, fishing and fisheries in all waters of the State whereupon a tax or license is levied for use for commercial purposes [including] shell fish, crustaceans, diamond-back terrapin, sea turtles, porpoises, shad, sturgeon, herring and all other migratory fish except rock fish (striped bass). [S. C. Code §28-159].

The Division is charged with enforcement of the state's laws pertaining to fish and fisheries [S. C. Code §§28-97 and 28-160] and is authorized to adopt and promulgate rules and regulations for the control of fisheries consistent with the laws and policies of the State [S. C. Code §28-174].

The coastal fishery laws of South Carolina are contained in Chapter 7, Title 28, of the Code of Laws of South Carolina and cover virtually every species concerned. Chapter 7 contains detailed substantive provisions concerning seasons for and manner of taking of oysters, clams, shrimp, prawn, crabs, shad, sturgeon, terrapin and sea turtles, and industrial fish, as well as gear restrictions, licenses, and taxes with respect to coastal fisheries in general.

As a result of the comprehensiveness of the statutory

coverage, there is very little flexibility within the Commission for management actions. Among the exceptions are the provisions of S. C. Code §28-961.5 (1972 Supp.) which provide that the Commission, after consultation with the Division, may shorten or extend the shrimp season by not more than thirty days in specified areas and may prohibit trawling for shrimp in such areas at any time during the season, or open such areas for trawling at any time, in or out of season, "if it feels such action should be taken in the best interest of the State." Pursuant to S. C. Code §28-781 the Commission may either open the oyster/clam season fifteen days earlier or extend the season fifteen days later, or both, if the Commission "deems it to be in the best interests of the State." Pursuant to S. C. Code §28-791 the Commission retains authority to lease all or any part of submerged lands considered as oyster beds, and by virtue of §28-874 the Commission may close all or any portion of South Carolina waters to crab trawling for specified periods if it is "in the best interest of conservation of marine resources."

But for these exceptions, however, all rules and regulations concerning the management of coastal fisheries are contained in the statutes and therefore require legislative action for modification.

Needless to say, the inflexibility of such a management system makes it unlikely that South Carolina -- under the present statutory and administrative arrangement -- could be an effective participant in a coordinated fisheries management plan which required substantial responsiveness on behalf of the participating states (see, however, subsection 6, post, for a discussion of possible changes in the South Carolina resource management system).

3. Criteria for Resource Management. Criteria for coastal fisheries management are contained in S. C. Code §§28-159 and 174, the former providing that the Division possesses "jurisdiction" over coastal fisheries, and the latter authorizing the Division to promulgate rules and regulations "for the control of

fisheries." As previously noted, this authority is strictly limited by statutory provisions, but it is clear that where administrative discretion does exist "control" implies more than simply conservation and probably provides a basis for economic management. Further, with respect to each of the areas identified above wherein the Commission has regulatory authority to alter seasons, the criteria is stated as being "the best interests of the state." There has been no judicial interpretation of this standard, although it is obviously broad enough to include economic and social as well as biologic criteria. That very broadness, however, might subject it to successful attack on the basis of vagueness or indefiniteness as to the limits on the authority of the Commission to extend or restrict the seasons or areas in question.

4. Limited Entry. No precedents warranting a discussion of limited entry in the context of South Carolina coastal fisheries management were found.

5. Data Concerning Rule Adoption and Modification.

a. Constitution. The South Carolina Constitution can be amended by the following procedure:

(1) The introduction of a proposed amendment in either the House or the Senate; (2) passage of the proposal by each House by two-thirds of the members; (3) submission of the proposal to the "qualified electors" at the next general election; and (4) if adopted by a majority, transmission back to the House, for reading and ratification [S. C. Const., Amend. XVI (1972)].

b. Statutes. Each year, beginning the second Tuesday in January, the General Assembly of South Carolina meets in regular session for forty days [S. C. Const., Art. 3, §9]. There are 124 members of the House elected for two year terms [S. C. Const., Art. 3, §3]. The number of senators stands at 46, their term being four years [S. C. Const., Art. 3, §6]. Each bill or joint resolution passed by a majority of the

members present in each house must be signed or vetoed by the Governor. The General Assembly can override a veto by a vote of two-thirds of the members present in each house.

c. Regulations of the Wildlife and Marine Resources Commission. The Commission meets monthly on the third Friday of each month, a quorum consisting of five members. A majority vote among those present suffices to pass resolutions or take other actions.

6. Other Matters. During on-site interviews, it was pointed out that South Carolina will shortly undergo a substantial government reorganization effort in the field of natural resources, commencing with the January, 1974, session of the South Carolina General Assembly. Changes in the existing structure -- possibly resulting in a greater delegation of authority to the Division and the Commission -- are therefore likely by 1974 or 1975.

C. Georgia.

1. Authorization to Enter Reciprocal Agreements. One of the duties specified for the Board of Natural Resources is to "enter into cooperative agreements with educational institutions and State and Federal and other agencies to promote wildlife management and conservation" [Ga. Code Ann., §45-114(9)]. In view of the "management and conservation" .

this section appears to provide broad authority for entering into reciprocal agreements.

2. Administrative Organizations and Flexibility of Management. In 1972 Georgia adopted an executive reorganization act which created the Department of Natural Resources ("Department" hereinafter). The chief administrative officer of the Department is called the Commissioner. The policy-making authority for the Department's predecessor agency was, prior to 1972, vested in the Game and Fish Commission, which being a creature of the State Constitution, could not be affected by the

statutory reorganization. However, a subsequent Constitutional amendment created the Board of Natural Resources ("Board" hereinafter) which succeeded to all the duties of the old Game and Fish Commission (in effect only a name change was accomplished). The principal obligation of the Board is to "establish the general policies to be followed by the Department of Natural Resources" [Exec. Reorg. Act of 1972, §1527]. Within the Department there has been administratively created the Division of Game and Fish ("Division" hereinafter) and, within the Division, the Section of Coastal Fisheries ("Section" hereinafter).

Much of the regulatory material concerning coastal fisheries in Georgia is established in statutes. However, the Board and the Commissioner have some amount of delegated authority including the power to:

> [F]ix bag and creel limits and to fix open and closed seasons for all wildlife on a statewide, regional, or local basis, as they may find to be appropriate, except as otherwise provided by law.
>
> [R]egulate the manner, method, ways, means and devices of killing, taking, capturing, transporting, storing, selling, using, and consuming wildlife except as otherwise provided by law. Ga. Code Ann., §45-114(2) and (3).

Included within statutory coverage are matters pertaining to commercial fishing boat licenses [Ga. Code Ann., §45-212], requirements for commercial licenses for the taking of shad [§45-210], personal commercial fishing licenses [§45-219], oyster collecting permits [§45-221], and certain gear restrictions [§45-713]. Chapter 45-9 of Title 45 contains detailed regulatory provisions concerning oysters, shrimp, prawn, and crabs [§§45-901--45-938]. Although basic shrimp seasons are established in §45-905, the Commissioner is authorized to: (a) close sounds during the regular open season; (b) close areas to shrimping or crabbing when the count of shrimp exceeds 55 to the pound; and (c) open any sound to shrimping or crabbing during August or January when the

count is below 55 to the pound. Thus, with respect to shrimp and crabs, some flexibility over seasons is available, although matters of judgment are not left with the administrative agency but rather depend upon a specific statutory standard. Based on the 1973-74 Fishing Regulations promulgated by the Board, the only coastal fisheries subjects dealt with in the regulations are: (a) seasons and gear restrictions with respect to commercial shad fishing; (b) gear restrictions with respect to commercial salt water catfishing; and (c) general gear restrictions concerning seines.

However, with respect to species not covered by statutory regulations, it would appear that the Board would have substantial flexibility in view of the provisions of Ga. Code Ann., §45-114(2) and (3) quoted above. Thus, Georgia seems to rank somewhere between North Carolina and South Carolina in terms of administrative flexibility to respond to a cooperative interstate fisheries management program.

3. Criteria for Resource Management. Ga. Code Ann., §45-114(3) quoted above, would appear to constitute an extremely broad set of criteria for coastal fisheries management. The authority to regulate the method of "taking, capturing, transporting, storing, selling, using, and consuming" fishery resources covers economic and social criteria as well as the traditional biologic or conservation standard. As was the case in South Carolina, however, such a broad mandate could be subject to successful challenge bacause of vagueness or indefiniteness should economic or social criteria be administered in practice. Here, as in other states, a more express statement of the appropriate criteria for marine fisheries management would be helpful if successful coordinated interstate management programs are to be developed.

4. Limited Entry. In view of the rather broad language of §45-114(3), and barring a constitutional impediment based on due process or equal protection, it would seem conceivable that a limited entry law could be upheld as part of the

Board's authority to regulate the taking of fish. A further relevant statutory provision is contained in Ga. Code Ann., §45-101.1 which provides, following a recitation placing ownership of, jurisdiction over, and control of all wildlife in the state of Georgia that:

> To hunt, fish or trap, or to capture or kill wildlife as defined herein, or to possess or transport the same is hereby declared to be a privilege to be exercised only in accordance with the laws granting such privilege. every person exercising this privilege does so subject to the rights of the state to regulate [those activities] . . . . Ga. Code Ann., §45-101.1(b). (Emphasis added.)

There would thus appear to be a rather clear presumption against any vested right to the fishery resources of the State of Georgia, and the specific categorization of that activity as a privilege would lead one to believe, in the absence of other constitutional impediments, that the establishment of a system of limited entry for the purpose of optimizing net economic return would be consistent with the existing statutory law.

5. Data Concerning Rule Adoption and Modification.

a. Constitution. A majority of qualified voters can adopt a constitutional amendment proposed by a 2/3 vote of both houses of the Georgia legislature.

b. Statutes. The Georgia Legislature meets annually for its regular session (the duration varies between even and odd year sessions, however) [Ga. Const., Art. III, §1]. A majority vote in each House suffices to enact a bill which must then be signed by the Governor. Gubernatorial vetoes may be overridden by a 2/3 vote in each House of the Legislature [Ga. Const., Art V, §1, ¶16].

c. Regulations of the Board of Natural Resources. The Board consists of fifteen members, eight of whom constitute a quorum

["Natural Resources Act" of 1973, modifying Ga. Code Ann., §45-107]. Regular meetings are required to be held at least once every sixty days and the Board may not hold more than six special or called meetings per year. Rules and regulations promulgated by the Board must be posted for at least thirty days before the effective date thereof [Ga. Code Ann., §45-115(a)]. However, in "emergency situations," the thirty day posting notice period is waived and such emergency rules and regulations may enter into force upon proclamation by the Board [Ga. Code Ann., §45-115(b)].

D. Florida.

1. Authorization to Enter Reciprocal Agreements.

Fla. Stat. Ann. §370.18 provides that:

> The [Department of Natural Resources][137] may enter into agreements of reciprocity with the fish commissioners of other departments or other proper officials of other states whereby the citizens of the State [of Florida] may be permitted to take or catch shrimp or prawn from the waters under the jurisdiction of such other states upon similar agreements to allow such nonresidents or aliens to fish for or catch seafood products within the jurisdiction of the State [of Florida] regardless of residence.

The authority contained in this section is limited to matters of access to fishery resources and does not appear to extend to management in general. Compare, for example, the more management-oriented approach of the North Carolina reciprocal agreement statute in which the appropriate agency is authorized to "enter into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources" [N. C. Gen. Stat. §113-181(a)]. Thus, a broader range of reciprocal agreement authority may be needed in Florida if that state is to participate in reciprocal or coordinated management agreements dealing with

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137. The statute formerly read "state board of conservation." As will be noted in subsection 2, post, the Governor and Cabinet now constitute the "board of conservation" for purposes of approving agreements negotiated and entered into by the Executive Director of the Department of Natural Resources.

matters other than reciprocal access.

It should also be noted, that Fla. Stat. Ann. §370.18 limits the rights which can be acquired under such agreements by Florida citizens to shrimping operations, whereas the rights which can similarly be acquired by citizens of contracting states extend to the broader area of "seafood products." It would seem desirable to at least amend this statute by replacing the words "shrimp or prawn" with the words "seafood products" in order that all species could be included in the agreements.

2. Administrative Organization and Flexibility of Management. The agency charged with the administration, supervision, development, and conservation of the natural resources of the State of Florida is the Department of Natural Resources ("Department" hereinafter) [Fla. Stat. Ann. §370.013] which is headed by an Executive Director ("Director" hereinafter). Within the Department there exists the Division of Marine Resources ("Division" hereinafter) whose duties include the preservation, management, and protection of marine fisheries, and the regulation of all fishing operations in the State and of its citizens engaged in fishing activities wihtin and without the State[138/] [Fla. Stat. Ann. §370.02(2)(a)]. There does not exist any separate board or commission of natural resources or conservation in Florida, and the Governor and the Cabinet ("Governor-Cabinet" hereinafter) sit as a board which approves all rules and promulgated by the Director of the Department.

The rules applicable to coastal fisheries are contained in Chapter 370 of the Florida Statutes Annotated (statutes) and in Chapter 16B of the Florida Administrative Code (regulations). The statutes encompass: (a) license and licensee fee provisions [Fla. Stat. Ann. §370.06]; (b) enforcement [Fla. Stat. Ann. §370.061]; (c) seafood dealers [Fla. Stat. Ann. §370.07]; and (d) general gear restrictions [Fla. Stat. Ann. §370.08]. Extensive statutory

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138. On the extraterritorial jurisdiction issue raised by this statutory language, see the discussion of the Skiriotes case, supra, Section III, D.1.b.

provisions deal with regulation of fisheries on a species by species basis. Specifically, the commercial taking of food fish[139/] for other than food purposes (i.e., for industrial purposes) is prohibited [Fla. Stat. Ann. §370.11(1)] and minimum lengths for certain salt water fish are specified [Fla. Stat. Ann. §370.11(2)]. Detailed provisions concerning shad -- seasons, gear restrictions, limits -- are contained in the statutes, although the Department is given discretion to establish the time of a required 72 hour closure per week during open season [Fla. Stat. Ann. §370.11(3)(e)]. Gear restrictions and limits are also established in the statutes for marine turtles [Fla. Stat. Ann. §370.12], snook [Fla. Stat. Ann. §370.111], striped bass [Fla. Stat. Ann. §370.112], bonefish [Fla. Stat. Ann. §370.1121], stone and blue crabs [Fla. Stat. Ann. §§370.13 and 370.131], and crawfish [Fla. Stat. Ann. §370.14]. Bag limits are provided for sailfish [Fla. Stat. Ann. §370.111], tarpon [Fla. Stat. Ann. §370.111], and queen conchs [Fla. Stat. Ann. §370.113]. Administrative regulations which interpret, implement, or make specific the statutory requirements concerning these species are contained in Chapter 16B of the Florida Administrative Code.

Shrimp management provisions in the statutes include size limits and prohibitions on shrimping in areas where undersized shrimp exist in specified quantities [Fla. Stat. Ann. §370.15(2)], gear restrictions on an area and seasonal basis [Fla. Stat. Ann. §370.15(4)], licensing [Fla. Stat. Ann. §370.15(5)], and special restrictions based on geographical location [Fla. Stat. Ann.§§370.151 and 152]. The regulations concerning shrimp [Chapter 16B-2, Fla. Adm. Code] generally reiterate the statutory provisions, or amplify them, very little management discretion being left to

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139. "Food fish" are defined in the statutes as including "mullet, trout, red fish, sheephead, pompano, mackerel, bluefish, red snapper, grouper and all other fish generally used for human consumption" [Fla. Stat. Ann. §370.01(12)].

the Department. The same is true for oysters [Fla. Stat. Ann. §370.16 and Fla. Adm. Code, Ch. 16B-5] and other species.

Accordingly, Florida's coastal fishery management system, insofar as details thereof are set forth in the statutes, is relatively inflexible. The amount of administrative discretion is not now of such a character or dimension as to permit effective responsiveness to a reciprocal or coordinated interstate coastal fishery management program.

3. Criteria for Resource Management. The Department is charged with the "administration, supervision, development and conservation" of the natural resources of the State of Florida [Fla. Stat. Ann. §370.013]. The Division is charged with the duty to "preserve, manage, and protect" the fishery resources of the state [Fla. Stat. Ann. §370.02(2)(a)]. The section goes on to provide that all of these duties shall:

> [B]e directed to the broad objective of managing such fisheries in the interest of all people of the state, to the end that they shall produce the maximum sustained yield consistent with the preservation and protection of the breeding stock.

Specifically with respect to shrimp, the Department is authorized to promulgate rules and regulations consistent with the "general policy of encouraging the production of the maximum sustained yield consistent with the preservation and protection of breeding stock." [Fla. Stat. Ann. §370.15(1)].

The terms "supervision, development, and conservation" lend themselves to broad interpretation as does the "management," criterion applicable to the Division. However, the specific policy objective of ensuring maximum sustainable yield would appear to act as a limitation on broad interpretation of these terms and may in fact adversely affect an interpretation which would permit management on an economic basis. The situation is unclear, however, for although the maximum sustainable yield or biologic standard seems to be exclusive with respect to shrimp, nonetheless the statutes contain an economically based regulatory

system, viz., size limits. As with most states, then, the question is an open one, the answer to which can only come from a court challenge to a particular management initiative.

4. Limited Entry. No precedents warranting a discussion of limited entry in the context of Florida coastal fisheries management were found.

5. Data Concerning Rule Adoption and Modification.

a. Constitution. Either branch of the Florida Legislature may propose an amendment, whether in regular or special session. Prior to being submitted to the electors, a vote of three-fifths of all members of the Legislature must be obtained. The proposal must be published in each county newspaper no later than six weeks "immediately preceding the election" to vote on the proposal. Normally the proposal is submitted at the next general election. However, three-fourths vote of the members of the Legislature may call a special election in cases of emergency [Fla. Const. Art. XVII, §§1 & 3 (rev. 1968)].

b. Statutes. The legislature of Florida is authorized to meet annually for its regular session not exceeding sixty (60) days unless by three-fifths vote of each House the session is extended. The legislature convenes on the first Tuesday after the first Monday in April [Fla. Const. Art. III, §3 (Rev. 1968)]. A majority of members is required to constitute a quorum, and a bill is passed by a majority of the quorum in each House [Fla. Const. Art. III, §4 (Rev. 1968)]. A bill may originate in either the House of Representatives or the Senate and must be read on three separate days unless a 2/3 vote declares the requirements waived [Fla. Const. Art. III, §7 (Rev. 1968)]. The governor has the power to veto a bill; however the legislature, by a 2/3 vote, may override the veto [Fla. Const. Art. III, §8].

c. Regulations Promulgated by the Governor and Cabinet.

Regulations of the Department (which are issued by the Director based on Division recommendations) may be promulgated in two ways. First, an emergency rule, the duration of which may not exceed ninety days, may be promulgated with the approval of the Governor and the Cabinet, and becomes effective on filing with the Secretary of State. Second, permanent rules, after approval by the Governor and Cabinet, become effective forty-five days after their appearance in the Secretary of State's "registry." No public hearing is required for the promulgation of such rules and regulations, the Governor being excepted from the provisions of the Administrative Procedure Act [Fla. Stat. Ann. §120.021(1)]. The Cabinet meets every two weeks and the Secretary of State distributes a "registry" of rules and regulations monthly.

6. Other Matters. A unique feature of Florida statutory law, at least in the past, has been the existence of "local laws" and "general bills of local application." Local laws are passed by the entire legislature but are sponsored by the legislators of a particular area and are made applicable only to that area. The legislature normally passes these types of local laws as a courtesy, provided that the representatives from the affected region are in agreement on the text and that they indicate non-objection from citizens in the area. General bills of local application are also passed by the entire legislature but contain provisions or criteria limiting them to designated counties, for example, by population. Such a "county option" system of coastal fisheries management is clearly inconsistent with the objectives of interstate coordinated fishery management programs.

The 1973 Florida Legislature passed bill 73-208 which provides:

> The power to regulate the taking or possession of salt water fish . . . is expressly reserved to the state.

The bill also amended Fla. Stat. Ann. §125.01 by adding the following provisions:

> The legislative and governing body of a county shall not have the power to regulate the taking or possession of salt water fish . . . with respect to the method of taking, size, number, season, or specie; provided, however, that this subsection shall not be construed to prohibit the imposition of excise taxes by county ordinance.
>
> All county ordinances purporting to regulate in any manner the taking or possession of salt water fish . . . are hereby repealed. (Emphasis added.)

The act was approved by the Governor of Florida on June 19, 1973, and takes affect on October 1, 1973. It should be noted, however, that the preemption bill only affects those local laws and general bills of local application which have actually been adopted as county ordinances for the only such regulations which were repealed were those in force as county ordinances. Apparently some local laws and general bills of local application have not in the past been adopted as county ordinances and are therefore not affected by the preemption bill. It is not possible from a reading of either statutory or regulatory law to determine which is the case and a review of the filing records with the Secretary of State is required. Such a compilation and investigation is now underway and should be completed during 1973. At that time it will be possible to determine whether the "loophole" contains significant amounts of substantive law which would still be in force in spite of the preemptive bill. It is possible that if a significant amount of substantive law is thus exempted, further legislation will be sought.

E. Alabama.

1. Authorization to Enter Reciprocal Agreements.

The authority to enter into reciprocal agreements with respect to coastal fisheries is contained in Code of Ala., Tit. 8, §171(13a) which provides:

> The director of the department of conservation shall have authority to enter into agreements of reciprocity with conservation commissioners or directors and other proper officials of other states, who have jurisdiction over the seafood laws and regulations of such states, whereby the citizens of the State of Alabama may be permitted to catch or take fish, shrimp, crabs or oysters from the waters under the jurisdiction of such other states, for commercial purposes, upon similar agreements whereby such non-residents are allowed to take or catch fish, shrimp, crabs or oysters from the public salt waters of the State of Alabama, for commercial purposes, regardless of residence.

Like some other reciprocal agreement authorizing statutes, this language contemplates only an arrangement permitting non-residents to fish within Alabama waters on a reciprocal basis. It does not extend to management issues in general such as coordinated regulations concerning a fishery which may be common to Alabama and other states. It would not, for example, authorize a reciprocal agreement establishing a season or size limit for menhaden. The limited scope of this and similar provisions should be carefully noted in judging their values as tools for effectuating a coordinated interstate fisheries management program.

Reciprocal agreements entered into pursuant to Code of Ala., Tit. 8, §171(13a) require only the signature or authorization of the Commissioner of the Department of Conservation and Natural Resources (see below for administrative organization) although there are similar statutory provisions with respect to fresh water fish and other subjects which also require the assent of the Governor.

2. Administrative Organization and Flexibility of Management. The administrative organization of the State of Alabama with respect to coastal fisheries begins with the Department of Conservation and Natural Resources ("Department" hereinafter) [Code of Ala., Tit. 8, §§1-4] which is headed by a Commissioner appointed by the Governor [Code of Ala., Tit. 8, §5]. Code of Ala., Tit. 8, §6 provides that:

> All functions and duties of the Department of Conservation shall be exercised by the Director of Conservation, acting by himself or by and through such administrative divisions or such officers or employeees as he may designate. The Director of Conservation shall have all power and authority necessary or convenient to carry out the functions or duties of the Department of Conservation . . . .

There also exists an Advisory Board of Conservation ("Advisory Board" hereinafter) which consists of certain state officers, ex officio, and gubernatorial appointees [Code of Ala., Tit. 8, §8]. The functions of the Board are advisory only [Code of Ala., Tit. 8, §9] and has itself no legal authority to act. In general, the Commissioner will consult with the Advisory Board and secure the Board's approval concerning the promulgation of rules and regulations which involve controversial issues. Within the Department there exists a Division of Marine Resources ("Division" hereinafter) which has two sections, one concerning enforcement and another marine biology [Code of Ala., Tit. 8, §§1(2) and 15].

The Department has "full jurisdiction and control of all seafoods" in Alabama waters and is required to promulgate and enforce rules and regulations for the "protection, propagation, or conservation" of those fishery resources [Code of Ala., Tit. 8, §4]. All functions and duties of the Department are to be exercised by the Director [Code of Ala., Tit. 8, §6]. The Division is required to perform "the functions and duties of the [Department] with respect to the wildlife of the State of Alabama, including game, fish, and seafoods" [Code of Ala., Tit. 8, §15].

The Department's authority extends to prescribing:

> the manner of taking or catching, the time when, and . . . the places from which sea foods may or may not be taken or caught, during certain periods of the year, or entirely, as it may deem to be for the best interest of the sea food industry. [Code of Ala., Tit. 8, §4].

Detailed statutory provisions are contained in Code of Ala., Tit. 8, §§111-171, although substantial latitude for management remains with the Department and the Commissioner. For example, although the basic authority to lease oyster beds is set forth in the statutes, details of the terms of leasing are left to the Commissioner.

With respect to shrimp, licensing requirements and fees are set forth in the statutes [Code of Ala., Tit. 8, §155] but the Commissioner retains authority to set by regulation the weight requirements within specified limits [Code of Ala., Tit. 8, §161]. General gear restrictions and license requirements for other seafoods are set forth in Code of Ala., Tit. 8, §171 et seq.

It thus appears that Alabama has a relatively flexible management system which would lend itself to a reciprocal or coordinated interstate fisheries management plan.

3. Criteria for Resource Management. The criteria provided for the Department in connection with the promulgation of rules and regulations concerning coastal fisheries are set forth in Ala. Code, Tit. 8, §4 as follows:

> [The Department] shall ordain, promulgate, and enforce all rules, regulations and orders deemed by it to be necessary for the protection, propagation, or conservation of [all seafoods]; the department may by order duly made and published proscribe the manner of taking or catching, the time when, and designate the places from which seafoods may or may not be taken or caught, during certain periods of the year, or entirely, as it may deem to be for the best interest of the seafood industry. (Emphasis added.)

Section 4 also provides that the opening and closing of oyster season is to be based on the "best interest of the public welfare."

The terms "protection, propagation, or conservation," clearly relate to biologic standards but the phrase "best interests of the seafood industry" obviously provides for economic management. At least with respect to oysters, the above quoted provision would also appear to relate to some social goals such as health and safety although it is questionable whether the language

can be extended to the type of social management contemplated in fisheries management objectives relating to optimization of social yield. A further limitation is contained in Code of Ala., Tit. 8, §21 which provides in part that:

> [T]he Director shall not have the right to make or promulgate any rules or regulations which will hamper industry or which will interfere with the operation of any industrial plant or plants or any industrial operation.

4. Limited Entry. The last quoted provision, particularly the term "hamper industry," could be construed to forbid entry limitation schemes. However a valid argument can be made that the adoption of a limited entry system would indeed be of economic benefit to industry and thus would not "hamper" the industry as a whole. Obviously, however, it would "hamper" those individuals engaged in the industry who did not secure or qualify for licenses under such a limited entry scheme.

5. Data Concerning Rule Adoption and Modification.

a. Constitution. A proposed amendment to the Constitution of Alabama may be introduced into either the House or the Senate. It must then: (a) be read at least three times on different days, (b) pass each House by a vote of three-fifths of all members, and (c) be adopted by a majority of the electorate at an election ordered by the legislature either at the next general election, or at a time so fixed "not less than three months after the final adjournment of the session of the legislature at which the amendments were proposed" [Ala. Const. Art. 18, §284].

b. Statutes. The Alabama Legislature, made up of 35 members of the Senate and 105 members of the House, convenes for a regular session of not more than thirty-six days on the "first Tuesday in May" of each odd-numbered year. A majority of members constitute a quorum in transacting business [Ala. Const. Art. 4, §52]. A bill becomes law by vote of a

majority of each house [Ala. Const. Art. 4, §63]. All bills that are passed must be sent to the governor for his signature or veto. Notwithstanding the exercise of the veto power, the bill may still become law by a vote "of a majority of the total number in each House." Should the governor fail to return the bill within six days it becomes law [Ala. Const. Art. 5, §125].

c. Regulations of the Department of Conservation and Natural Resources. The Commissioner's power to promulgate regulations is contained in Code of Ala., Tit. 8, §§7 and 21:

> The [Commissioner] shall have and exercise all rule-making powers of any division of the [Department] . . . . [H]e shall have power and authority to establish and promulgate rules and regulations . . . with respect to the manner of performance of all functions and duties of the [Department] . . . . [§7]

> The [Commissioner] is authorized to make and promulgate such reasonable rules and regulations not in conflict with the provisions of the game and fish laws as he may deem for the best interest of the conservation, protection, and propagation of . . . seafoods . . . . [§21]

He is required to "publish in pamphlet form for general distribution" all laws and regulations pertaining to fisheries regulation, inter alia [Id.]. The Advisory Board may repeal or amend a rule or regulation of the Commissioner, or promulgate additional rules, by a 2/3 vote of those present at any meeting with the approval of the governor [Code of Ala., Tit. 8, §9].

F. Mississippi.

1. Authorization to Enter into Reciprocal Agreements. The Mississippi reciprocal agreement provision is found in Miss. Code Ann. (Recomp. 1972)

The Commission is given jurisdictional authority over the taking, catching and processing of shrimp, oysters, and crabs, but is specifically denied jurisdiction with respect to the taking, catching, and processing of menhaden, trash fish, tuna, and red snapper [Miss. Code Ann. (Recomp. 1972) §49-15-15]. With respect to those species over which the Commission has jurisdiction, and excepting the amounts of taxes and the fees for licenses (both of which are specified in statutes) the Commission has very broad discretion with respect to the regulation of coastal fisheries. Thus, Mississippi has an extremely flexible fisheries management system which would be entirely suitable to reciprocal or coordinated interstate fisheries management arrangements, at least with respect to the species over which the Commission has legal jurisdiction. Of course, with respect to menhaden, trash, fish, tuna, and red snapper, the total absence of regulatory authority makes Mississippi's participation in any interstate management arrangements concerning those species dependent on action by the Legislature.

3. Criteria for Resource Management. The criteria for coastal fisheries management are set out in Miss. Code Ann. (Recomp. 1972) §49-15-15(1) which provides that the Commission:

> Is authorized to enact all ordinances necessary for the protection, conservation or propagation of all shrimp, oysters and crabs in the waters under the territorial jurisdiction of the state of Mississippi.

The seafood chapter of the Mississippi Code contains at the outset a statement of public policy as follows:

> As a guide to the interpretation and application of this chapter, the public policy of this state shall be to recognize the need for a concerted effort to work toward the protection, propagation and conservation of its seafood and aquatic life in connection with the revitalization of the seafood industry of the State of Mississippi . . . . [I]t is the intent of the

> legislature to provide a modern, sound, comprehensive and workable law to be administered by specialists who are vested with full and ample authority to take such action as may be necessary in order to help protect, conserve and revitalize seafood life in the State of Mississippi . . . . [Miss. Code Ann. (Recomp. 1972) §49-15-1] (Emphasis added.)

Taken alone, the terms "protection, propagation, and conservation" clearly have a biologic import and would seem to limit the management authority to essentially biologic or traditional conservation techniques. However, the reference to revitalization of the seafood industry and the authority vested in the Commission to take steps necessary to "revitalize seafood life" would tend to imply some basis for economic regulation since revitalization of the seafood industry clearly refers to economic viability. Thus, given this broad public policy statement, it is likely that both biologic and economic criteria could be utilized in the management of coastal fisheries. In fact, Miss. Code Ann. (Recomp. 1972) §49-15-15(1) makes it unlawful to catch or have in possession shrimp of a size less than a minimum specified weight, and it is generally recognized that restrictions on the size of shrimp relate purely to the economic return to the industry taking such shrimp and have no basis in conservation whatsoever. Since the legislature saw fit to codify one economic management principle, and in view of the broad public policy statement of §49-15-1, it appears that economic as well as biologic criteria may be used in the management of Mississippi coastal fisheries.

4. Limited Entry. No precedents warranting a discussion of limited entry in the context of Mississippi coastal fisheries management were found.

5. Data Concerning Rule Adoption and Modification.

a. Constitution. Article XV, §273 of the Mississippi Constitution provides that when two-thirds of a majority of all members of the legislature deem an amendment to

the Constitution necessary, the proposal goes before the electors for approval in a special election. The public must be given thirty days notice.

b. Statutes. Under the Mississippi Constitution the legislative power is vested in the Senate and the House of Representatives [Miss. Const, Art. 4, §33]. The legislature meets annually for its regular session on "the Tuesday after the first Monday of January" for a duration of ninety days. Every fourth year, beginning in 1972, the length of the regular session is extended to one hundred and twenty-five days. Moreover, the session may be extended in duration by a two-thirds vote of each house for a maximum of thirty days [Miss. Const., Art. 4, §33]. A majority of each house constitutes a quorum [Miss. Const., Art. 4, §54]. A majority of the quorum is necessary in order to pass a bill. A bill may be introduced into either house, must be read on three different days, and after it has received the necessary vote must be signed by the president of the Senate and speaker of the House [Miss. Const., Art. 4, §59]. The governor of Mississippi must either sign or veto the passed bills. "[I]f he does not approve, he shall return it" to the house, for reconsideration [Miss. Const., Art. 4, §72]. The legislature can override a veto of the governor by a vote of two-thirds of the members in each house.

c. Regulations of the Mississippi Marine Conservation Commission. The Commission holds open meetings on the first Monday of each month and from time to time as business may require; further, no action shall be taken except "by vote in meeting assembled" [Miss. Code Ann. (Recomp. 1972) §49-15-13]. A majority of members constitutes a quorum and decisions on recommendations submitted by the marine biologist members are automatically adopted unless overruled by at least six other members [Miss. Code Ann. (Recomp. 1972) §49-15-11(a)]. Other actions may apparently be taken by majority vote of the quorum. Regulations ("ordinances") so

promulgated by the Commission must be recorded in an official ordinance book and each such regulation must be "advertised" one time in a newspaper having general circulation in counties so affected by the regulation; further, the regulation may not become effective less than seven days after its publication [Miss. Code Ann. (Recomp. 1972) §49-15-15(m)].

6. Other Matters.

a. Species Excluded from Regulation.

There appears to be a question whether the species not referred to in §49-15-15 (i.e., species other than shrimp, oysters, and crabs, over which the Commission has jurisdiction, and menhaden, trash fish, tuna, and red snapper, over which the Commission does not have jurisdiction) are within or without the jurisdiction of the Commission. One interpretation would apply the maxim inclusio unius est exclusio alterius and would conclude that such species were not subject to regulation by the Commission since only those species specifically enumerated as being within the Commission's jurisdiction could be considered so. However, this argument is weakened because of the specification of excluded species -- the maxim could be applied in reverse to argue that since only menhaden, trash fish, tuna, and red snapper were specifically enumerated as being without the jurisdiction of the Commission, all other species were intended to the included. In view of the two edges of the inclusio maxim, We do not believe that it offers any real guidance in interpreting the status of non-enumerated species.

Another argument is based on Miss. Code Ann. (Recomp. 1972) §49-15-1 -- the public policy statement -- since it refers to the generic term "seafoods" which is defined in Miss. Code Ann. (Recomp. 1972) §49-15-3(a) to include:

> All oysters, salt water fish, salt water shrimp, diamond back terrapin, sea turtle, crabs and all other species of marine or salt water animal life existing or living in the waters within the territorial jurisdiction of the State of Mississippi. (Emphasis added.)

Further support for this position can be found in Miss. Code Ann. (Recomp. 1972) §49-15-15(c) which authorizes the Commission to:

> [S]et size, catching and taking, and culling regulations for all types of seafood except menhaden, trash fish, and tuna. (Emphasis added.)

On the whole, it would seem that the latter argument would be compelling and that the only species presently without the competence of the Commission would be menhaden, trash fish, tuna, and red snapper. This being the case, it would not be possible for the Commission to enter into reciprocal agreements concerning, or to promulgate ordinances adopting a management system with respect to, those species.

b. Special Menhaden Fishery Prohibition. Miss. Code Ann. (Recomp. 1972) §49-15-35 provides that:

> Upon the request of the Board of Supervisors of the respective coastal counties, the Commission may adopt ordinances prohibiting the taking and catching of menhaden within certain limits of the coast line of the county so requesting, but the Commission shall not fix such limits except upon request of the Board of Supervisors, and such limits shall not exceed two (2) miles from the shoreline, or two (2) miles from the corporate limit boundaries of any municipality bordering on the Mississippi Sound.

This obviously provides an exception to the restriction of Commission jurisdiction with respect to menhaden, but it is a negative authority and would not aid in the adoption of a regulatory management system for menhaden beyond the outright prohibition of menhaden fishery within two miles of the coast.

G. Louisiana.

1. Authorization to Enter Reciprocal Agreements. The provisions of La. R. S. 56:671 provide the Louisiana Wildlife and Fisheries Commission (see below) with authority to enter into

"reciprocal fishing license agreements" with the authorities of any ohter state. Further, La. R. S. 56:673 authorizes the Commission to enter into reciprocal agreements with the states of Arkansas, Mississippi and Texas pertaining to "seasons, creel limits and all other rules and regulations pertaining to the taking or protection of any species of fish or other aquatic life" in bodies of water which form the "common boundary" between Louisiana and the reciprocating states.

The latter provision would not seem to be applicable to coastal fisheries management agreements since the Gulf of Mexico is not a body of water which forms "the common boundary" between Louisiana and the reciprocating states. Although La. R. S. 56:671 would appear to be generally applicable to coastal fisheries, its effect is restricted to fishing license agreements only and would not contemplate broader management systems. It should also be noted that agreements concluded pursuant to either statutory provision cited above are to be effective when ratified by the Commission and the authority of the reciprocating state, and the duration is to be until ninety days following recision thereof by either state. Louisiana is the only state covered in this study which contained an "escape" clause of this type (see discussion in Section III.D.3.f above).

2. Administrative Organization and Flexibility of Management. The Louisiana Wildlife and Fisheries Commission ("Commission" hereinafter) is a constitutionally created seven-member body possessing authority and control over "wildlife of the state, including . . . oyster, fish and other aquatic life" [La. Const. Art. VI, Sec. 1(A)]. Moreover, the constitution provides that the Commission "shall have sole authority to establish definite management programs and policies . . . with no administrative functions" [La. Const. Art. VI, Sec. 1(A)(6)(b)]. The Director of Wildlife and Fisheries ("Director" hereinafter) is an appointee of the Commission to serve at its pleasure. The Director's duties, inter alia, consist of serving in

an administrative and executive capacity "in accordance with the policies . . . of the [C]ommission" [La. Const. Art. VI, Sec. 1(A)(7), as amended in 1968]. All functions of the previously constituted Department of Wildlife and Fisheries, including the commissioner thereof, have been transferred to the Commission to be "performed under its direction by the Director and employees of the Commission" [La. Const Art. VI, Sec. 1(A)(6)(b) as amended in 1968]. The Director is accorded the duty of preparing and recommending wildlife regulations to be considered for adoption by the Commission. Within the administrative hierarchy, the Assistant Director is responsible for the administration of "commercial fur and fishing laws of the state" [La. Const. Art. VI, Sec. 1(A)(7) as amended 1968]. Finally, below the Assistant Director is the Division Chief of Oysters, Water Bottoms and Seafoods.

Louisiana statutory law covers the method of taking fish commercially [La. R. S. 56-366], mesh size for seine and trawl [La. R. S. 56-365], licensing of commercial fishermen, nets, and vessels [La. R. S. 53-377], and the size limits on the taking of crab, speckled sea trout, channel bass, sheepshead, and shrimp [La. R. S. 53-363, 498]. Moreover, most aspects of the oyster industry are governed by statute [La. R. S. 53-421 et seq.] and there exists an elaborate statutory scheme with respect to shrimp [La. R. S. 53-491 et seq.], providing little Commission discretion save some flexibility in opening the season.

Because the constitution places the policy-making authority solely with the Commission, and because of the requisite procedures that must be followed in formulating that policy plus the existence of a substantial amount of statutory law, the state management system would probably be less responsive to an effective coordinated fisheries management plan than is the case in other states in the N.M.F.S. Southeast Region.

3. Criteria for Resource Management. The state constitution provides:

> The natural resources of the State shall be protected, conserved and replenished . . . . [and] [f]or that purpose . . . oyster, fish and other aquatic life, are hereby placed under the . . . Commission. [La. Const. Art. VI, Sec. 1(A)] (emphasis added).

Thus, it is provided by express constitutional mandate that the criteria to be utilized for coastal fisheries management by the Commission shall be biologic in nature. The language does not appear to prevent the legislature, in the exercise of the state's police powers, from using economic management criteria. Moreover, in describing the scope of the state's police power in the area of commercial fisheries, the State Supreme Court has recognized that the taking of fish constitutes a "privilege" which the "State had the right to interfere with . . . in the exercise of its police power . . . for any other cause that it deemed sufficient" [Alfred Oliver & Co. v. Bd. of Com'rs., 169 La. 438, 440, 125 S. 441]. The Louisiana legislature has deemed it the duty of the Commission to "assist in developing the natural resources of the state under . . . [its] jurisdiction to their fullest proportions." [La. R. S. 56-6(19)] (emphasis added). Specifically, the legislature has enacted economic fisheries management legislation with respect to taking shrimp [La. R. S. 56-498]. The validity of the latter provision is now being litigated.

4. Limited Entry. Louisiana law provides that "ownership of all fish . . . remains in the state for purpose of regulating and controlling the use and disposition within its borders" [La. R. S. 56-352]. Moreover, there is judicial precedent to the effect that the taking of fish is a "privilege" subject to regulation by the state "for any . . . cause it deemed sufficient" [Alfred Oliver & Co. v. Bd. of Com'rs., supra]. Although the jurisprudence has recognized that "the pursuit of a legal occupation is a property right" [Banjavich v. Louisiana Licens. Bd. for Marine Divers, 111 So.2d 505 (1959) and cases cited therein], even "this right is subordinate to legitimate exercises of the regulatory

or police power of the State" [La. Bd. of Exam. in Watchmaking v. Morrow, 188 So.2d 160 (La. App. 4th Cir. 1966)]. Thus, having cognizance of the fact that the state, as trustee for the people, has the obligation to assure that the marine fishery resources benefit the people as a whole, the issue is whether economic regulation via limited entry constitutes a valid recognition in the public interest. If it may be assumed that legislation providing for an adequate livelihood to fishermen, improving fisheries management efforts, and eliminating economically inefficient regulations (short seasons and gear restrictions, etc.) involves a public interest, limited entry in Louisiana may be a viable and legally sound approach. The presumption that "the Legislature must have acted only after a thorough investigation and upon a finding that the interst of the public required the legislation" [Banjavich, noted above] lends credence to the validity of a limited entry statute. Thus, assuming a legitimate purpose, if the means used to accomplish the purpose is reasonable, and there is an absence of arbitrary classification of persons subject to the regulation (a lack of "invidious discrimination"), due process and equal protection should be satisfied. Aside from the due process and equal protection arguments, and the issue concerning valid regulation of the number of fishermen under the police power, the state constitutional prohibition against monopolies [La. Const. Art. XII, Sec. 5] may stand as an obstacle to the economic regulation of coastal fisheries by means of limited entry. The drafting of a new State Constitution is presently in progress in Louisiana. It thus remains to be seen whether there will be any new provisions posing added complications to the legal feasibility of limited entry in Louisiana.

5. Data Concerning Rule Adoption and Modification.

a. Constitution. The Louisiana Constitution may be amended by the following procedure: (1) the introduction of the proposed amendment within the first twenty-one days of any session of the Legislature; (2) passage of the proposal

by two-thirds of all members in each House; (3) publication of the proposal at least twice in "the official journal of each parish" no less than thirty nor more than sixty days prior to a representative election; (4) adoption by a majority of the electors; and (5) effective twenty days subsequent to the issuance of the governor's proclamation [La. Const. Art. XXI, Sec. 1 as amended 1968 and Art. III, Sec. 8 as amended 1966]. Once a bill or joint resolution proposing an amendment is introduced, it may not be thereafter amended by either House [La. Const. Art. III, Sec. 8(1) as added 1958].

b. Statutes. Although the state legislature meets on an annual basis the second Monday in May, odd-numbered years are limited to budgetary or fiscal matters, or emergency legislation. The regular session is sixty days in length, but introduction of new bills is not permitted after the first fifteen days [La. Const. Art. III, Sec. 8]. A majority of both houses is necessary to adopt a bill. All bills passed by the Legislature must be approved or vetoed by the Governor within ten days from receipt thereon. A two-thirds vote of all members of the Legislature is necessary to override an executive veto.

c. Regulations of the Wildlife and Fisheries Commission. The Commission is prohibited from acting "except by vote in meeting assembled, and which shall be included in the minutes" [La. Const. Art. VI, Sec. 1(A)(6)(c)]. The Commission may meet as often as deemed necessary; it must meet at least once a month. The meetings must be open to the public [La. Const. Art. VI, Sec. 1(A)(6)(8)]. A majority of the members constitute a quorum, and a vote of a majority of members is needed to adopt rules or regulations. The effective date of a rule or regulation is discretionary with the Commission. In the absence of a stipulation, it would seem that a rule would be effective when entered into the minutes. The State Constitution provides that "[n]o appointed member of the

Commission may prescribe or direct the conduct of the Commission or the action of the Director or any subordinate member thereof in any matter or case, unless first authorized by the board in a meeting open to the public" [La. Const. Ar. VI, Sec. 1(A)(6)(b)].

H. Texas.

1. Authorization to Enter Reciprocal Agreements. The State of Texas has at the present time no statutory authorization for any of its agencies or departments to enter into reciprocal agreements with other jurisdictions concerning access to or management of marine fisheries. Such a provision apparently did exist in Vernon's Ann. P. C. Art. 934b[140/] but that provision, which also contained a differential fee schedule for residents and non-residents with respect to commercial fishing activities was repealed in 1949 and the authority in a subsection of that article concerning reciprocal agreements for such license fees was also repealed since the necessity therefore was obviated under a new uniform fee schedule.

Therefore, if Texas is to participate in a reciprocal or coordinated interstate marine fisheries management system based on agreements among affected states, the Legislature will have to enact enabling legislation. If, of course, a system of voluntary compliance with informally agreed standards for fisheries management is utilized, then Texas stands in the same position as all other states since actual written agreements would not be utilized under this option.

2. Administrative Organization and Flexibility of Management. The lead agency for coastal

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140. The only evidence of pre-existing authority is contained in an agreement between Texas and Florida executed by the Game and Fish Commission of Texas on April 23, 1959, concerning reciprocal access to shrimp, where a recitation is made that the Game and Fish Commission "is authorized to enter into reciprocal agreements with the proper officials of other states under authority of §9, Article 934B, Vernon's Texas P. C., 1950 Supp." Since that provision was repealed in 1949, it is questionable whether in fact Texas possessed authority to enter into the agreement with Florida.

fisheries management in Texas is the Parks and Wildlife Department ("Department" hereinafter) [Vernon's Ann. P. C. Art. 978f-3a] and the policy function has been assigned to the Parks and Wildlife Commission ("Commission" hereinafter) [Id.]. The Commission appoints an Executive Director ("Director" hereinafter) who serves as the chief executive officer of the Department [Vernon's Ann. P. C. Art. 978f-3a, Section 3]. Within the Department there exists the Fish and Wildlife Division and within that Division the Branch of Coastal Fisheries Operations. These are administratively functional offices.

The Commission has authority to establish all rules and regulations permitted by statute concerning coastal fisheries within its jurisdiction. The Director and the remainder of the Department staff are concerned with the development of recommendations for regulations, and with their enforcement.

> The duties of the Parks and Wildlife Commission are:
>
> [T]he execution of the laws relating to game, fish, oysters and marine life, and such further duties as are imposed . . . by legislation . . . . [Vernon's Ann. Civ. Stat. Art. 4018].

The basic fisheries management law in Texas is the "Uniform Wildlife Regulatory Act" ("Uniform Act" hereinafter) [Vernon's Ann. P. C. Art. 978j-1]. However, six of the seventeen Texas coastal counties are excluded from the Uniform Act. Section 1 thereof provides an enumeration of counties to which it is applicable. In addition, the coverage of shrimp is excluded from Orange, Jefferson, Matagorda, and Aransas Counties to which the Uniform Act is otherwise applicable. Orange and Jefferson county shrimping is governed by Vernon's Ann. P. C. Art. 978j (note) which delegates regulatory responsibility to the Commission. Further, salt water species are exempted from Uniform Act coverage in the participating counties of Calhoun, Harris, and Victoria, with shrimp being included in the exemption of salt water species for Calhoun County. Finally, portions of Aransas and Cameron Counties are excluded entirely from the coverage of the Uniform Act. The Texas Shrimp Conservation Act is in force in all non-

regulatory counties and has been adopted by the Commission in all regulatory counties. In order to ahcieve any degree of uniformity in management, it will be necessary to secure legislative action in order to ensure that all coastal counties participate in a particular management scheme. However, within the existing framework, the regulations which can be promulgated by the Commission under the Uniform Act will be applicable to those counties previously indicated.

A new marine fisheries act was adopted during the spring, 1973, session of the Texas Legislature, and became effective on August 27, 1973. The new act adds all coastal waters to the Uniform Act, with exceptions only for shrimp and oysters (which would not be covered at all and would therefore be covered by the Texas Shrimp Conservation Act and a general oyster law), and for Harris, Galveston, Chambers and Victoria Counties (which would not be participants). A question has arisen whether the new act eliminates all of the local and special arrangements previously attendant on the Uniform Act and an opinion of the Attorney General's Office has been sought on this point. Until the Attorney General's opinion is forthcoming, the question of the extent of applicability of the amended Uniform Wildlife Regulatory Act will be in doubt. This opinion should be given sometime during the fall, 1973.

The annual hunting, fishing, and trapping proclamation usually emanates from the June meeting of the Commission and the public hearings therefor are held in all coastal counties in April and May.

In fact, however, the proclamation consists of little more than a reiteration of the statutory laws for shrimp and oysters (e.g., the Texas Shrimp Conservation Act) and the political climate dictates that the regulatory system is essentially statutory in nature. Thus Texas has both little flexibility and complications arising from the "county option" regulatory system now in effect. The Commission has more authority, however over fish and other species such as blue crabs.

In view of the potentially controversial nature of any coordinated interstate fisheries management proposal, it is likely that the Commission would consider such a proposal only at its annual June meeting following hearings in coastal counties in April and May, the procedure now used for issuance of the annual hunting, fishing, and trapping proclamation. However, the Commission can act in any given month following public hearings if the requisite procedures are followed.

3. Criteria for Resource Management. The criteria set forth in the "Uniform Wildlife Regulatory Act" [Vernon's Ann. P. C. §978j-1] are essentially biologic in nature. Reference is made to the objective of better conserving "an ample supply of the wildlife resources" [Vernon's Ann. P. C. §978j-1 (sec. 2)]. The Commission is authorized to act in certain situations depending upon the presence of "an ample supply of such wildlife resources that a portion thereof may be taken which will not threaten depletion or waste of such supply" [Id.]. Definitions of the term "depletion" and "waste" contained in §3 of Vernon's Ann. P. C. Art. 978j-1 confirm the biologic basis of the terms:

> "Depletion" . . . shall be construed to mean reduction of a species below immediate recuperative potentials by any deleterious cause or causes.
>
> "Waste" . . . shall be construed to mean supply of a species or sex thereof sufficient that a seasonal harvest thereof will aid in the re-establishment of normal numbers of such species.

As in the case in several other states which have no express economic management criterion, Texas does utilize a size factor for regulation of shrimp which, as is well known, is entirely economic in nature. Accordingly, and although the only established criteria in Texas for coastal fisheries management is biologic, either a court decision or a new expression of legislative intent will be needed to ascertain with certainty the limits of regulatory authority.

4. Limited Entry. In 1949 the Texas Legislature enacted a law providing a quota on the licensing of commercial fishing vessels. The provision allowed the Fish and Game Commission discretion to set a limit on the number of licenses to be issued for the succeeding year, if in its opinion, it was deemed necessary to preserve the maximum sustainable yield [Vernon's Ann. P. C. Art. 934b-2 (1949)]. Anyone holding a commercial license prior to April of 1949 was entitled to a renewal and no new licenses could be issued until all renewals were filled. The statute also provided resident priority for the issuance of any new licenses. In Dobard v. State, 233 S.W.2d 435 (Tex. 1950), the Supreme Court of Texas struck down the measure on the grounds that it violated the due process clause of the state Constitution. Although all but one of the appellants were nonresidents, the court did not rest its opinion on discrimination between residents and nonresidents. Instead, the court concluded that:

> [T]he serious restriction of individual liberty to earn a livelihood which the present law imposes, together with the vagueness of its connection with its . . . object of conservation, render it inconsistent with due process under our state constitution, whatever be its effect under the federal constitution . . . . It cannot be said with the least certainty that reduction or increase of the number of boats, especially without any provision as to the size or other characteristic of the boats, would reduce or increase the total number of shrimp taken, still less do so to a degree commensurate with proper conservation for a given period. . . . If allowed to stand, the statute and action already taken under it are reasonably calculated to perpetuate in effect a monopoly of commercial fishing for the favored class.

It may be, had the legislature been more careful in enacting the quota scheme (eliminating, for example, the favoritism specifying the maximum size boats to be used, and providing for more than one kind of fishing license), the provision could have been upheld.

Nonetheless, the decision afforda a legal precedent against the use of licensing quotas or other limited entry schemes in for purposes of fisheries management.

5. Data Governing Rule Adoption and Modification.

a. Constitution. The Legislature may propose an amendment to the Texas Constitution at any regular session, or at a special session, provided the proposal is included within the statement of matters for which the session is to convene. The required vote for adoption is two-thirds (2/3) of all members of the legislature. Moreover, the legislature is to provide the data at which the election shall take place. The proposal must then be published twice in all newspapers that meet the requirements for publishing official notices, and must be posted at each county court house no later than thirty days prior to the election date. The proposal becomes a part of the constitution by the affirmative vote of a majority of the electors [Tex. Const. Art. XVII, §1 (1876) as amended (1972)].

b. Statutes. The legislature convenes in regular session for 120 days on the second Tuesday in January of odd numbered years [Tex. Const. Art. III, §5]. The governor is granted the power to convene a special session if necessary. The legislature has a split session system, which provides that no new bills may be introduced after the first sixty days. However, each House may, by 4/5 vote, deviate from this formula. Although most state legislatures require only a majority of members to constitute a quorum, Texas requires the presence of two-thirds of all members to transact its legislative business [Tex. Const. Art. III, §10]. Every bill passed must be sent to the governor for signature or veto. A two-thirds voet of the Legislature will override the governor's veto [Tex. Const. Art. IV, §14].

c. Regulations of the Parks and Wildlife Commission. The Commission consists of six members appointed by the Governor with

the advice and consent of the Senate and is authorized to meet as often as necessary but a minimum of once every quarter; four members constitute a quorum for transaction of business [Vernon's Ann. P. C. Art. 978f-3a, Sec. 1]. Public hearings are required before regulations can be adopted by the Commission under the Uniform Act and notice thereof must be given in a newspaper circulated in the county where the hearing is to be held at least ten days prior to the date of the hearing [Vernon's Ann. P. C. Art. 978j-1, Sec. 7].

According to the Uniform Act, which is in conflict on the point with the general provisions of Vernon's Ann. P. C. Art. 978f-3a concerning the general powers and duties of the Commission, two members, or one member and the chairman, constitute a quorum of the Commission [Vernons' Ann. P. C. Art. 978j-1, Sec. 8], and orders, proclamations, rules, and regulations proposed under the Uniform Act may be "adopted by a quorum" at any regular or special Commission meeting [Id.].

V. RECOMMENDATIONS.

Our review of the various state laws providing authority to enter into interstate agreements, as well as the law and practice concerning interstate agreements in general, leads us to make the following recommendations. We believe these actions are necessary if the interstate agreement process is to provide the basis (whether in whole or in part) for a coordinated fishery management system among states in the N.M.F.S. Southeast Region.

(1) The legislatures of the states of South Carolina and Texas should enact statutes providing authority for their respective resource management agencies to enter into interstate agreements concerning the management of marine fishery resources. This authority is presently lacking, and should reform not be achieved, two very important states would be excluded entirely from the interstate agreement process.

(2) The legislatures of the states of Florida, Alabama, and Louisiana should amend their existing statutes authorizing entry into interstate agreements in order to broaden the scope of subjects which can be covered. At present, these three states are limited to agreements concerning reciprocal access. This should be expanded to cover the full range of fisheries management matters which might be involved in a coordinated management program.

(3) We recommend the following language as being appropriate for the five states mentioned in paragraphs (1) and (2), above, to correct the existing defects:

> The [appropriate state agency] is authorized to enter into interstate agreements with proper officials or agencies of other states or the Federal Government in order to achieve coordinated management of coastal fishery resources [or other word of art], through the optimization, inter alia, of biologic, economic, or social yields from the resource.

We also suggest that the existing statutes in North Carolina, Mississippi, and Georgia, which are adequate for the purposes mentioned above, be considered in adopting new legislation authorizing entry into interstate agreements (see Sections IV.A.1, IV.F.1, and IV.C.1, respectively).

(4) We recommend that test cases be developed and brought before the courts in order to resolve the following questions with a degree of certainty impossible in a study of this type:

(a) May an interstate agreement modify a state statute or regulation of a state party to such an agreement where a conflict exists between the statute or regulation and the provisions of the interstate agreement?

(b) Is the consent of Congress required for interstate agreements relating to the management of coastal fishery resources?

(5) We recommend that each of the states in the N.M.F.S. Southeast Region review its statutory and regulatory coastal fishery resource management system to determine whether the criteria for management are sufficiently broad to include economic and social objectives as well as traditional conservation/biologic objectives. If the existing system is found wanting in this respect, appropriate legislative action to remedy the situation should be sought.

(6) We recommend that each of the states in the N.M.F.S. Southeast Region review its administrative organization and procedure for coastal fishery resource management to determine whether or not the system is sufficiently flexible to provide rapid reaction to changing natural and human conditions. If the existing system is found wanting in this respect, appropriate legislative action should be sought in order to ensure maximum delegation of authority to the appropriate administrative agency and flexibility of operation of that agency.

ANNEX A

Individuals Consulted During Course of the Study

The following persons in the indicated states or other organizations were consulted during the progress of this study. Those with whom in-person interviews were held are indicated by an asterisk; others were contacted either by letter or telephone, although not all those contacted provided inputs.

North Carolina. *Dr. Thomas L. Linton, Fisheries Commissioner, Division of Commercial and Sports Fisheries, North Carolina Department of Natural and Economic Resources; Mr. Edward G. McCoy, Chief, Research and Development Section, Division of Commercial and Sports Fisheries; Millard Rich, Esq., Office of the Attorney General.

South Carolina. *Dr. Edwin B. Joseph, Director, Research Laboratory, Marine Resources Division, South Carolina Wildlife and Marine Resources Department; *Mr. Charles M. Bearden, Chief, Office of Marine Conservation and Management Services, Marine Resources Division; *Dr. Eugene A. Laurent, Associate Marine Scientist, Marine Resources Division; *Mr. William F. Cotty, Legislative Aide, South Carolina Wildlife and Marine Resources Department.

Georgia. *James B. Talley, Esq., Attorney and Executive Assistant to the Commissioner, Georgia Department of Natural Resources; *Mr. David H. Gould, Supervisor of Coastal Fisheries Research and Development Program, Georgia Department of Natural Resources; *Mr. Michael S. Reeves, Law Clerk, Georgia Department of Natural Resources.

Florida. *Mr. Edwin A. Joyce, Jr., Chief, Bureau of Marine Science and Technology, Division of Marine Resources, Department of Natural Resources; *Jack W. Pierce, Esq., Attorney, Department of Natural Resources; *Mr. Clifford A. Willis, Administrative Assistant, Division of Marine Resources, Department of Natural Resources.

Alabama. *Mr. William F. Anderson, Director, Division of Marine Resources, Department of Conservation and Natural Resources; *Mr. Wayne H. Swingle, Chief Marine Biologist, Division of Marine Resources, Department of Conservation and Natural Resources; William G. Orear, Esq., Chief, Legal Division, Department of Conservation and Natural Resources.

Mississippi. *Mr. William J. Demoran, Member and Biological Advisor, Mississippi Marine Conservation Commission; Samuel Favre, Esq., Counsel, Mississippi Marine Conservation Commission.

Louisiana. *Dr. Lyle S. St. Amant, Assistant Director, Louisiana Wild Life and Fisheries Commission; *Mr. Harry Schaefer, Chief, Oysters and Water Bottoms Division, Louisiana Wild Life and Fisheries Commission; *Dr. Theodore B. Ford, Associate Director, Office of Sea Grant Development, Louisiana State University.

Texas. *Mr. Terrance R. Leary, Chief, Coastal Fisheries, Division of Fisheries and Wildlife, Department of Parks and Wildlife.

National Marine Fisheries Service. Mr. I. B. Byrd, Chief, State-Federal Relationships Division; *Mr. Johnnie Crance; *Dr. Paul Hooker; Mr. Donald W. Geagan.

Others. Mr. Cameron Webster, President, Louisiana Shrimp Association; Mr. Robert G. Mauermann, Executive Secretary, Texas Shrimp Association; Mr. Robert Jones, Executive Secretary, Southeastern Fisheries Association, Inc.; Mr. Joseph V. Colson, Executive Director, Gulf States Fisheries Compact; Mr. Irwin M. Alperin, Executive Director, Atlantic States Marine Fisheries Commission; Mr. William C. Herrington, University of Rhode Island; Dr. James Crutchfield, University of Washington; Prof. Thomas A. Clingan, Jr., University of Miami School of Law; Counsel, Subcommittee on Oceanography, House Committee on Merchant Marine and Fisheries; A. Adasiak, Assistant Attorney General, State of Alaska.

ANNEX B

Summary of Constitutional Amendment Procedures in States in the N.M.F.S. Southeast Region

North Carolina	Origination by 3/5 majority of each house of the General Assembly; ratification by majority of qualified voters at next general election.
South Carolina	Origination by 2/3 majority of each house of legislature; public ratification by majority of qualified voters at next general election; final reading and ratification by House of Representatives following public vote.
Georgia	Origination by 2/3 majority of both houses of legislature; ratification by majority of qualified voters.
Florida	Origination by 3/5 of all members of the legislature; ratification by majority of qualified voters at next general election. A 3/4 vote of legislature required for a special election in cases of emergency.
Alabama	Origination by 3/5 of all members of the legislature; ratification by a majority of qualified voters at next general election or at a date set by legislature not less than 3 months from adjournment of session at which amendment was proposed.
Mississippi	Origination by 2/3 of all members of the legislature; ratification by a majority of qualified voters at special election.
Louisiana	Origination by 2/3 of all members of the legislature; ratification by a majority of qualified voters. [NOTE: Louisiana was engaged at the time of this study in constitutional revision, which may result in the adoption of a new State Constitution sometime during 1974].
Texas	Origination by 2/3 of all members of the legislature; ratification by a majority of qualified voters; legislature to specify date of election.

ANNEX C

Summary of Statutory Amendment Procedures in States in the N.M.F.S. Southeast Region

North Carolina	Legislature meets biannually; majority of quorum of each house required for statutory enactment or amendment; no requirement of gubernatorial assent and no power of gubernatorial veto.
South Carolina	Legislature meets annually; majority of quorum of each house required for statutory enactment or amendment; gubernatorial veto may be overridden by 2/3 vote of each house.
Georgia	Legislature meets annually; majority of quorum of each house required for statutory enactment or amendment; gubernatorial veto may be overridden by 2/3 vote of each house.
Florida	Legislature meets annually; majority of quorum of each house required for statutory enactment or amendment; gubernatorial veto may be overridden by 2/3 vote of each house.
Alabama	Legislature meets biannually; majority of quorum of each house required for statutory enactment or amendment; gubernatorial veto may be overridden by a majority of the total membership of each house.
Mississippi	Legislature meets annually; majority of quorum of each house required for statutory enactment or amendment; gubernatorial veto may be overridden by 2/3 vote of each house.
Louisiana	Legislature meets biannually for a substantive session, in alternate years for fiscal session (substantive matters may be considered during fiscal session in emergency situations as decided by the legislature); majority of quorum of each house required for statutory enactment or amendment; gubernatorial veto may be overridden by 2/3 vote of each house. [NOTE: Constitutional revision in progress in 1973 could result in alteration of these procedures by 1974.]
Texas	Legislature meets biannually; 2/3 of members of each house required for a quorum; majority of quorum of each house required for statutory enactment or amendment; gubernatorial veto may be overridden by 2/3 vote of each house.

ANNEX D

Summary of Administrative Regulation Amendment Procedures in States in the N.M.F.S. Southeast Region

North Carlina	Regulations of Board of Conservation and Development adopted by majority vote; effective on date of filing with Secretary of State; meets a minimum of four times per year.
South Carolina	Regulations of Wildlife and Marine Resources Commission adopted by majority vote of quorum (5 of 9 members required for quorum); meets monthly on 3d Friday in each month.
Georgia	Regulations of the Board of Natural Resources adopted by majority vote of quorum (8 of 15 members required for quorum);meets at least once every sixty days; effective thirty days after adoption, following "posting."
Florida	Regulations of the Governor and Cabinet adopted by majority vote; emergency rules effective on filing with Secretary of State (90 days maximum duration); permanent rules effective 45 days after appearance in Secretary of State's "register;" Cabinet meets every two weeks; Secretary of State distributes "registry" monthly.
Alabama	Regulations of the Department of Conservation and Natural Resources promulgated by Commissioner of Department; Advisory Board may repeal or amend regulation of the Commissioner by 2/3 vote of those present, with approval of the Governor.
Mississippi	Regulations of the Marine Conservation Commission promulgated on recommendation of marine biologist unless overruled by 6 members; other actions taken on majority of quorum (majority constitutes a quorum); meetings held once per month, and from time to time as business requires; regulations may not become effective less than 7 days after publication.
Louisiana	Regulations of WildLife and Fisheries Commission adopted on Majority vote of quorum (majority constitutes a quorum); must meet monthly, may meet as often as necessary; effective date of rules discretionary with Commission.
Texas	Regulations of the Parks and Wildlife Commission adopted by majority of quorum (4 of 6 members constitutes a quorum); must meet once per quarter, may meet as often as necessary, public hearings required before rule promulgation.