MANAGEMENT OF AN EXPANDED TERRITORIAL SEA: Impact of the Third United Nations Law of the Sea Conference on South Carolina and the Nation

Technical Report Number 1
SC-SG-TR-80-01
The South Carolina Sea Grant Consortium

MANAGEMENT OF AN EXPANDED TERRITORIAL SEA: Impact of the Third United Nations Law of the Sea Conference on South Carolina and the Nation

BY

ROBERT S. JORDAN and

CHRISTOPHER W. HERRICK

This work was funded by the Office of Sea Grant, N.O.A.A., U.S. Department of Commerce, under Grant No. NA-80-AA-D-105, and the South Carolina Sea Grant Consortium. The U.S. Government is authorized to produce and distribute reprints for governmental purposes notwithstanding copyright notation that may appear hereon.

THE SOUTH CAROLINA SEA GRANT CONSORTIUM
221 Fort Johnson Road
Charleston, South Carolina 29412
(803) 795-9650

SC-SG-TR-80-01

EXECUTIVE SUMMARY

As originally conceived, this project, "Policy Issues Arising from the Law of the Sea Conference", was to assess the potential impacts of the Third United Nations Law of the Sea Conference on South Carolina. During the early stages of the project, the authors consulted with academics and representatives of various state and federal agencies. These consultations lead the authors to conclude that the principal impact of the Law of the Sea negotiations on South Carolina would be the impetus generated by these negotiation for the United States to declare an expanded territorial sea. As a result, the project focused on five aspects of the problem of the management of an expanded territorial sea. These were:

- determining the likelihood that the Unitewd States would in fact be pressured by the negotiations to declare an expanded territorial sea;
- defining the geographic area which would be impacted by the declaration of an expanded territorial sea;
- outlining a series of options for management of an expanded territorial sea;
- determining the potential impact of the declaration of an expanded territorial sea on federal, state and private interests to manage, exploit, and conserve the resources contained in the area encompassed by an expanded territorial sea; and,
- determining the potential impact of the adoption of each of these management systems on the State of South Carolina.

Drawing upon the tentative conclusion that the United States might be pressured to declare an expanded territorial sea, the authors explored the practicality of a series of management regimes for such a zone. Of the many possible management options, however, six more or less exclusive options seemed to merit further analysis. These were: 1) a state management option, 2) a regional management option, 3) joint state-federal managemnt of the outer portion of an expanded territorial sea (a transition zone), 4) joint state-federal managemnt of the entire expanded territorial sea, 5) joint state-federal managemnt of all national ocean space (the territorial sea and the 200-mile Exclusive Economic Zone or outer continental shelf/200-mile fisheries conservation zone), and 6) federal management of the outer 9-mile section of an expanded territorial sea.

During the spring of 1980, the authors conducted a second series of interviews with relevant individuals at the United Nations, and within federal and state governments. These interviews centered on a number of issues. First, the authors sought to assess the extent to which the

United States might feel obliged to declare an expanded territorial sea in the event of the ratification of a Law of the Sea treaty and, more significantly, in the event that an acceptable treaty is not forthcoming. Second, the authors sought to identify some of the potential benefits and liabilities of each of the six most likely management regimes for an expanded territorial sea. Third, the authors sought to gauge the relative acceptability of each of six potential management options for an expanded territorial sea in the event that such a zone was declared by the United States.

On the basis of these interviews and an extensive examination of relevant federal and state legislation and commentaries on the history and impact of that legislation, the authors arrived at a number of conclusions. Among these were:

- ° despite the continued inability of delegates to the Third United Nations Conference on the Law of the Sea to conclude a comprehensive treaty and the somewhat uncertain nature of continued United States participation in these negotiations under the Reagan administration, the United States will face considerable pressure to declare an expanded territorial sea;

- ° of the six potential management options, the state management option, the federal management option, and joint state-federal management of the outer portion of the expanded territorial sea (the transition zone option) enjoyed the most support and were therefore more likely to be adopted;

- ° the adoption of either the state management option or the transition zone option could substantially affect the regulatory burdens and revenues of both federal and state governments;

- ° because it lacks identifiable valuable mineral resources beneath the coastal waters off its shores, the State of South Carolina would in all probability be negatively impacted by the adoption of a state management regime for the expanded territorial sea; and,

- ° the joint state-federal management of the outer 9-mile area of an expanded teritorial sea would be more in the interests of South Carolina becaues the state would have the potential of obtaining a portion of any revenues from leases within this area without the burden of exercising full management control over the area in the absence of any revenue producing leases.

Although the authors do not make any recommendations as to the general acceptability of the six management options or the steps which most states should take in the event of the adoption of any one of the options, they do present the following recommendations for the State of South Carolina:

- ° for the reasons stated in the above conclusions, the state should

actively lobby for the adoption of the state-federal management option;

° if the state management option is adopted, the state should explore the possibility of obtaining additional funds to defray management costs in one of four ways, 1) invoking sections 305 & 306 of the CZMA, 2) reviving the 'so-called' Mason proposal for the expansion of activities under the State-Federal Fisheries Management Program, 3) instituting user service charges, and 4) invoking section 306 (b) (1) (B) of the Fisheries Conservation and Manangement Act and thereby passing the fisheries management burden within the zone back to the Regional Fisheries Management Council.

CONTENTS

Chapter I

INTRODUCTION

This report examines the problems to be faced in the development of a management regime for one sector of the ocean space surrounding the United States - an expanded (12 mile) territorial sea. Unlike many past works which describe ocean management efforts in general terms and do not present specific structures for these efforts, this report does set forth a series of relatively specific options for the management of the sector of ocean space in question.[1] In addition, it sets forth the advantages and disadvantages of each option and describes the federal, state, and private interests which might be affected by the institution of the particular regime option. On the basis of this analysis, the study describes a series of actions which South Carolina might take in order to deal with the impact of an expanded territorial sea on the state. Finally, although this study does not recommend which of the various options described should or should not be adopted by the nation as a whole, it does recommend which option might most advantageous to South Carolina.

1.1 DEFINITIONS OF TERMS

The discussion of options for a management regime for an expanded territorial sea involves the consideration of a large number of issues and concepts. However, despite the fact that many of the terms and concepts employed in the report have been in common usage within government, industry, and the academic community over a period of years, they continue to be subject to certain confusion and ambiguity of meaning. For this reason, specific definitions for three of the most significant terms or concepts are presented at this point in the report.

---

[1] For example, see Armstrong and Hyner's Ocean Management: Seeking a New Perspective.

1.1.1 Defining "Ocean"

This report is specifically concerned with the management of one component or sector of the oceans. However, in order to better understand the problems that may be encountered in the management of the territorial sea, it is necessary to view this area in the perspective of the entire ocean system. In this study, the ocean is taken to have three separate components: physical, legal and management.

1.1.1.1 The Physical Dimension

By convention, the physical ocean system is taken to consist of four dimensions. These are the surface waters, the water column, the seabed, and the subsoil. As indicated in Figure 1, the latter two divisions have often been combined and referred to as submerged lands. Submerged lands, in turn, may be subdivided on a horizontal dimension into four components. The horizontal physical profile of the oceans is presented below in Figure 2. As shown in Figure 2, these components are the continental shelf, the slope, the continental rise and the abyssal plain.

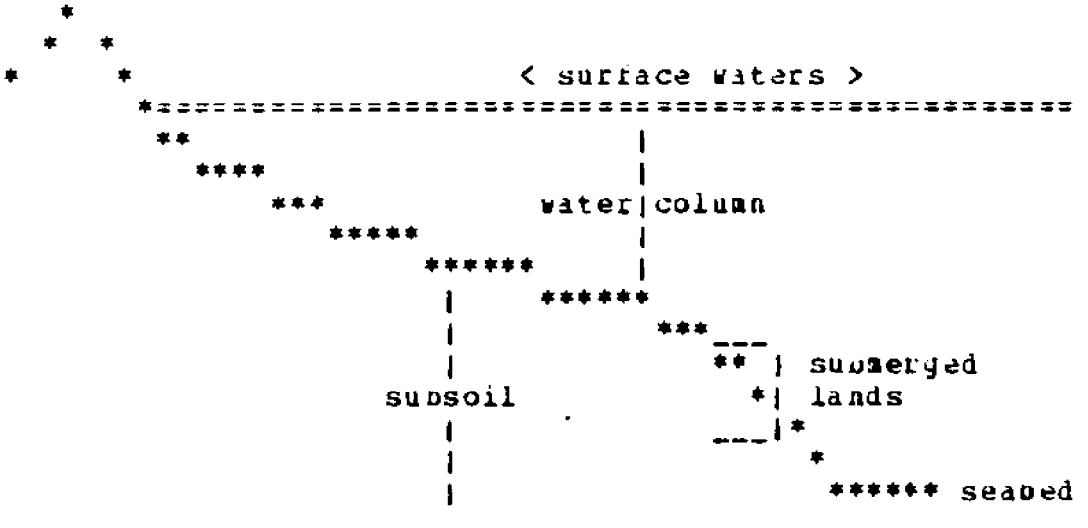

Figure 1: Vertical Ocean Profile

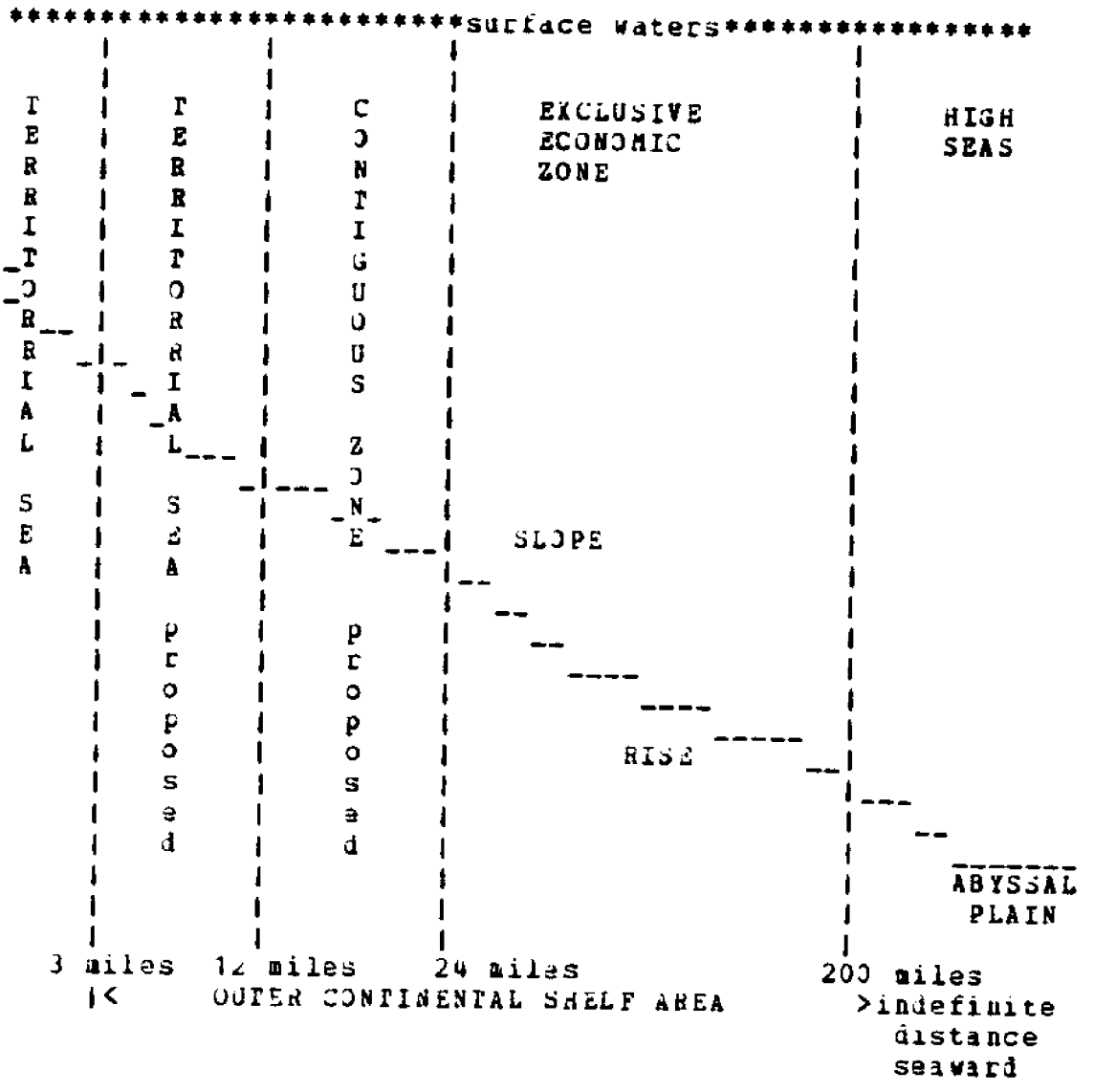

Figure 2: Horizontal Ocean Profile

1.1.1.2 The Legal Dimension

The legal divisions of ocean space are somewhat less precise than the physical divisions. In general, on the basis of international legal convention and present United States' ocean programs, the oceans may be divided into four zones. These are the territorial sea, the waters immediately surrounding the territorial sea, the high seas, and foreign ocean zones. With the exception of the territorial sea, the exact expanse of each of these divisions and the degree of control which the United States may exercise within each of the zones, are subject to significant ambiguity.

By convention, the territorial sea is that sector of ocean space over which countries may assert their full sovereignty, with certain notable exceptions such as the right of innocent passage. Traditionally, the limit of the territorial sea has been set at three nautical miles. This was equivalent to the effective range of coastal batteries in the eighteenth century and thus the effective limit to which coastal states could exercise their sovereignty. However, in recent years, the extent of the territorial sea has been subject to considerable disagreement. While the United States continues to claim a territorial sea of 3 nautical miles width, other countries have claimed 12 mile territorial seas. Still other nations have declared territorial seas ranging up to 200 nautical miles in width.

The waters surrounding the territorial sea have increasingly come under the partial control of the contiguous coastal state. In most cases, the width of this area of partial control is roughly coincident with the width of the continental shelf. As a result, this zone has often come to be referred to as the outer continental shelf zone. Although the width of the continental shelf varies greatly, the zone is generally considered to stretch seaward to a distance of 200 miles. Moreover, the outer continental shelf area is an extremely complex zone.

Under existing international law, the 9 mile area immediately bordering the territorial sea is recognized as the contiguous zone. Within this zone, the coastal state is recognized as having a limited degree of management authority, particularly with regard to immigration, fiscal management, customs, and pollution control. The United States has declared such a zone.

Through a series of unilateral actions, the United States and other states have extended their claims of management authority over the resources within and beneath the waters surrounding the territorial sea to a distance of 200 miles. Since 1953, the United States has claimed management authority over the submerged lands of the continental shelf. Beginning in 1976, the United States also asserted its management authority over the fisheries resources up to 200 miles from its coasts. More recently, the resources of the water column, such as thermal gradients and currents, have come to be perceived as potentially valuable assets. Consequently, there has been increasing discussion concerning the possibility and advisability of asserting management authority over these resources as well.

The international ocean zone, usually referred to as the high seas, is that section of ocean space over which no country exerts direct control. The area is now usually taken to begin seaward of the limit of the continental shelf. Traditionally, management of this area has been accomplished by bilateral or multilateral treaties or conventions. Until recently, such management efforts have been few and of a very limited nature.

Foreign ocean zones refer to those sectors of the world's oceans, including the territorial sea and outer continental shelf zones controlled by other countries. For the purposes of this report, these zones are of significance for several reasons. First, the United States has and continues to have economic, research, and defense-related interests in these zones. Second, in recent years, the United States has entered into so-called reciprocal state agreements whereby the parties to the agreement covenant to respect each others' claims to blocks of international ocean space for the sole purpose of resource development.

The extent of the various ocean zones and the degree to which countries may exercise management authority over the resources within these zones has come under increasing international debate in recent years. Since 1974, the more than 100 countries participating in the Third United Nations Conference on the Law of the Sea have been engaged in the process of drafting a comprehensive international treaty which will define or redefine the extent of these zones. The treaty will also codify the management rights of coastal states within each of the respective zones.

1.1.1.3 The Management Dimension

As noted by Armstrong and Ryner, the management dimension has three components.[2] The first of these is the natural ocean system. This component consists of ocean space and the resources or dynamic systems occurring within that space. The second dimension consists of the activities taking place within the zone and the individuals engaged in these activities. The third component of the dimension consists of the agencies (federal, state, and local), together with the programs and policies developed by these agencies, for the management of the resources of the particular area

---

[2] Armstrong and Ryner (1978:2).

of ocean space.

1.1.2 Defining Management

The management referred to in the previous section in a general sense consists of efforts to control either environmental conditions or the actions of individuals or groups in order to achieve some desired end. Such efforts may involve a minimum of control. Alternately, the management effort may require considerable exertion of power or influence on the part of government. Moreover, the management efforts may involve either prescription or prohibition. Apart from these functions, management also involves the collection and assimilation of data upon which to develop policies or regulations. Among the management functions applicable to the marine dimension are the following: research, information collection, monitoring, enforcement, policy development, regulation, revenue collection, and financial aid.

1.1.3 Defining Regime

A regime normally refers to a system of rule, governance, or administration. Such systems of governance may be no more than a vague structure. However, as used in this report, a regime will refer to a more comprehensive and detailed system of programs, policies, regulations and administration.

1.2 RESOURCES OF U. S. COASTAL WATERS

The waters and underlying lands surrounding the coast of the United States are rich in a variety of resources. Many of these resources have been subject to development and exploitation by domestic and foreign interests for a considerable period of time. Other resources, particularly those hard mineral resources lying on and beneath the sediments underlying coastal waters, have yet to be developed intensively. Still other resources of the coastal waters, such as thermal gradients, remain essentially undeveloped at this time.

Over the past two decades, pressure to exploit traditional resources more intensively has increased. At the same time, foreign and domestic economic and political conditions have prompted increasing interest in exploiting heretofore underdeveloped or undeveloped resources of and beneath the coastal waters surrounding the United States.

1.3 GROUPS CONCERNED WITH THE MANAGEMENT OF U. S. MARINE RESOURCES

The interests concerned with the resources of the territorial sea and surrounding shore and ocean areas are in many ways as diverse as the resources of these areas. Each of these interests shares a concern that the efforts of others to exploit resources of coastal waters do not interfere significantly with their right to exploit the resource or resources which are of particular interest to them. It is the task of federal and state management authorities working in cooperation with private interests to frame regulations so that these regulations do not entirely preclude the development of one resource in order to protect the right of others to exploit different resources, unless it is absolutely necessary. This task, however, is not an easy one.

Despite their comparatively vast area, coastal waters are not limitless. Thus, the task of balancing the rights of various interests to exploit resources which are often located in close conjunction is extremely difficult. As a greater number of resources are exploited more intensively, the task will become more difficult, because efforts to exploit one resource may have potentially serious effects on efforts to exploit other neighboring resources.

1.4 THE MANAGEMENT OF U. S. TERRITORIAL WATERS

As noted by one commentator on the state of United States' ocean policy, that policy is a "grab-bag of single purpose laws, each of which fails to acknowledge the co-existence of similarly well intentioned laws and other competing uses of the oceans".[3] The fragmented nature of United States' ocean policy is particularly evident in the complex

---

[3] Curlin (1980:7).

and often overlapping set of laws and regulations applied to the management of the nation's territorial sea. The management system, originally established by the Submerged Lands Act and the Outer Continental Shelf Lands Act in 1953, was at best ambiguous in the designation of particular areas of authority. Since its inception, this system has been greatly complicated by the introduction during the past decade, of a number of additional acts which cross-cut and overlay this basic management system. For example, most legislation is directed toward management of a single resource within one sector of ocean space. In addition, most key pieces of federal legislation provide for federal and state authorities to exercise limited oversight within their respective zones of authority.

The lengthy international negotiations on a new Law of the Sea Treaty, now rapidly drawing to a close, are likely to add a new dimension to the complex federal-state efforts to manage the resources of the territorial sea and outer continental shelf. The chapter which follows will examine the impact of these international negotiations on the management of the territorial sea and surrounding waters.

Chapter II

INTERNATIONAL AGREEMENTS AND THE MANAGEMENT OF COASTAL WATERS

2.1 INTRODUCTION

The role of the international community in the management of ocean space has grown dramatically in the past quarter century. The principal area of concern has been the area of the high seas. However, international negotiations and agreements have also had an increasing effect upon countries' management of their coastal waters.

This chapter will examine briefly the history of international agreements and conference activity with particular reference to the management of the territorial sea and surrounding waters prior to the Third United Nations Conference on the Law of the Sea. It will then describe the provisions of the current draft (ICNT rev. 3) of the Law of the Sea Treaty and analyze the possible impact of many of these provisions on the management of United States' coastal waters. Finally, the chapter will briefly explore the impact of other international agreements on the management of U. S. coastal waters.

2.2 HISTORY OF INTERNATIONAL CONCERN FOR THE OCEANS

International agreements and conference activity concerning the oceans may be divided into three periods. Prior to 1958, there was little organized effort toward the development of an international regime for the oceans. Rather, the regime which emerged was the result of centuries of discrete actions by individual nations or small groups of nations incorporated as customary law. Conference activity specifically directed toward the development of a more complex international regime for the oceans may be said to have begun in 1958. Participation in the United Nations Conference on

the Law of the Sea, convened in that year, was generally confined to the developed countries. The Conventions which issued from this conference did not serve as the basis for the development of a coherent, stable, or comprehensive regime. By the mid-1960's, man's ability to exploit a wider range of marine resources over a considerably greater area of the oceans was apparent. At the same time, the now independent "third world" nations began to express an increased desire to exert greater control over the resources lying off their shores. In addition, the developing states expressed increased interest in participating in the management of ocean resources, and it possible, in the exploitation of a wider range of marine resources. These factors coupled to provide the impetus for the convening of a more universal international conference for the purposes of considering a broad array of issues concerned with marine management.

2.2.1 The Pre-1958 Period

Until the twentieth century, international concern for the oceans centered on their use as a source of food, a medium of commerce, and to a lesser extent, as a medium by which to project armed force. The international regime for the oceans reflected this simplicity of purpose and remained relatively stable for a considerable period. The regime was directed toward protection of near-shore areas, while the seas beyond remained virtually unregulated. On the matter of the extent of the near shore area subject to national jurisdiction, there was general, though not complete, agreement.

While the 3-mile territorial sea enjoyed general recognition as the major delimiting boundary of near-shore regulatory activities, it was not the only zone in which the coastal state could exert its authority. As noted by Ball, even the United States, a strong supporter of the concept of a 3-mile territorial sea as the limit of a nation's seaward jurisdiction, has, since the earliest days of the Republic, advocated more extensive zones for specific purposes.* Among the extended zones advocated or adopted by the United States were: (1) a neutrality zone reaching to the Gulf Stream (advocated by Jefferson); (2) a customs zone of four leagues declared in 1799; (3) extension of the zone in which prohibition laws were enforced to a distance of four leagues; (4) the Liquor Treaty of 1924 which extended the enforcement

---

* Ball (1978:7).

zone to a maximum of approximately 30 miles; and, (5) the security zone of the Panama Declaration which stretched seaward a distance of several hundred miles.[5]

International conference activity prior to 1958 was chiefly directed toward refining or codifying this system. For example, The Hague Codification Conference of 1930, under League of Nations sponsorship, devoted considerable attention to developing more precise definitions of the width of the territorial sea, the baseline to be used in determining this limit, and the rights of the coastal state to manage activities within this area.[6] This Conference also directed attention toward the prospect of instituting a contiguous zone beyond the territorial sea. In addition, the Conference anticipated the actions of individual states, such as the United States, in drawing attention to the possible need for, and problems related to, coastal state control of the continental shelf.

Although the 1930 Hague Conference broached the subject of expanded national claims to jurisdiction over ocean space, the new era in ocean politics may be said to have begun in 1945. As noted in Chapter 5, in that year the United States did, in fact, unilaterally declare its jurisdiction over the resources of the vaguely defined continental shelf and certain fisheries of the waters off its shores. In the years immediately following this action, a number of other countries declared similar vaguely defined conservation or resource management zones.[7] Reacting to the Truman Proclamations and similar declarations by other countries, the United Nations International Law Commission initiated a comprehensive review of existing ocean management problems and practice. Among the issues considered were: the breadth of the territorial sea; the right of jurisdiction over the continental shelf; fisheries management; conservation of marine resources; and, the definition and regulation of activities on the high seas.[8] The release of the Commission's final report in 1956 provided impetus for the United Nations to convene an international conference for the purposes of standardizing and codifying international practice.

---

[5] Ball (1978:7).

[6] Doumani (1973:15).

[7] Ball (1978:10).

[8] As noted in Doumani (1973:16).

2.2.2 The First Law of the Sea Conference and Beyond

The First United Nations Conference on the Law of the Sea was convened in 1958 at Geneva. After lengthy deliberations, the 86 countries participating in the negotiations were able to develop four conventions which were subsequently ratified by the United Nations General Assembly. These included:

1. a Convention on the Territorial Sea and Contiguous Zone;

2. a Convention on the Continental Shelf;

3. a Convention on the High Seas; and,

4. a Convention on Fishing and the Conservation of the Living Resources of the High Seas.

Of the four Conventions, the first two are of particular interest for the purposes of this report.

The Convention on the Territorial Sea and Contiguous Zone was notable for its lack of definition. While it did specify the low water line as the landward baseline from which to calculate the width of the territorial sea, it did not specify any figure for the seaward limit of this zone. Further, although the convention delimited the outer border of the Contiguous Zone at 12 miles from the low water line, it did not specify the inner boundary of the zone.

The Convention on the Continental Shelf was equally vague in its definition of the continental shelf area. Article 1 of the Convention defined the continental shelf area:

> as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters, or beyond this limit to where the depth of the super adjacent waters admits to the exploitation of the natural resources of the said areas...

The Second Law of the Sea Conference, convened in 1960, again considered the problem of defining the limits of the territorial sea and the continental shelf. This Conference, however, failed to arrive at any consensus regarding either issue. As a result, the Conventions drafted at the earlier Conference which passed into effect in 1964, have have remained in effect to the present time.

The deficiencies of the above two Conventions, however, became apparent soon after their entrance into force. In failing to delimit the territorial sea, the Conventions left states free to extend their territorial seas to virtually any width. A few states did, in fact, declare territorial seas stretching hundreds of miles seaward. Further, in employing the 100 fathom (200 meter) depth as the delimiting measure for the continental shelf, the Convention made it possible for states with broad continental shelves to claim areas hundreds of miles to sea while other states with narrower shelves were limited to claims of only a few miles. Of perhaps greater importance were the difficulties which quickly became apparent with the definition presented in the final clause of the Article. A literal reading of, "to a depth where the super-adjacent waters admits of the exploitation of the natural resources of said area", would suggest that any state could claim as far seaward as its technology would allow it to develop. Thus, a country, such as the United States, with a high level of technology could conceivably claim substantial portions of the ocean floor for itself under this definition.[9]

Within three years of the time that the 1958 Conventions came into force, it was evident that a number of factors were prompting states to make claims to increasingly broad sectors of ocean space. Oil companies had demonstrated their ability to successfully drill in increasingly deep waters. Other industrial goups were actively exploring the possibility of exploiting manganese nodule deposits on the deep seabed. It was also becoming increasingly evident that unregulated exploitation of coastal fish stocks was endangering the continued productivity of these stocks. Finally, growing concern about the effects of various sources of pollution on the continued productivity of the marine environment prompted states to exert jurisdiction over bordering sections of ocean space.

Although in many cases they had themselves been active in asserting jurisdictional authority over increasingly broad areas of ocean space, those maritime nations relying on unimpeded access to, and use of, wide sectors of ocean space for purposes of commerce and defense were clearly alarmed by the prospects of expanded national jurisdiction over large sectors of heretofore open ocean. On the other hand, developing countries feared that the developed world could and would claim and exploit the resources within and beneath

---

[9] As noted by Doumani (1978:18), the United States did grant oil leases to tracts of land over 100 miles off its shores under authority of this Convention.

large sectors of the open ocean. This fear was based to some extent on the perception that if developed countries were to exploit seabed resources, they would become less dependent upon raw materials exported by developing states. It was also based on the perception that immediate exploitation of open ocean resources by developed states would leave developing countries few ocean resources to exploit when, and if, they had the technology to do so. In part due to these fears, developed and developing states agreed to convene a third Law of the Sea Conference for the purposes of developing a new regime for the management of the world's ocean space.

2.3 THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE

The Third United Nations Conference on the Law of the Sea (UNCLOS III) which convened in December 1973 with 140 nations present, was the largest international conference ever assembled. Moreover, the Conference agenda, directed toward the drafting of a comprehensive treaty which could serve as the basis for a new international regime for the oceans, was among the most exhaustive ever attempted in an international negotiation. Nevertheless, the majority of the delegates were of the opinion that these negotiations could be satisfactorily completed within a relatively short period of time. However, despite this initial optimism, delegates have been unable to reach final agreement on a number of the issues before the Conference, even after seven years of negotiations and six formal drafts of a treaty.

2.3.1 Outline of the Treaty

An analysis of the complex process of negotiations at the multiple sessions of UNCLOS III is clearly beyond the scope of this report.[10] So too is an exhaustive analysis of all 320 Articles and multiple Annexes of the most recent draft of the Law of the Sea Treaty. Rather, this section of the report will present a brief account of the major divisions of the treaty and a more detailed description of those

---

[10] Various delegation reports, and the series of articles by Bernard H. Oxman et al. in the Journal of the American Society of International Law provide relatively detailed descriptions of the work of the Conference by session.

articles directly applicable to the management of the territorial sea and surrounding waters.

The most recent draft of a Law of the Sea Treaty, the Informal Composite Negotiating Text, Revision 3 (ICNT rev. 3), was issued in August 1980. Of the 320 Articles in the draft treaty, 21 relate to general procedural provisions or final clauses. Another 32 Articles concern the definition of the territorial sea and contiguous zone, or the rights of coastal states to regulate activities within these areas. An additional 31 Articles define the extent of the Exclusive Economic Zone (EEZ) or the continental shelf, and the rights of coastal states to manage activities within these areas. A further 12 Articles concern the issue of straits used for international navigation. Part IV of the Treaty, containing 9 Articles, addresses the issue of archipelagic states. The 35 Articles contained in Part VII of the Treaty outline the rights and duties of states, or their ships, on the high seas. The 12 Articles of Parts VIII, IX, and X deal with special geographic situations, including islands, enclosed and semi-enclosed seas, and landlocked states.

With 59 Articles, Part XI is the most extensive division of the Treaty. This Part details the principles governing the area beyond national jurisdiction (the Area), the conduct of activities within the Area, and the development of the resources of the Area. In addition, Part XI describes the powers of the international authorities established to manage and exploit the resources of the Area. Annexes III through VIII include detailed provisions concerning the management of the Area.

The protection and preservation of the marine environment also receive considerable attention in the Treaty. A number of Articles deal with technical assistance and global cooperation in these areas. Other sections deal with enforcement of anti-pollution measures or regulations.

Part XIII of the Treaty addresses the issue of marine scientific research. Several Articles in this Part outline provisions for marine research within the territorial sea and the EEZ. Other Articles establish conditions for the conduct of marine scientific research on the high seas.

Part XIV of the Treaty deals with the development and transfer of marine technology. This section includes Articles describing ways and means of international cooperation. It also contains an Article dealing with the protection of legitimate proprietary interests in technology.

The final substantive division of the Treaty, Part XV, addresses the issue of the settlement of disputes. Several Articles describe compulsory dispute settlement procedures to be applied in connection with activities within the Area.

2.3.2 Articles Applicable to the Management of Coastal Waters

Over forty of the Articles of the draft Treaty are directly or indirectly applicable to the management of coastal waters. The majority of these Articles deal with the territorial sea or the Exclusive Economic Zone. Other Articles deal with pollution control and marine scientific research within coastal waters. Finally, the provisions governing activities within the Area may indirectly affect the conduct of activities within coastal waters.

2.3.2.1 The Territorial Sea and Contiguous Zone

The Articles contained in Part II of the draft Treaty relate to the territorial sea and contiguous zone. These Articles are grouped into four sections. The first section provides a general definition of the legal status of the teritorial sea. In particular, the Article recognizes the sovereignty of the coastal state over the area designated as the territorial sea. The Article also recognizes coastal state sovereignty over the air space above, and the seabed and subsoil beneath, this area.

The second section of Part II defines the limits of the territorial sea. Article 3 establishes the right of states to establish "the breadth of its territorial sea up to a limit not exceeding 12 miles". Article 4 sets the outer limit of every point of the territorial sea at an equal distance from the baseline. Thus, a state may not declare a 3-mile territorial sea along one section of coast and a 12-mile territorial sea along another section. Article 5 establishes the low water mark as the normal baseline from which to measure the breadth of the territorial sea.

Articles 6 through 13 describe special provisions for the delineation of the terreitorial sea. Each of these could be significant in providing for the potential expansion of the

claims of individual coastal states within the United States even under the present 3-mile territorial sea regime. Article 6 sets the baseline for islands having reefs at the low tide mark of the reef. Articles 7 and 9 provide a series of instances in which it is possible to draw a straight baseline across indentations, the mouths of rivers and unstable deltas on a coast. Article 8 defines the internal waters of a state. Article 10 contains a lengthy series of provisions whereby it may be possible for a state to draw a straight baseline across the mouth of a bay. In particular, this Article allows the drawing of a closing line if the bay is not more than 24 miles from its mouth to its throat, or if it is an "historic bay". Although Article 11 states that countries may use permanent harborworks as the baseline point, it specifically denies a state the right to designate artificial islands or off-shore installations as the baseline from which they will measure their territorial sea. Article 12 provides that "roadsteads which are normally used for loading, unloading, and anchoring ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea". Finally, Article 13 provides that low tide elevations wholly situated beyond the breadth of the declared territorial sea from the mainland or an island may not have territorial seas of their own.

Section 3 of Part II addresses the issue of innocent passage within the territorial sea. Article 17 asserts the right of innocent passage through the territorial sea, while Articles 18, 19, and 20 define the meaning or conditions of innocent passage. Of the remaining Articles in this section, three are of particular significance for the management of the territorial sea. Article 21 sets forth the rules and regulations which a state may impose upon ships passing through its waters. In particular, paragraph 1 provides for regulations pertaining to safety, the preservation or conservation of living marine resources, pollution, and marine scientific research, as well as the traditionally accepted right to regulate customs, immigration, etc. Article 22 specifically recognizes the right of coastal states to establish sea lanes and traffic separation schemes within the territorial sea. Finally, paragraph 3 of Article 23 provides that a state may declare temporary security zones surrounding areas of the territorial sea in which activities such as weapons tests are being conducted.

Article 33 defines the area of the Contiguous Zone and the right of the coastal state to regulate activities within that zone. This Article provides that the maximum width of the zone is 24 miles from the baseline. In general, the rights granted to the coastal state within this zone are similar to those granted under the 1958 Convention.

2.3.2.2 The Exclusive Economic Zone

Part V of the draft Treaty deals with the EEZ. Among the Articles in this Part, eleven are of particular importance for the purposes of the current study. Artical 56 outlines the general rights and duties of the coastal state within the EEZ. According to this Article, the coastal state is recognized as having sovereign rights over the natural resources of the zone, including living and non-living resources within and beneath the area. In addition, the coastal state is considered to have jurisdiction over other activities, "for the economic exploitation of the zone, such as the production of energy from the waters, currents, and winds", within the area. Article 57 establishes the width of the EEZ at 200 nautical miles from the baseline for the territorial sea. Article 57 describes the general rights of foreign states within the EEZ of another country. These include the rights of innocent passage and overflight, as well as the right to lay cables and pipelines as long as these comply with the generally applied safety regulations of the coastal state.

Articles 60 to 67 concern the rights of the coastal state to regulate specific resources within the Exclusive Economic Zone. Article 60 confirms the right of the coastal state to establish and regulate artificial platforms or structures within the Zone. Articles 61 and 62 relate to the right of the coastal state to manage living marine resources entirely resident within the EEZ. In conformity with existing international Conventions, Articles 66 and 67 assign responsibility for management of anadromous and catadromous species to the coastal state within whose waters the species spawn or are generally resident. Article 63 deals with stocks which overlap the EEZs of two or more nations. Apart from suggesting appropriate bilateral or multilateral consultation on management of these species, the Article does not prescribe either management criteria or format. Finally, Article 65 affirms the right of coastal states to act alone or in concert with other interested parties or the appropriate international organizations to limit the taking of marine mammals.

2.3.2.3 The Continental Shelf

Articles pertaining to the rights and duties of nations with respect to the continental shelf are contained in Part VI of the draft Treaty. Article 76 provides a complex defi-

nition of the limits of the continental shelf. This definition is based upon either geological factors or a distance in nautical miles. Thus, in simplified terms, the legal limit of the continental shelf may be 200 miles from shore, even if the actual geological configuration is narrower. Conversely, the legally defined continental shelf is limited to a maximum distance of 350 miles from the low water mark or 100 miles distance from the 200 meter isobath, even if the geologically defined shelf is broader. Article 77 establishes the right of the coastal state to manage the living and non-living resources on or beneath the bed of the continental shelf. Article 81 establishes the right of the coastal state to control drilling along the continental shelf.

Articles 77 and 79 enumerate the rights of foreign countries within the continental shelf areas controlled by another nation. These include the right of navigation and over-flight of the area. In addition the Article recognizes the right of all states to lay submarine cables and pipelines along the continental shelf as long as these comply with the general safety and environmental regulations established by the coastal state.

2.3.2.4 Articles Concerned with the Regulation of Marine Pollution

Six of the Articles contained in the ICNT rev. 3 may be directly applicable to the right of coastal states to institute anti-pollution regulations respecting their territorial seas or EEZs. Article 207 specifically recognizes the right of coastal states to establish laws concerning land-based pollution sources. Article 208 ascribes to coastal states the right to implement anti-pollution regulations with respect to activities on the seabed area within their jurisdiction. Paragraph 5 of Article 210 outlines the right of coastal states to establish regulations regarding dumping within their territorial sea or EEZ. Paragraph 3 of Article 211 enumerates the right of coastal states to enact regulations concerning pollution from and safety standards of vessels calling at their ports. Finally, Articles 218 and 220 of the Treaty describe the right of the coastal state to enforce anti-pollution regulations within their waters.

2.3.2.5 Articles Concerned with Marine Scientific Research

Articles 245 and 246 outline the right of coastal states to control marine scientific research within their territorial sea, Exclusive Economic Zone, and continental shelf area. Within the territorial sea, coastal states are recognized as having an unencombered right to regulate authorize or conduct marine scientific research. Within their EEZs, however, coastal states are recognized as enjoying a more limited right of control. Article 246 directs thast coastal states shall grant permission for such research except under previously specified conditions and on a non-dicriminatory basis.

2.4 EFFECT OF AN LOS TREATY ON THE U. S. OCEAN MANAGEMENT REGIME

Many of the provisions contained in the draft Law of the Sea Treaty will directly affect the management of United States coastal waters. Other provisions will indirectly affect the management of the territorial sea and surrounding waters in that they provide international sanction for past unilateral actions by the United States. Still other provisions of the ICNT rev. 3 may indirectly affect the management of United States coastal waters in that they may tend to create a regime for the area beyond the continental shelf which private developers perceive to be hostile to their interests.

2.4.1 Direct Effects

Those provisions of the LOS Treaty establishing the limits of the territorial sea and EEZ, and the rights of coastal states to manage resources within those zones won general acceptance in the early stages of the UNCLOS III negotiations. The majority of coastal nations have declared a 12 mile territorial sea.[11] As a result this provision has

---

[11] As indicated in Ball (1978:19) 50 of the 119 coastal states have declared 12 mile territorial seas. An additional 30 states claim territorial seas of more than 12 miles width, while approximately 10 states claim territorial seas of between 3 and 12 miles breadth.

increasingly taken on the status of customary law. Following the declaration of a 200 mile fisheries zone by the United States in 1976, other states have adopted similar resource management legislation. Consequently, the concept of a 200 mile resource management zone embodied in the draft Treaty has also taken on the status of customary international law. Given the general acceptance of a 12 mile territorial sea and a 200 mile Exclusive Economic Zone, the United States will most certainly come under increasing domestic and international pressure to allign the basic framework of its ocean management regime with that of the rest of the world. Should the United States accede to a Law of the Sea treaty containing these provisions, the impetus toward declaration of a 12 mile territorial sea and a generalized EEZ would be even stronger.

Many of the provisions of the ICNT rev. 3 would clarify or give post facto international legitimacy to a variety of resource management legislation enacted on a unilateral basis by the United States in the course of the last thirty years. While granting added international legitimacy to the Outer Continental Shelf Lands Act, Article 76 of the draft Treaty would also finally establish a fixed boundary to the here to fore ill-defined outer continental shelf land area referred to in the OCS Lands Act. Taken as a group, Articles 57, 61, and 62 confirm the right of the United States to establish the Fisheries Conservation Zone. Further, Articles 12 and 60 confirm the right of the United States to establish and regulate traffic about deepwater ports. The provisions of Articles 210, 211, 218, and 220 recognize the international legitimacy of United States Ocean Dumping Legisdlation and the right of the United States to regulate discharge levels from ships visiting its ports. Finally, Article 65 grants international confirmation to the right of the United States both alone and in concert with other states to enact regulations for the protection of marine mammals beyond its zone of exclusive jurisdiction.

2.4.2 Indirect Effects

The principal indirect effects of the ratification of a Law of the Sea Treaty identical to the ICNT rev. 3 draft relate to the propensity of United States private corporations to engage in resource development activities within and beyond the continental shelf area. According to some of the more influential private and governmental leaders, the the provisions of the ICNT rev. 3 dealing with the exploitation of resources in the area beyond national jurisdiction (the

Area) are decidedly hostile to private development efforts. In particular, these individuals point to the fact that the provisions of Part V and Annex III may create major problems for the potential private developer of the resources (especially, though not exclusively, the hard mineral resources) of the Area. In addition, they view the provisions of the draft Treaty pertaining to representation on, and the powers of, the policy setting bodies of the international regime (the Council and the Assembly) as being too vague.

Among the provisions of Annex III to which private developers have objected are those contained in Article 5, subsection 3e. This subsection would require the developer and its sub-contractors to make their technology available not only to the Enterprise , but also to individual developing states. In the mind of many potential private developers, this provision would not allow them to properly guard their proprietary rights to the technology which they have developed at great expense. Many observers have concluded that the most recent set of financial terms of contracts presented in Article 13 of the Annex are considerably more reasonable than those contained in past drafts. However, industry spokesmen have continued to indicate that even these revised terms may prove too onerous to allow them to undertake activities in the seabed area.

Representatives of a number of developed states, although heartened by progress in the negotiations, continue to be skeptical of the feasibility of the provisions relating to the powers and constitution of the ultimate governing bodies for the Area. Generally, they are concerned that membership on the Council could be so maneuvered that states heavily involved in, and in the future dependent on, the development of seabed resources would be unable protect their vital interests. In particular, these developed states fear that through domination of the Council, developing states could so alter existing provisions for the conduct of activities in the Area as to make private exploitation of the resources of the Area technically or financially prohibitive.

Taken as a group, the provisions of the draft Law of the Sea Treaty concerned with the management and exploitation of the resources of the Area may be seen to be somewhat hostile to the interests of potential private developers and the industrialized states which would sponsor their efforts. The extent to which these provisions would prove to be sufficiently onerous to private developers to preclude their participation in the development of the resources of the Area if the Treaty were actually ratified is open to question. Some industry spokesmen assert that the present provisions

would stifle private interest in developing the resources of the Area. Other industry representatives will concede privately that they could operate within the current provisions, albeit unwillingly and on a reduced scale. If the Treaty provisions should in fact prove too burdensome for private development of the resources of the Area, there could be increased interest among these groups in more extensive exploitation of near-shore resources.

2.5 EFFECT OF PROVISIONS IN THE ABSENCE OF A RATIFIED TREATY

When the Third United Nations Conference on the Law of the Sea convened at Caracas in 1974, the majority of the representatives were of the opinion that a satisdfactory treaty could be drafted in a relatively short time. Moreover, the majority of countries were of the opinion that a comprehensive treaty was essential if the international ocean regime was to be stabilized. Throughout the ensuing seven years of negotiations, despite the relatively slow progress and wide divergence of opinion on critical issues at UNCLOS III, delegates from developing and developed nations including the United States have continued to assert that a comprehensive Law of the Sea Treaty is both necessary and possible. As the negotiations have drawn on, and the remaining points of disagreement among nations over treaty provisions have become more and less easily resolved, frustration within and without governments has grown. As frustration has grown, so too has the sentiment that possibly no treaty is better than a bad treaty ratified, and infinitely better than a bad treaty initialed but not ratified.

Within the United States, dissatisfaction with the provisions of the draft LOS treaty and the prospects for altering these provisions has centered on two points. First, from the early stages of the negotiations, private groups and their legislative supporters have been interested in ensuring that U. S. corporations will have access to the resources of the deep seabed on reasonable terms and conditions. These interests have been concerned with both the content and progress of negotiations at UNCLOS III. As the negotiations have drawn on, these groups have expressed the concern that United States firms will lose their technological advantage if they are not allowed to engage in, or at least plan for, large scale development in the relatively near future. The seeming inability of U. S. negotiators to win more favorable terms in the draft treaty has also caused these groups to be concerned that the ultimate LOS treaty

will be decidedly detrimental to their efforts to exploit seabed resources.

Second, other public and private groups have expressed concern over the content of Treaty provisions to which the United States has already given tentative approval. This concern is prompted in part by a belief that issues which were thought to be vital during the early stages of the negotiations may no longer be quite so vital. For example, while the right of transit through international straits is still a very desirable provision, its inclusion in a general treaty may be somewhat less vital than it was at the outset of the LOS negotiations.[12] This is due in part to the perception that it would be possible to negotiate bilateral treaties for the use of the most vital of these straits. It is also due to the fact that some of the most modern U.S. warships are either physically incapable of transiting these straits, or incapable of transiting the straits in a secure manner. Further, more modern submarines, such as the Trident submarines no longer have the need of transiting these straits in order to take up vital positions. Concern over ICNT rev. 3 provisions is also prompted by fears that some of these provisions may turn out to be double-edged swords in practice. That is, their application in one context may be advantageous to the United States while their application by other countries may put the United States at a serious disadvantage. This is true of some of the provisions for navigation, pollution control, and scientific research in coastal waters.

The growing dissatisfaction among Executive and Legislative branch officials with progress in the Law of the Sea negotiations has become more evident since the Reagan Administration took office in January 1981. For example, at the time that President Reagan replaced the majority of the United States delegation to UNCLOS III, The Administration issued a statement to the effect that the United States would have to reconsider at length its interests in a Law of the Sea Treaty. In view of the apparent dissatisfaction of the Reagan Administration and elements of Congress with the state of the negotiations and the product of past negotiations at UNCLOS III, there is some reason to doubt whether the United States will sign or ratify a Law of the Sea treaty. This raises the question of the impact of the UNCLOS

---

[12] In the face of 12 mile territorial seas, many of the world's straits, including Dover and Gibraltar, would come within the territorial waters of one or more states. A transit passage provision would ensure that all ships could continue to enjoy unimpeded use of these straits.

III negotiations on the management of U. S. coastal waters in the absence of a ratified treaty.

As noted in the previous section of this chapter, certain provisions contained in the draft Law of the Sea Treaty have, in the course of the negotiations, taken on the status of customary law. Among the most significant of these provisions from the perspective of this report are the provisions establishing 12 mile as the acceptable breadth of a territorial sea, and the general acceptance of the concept of a 200 mile Exclusive Economic Zone. Thus, even in the absence of a Law of the Sea Treaty, there will be strong impetus for the United States to join the majority of world states in declaring a 12 mile territorial sea, if only to have a more secure position in dismissing the outlandish claims of some other states to excessively broad territorial seas.

2.6 IMPACT OF OTHER NEGOTIATIONS ON THE MANAGEMENT OF U. S. WATERS

The Law of the Sea Conference is by far the most comprehensive set of negotiations in which the United States has participated. However, much of the management of individual resources or activities in international waters and in coastal waters is affected by or accomplished by means of individual treaties or agreements. The United States is party to a number of international which may directly or indirectly affect the management of its coastal waters.

The United States has engaged in extensive bilateral negotiations with Canada on a variety of fishery related issues. Among the subjects of negotiations were boundary lines for fishing, and methods for managing inter-jurisdictional stocks. Agreements on such issues do, of course, affect to some degree the catch available to U. S. fishing interests, as well as the manner in which FCZ regulations are formulated and aplied.

Reacting to the slow progress of negotiations at the Law of the Sea Conference, the 96th Congress enacted "The Deep Seabed Hard Minerals Resources Act" (P. L. 96-283). Under this Act, the NOAA Administrator in consultation with the Secretary of State is empowered to enter into negotiations with other states for the purposes of granting reciprocal state status to these nations. In granting reciprocal state

status, the parties to the agreement consent to acknowledge the validity of licenses and permits granted by other parties to the agreement. Thus, by becoming party to a reciprocal state agreement, the United States would potentially limit the access of its own citizens to certain areas of ocean space while recognizing the right of nationals of reciprocal states to exploit areas near its shores.

2.7 CONCLUSION

National concern for the management of the resources of coastal waters has increased dramatically since 1945. This has been manifested in the tendency of nations to assert claims to management authority over the resources of large areas of ocean space. The result has been a progressive erosion of the international ocean regime in existence prior to 1945. Reacting to the perceived instability of the international ocean regime, the nations of the world have attempted on three separate occasions over the past quarter century to establish a coherent and comprehensive regime for the management of their world's ocean space. The Third United Nations Conference on the Law of the Sea is the most recent and most complex of these international attempts to restructure the international ocean regime.

In the course of the nearly seven years of negotiations at UNCLOS III, delegates have reach tentative agreement on a wide range of provisions. Among these provisions are the Articles defining the limit of the territorial sea at a maximum of 12 miles and the Exclusive Economic Zone at 200 miles, and the right of coastal states to manage resources within these zones. In the opinion of many scholars of international law, these provisions have taken on the status of customary law. However, the complexity of a number of other issues before the Conference, coupled with the wide divergence of opinion initially separating the parties to the negotiations, has precluded agreement on these issues to the present time. Moreover, the prolonged nature of this disagreement now appears to threaten, though not preclude, the ultimate ratification of a comprehensive Law of the Sea Treaty by the United States.

If a Law of the Sea Treaty similar in content to the ICNT rev. 3 is ratified, it will affect the management of United States' coastal waters in a number of ways. First, there would be strong impetus to declare a 12 mile territorial sea. Second, the Treaty would grant general international

legitimation to the unilateral expansion of management authority over coastal marine resources undertaken by the United States through such Acts as the Outer Continental Shelf Lands Act, The Fisheries Consrvation and Management Act, the Deepwater Ports Act, and the Marine Protection, Research, and Sanctuaries Act. At the same time, ratification of an LOS treaty could provide some impetus to the harmonizing of much of this legislation under a general Exclusive Economic Zone management program. Third, the ratification of an LOS Treaty containing provisions similar to those in the ICNT rev. 3 might tend to direct private development efforts inward from areas under direct international control.

If the United States decides that ratification of a general LOS treaty along the lines of the ICNT rev. 3 is not in its overall interests, the management of United States coastal waters could still be affected by the outcome of negotiations at UNCLOS III. As noted above, certain provisions of the draft Treaty, including the 12 mile territorial sea, and the EEZ have attained the status of customary law. Therefore, it could still be in the interests of the United States to accede to these generally recognized principles, if only to give them added legitimacy in the eyes of the world. This could to some degree help to stabilize the international ocean regime by diminishing the probability that other states will continue to claim more extensive zones.

Chapter III

MANAGEMENT OPTIONS FOR AN EXPANDED TERRITORIAL SEA

3.1 INTRODUCTION

The preceeding chapter examined the impact of international negotiations currently in progress on the area of ocean space to be managed by the United States. This chapter will examine possible options for the United States to adopt in the management of one of the areas, an expanded territorial sea, to come under its jurisdiction as a result of the Third United Nations Law of the Sea negotiations.

The expansion of the territorial sea surrounding the United States from three to twelve miles will raise a number of issues which must be dealt with in the development of a regime for the management of this area. First, as the twelve mile territorial sea will encompass two currently existing management zones, the territorial sea and a portion of the outer continental shelf, will the twelve mile zone be administered as one or two or more units? Second, what level or levels of government should administer the expanded territorial sea? Third, should the development of a regime for the management of the expanded territorial sea reflect existing legislation or should it serve as an opportunity for a general re-orientation of United States' ocean policy?

The sections which follow examine in detail six options for the management of an expanded territorial sea. These options include:

1. expanding state control from 3 to 12 miles from shore;

2. establishing a transitional zone, stretching from 3 to 12 miles from shore, and placing this zone under regional authority;

3. establishing a transitional zone, stretching from 3 to 12 miles from shore, and placing this zone under joint state-federal authority;

4. making the entire 12 mile territorial sea a dual management zone under joint state-federal authority;

5. combining the territorial sea and the present outer continental shelf and fisheries conservation zones into a single management regime (0 to 200 miles) under joint state and federal authority; and,

6. merging the expanded 3 to 12 mile portion of the territorial sea with the outer continental shelf regime, thus placing it under federal control for administrative purposes.

In addition, these sections explore the impact of various options on the major existing components of United States ocean policy, including potential modifications of these Acts required under the option. Each section also briefly examines the interests impacted by the particular management regime. Finally, each section will examine the potential liabilities and benefits to federal and state governments of the particular management option.

3.2 STATE MANAGEMENT OF AN EXPANDED TERRITORIAL SEA

One option for the management of an expanded territorial sea would be to extend the management regime established under the Submerged Lands Act and Coastal Zone Management Act for the existing territorial sea to the additional 9 miles of ocean space that would be included in the expanded area. Under this system, states would obtain control over the majority of resources within and beneath the additional 9 mile stretch of ocean to be incorporated in the territorial sea. This would mean that the states would have the benefit of the revenues to be gained from the lease of the rights to exploit the resources of the area and the responsibility for management of the resources of the area.

As in the case of the existing territorial sea, the federal government would retain responsibility for the regulation of commerce and navigation and for the maintenance of defense capability within the area. Thus, the federal government would retain management responsibility for deepwater ports even though these facilities would be located within state waters. In addition, the federal government

would retain a role in many aspects of the management of the resources of the area through its oversight role in the permit and planning process. For example, the federal government may continue to make its influence felt through the enforcement of air and water quality standards, and if funding is continued, through the coastal zone management program. Although many aspects of federal role in ocean management would be unchanged by assigning the primary regulatory responsibility for the expanded territorial sea to the states, a substantial number of federal acts would have to be modified.

3.2.1 Potential Modifications to the Existing Management System

The delegation of management responsibility for the additional 9 mile area of an expanded territorial sea to the bordering coastal state would necessitate modifications to a number of the Acts which help to comprise the current management regime for United States coastal waters. Some Acts, such as the Submerged Lands Act, would require minor yet very significant modification. Other Acts, such as the Outer Continental Shelf Lands Act and the Fisheries Conservation and Management Act, could require substantial changes to their provisions in order to preserve the intent of the Act.

3.2.1.1 Submerged Lands Act

Among the most basic changes to the existing ocean management system required by the assignment of primary responsibility for the management of an expanded territorial sea to the bordering coastal states would be to the Submerged Lands Act. Initially, the provisions of the Act setting the limit of state authority at 3 miles would have to be modified to reestablish this limit at 12 miles. Such action would not be without precedent. Bills to modify the Submerged Lands Act in this manner have been introduced by a number of congressmen in recent years. However, modifying the Submerged Lands Act in this manner would also require parallel adjustments in a number of other current legislative Acts.

3.2.1.2 Outer Continental Shelf Lands Act

Perhaps the Act most affected by an expansion of the limit of state authority from 3 to 12 miles from shore would be the Outer Continental Shelf Lands Act. As responsibility for this 9 mile section of ocean space previously administered by the federal government passes to the states, enterprises operating in the 3 to 12 mile section of the zone could suddenly become subject to a substantially different set of regulations than they had been operating with under OCS regulations. In order to prevent potentially significant disruption to existing operations within this area, some form of "grandfather" provision, allowing these operations to continue to conduct their activities without drastic immediate changes in their regulatory environment, should be enacted. In addition, if deeding of rights to the resources of the expanded territorial sea to coastal states is to be acceptable to the federal government and non-coastal states, provision should also be made to assure that revenues from existing leases continues to go to the federal treasury.

Many provisions of the OCS Lands Act, however, could continue to operate as they do under the present ocean management system. For example, although the physical area of their application would change, sections of the OCS Lands Act providing for input from state authorities would not require major modification. Thus, state authorities could continue to provide input into operations of the truncated OCS area (12-200 miles) which are liable to affect activities within the expanded zone under state authority.

3.2.1.3 Coastal Zone Management Act

The current climate of fiscal austerity coupled with a predisposition at the federal level to devolve regulatory responsibility to the states leaves some doubt as to the continued existence of coastal zone management as a federal program in its present form. However, it would be in the interests of both federal and state government for the federal government to encourage continued or expanded coastal zone management efforts at the state level. These efforts should specifically be directed toward developing more systematic approaches to the management of the expanded territorial sea by coastal states.

If general CZM authorizations are to be continued, and the coastal states are given authority over the resources of the expanded territorial sea, Congress should encourage participating states to devote more of their efforts to planning and regulating the use of the resources of this expanded area of ocean space. This could be accomplished in much the same manner as Congress encouraged states to devote more attention to 'the national interest'. That is, continued funding under section 306 could be tied to a state's demonstrating that it was developing coordinated plans for the management of its coastal waters as well as its coastal lands.

A number of individuals from both state and federal government interviewed for this report raised the possibility that states should be required to participate in the federal coastal zone management program as a prerequisite for being granted authority over the resources of an expanded territorial sea. Moreover, many interviewees contended that, if a state refused to participate in the CZM program or develop a comprehensive plan for the management and development of the resources of the expanded territorial sea, the federal government could maintain the management control over the area under the OCS Lands Act. Such a requirement should be entirely within the power of the federal government as interpreted by numerous Supreme Court decisions regarding the absolute authority of the federal government in connection with the Submerged Lands Act.

3.2.1.4 Fisheries Conservation and Management Act

The granting of management authority over the resources of an expanded territorial sea to the bordering coastal states would precipitate a number of modifications in the operation of the federal fisheries management regime under the FCMA and other Acts. First, the inner boundary of the Fisheries Conservation Zone should most likely be modified from 3 to 12 miles. Thus, responsibility for the management of certain species would pass from the Regional Fisheries Management Councils to state governments, which would presumably coordinate their management efforts under other NMFS programs. Of perhaps greater importance, Regional Fisheries Management Councils might be likely to attempt to maintain their authority over certain species by invoking largely unused provisions of the FCMA in order to assert their authority over species lying "largely within the FCZ". Under these circumstances, further legislation might be required to define more adequately the circumstances under which the

Regional Fisheries Management Councils should assert their control over species which lie largely within the Fisheries Conservation Zone as redefined. Third, the assignment of management authority over the additional nine miles of an expanded territorial sea to state authorities might also affect treaty fishing rights under the Fisheries Conservation Zone.

The decrease in the size of the FCZ could require the reduction or renegotiation of quotas to foreign states. The reduction of the size of the FCZ under the state management of an expanded territorial sea also might necessitate the renegotiation of federal fishing treaties with Native American groups. Alternately, the federal government could require the continuation of existing treaty rights for Native Americans within the 9 mile zone formerly under FCMA authority as condition for granting authority over the area to the bordering coastal state.

3.2.2 Interests Affected by State Management Option

A considerable number of public and private, domestic and international interests would be affected by the granting of management authority over the additional 9 miles of an expanded territorial sea to coastal state governments. Domestic public interests will be affected chiefly by the increase or decrease in the burdens placed on them as their area of management authority is expanded or contracted. Domestic private interests will be affected in the procedure by which they may access the resources of the additional 9 miles of ocean space to be incorporated into the territorial sea. International private and public interests will be affected because the area in which they may vie for a portion of the resources not exploited by United States' interests will contract.

3.2.2.1 Federal Interests

A number of federal agencies would be relatively unaffected by a shift in management authority over the 9 mile area to be added to the territorial sea from the federal to state governments. Among these agencies are the Coast Guard, the Environmental Protection Agency, the Corps of Engineers, and the Fish and Wildlife Service. The authority of these agencies extends into the existing territorial sea.

Those agencies with major responsibilities for the management of the resources of the waters immediately seaward of the existing territorial sea would be affected to some degree by a shift in authority over these areas. The most significant of these agencies are the Bureau of Land Management, the U. S. Geological Survey, and the National Oceanic and Atmospheric Administration. Some of these effects would be minor. Although there would undoubtedly be some modifications as a result of shifting responsibilities, basic operating procedures of these agencies could remain essentially as they are under the present management system. For example, although the area of greatest potential impact of OCS operations on state management operations would shift seaward 9 miles (3 miles in the case of certain Gulf Coast states), the procedures for consultation on these operations could remain essentially unchanged.

However, in other ways these agencies could be substantially affected. First, with a reduced area of responsibility, personnel at some of these agencies could devote more time to their remaining area of management concern. This could potentially improve overall management of the remaining area. Second, the relative power of agencies such as BLM within the federal structure might be somewhat reduced, because they would initially be providing a smaller amount of revenue to the federal treasury. Third, in the case of an agency such as the National Marine Fisheries Service, personnel could be transferred from one section of the agency, FCMA coordination, to domestic liason operations under other NMFS programs. Fourth, offices such as the Office of Coastal Zone Mangement might be reactivated or redirected to aid states in their efforts to develop comprehensive management regimes for the resources of the expanded coastal waters under their jurisdiction. Alternately, as discussed in the preceeding section, OCZM might assume management responsibility for this area if the bordering coastal state chose not to accept management responsibility for the area.

3.2.2.2 State Interests

The responsibilities of state government would be impacted to some degree by the grant of authority over the resources of the additional 9 mile area of coastal waters. The extent of this impact will vary from state to state, depending upon the mix of resources found in the area to come under the authority of that state. First, there would be great pressure on state governments to develop a coordinated management regime for these waters. Second, states will in

many cases come under increased pressure from private interests concerned with the resources of the newly acquired area.

The organizational structure of state governments would also be affected by the assumption of management authority over an expanded territorial sea in a number of ways. First, those agencies responsible for the management of marine resources would undoubtedly have to be expanded. Second, there would be a parallel need for an expansion of state enforcement capability. Third, there would be the potential for a shift in the relative power of the marine resource agency within state government, because this agency might be providing increased revenues to the state treasury.

3.2.2.3 Private Interests

The delegation of management responsibility for the resources of the expanded territorial sea to state governments would affect private interests chiefly in the ease with which they might access these resources for commercial development. Instead of facing a single regulatory authority with a relatively consistent set of standards, interests wishing to exploit the resources of this 9 mile area would face a variety of organizational structures, priorities, and conditions concerned with the development of the resources of this zone. In some instances, this might mean that private interests would have greater ease in accessing resources under a state management system than under the federal management system. This would be particularly true in the case of states with a well-organized marine resource agency and a strong desire to promote the development of the resources within its jurisdiction in a safe and expeditious manner. In other instances, private interests may have a much more difficult time in exploiting one or more of the resources of this area once it is under state management authority. For example, as a result of local or regional constituent pressures, some state authorities may be much more reluctant to grant permission for the development of a resource, such as oil or gas, than federal authorities. Alternately, a state regulatory apparatus which is either disorganized or extremely rudimentary may make it extremely difficult for private interests to develop resources. This difficulty could arise for two reasons. First, the process of obtaining permission to exploit the resurce in question could be extremely complex and time-consuming. Second, there could be no obvious administrative apparatus to approach for permission to undertake development efforts.

The grant of management authority over an expanded territorial sea to state governments would have mixed effects on those private interests concerned with the development of marine resources and on the efforts of environmentalist and conservation oriented groups. In states in which conservationist groups have a powerful lobby and a receptive legislative, administrative and judicial climate, these groups might benefit from state control of the area. In states which have traditionally been less receptive to the arguements of environmentalist coalitions, state management of the additional coastal waters may not benefit their goals. However, since much of the federal legislation under which conservation-oriented groups have made their views felt would be unaffected by state management of the expanded territorial sea, it may be that the interests of these groups would be largely unaffected by the adoption of this option.

3.2.3 Advantages and Disadvantages of the Option

As noted in the previous section, the assignment of responsibility for the management of the expanded territorial sea to the states would have mixed impact on private interests concerned with the preservation or exploitation of the resources of that area. The adoption of this option would, however, have a number of general benefits and liabilities. Likewise, both federal and state governments would be presented with a number of clear advantages and disadvantages by the enactment of this management regime. The sections which follow will highlight many of the most significant of these costs and benefits.

3.2.3.1 General Advantages and Disadvantages

The state management option presents several general advantages. First, this option has the advantage of continuity with the existing United States' ocean management regime. That is, a majority of the existing regulations, Acts, and regulatory practices operative under the current management system could continue with minor modifications into the management regime for the expanded territorial sea. Second, this option places responsibility for the management of the resources of the expanded the zone at a level of government relatively close to the affected population. As a result, the option has the advantage of of being perhaps closest to the general theory of government espoused by the current ad-

ministration. Third, this option has the closely related advantage of placing responsibility for regulation of the resources of the zone at a level of government which is perhaps best able to take account of special or area-specific, as opposed to general, management concerns.

The state management option is not without its general disadvantages, however. Perhaps the greatest disadvantage of this option is the fact that it makes a comprehensive or highly coordinated approach to the management of a relatively large area of ocean space extremely difficult. Under this regime, the additional 9 miles of coastal waters could be subject to nearly 30 distinctive management systems. In addition, unless participation in the coastal zone management program were made a prerequisite for receiving control of the additional 9 mile area, relatively large blocks of ocean space could be subject to little or no management. Such a lack of mangement authority would present a situation of great uncertainty that would not be to the advantage of government or private interests.

The state management option would have the further disadvantage of requiring what could prove to be extremely complex rewriting of legislation and regulations to take account of those lease rights in the 9 mile area granted under the OCS system. Specifically, the matter of what level of government should regulate operations initiated under OCS leases and what additional regulations should be immediately applicable to these operations would have to be worked out. There would also be a problem of which level of government should pay for these management activities. This could be a particular problem if management responsibility were assigned to the states while the federal government was to continue to receive the revenues from these leases.

A final major problem with the state management option rests in the fact that the level of government to be granted regulatory authority over the area may not have adequate resources to carry out its new management responsibilities. That is, states generally have less readily available resources, in terms of revenues, personnel or dual purpose technical equipment for monitoring, planning, and enforcement activities within the zone, than does the federal government. This raises the matter of what level of government should bear the burden of paying for regulatory operations. While this may not be a particular problem for some states in which there are few resources to be monitored, it could be a severe problem in the case of states with a considerable number of resources. The lack of financial, personnel, and technical resources adequate to meet

the demands of managing the resources of an expanded territorial sea could also become a more widespread problem. As technology and market conditions change to make the exploitation of an increasing number of resources, such as marine minerals and energy resources, more viable, the burden on states could increase substantially. As a result, state governments either singly or in concert could be prompted to call increasingly on resources of the federal government, such as Landsat or its descendants or other ocean monitoring devices, in order to adequately continue their management efforts.

3.2.3.2 Specific Advantages and Disadvantages to the Federal Government

The state management option carries with it a limited number of advantages for the federal government. First, because the area of federal responsibility would be reduced, federal employees now assigned to OCS management would be able to devote more time to operations in the remaining OCS area. This could improve management of the remaining OCS lands. Alternately, a small number of the employees currently engaged in this work might be reassigned to other critical areas. Of perhaps greater interest to the federal government, the state management system would end the controversy over the differential, between Gulf, and East and West coast states, in the breadth of state-controlled coastal waters. This could reduce the number of suits periodically brought by states against the federal government.

Perhaps the most serious effect on the federal government of the grant of management authority over the additional 9 miles of an expanded territorial sea to state governments would be the substantial loss in potential revenue from leases of this area. Closely related to this issue would be the fact that the federal government would be expected to continue to provide services to navigation and shoulder other regulatory responsibilities without benefit of the revenue from the area. Further, if the federal government wished to maintain some form of coordinated management regime for the 9 mile area it might be placed in the position of imposing its power on somewhat recalcitrant states. This could lead to a new series of suits against the federal government by affected states.

3.2.3.3 Specific Advantages and Disadvantages to State Governments

While the grant of authority over the additional 9 miles of an expanded territorial sea to the coastal states would represent a major revenue loss to the federal government, it would represent a potentially large increase in revenues for these states. In addition, the adoption of this option would mean that coastal states were able to manage a greater amount of the ocean space along their shores as they see fit. Finally, this option might present the states with the possibility of eventually receiving some level of federal funds to aid them in developing coordinated management regimes for this area of ocean space.

The state management option also presents states with a number of disadvantages. From the point of view of interior states this option merely grants a windfall to the more fortunate coastal states. While at best interior states will receive no benefits, at worst, their federal benefits may be reduced as a consequence of the loss to the federal government of revenues from the 9 mile zone to coastal state governments. Coastal states, on the other hand would have to bear the increased burden of financing the management of the area. This burden would include the cost of additional planning personnel and additional personnel and equipment for monitoring and enforcement purposes. Further, coastal states would feel additional pressures from both pro-development and anti-development private interests. This would most likely lead to increased burdens on the states' court systems.

3.3 STATE-REGIONAL-FEDERAL MANAGEMENT OPTION

The expanded territorial sea might also be administered as part of a state-regional management regime. Under this system, states would retain management authority over the 3-mile area of the exiting territorial sea. Management of the 9-mile area seaward from this zone would be granted to Regional Fisheries Management Councils similar to those which play a role in the administration of the Fisheries Conservation Zone. Income from the extension of lease rights within the regional management zone, however, would be granted to the bordering coastal state. As in the case of the state management option, the federal government would retain control over outer continental shelf resources from 12 to 200 miles from shore.

Within the existing 3-mile territorial sea, the states would continue to exercise their control under the authority of the Submerged Lands Act. Further, participation in the coastal zone management program could remain optional, because the area under direct state control would remain relatively small. Finally, federal participation in the regulation of activities within the 3-mile zone could also remain unchanged.

Regional management of the 3 to 12 mile transition zone would require the creation of a series of interstate coordinating bodies. As in the case of the Regional Fisheries Management Councils, membership would be drawn in part from the heads of the relevant state agencies. These would include the heads of fisheries agencies, coastal zone management agencies, state geological surveys, and power authorities. Additional members could be drawn from private interests and qualified academics. Finally, in order to facilitate coordination of the management of the transition zone with federal management efforts in the outer continental shelf region, representatives of relevant federal authorities could be included as non-voting representatives.

Many of the oversight operations of the Regional Management Coordination Bodies could be conducted on a committee basis. In this way, separate committees could have responsibility for particular resource groups such as fisheries, minerals, or energy systems. If the borders of the Regional Fisheries Management Councils were adopted as those of the larger territorial sea Regional Coordinating Bodies, the Regional Fisheries Management Councils (RFMC's) could act as the fisheries committee for the larger Coordinating Body. In addition, the selection of the boundaries of the RFMC's as the borders for the territorial sea transitional management zone would simplify the coordination of regulatory efforts for the range of resources contained in the zone. Such a choice of boundaries could improve the chances of developing management plans based on an adequate consideration of multiple use and comprehensive management criteria, vague as these may be. Further, the adoption of the Regional Fisheries Management Council boundaries would insure that the states in question had previously worked together on some resource management problems.

A majority of the operational activities required in connection with the administration of the zone could be borne by the individual state governments, which would obtain the financial benefits from the lease of resources of the zone after the Regional Management Coordination Bodies had been deducted. For example, much of the staff work required by

the RCBs could be performed by the staff of appropriate resource agencies of the member states. Enforcement operations within the 9-mile transition zone could also be delegated to appropriate agencies within the various state governments.

3.3.1 Potential Changes to Existing Management System

As noted above, the state-regional management option would require no changes to either the Submerged Lands Act or the Coastal Zone Management Act as amended. However, changes would be required in the Outer Continental Shelf Lands Act. In addition, new legislation would be required for the establishment of the Regional Management Coordination Bodies. Finally, legislation modifying the management area to be administered under the FCMA would have to be enacted.

3.3.1.1 The Outer Continental Shelf Lands Act

The OCS Lands Act would have to be modified to grant management authority over the 9 miles of expanded territorial sea to the Regional Coordinating Bodies. In addition, the Act could be modified to provide that states will have input into the operations of the OCS area through the Regional Management Coordinating Bodies. Finally, as in the case of the state management option, the OCS Lands Act would have to be modified to make provision for the management unier the state-regional system of leases granted under the prior OCS system. In particular, the modifications to the OCS Lands Act would have to clearly define the disposition of lease revenues from existing operations, and the right of the new state-regional management regime to impose added conditions on existing operations.

3.3.1.2 Fisheries Conservation and Management Act

In order to provide for true regional control of the fisheries resources within the 9-mile regional management zone, the FCMA should be modified to designate this area as a separate zone for certain management purposes. State au-

thorities would be assigned enforcement responsibilities within this 9-mile zone. In addition, although quota determinations for the 9-mile outer territorial sea zone would be a product the basic quota determinations for the present 3-200 mile Fisheries Conservation Zone, foreign fleets would be excluded from the state-federal management zone. As a result, the allocations made available to foreign fleets would be reduced accordingly.

3.3.1.3 New Legislation

The major change to the existing United States ocean management system required by the state-regional option consists of the passage of legislation creating the Regional Management Coordination Bodies. Such legislation, of course, would make receipt of the financial benefits from the sale of leases to the resources of the state-federal management zone contingent upon a state's participation in the Regional Management Coordination Bodies. The implementation legislation could also stipulate a formula for the assessment of state contributions of funds to the operation of the RMCBs. These assessments could be based on a percentage of state revenues from the 9-mile outer territorial sea area. In addition, the legislation should make provision for federal contributions to the cost of maintaining the regional management system, particularly if the states of a region are not obtaining income from lease arrangements within the 9-mile area.

3.3.2 Interests Affected by the State-Regional Management Option

As in the case of the state management option, the state-regional option would affect a number of domestic and international, private and governmental interests. Domestic public interests would be affected principally by the increase or decrease in responsibilities required of them. In addition, these interests would be affected by the necessity of coordinating with the Regional Management Coordination Bodies. Domestic private interests would generally be required to deal with a third level of bureaucracy in their efforts to affect development policy. Further, domestic private interests would be able to participate directly in the management of the resources of the transition zone. Finally, international public and private interests would be excluded from the 9-mile state-regional management zone.

3.3.2.1 Federal Interests

The state-regional management regime would affect federal agencies in much the same manner as the state management option. Because the authority of many agencies involves matters, such as navigation and pollution control, in which federal standards are applicable to the entire range of ocean space under United States control, these agencies would be relatively uneffected by the implementation of the state-federal management option. However, several other federal agencies might be affected to greater degree by the adoption of this form of management regime. As in the case of the state management option, the area over which federal agencies, such as the Department of the Interior and the National Oceanic and Atmospheric Administration, have management authority, would decrease.

3.3.2.2 State Interests

The principal effect of the state-regional management regime on state government would be to the organizational structure of those governments. As in the case of the state management option, those agencies responsible for the management of marine resources would undoubtedly have to be expanded in order to provide the staff work required by the RMCBs. However, the absolute level of expansion might be less under this option because the burden of staff work for the development and execution of management plans for the resources of the transition zone would be shared by agency personnel from a number of states. The parallel need for an expansion of state enforcement capability, on the other hand, would not be alleviated by the enactment of the state-regional management regime. Finally, the potential for a shift in the relative power of of the marine resource agency within state government due to its indirectly providing revenue to to the state treasury would be similar to the state management option.

3.3.2.3 Private Interests

Private interests would be affected by the adoption of the state-regional option in two ways. First, under this system, private interests would have the opportunity of making a more systematic impact on the management of the re-

sources of the expanded territorial sea. Through their participation on the RMCBs, these interests would have the opportunity to participate directly in the setting of management priorities, rather than as informal consultants or commentators after the fact. Second, as the zone would encompass several states, the influence of either a staunchly pro-development or pro-conservation state would to some degree be moderated in the management plans for the transition zone. Therefore, private interests concerned with the management or development of the resources of the zone might find that the plan for the management of the zone as a whole would be more in line with their interests than a plan developed by a single state.

3.3.3 Advantages and Disadvantages of the Option

The assignment of responsibility for the management of the expanded territorial sea to a regional body would have mixed impact on private interests concerned with the preservation or exploitation of the resources of that area. The adoption of this option would also have a number of general benefits and liabilities. Likewise, both federal and state governments would be presented with a number of clear advantages and disadvantages by the enactment of this form of management regime. The sections which follow will highlight many of the most significant of these potential costs and benefits.

3.3.3.1 General Advantages and Disadvantages

It is possible to identify three general advantages of the state-regional option. First, this option will provide for greater coordination among states in the management of the 9-mile extended territorial sea than the state management system. This should provide an opportunity for more attention to multiple use criteria (however vague these may be) in the development of management plans. At the same time, the state-regional management option should also provide for a greater degree of coordination in the management of the territorial sea and the federal waters beyond than the state management option. Under the state-regional management system, the federal government would have direct, though limited, participation in the development of the regional plans. Finally, the state-regional regime option would have the advantage of providing a direct mechanism for

private interests to have an input into the development of a management system for the 9-mile expanded zone.

While the state-regional management option has a number of advantages, it also has a number of definite disadvantages. First, this management system involves setting up an additional layer of bureaucracy. Therefore, the cost of administering the zone could be higher than in the case of a zone administered by existing state or federal authorities. In addition, private groups wishing to exploit resources at the inner boundary of the zone would have to deal with two rather than the one set of regulations they would deal with under the state management system. Second, the fragmentation of the coastal waters into an additional zone would make certain aspects of development and enforcement operations more difficult. Conceivably, three separate sets of regulations could apply to a single resource, depending on the location of the resource within the various zones. Third, there is some doubt regarding the ability of the states comprising a Regional Management Coordination Body to coordinate their staff work adequately. For example, states with more highly developed resource management apparatus may seek to assume a disproportionate share of the planning burden for the region. As a result, they may tend to impose their management concepts on other states within the region. Alternately, states with larger resource management apparatus may feel unjustly burdened by the regional approach, because they are expected to shoulder disproportionate portions of the planning effort. Fourth, the coordination of enforcement within the region may be a problem. Some states may have greater enforcement capabilities in terms of personnel and equipment than others. Therefore, the same regulations may be enforced with varying degrees of stringency from state to state within the same region. As a result, the advantages of a single regional management system may be diluted to some degree. Finally, the operation of the Regional Fisheries Management Councils leaves some doubt as to the feasibility of managing resources on a regional basis. The RFMCs have had mixed records. Some Councils have operated extremely smoothly while others have been subject to multiple disagreements ranging from operating procedure to priorities.

3.3.3.2 Advantages and Disadvantages to the Federal Government

From the point of view of the federal government, the state-regional management option has two principal advantag-

es apart from the general advantages outlined above. First, under this regime, federal enforcement responsibilities would be reduced. Second, under this option, the apparatus and operations of the FCZ could maintained to a large degree.

As in the case of the state management option, the principal disadvantage of the state-regional management system would be the potential loss of revenue to the federal government. In addition, this management option is less than optimal in that it still does not provide for a unified management system nor does it appreciably lessen the potential for action by states through the regional bodies against federally-sanctioned operations in the OCS (or Exclusive Economic Zone) area beyond.

3.3.3.3 Advantages and Disadvantages to States

The major advantage of the state-regional management option from the point of view of coastal states is, of course, the potential revenue to be gained from control of the additional 9 miles of ocean waters and submerged lands. This option also has the advantage of allowing states to maintain their peculiar type of coastal management organization in the inner 3-mile area of the territorial sea. In addition, the ability to have more influence over the conduct of operations in a wider range of waters surrounding their shores may be perceived to be an advantage by some states. Further, the regional management option has the advantage of providing for the sharing of the burdens of staff work for the development and administration of the zone.

Like the state management option, the regional management option has the disadvantage of placing additional enforcement burdens on the states. The regional management option has the further disadvantage of tying receipt of the additional 9-miles of ocean space to participation in a management structure not entirely of the state's choosing. Finally, as noted above, this option has the disadvantage of requiring coordination with other states in a region, even when their policies regarding the management of marine resources may be highly divergent.

3.4 STATE-FEDERAL TRANSITION ZONE

A third option for the management of an expanded territorial sea would consist of administering the entire 9-mile area as a transition zone under joint state-federal authority. This option would recognize the strong mutual interest of these two levels of government in the management of the zone. The transition zone management system could also provide for the respective federal and state interest in receiving revenue from the sale of leases to the resources of the area.

In order to provide for adequate coordination in the management of the zone as a whole, a state would be required to participate in a joint management program with the federal government before it would receive partial title to the transition zone. Revenues from leases granted in the transition zone would be divided between federal and state governments on an equal basis. Within the transition zone, the federal government could be given primary responsibility for enforcement in recognition of its greater capabilities. Finally, in determining which regulatory standards should apply within the zone, the criteria of enforcing state regulations when these are more stringent than federal standards could be applied.

3.4.1 Modifications to the Existing Management System

The establishment of a 9-mile transition zone, under joint state-federal management authority, on the border of the 3-mile territorial sea would require modifications to a number of federal ocean management programs. Among these would be the Fisheries Conservation and Management Act, and the Outer Continental Shelf Lands Act. In addition, legislation establishing a mechanism for coordination of state-federal management efforts within the zone would have to be enacted. The Coastal Zone Management Act could be modified to provide for this coordination mechanism.

3.4.1.1 Outer Continental Shelf Lands Act

As in the case of the previous two options, the state-federal transition zone management option would require two

specific modifications to the OCS Lands Act. First, the sections of the Act defining the geographic areas to be managed under the authority of the Act would have to be altered to exclude the zone from 3 to 12 miles from shore. Second, adequate provision for the continued operation of existing leases under federal authority would have to be added.

3.4.1.2 Fisheries Conservation and Management Act

The modifications to the FCMA required in connection with the adoption of the state-federal transition zone option are very similar to those required under the state regional option. Thus, the FCMA should be modified to designate the 3 to 9 mile transition zone as a separate area for management purposes. Although the quota determinations for the transition zone could continue to be a part of the basic quota determinations for a 3-200 mile fisheries management zone, foreign fleets would be excluded from the 9-mile transition zone as they are presently excluded from the area of the existing 3-mile territorial sea. As a result, the allocations made available to foreign fleets would be reduced accordingly. In addition, some GIFA's and reciprocal fishing agreements might have to be renegotiated.

3.4.1.3 Transition Zone Legislation -- Modifications to the CZMA

Legislation to establish the joint state-federal management zone for the administration of the 9-mile expanded territorial sea area should address a number of points. First, as noted above, the legislation should require that states agree to participate in a joint state-federal management program for the zone in order to acquire the right to receive revenue from the sale of leases within the zone. Second, the legislation should establish a mechanism for the coordination of state participation in the management of the zone. One option would be to designate the coastal zone management agency as the liaison agency for the state. In addition, one federal agency should be assigned responsibility for the coordination of management plans and the development and coordination of the federal position. Such an agency could reside either in NOAA, with its responsibility for coastal zone programs, or within the Interior Department, with its responsibility for OCS programs. Third, the legislation should enumerate the basic management criteria

which should be included in the development of the plans. These could include many of the concepts discussed in previous chapters. Fourth, the legislation should indicate the locus for management initiatives within the zone. In this regard, the federal government could have responsibility for developing the basic management framework for the zone, in connection with state governments. State governments, on the other hand, would have the right to enact legislation imposing stricter standards for their sector of the zone than those imposed by the federal government for the zone as a whole. Finally, the Act should specify a formula for the division of the revenues from the transition zone. The formula could follow that established for onshore federal lands and split the revenues evenly. Alternately, the revenues might be split 60-40 in favor of the federal government in view of its assumption of enforcement responsibilities within the transition zone.

3.4.2 Interests Affected by the Enactment of the Option

The adoption of the state-federal transition zone as the management apparatus for the 3 to 12 mile section of the expanded territorial sea would affect the operating procedures, structure and internal power relationships among a number of agencies within federal and state government. This management option could also affect the ease with which private interests are able to exploit a variety of marine resources. As in the case of the previous two options, this management regime would affect foreign private and para-statal interests by circumscribing their access to the resources of the additional 9-mile wide area of ocean space included in the expanded territorial sea.

3.4.2.1 Federal Interests

Those federal agencies concerned with navigation or defense-related ocean management (exclusive of waste disposal) would not be affected to an appreciable degree by the institution of the state-federal transition zone management option. Similarly, those agencies now exercising direct authority over activities both within and beyond the existing 3-mile territorial sea would not be greatly affected by the adoption of this form of management regime. However, agencies such as BLM or NOAA with direct responsibility for the management of resources beyond, but not within, the existing

0-3 mile territorial sea would experience a shift in those responsibilities. Because the administration of the transition zone would involve joint state-federal efforts in the development of a management plan for the zone, these federal agencies would have to devote a greater proportion of their efforts to liaison operations with relevant state bodies. In addition, agencies, such as the Coast Guard, with enforcement responsibilities within the 9-mile wide transition zone would experiance a relatively greater burden under the transition zone option. Because each of the bordering coastal states could impose a different constellation of regulations more stringent than the federal minimum, the potential for variance in regulatory standards within the zone would be greater than under the regional system. Further, there could be considerable diversity in regulations between the transition zone and the federally regulated waters beyond it. Still other agencies, such as BLM and Treasury, which are directly involved in either providing or managing revenues derived from this area, would be affected because the potential revenue at their disposal could be decreased.

3.4.2.2 State Interests

The adoption of the transition zone option would impose a greater burden of planning and coordination functions on those state agencies responsible for marine resource management. However, as the federal government would have primary responsibility for enforcement under this option, the burden placed upon state resource management agencies would be less than that under either of the previous two options. At the same time, this system of management could provide state resource management agencies with an increased voice in state government, because these agencies would have the potential of providing state government with a considerable amount of new revenues.

3.4.2.3 Private Interests

Domestic private interests would be affected in several ways by the institution of a state-federal transition zone. As in the case of the state-regional management regime, private interests anxious to exploit some forms of inter-jurisdictional resources could be subject to three differing sets of regulations as they moved seaward. In addition, interests wishing to exploit a resource lying entirely within the

3-12 mile area could be subject to varying regulations as they pass from one state to another. Further, although there would be some opportunity for private interests to play a part in the development of a management plan for the zone, private interests would not have the extensive opportunities for direct input provided under the regional system, because the framework would be essdentially an artifact of federal-state negotiations. Finally, one group of private interests, domestic fishermen, would be substantially affected in that the width of the area open to their exclusive exploitation would increase three-fold. It should be noted, however, that recent fisheries legislation, such as the American Fisheries Promotion Act, may, in any case, tend to sharply limit foreign access to the 200-mile Fisheries Conservation Zone as a whole.

3.4.3 Advantages and Disadvantages of the Option

The state-federal transition zone option has a number of advantages over either the state or state-regional management options. However, the transition zone option may also be subject to a number of serious problems in practice. These advantages and disadvantages are summarized in the sections which follow.

3.4.3.1 General Advantages and Disadvantages of the Option

This option would have several significant advantages over the options discussed previously. First, under the state-federal transition zone management option, there would be fewer layers of governmental bureaucracy than would be the case under the state-regional system. Second, states would not have to be constrained to completely harmonize regulations in their section of the zone with those desired by neighboring states as might be the case under the state-regional regime. As a result, states may have greater freedom of control over their respective sections of the 9-mile area of the expanded territorial sea. Third, there would be the potential for a generally more uniform system of management than under the state management option in that the overall management framework would be determined at the federal level.

The state-federal transition zone option also would appear to have a number of possible disadvantages in practice. First, unlike the state management option, this option would fragment United States' ocean space into three rather than two zones. As a result, potential developers could be faced with three separate procedures for seeking to develop a given resource. Second, the transition zone option could result in a larger number of management units than the regional system, because each state could have somewhat different regulations in addition to the general federal guidelines. Third, it would be more difficult to provide for direct input from private interests into the management plan for the zone than under the regional management option. Fourth, it is probable that the incentives for state-state coordination of regulations would be less than those under the regional system. Finally, the fact that state-federal cooperation in the management of disputed areas under the OCS Lands Act provisions has not been very successful bodes ill for the success of similar arrangements for the management of the 9-mile expanded territorial sea under the transition zone option.

3.4.3.2 Advantages and Disadvantages to the Federal Government

From the point of view of the federal government, the state-federal transition zone regime has one primary advantage; that is, under this regime, the federal government retains a portion of the revenue potential to be obtained from the area of the expanded territorial sea. However, the option also has the major disadvantage of requiring the federal government to take on the financial and administrative burden of a new program.

3.4.3.3 Advantages and Disadvantages to States

Coastal states would have the potential advantage of obtaining some additional revenues under this option. In addition, coastal states would have the opportunity to have greater control over the administration of activities in the area beyond their present 3-mile zone of control. Interior states, on the other hand, would receive indirect benefit from the fact that the federal government would not be deprived of all of the revenues to be obtained from the area within the expanded territorial sea. As a result, the fed-

eral government should be in a somewhat better financial position to continue to make general revenue transfers to these interior states than under either of the two previous options.

The major disadvantages of the transition zone option to the states are two-fold. First, under this option, coastal states do not receive all of the potential revenues from the zone as they would under either of the previous two options. Second, coastal states would have the problem of coordinating with the federal government on a scale greater than that expected under either the present coastal zone management program or the state management option.

3.5 STATE-FEDERAL MANAGEMENT OF A UNIFIED TERRITORIAL SEA

A fourth option for the management of an expanded territorial sea would be to administer the entire 12-mile zone as a single unit as in the state management option. However, in this latter instance, the management of the zone would be the joint responsibility of the federal and state governments. As in the case of the state-federal transition zone option, the state and federal governments would share revenues resulting from lease sales within the area. Unlike the transition zone option, however, the unified management zone option would require substantial changes to the existing United States' ocean management system.

3.5.1 Modifications to the Existing Management System

Whereas the previous options would leave the regime established by the Submerged Lands Act essentially intact, the present option would abolish or alter this regime to a significant degree. This would include major modifications to the Coastal Zone Management Act. It could also require modifications to the Fisheries Conservation and Management Act and the Outer Continental Shelf Lands Act similar to those required under the transition zone option.

3.5.1.1 Submerged Lands Act

If the unified zone option were adopted, the Submergal Lands Act would in effect be repealed. As a result, coastal state rights to exclusive management of the resources in the area stretching from 0-3 miles to sea would be abolished. The sole exception could be the right to receive revenues from leases granted previous to the enactment of the unified management option. In exchange, states would be granted revenue and management rights to the 12-mile territorial sea jointly with the federal government.

3.5.1.2 New Legislation

The legislation establishing the unified territorial sea management system should address a number or points. First, the legislation should enumerate the criteria to be considered in the development of a management program for the area. Among these would be criteria, such as multiple use, clear jurisdictional lines, and sustained or long-term use. In addition, the legislation should indicate that the program is to establish minimal environmental standards. Second, the legislation should designate the level of government responsible for the development of the management plan for the area. As in the case of the transition zone option, the federal government should be assigned ultimate responsibility for the development of the comprehensive management program. However, provision should also be made for input from state governments at an early stage in the development of the plan. Such input could emanate directly from the states or input could be organized on a regional basis, along the lines of the Fisheries Management Councils. Third, the legislation should make provision for the states to enact legislation to strengthen environmental standards or to deal with issues peculiar to the coastal waters bordering their shores, as long as this legislation is consistent with the general management plan for the expanded territorial sea. Fourth, the legislation should include a formula for the division of revenues derived from the zone. The 50-50 split of revenues applicable to onshore mineral revenues would seem equitable. Finally, the legislation should assign primary responsibility for the enforcement of regulations in the area from 0 to 3 miles from shore to state authorities, and enforcement responsibilities for the remainder of the area to federal authorities.

3.5.1.3 The Fisheries Conservation and Management Act

Modifications to the FCMA under the unified territorial sea management regime could be similar to those required under the state management option. Thus, the Act should be modified to limit its application to the ocean space from 12 to 200 miles from shore. State authorities would then be given responsibility for developing management plans for affected species. Alternately the FCMA could be modified to assign primary responsibility for the management of all species within the territorial sea to the Regional Fisheries Management Councils. This would involve integrating plans already developed by state authorities for species within their jurisdiction into the overall FCMA framework. In addition, it could also mean that greater attention would be devoted to the management of species which have in the past received scant attention due to overlapping or unclear jurisdiction. Primary responsibility for the enforcement of fisheries regulations within the 12-mile zone could either be shared by state and NMFS officials or assigned entirely to state authorities, thus relieving the pressure on federal officers. Finally, as in each of the previous options, the FCMA would have to be amended to exclude all foreign fishing activities from the 12-mile zone of the expanded territorial sea.

3.5.1.4 Outer Continental Shelf Lands Act

The implementation of a management system for a unified territorial sea based on joint state-federal administration of the area would again require two specific modifications to the OCS Lands Act. First, the sections of the Act defining the geographic area to be managed under the authority of the Act would have to be altered to exclude the zone stretching from 3 to 12 miles from shore. Second, adequate provision for the operation of existing leases under federal authority would have to be added.

With the adoption of the unified zone option, provisions of the OCS Lands Act describing the conditions under which states may have input into the management of OCS operations might also be altered to allow for input based on the joint state-federal management plans for the unified territorial sea. In addition, the OCS Lands Act might be modified to provide for somewhat greater participation of states in the development of OCS policy, through the joint coordination mechanism.

3.5.1.5 Coastal Zone Management Act

With joint state-federal management of a unified territorial sea, the Coastal Zone Management Act might be altered in either of two ways. The Act could be altered to provide for an expanded role of state and federal CZM agencies as the primary consultative bodies in coordinating management of the territorial sea. Further, the Act could be modified to provide for mandatory participation in the program by coastal states. Alternately, the Act could be modified to reflect the fact that most coastal states have not developed comprehensive plans for the ocean space under their jurisdiction. That is, the Act could be modified to apply strictly to the land- and water-based activities which may affect the land. Responsibility for the development of state input into the joint state-federal management program for the expanded territorial sea would then be assigned to one or more other state agencies.

3.5.2 Interests Affected by the Enactment of the Option

Joint state-federal management of a unified 12-mile territorial sea would to some degree affect marine management operations at both the state and federal levels. For example, each of these levels of government would experience an increase in the burden of planning activities and in the frequency and complexity of inter-governmental coordination. The enactment of this management system might also be expected to affect both the ease and manner in which domestic private interests can seek to exploit marine resources.

3.5.2.1 Federal Interests

Many of the federal agencies involved to a limited degree in the management of activities in the existing 3-mile territorial sea would not be overly affected if the entire 12-mile territorial sea were to be administered jointly by federal and state governments as a single unit. However, those federal agencies having a lead role in the management of various marine resources could experience considerable shifts in the level and nature of their responsibilities. For example, if there is to be a general plan for the management of the entire 12-mile area, planning staffs within NOAA could have a greater burden placed upon them. More-

over, since a major consideration in any general plan would be the management of marine soft mineral resources, there would have to be considerably greater contact with those agencies of the Interior Department responsible for the management of these resources. Further, if the existing state CZM plans are to be incorporated at some point into the overall management plan, provision for greater liaison with the states might have to be made. This, in turn, would probably require the establishment of either a program element or line component within the relevant federal agency to engage in liaison activities with the affected states. Finally, since the unified territorial sea would continue to be a separate administrative entity from the waters beyond it, agencies, such as NMFS or the Coast Guard, which would be concerned with enforcement matters both within and beyond the 12-mile territorial sea, could continue to experience many of the same problems with enforcement that they face under the present ocean management regime.

3.5.2.2 State Interests

At the state level, four major interests would be affected by the adoption of the unified territorial sea management option. First, the state coastal zone management agency would have to reorient its activities substantially from within-state planning to inter-state planning and inter-governmental liaison activities if it is to have a strong say in the development of the rules and regulations to be adopted for the territorial sea as a whole. Second, the state agency or agencies responsible for granting permits in connection with marine resource development could be affected to varying degrees. In those states with substantial existing oil and gas development, the affect on the relevant state agency could be substantial. Because, the ability of that agency to develop independent regulatory policy could be substantially reduced under this option. In states with relatively little development of marine mineral resources, the effect would be somewhat less. Those state agencies responsible for fisheries development would, of course, also be heavily affected in that their authority to promulgate independent regulations would be considerably diminished or eliminated. Third, those state agencies responsible for revenue policy in states with active leasing programs could experience some dislocation because their funding source would be altered and the level of expected revenues from new sources would be uncertain. Fourth, state agencies charged with enforcement responsibilities within coastal waters could experience temporary problems because the rules they are to enforce could be substantially different or more

stringent than state regulations under the present management system.

3.5.2.3 Private Interests

This option would affect the activities of private groups interested in exploiting or preventing the exploitation of marine resources in two major ways. First, under this regime, there would be a more unified set of regulations and procedures to be followed in order to begin development of a particular resource. Thus, development-oriented interests would not be confronted with as complex a process as now exists in some states. Further, the variation in requirements or prohibitions from state to state could be substantially reduced. This could significantly simplify the task of the developer. This could also simplify the efforts of conservation groups, because they would not have to engage in multiple legal battles from state to state in order to get a particular set of regulations established or expunged. Second, due to the fact that a single set would be issued, the principal locus of lobbying efforts by private groups might be shifted to a significant degree from the state to the federal level.

3.5.3 Advantages and Disadvantages of the Option

The joint management of a unified territorial sea would not be subject to a number of the objections raised against either the regional or transition zone options. This option would also avoid some of the objections posed against the state management option. However, a regime based upon state-federal management of a unified territorial sea is not without its difficulties. The sections which follow highlight a number of the more important benefits and liabilities of the option.

3.5.3.1 General Advantages and Disadvantages

Perhaps the most obvious advantage of the unified management option is the fact that the entire territorial sea would, for the first time, be subject to a single set of mi-

nimum regulations. With such a set of uniform regulations and regulatory procedures, the problems encountered by industry in its attempts to secure necessary permits prior to developing a resource could be reduced considerably. Further, the basic uniformity in regulatory procedures and regulatory framework could simplify enforcement procedures. At the same time, the joint management system would allow states to enact regulations dealing with conditions peculiar to their jurisdiction, as long as these regulations were consistent with the general management plan and procedures for the territorial sea as a whole. Finally, under the joint management system, it would be possible to develop a single consistent set of plans for all fisheries under U. S. jurisdiction. Such action could finally make it possible for the FCMA to live up to its promise of managing most fisheries through their entire range.

Joint state-federal management of a unified expanded territorial sea, however, has a number of potential disadvantages. First, the state-federal coordination mechanisms could prove to be extremely cumbersome. Second, this option would not eliminate all variation in regulation within the expanded territorial sea. Third, past instances of joint state-federal management have encountered serious problems.[13] Therefore, there is reason to believe that joint state-federal management of an area as vast as the expanded territorial sea would also be subject to many of these same problems. Finally, the system has the drawback of potentially causing states to rewrite significant portions of their CZM plans.

3.5.3.2 Specific Advantages and Disadvantages to the Federal Government

The joint management of the entire territorial sea would be advantageous to the federal government for a number of reasons. First, federal authorities would retain a strong role in the 3-12 section of the expanded territorial sea. Second, this management regime would allow the federal government to retain a portion of the total revenues to be derived from the entire 12-mile wide area of the extended territorial sea. Third, under this option, the federal role in the management of the 0-3 mile portion of the expanded territorial waters would be further defined and

---

[13] This has been particularly true of attempts to manage disputed OCS territory.

strengthened. Fourth, this regime would be more consistent with the administration of the territorial sea as a single unit vis-a-vis foreign countries.

Joint state-federal management of an unified expanded territorial sea could present two major difficulties for the federal government. First, the federal government could be expected to assume a greater role in enforcement within the 0-3 mile zone. As a result, it would also assume the financial and administrative burden of providing these services. Second, this management regime might be expected to involve the federal government in considerably more legal actions with states than either the state or regional management options. This could be particularly true in the case of the application of regulations in the 0-3 mile section of the expanded territorial sea which was formerly under state jurisdiction.

3.5.3.3 Specific Advantages and Disadvantages to States

The joint management of a unified territorial sea could provide three major advantages to coastal state governments. First, this option would provide these states with an opportunity to obtain a portion of the total revenues to be gained from the 3-12 mile sector of the expanded zone. Second, this option would allow these states to have direct input into the management of the expanded area. This is a right which they do not enjoy under the present OCS management system for this 9-mile area. Third, this option could allow states to pass on to the federal government a greater share of the enforcement burdens than under either the state or regional management options.

Joint management of a unified territorial sea could also present states with a number of disadvantages. First, coastal states would not receive all the potential revenues from the expanded zone as they would under the state management regime. At the same time, coastal states would lose a portion of the potential revenues which they now enjoy from the inner 3 miles of the territorial sea. Second, states would also lose primary authority over the resources of the inner 3 miles of the expanded zone. Third, it is possible that state input into the management of the OCS area might be curtailed to some degree. Fourth, states could face the possibility of restructuring their CZM plans in order that they might conform more closely to the comprehensive federal management system for the territorial sea. Finally, as in

the case of the federal government, states could experience severe problems in arriving at mutually acceptable regulations for the zone.

3.6 STATE-FEDERAL MANAGEMENT OF A SINGLE OCEAN ZONE

Perhaps the most ambitious option for the management of an expanded territorial sea would be for state and federal authorities jointly to administer the entire 12-mile area of an expanded territorial sea and the OCS area (200 mile Exclusive Economic Zone under the LOS Treaty) as a single unit. This option could provide a framework for the development of a unified and comprehensive plan for the management of the whole range of resources present in United States' coastal waters. It could also provide for expanded state participation in the management of the OCS area. However, it would also require the most extensive changes in existing ocean management legislation of any of the options.

3.6.1 Modifications to the Existing Ocean Management System

Management of the ocean space surrounding the United States as a single zone would require the repeal of both the Submerged Lands Act and the Outer Continental Shelf Lands Act. It would also require major modifications to the Fisheries Conservation and Management Act. Finally, it would require the enactment of legislation specifying the role of federal and state governments in the development of a comprehensive plan for the management of the resources of the ocean space surrounding the United States.

3.6.1.1 New Legislation

Legislation to establish the single ocean management zone would, of course, first have to define the area to be included in the zone. Following the definitions provided by the current draft of the Law of the Sea Treaty, the zone could stretch from the low tide mark to a distance of 200 miles from shore. The Act could further stipulate that for the purposes of resource management, the territorial sea and

the exclusive economic zone will be administered as a single unit.

The Act would also have to specify the respective responsibilities of federal and state governments within the zone. Primary responsibility for developing the initial management plan should fall to the federal authorities. In order to facilitate the development of such a comprehensive plan, the legislation should also provide for the establishment of a specialized task force or coordinating committee. This task force or committee would organize the input from the various agencies concerned with the management of ocean resources. Among the members of the committee should be representatives of NOAA, the Maritime Administration, the Bureau of Land Management, the Fish and Wildlife Service, the U. S. Geological Survey, the Corps of Engineers, the Navy, the Coast Guard, the Environmental Protection Agency, and such other federal agencies as may be deemed appropriate for the management of the resources in question. State authorities would then present comments on the plan.

Third, the legislation should specify the criteria to be employed in the development of the plan. These would include the maximization of multiple use of given sectors of ocean space and the inclusion of an analytic framework which gives adequate weight to the long term value of renewable resources.

Fourth, the legislation should establish enforcement and administrative responsibilities within the zone. States should be given primary responsibility for enforcement measures within the 0-12 mile area. Federal authorities would continue to have responsibility for enforcement measures in the remaining area of the zone.

Finally, the legislation should establish the manner in which revenues from the zone are to be allocated. This system should take into account the interests of interior as well as coastal states. The most equitable system would probably involve a sliding scale of revenues which would vary with distance from shore. For example, there might be an 80-20 split of revenues in favor of the coastal state in the 0-3 mile area, a 60-40 split of revenues in the 3-12 mile area, and a 20-80 split of revenues in the area beyond 12 miles from shore.

3.6.1.2 Fisheries Conservation and Management Act

The modifications to the FCMA which might be required under the single zone management system would be similar to those required under the joint state-federal management of a unified territorial sea. That is, the FCMA could be modified to assign primary responsibility for the management of all species within the territorial sea to the Regional Fisheries Management Councils. This would involve integrating plans already developed by state authorities for species within their jurisdictions into the overall FCMA framework. State fisheries authorities could retain a major role in the modification of existing plans because they are represented on the Regional Fisheries Management Councils. In addition, it could mean that greater attention would be devoted to the management of species which have in the past received scant attention due to unclear or overlapping jurisdictions. Primary responsibility for the enforcement of fisheries regulations within the 12-mile zone could either be shared by state and NMFS officials, or assigned entirely to state authorities. This would relieve the current pressure on federal officers. Finally, as in each of the past options, the FCMA would have to be amended to exclude all foreign fishing from the 12-mile area of the expanded territorial sea.

3.6.1.3 Coastal Zone Management Act

Under the single zone management option, the Coastal Zone Management Act would be modified in three ways. First, participation in the program would become mandatory. Second, the state CZM agency would be designated as the point of contact between federal and state government regarding the joint management plan. Third, states would be allowed to retain individualized land management plans, but would be required to have their management plan for coastal waters in harmony with the overall state-federal management program.

3.7 INTERESTS AFFECTED BY THE ENACTMENT OF THE OPTION

The implementation of the single management regime for the administration of the territorial sea and surrounding Exclusive Economic Zone would substantially affect interests within federal and state governments. It would also affect both foreign and domestic private groups in their efforts to exploit the resources of the expanded 12-mile territorial sea.

3.7.1 Federal Interests

Interests at the federal government level could be affected by the adoption of this form of regulatory regime in three important ways. First, those agencies having enforcement responsibilities would probably see their range of operations increased. Such an increase in responsibilities would require either additional personnel or an added burden on existing personnel. At the same time, the fact that the entire area of coastal waters would be subject to a single set of regulations could simplify enforcement, because evasion of regulations would be more difficult. Second, the interests of the Treasury Department could be affected in that the institution of this management regime would result in some loss of federal revenues. Further, if it was decided to institute some form of revenue-sharing with interior as well as coastal states, the administrative burdens placed upon the Treasury Department would be somewhat increased. Third, to the extent to which the adoption of this form of administrative regime were to lead to, or require the development of, a more comprehensive management system, this regime could provide impetus toward a general reorganization of federal agencies and Departments. For example, unified management might best be carried out by a single Department of the Oceans. Alternately, functions might be consolidated in an existing Department such as Interior. In either case, a large number of existing agencies such as NOAA or the Coast Guard, and portions of agencies such as BLM, USGS, and EPA could be disolved and have a part of their functions assigned to a variety of new or existing Departments. Such actions would obviously affect a wide variety of vested interests both within the federal Executive and Legislative branches, as well as private interests served by these agencies or subagencies.

3.7.2 State Interests

The principal groups within state government to be affected by the adoption of this management regime would be the coastal zone management agency, the state revenue agency and those agencies directly responsible for the management of particular marine resources. The CZM agency would be affected by a shift in its role from initiating to consultative body in regard to marine management. The revenue management agency would be affected by its added responsibility to administer the additional revenue derived from the 3-200 mile area. The organization and responsibilities of the marine resource management agency or agencies, however, could be substantially affected, particularly if the agency were involved in the active management of marine mineral operations. Under the single zone management regime, such agencies would give up their role as initiators of regulations for the 0-3 mile zone. Finally, state enforcement units would experience certain dislocation in that a new and somewhat more comprehensive set of regulations would be substituted for those in existence under the present state by state management system.

3.7.3 Private Interests

Private interests concerned with marine resource development would be affected in several ways by the adoption of the single zone ocean management regime. First, the substitution of a single regime, where there are now a multiplicity of separate and somewhat differing regimes, will bring mixed benefits to developers and conservation interests. In some instances, the single set of regulations adopted under the regime may be less restrictive than the state regulations which it replaces. In other instances they may be more restrictive. Second, to the extent that a truly comprehensive mangement plan for the resources of the waters surrounding the United States is adopted as a part of the regime, there may be greater control over certain types of marine activities than under any of the previous management systems. Third, because there will be a single zone, there will be less room for maneuver for private interests engaged in development. That is, they may not shop for a location with more lenient regulations as they may to some extent under the present system. Further, in the case of fishermen, it should be more difficult to circumvent catch limitation regulations by claiming that the catch in question was taken outside the particular management zone. Finally, from the point of view of foreign fishing interests, this regime

might be less attractive because the impetus for excluding such interests from the entire 200-mile zone could increase.

3.7.4 Advantages and Disadvantages of the Option

Conceptually, state-federal administration of a single 200-mile ocean management zone would seem to have a number of advantages over many of the other options presented in this report. It also would appear to have a number of specific practical advantages for both state and federal government. However, this form of ocean management regime also has a number of conceptual and practical disadvantages.

3.7.4.1 General Advantages and Disadvantages

Perhaps the most significant benefit of a single ocean management system would be the fact that such a zone would most closely reflect the true nature of the coastal environment. That is, the single zone regime would reflect the fact that the physical impacts of actions in the ocean environment are generally not confined to a neat geographic zone. In addition, the single zone regime could provide one of the more effective frameworks for the comprehensive management of resources. For example, under the single zone system, the task of protecting or managing living organisms throughout their entire range could be greatly simplified, because a single set of regulations and quotas could be applied throughout that zone. Further, the single zone regime should provide among the best systems for the comprehensive management of multiple resources. Because there would only be a single zone, the number of management plans and approaches that would have to be harmonized in the development of a master management plan would be greatly reduced. Also, the inter-related nature of these resources and the efforts to exploit them could be more obvious under a single management zone. Finally, the single management zone should benefit those interested in developing resources as they would have but one system of regulations to deal with throughout the entire area of U. S. coastal waters.

The single management zone also has a number of potential disadvantages. First, such a regime might be less apt or able to address specific local conditions or needs. In addition, attempts to incorporate or experiment with innova-

tive regulatory frameworks or concepts could be severely constrained. Second, the administrative apparatus for consultation between state and federal governements would be somewhat cumbersome. In view of the wide range in structures for state CZM agencies and the wide range in the content of CZM plans, one would expect a similar range in the input from states regarding the management of the single zone. The task of incorporating this input would be exceedingly difficult and fraught with many political pitfalls. Third, the single management zone could easily come to be dominated by the federal government or the federal governement and a few like-minded activist states. Fourth, even taking into consideration the fact that activities in the OCS area may have an impact on coastal states, there is at least some reason to question whether states should have an active role in managing resources over 100 miles from their shores. Fifth, the legislation to establish the single zone could be seen by the states as being unconstitutional, or at least a breach of faith, on the part of the federal government. In view of the fact that the Submerged Lands Act was, in fact, a quit-claim deed, the reassertion of federal authority over the zone could be considered an attempt to usurp state authority. Moreover, since the Submerged Lands Act was a form of quit-claim, it is possible that the establishment of the single management zone would require separate legislation by each of the coastal states. This process could be extremely lengthy, partcularly if some states do not see any immediate benefit to themselves in participating in the system.

3.7.4.2 Specific Advantages and Disadvantages to the Federal Government

The single zone management system would provide two specific advantage to the federal governemnt. First, this system would ensure the federal government a greater role in the administration of the resources of the inner (0-3 miles) territorial sea. Second, this option would allow the federal government to retain a portion of the revenues from the entire territorial sea.

The single zone regime would, however, present the federal government with a number of difficulties. First, this system would almost certainly involve the federal government in a greater number of administrative disputes and law suits vis a vis the states, particularly over the application of the single zone regulations to activities in the inner territorial sea. Second, this management system would impose a

heavier administrative and financial burden on the federal government at a time when the general federal policy is one of devolving authority on the states. Third, this option would allow greater state management and financial participation in the OCS area which has traditionally been the province of the federal government.

3.7.4.3 Specific Advantages and Disadvantages to States

The single ocean zone management regime could provide states with four significant advantages. First, this option could provide coastal states with the maximum input into the management of activities in the OCS area and the waters beyond the 3 mile inner territorial sea. Second, this option could potentially provide coastal states with increased revenues. Third, the single zone option could be structured to give interior states direct participation in and benefits from the management of the OCS area. Fourth, this option could reduce the planning effort and costs to individual coastal states, because they would no longer have the burden of lead responsibility for the management of the 0-3 mile zone.

The single zone option would have two potentially significant disadvantages to coastal states. First, these states would lose thier lead role in the development of policy for the 0-3 mile inner territorial sea area. This loss of authority could result in a modification or scrapping of plans and regulations developed at considerable financial and political cost to the states. It could in some instances mean the substitution of less stringent environmental regulations if the standards adopted for the single zone proved to be lower than those previously in force as a result of actions by the bordering coastal state. Second, as a result of the revenue split provisions adopted for the single zone system, the choice of this option could mean that certain states would receive only a small portion of the potential additional revenues that they might receive under a number of the other options.

3.8 FEDERAL MANAGEMENT OPTION

Federal management of the 9-mile area of the outer territorial sea would require the fewest modifications to the existing United States ocean management system of all those considered. Because, under a federal management option, this area could continue to be administered as part of the outer continental shelf area (Exclusive Economic Zone). Virtually every piece of federal ocean management legislation is predicated on federal management of this zone. Therefore, it could continue to operate in its present form even with the declaration of an expanded territorial sea. In fact, the principal federal action required to enact this regime would be the passage of legislation declaring an extension of the United States territorial sea from 3 to 12 miles. However, with the declaration of a federally managed expanded territorial sea, the federal government might be under some pressure from domestic interests to exclude foreign fishermen from the 3 to 12 mile area of the Fisheries Conservation Zone. As a result, the FCMA might be amended to this degree.

3.8.1 Interests Affected by the Enactment of the Option

Federal management of the expanded (3-12 mile) portion of the territorial sea would not cause major re-orientation of operating procedures at either federal or state government level. Neither would it cause a major shift in the regulations to which private interests must conform in their efforts to undertake or prevent development of the various resources of the territorial sea. However, the very fact that the presently existing management regime will in essence be preserved may to some degree affect federal, state, and private interests.

3.8.1.1 Federal Interests

To a large degree, exclusive federal management of the 3-12 mile section of the expanded territorial sea in connection with the OCS and FCMA (or Exclusive Economic Zone) regimes will allow most federal agencies to continue with their current operating procedures. It will also leave the current bureaucratic structure at the federal level intact. The existing stricture, after all, reflects the interests of

many federal Executive and Legislative branch elements. This structure also reflects to some extent interests at the state government level and within the private sector. Further, federal management of the 3-12 mile area of the expanded territorial sea will serve the interests of the Treasury Department, the Office of Management and Budget, and Congressional budget committees in that this area, which represents a potential source of revenues, will remain under federal jurisdiction. Finally, those elements of the federal government concerned with the development of a more comprehensive plan or system for the management and development of the resources within the 3-200 mile area might, to some degree, be served by federal management of an expanded territorial sea. Because, the institution of such a regime could prove to be an opportunity to promote a more systematic effort to manage and develop the resources of the area.

3.8.1.2 State Interests

Federal management of the 3-12 mile area of the expanded territorial sea would affect state interests in a variety of ways. Those elements in state government eager for additional potential revenue sources would be disappointed by this option. The degree to which the loss of this area would adversely affect these interests would, of course, depend upon the actual or potential existence of leasable resources within the area in question. On the other hand, state resource management agencies and revenue agencies, concerned with their potential loss of control over the resources of the 0-3 mile area of the territorial sea (as would be the case under two of the previous options), would be assured of continued control of the resources of this area under the federal management option. Finally, those state interests concerned with increasing state input into the management of resources beyond the 3 mile area now under state jurisdiction would not be served by the adoption of this form of management regime.

3.8.1.3 Private Interests

To a substantial degree, private interests could continue to operate as they do under the present system of management. Thus, interests concerned with the more stringent regulations which could accompany the more comprehensive management of the territorial sea and surrounding waters under

a number of the previous options, would be well served by the adoption of the federal management regime. Alternately, those groups which see more comprehensive management as a means to circumscribe development could be less pleased with the adoption of a federal management regime for the area in question. On the other hand, the federal management system could preserve the complex of contradictory regulations within and beyond the territorial sea, thus making development more costly and time consuming than it might be under a single set of regulations for the 0-12 or 0-200 mile area. From the point of view of state or private foreign fishing interests, the federal management of the 3-12 mile area of the expanded territorial sea might be the most desirable option as it would be the one most likely to provide for their continued access to the 3-12 mile area now within the FCZ.

3.8.2 Advantages and Disadvantages of the Option

As noted in the previous section, the assignment of responsibility for the management of the expanded territorial sea to the federal government would have mixed impact on private interests concerned with the preservation or exploitation of the resources of that area. It would mixed effect upon interests within federal and state governments as well. The adoption of this option would, in addition, have a number of general benefits and liabilities. Likewise, both federal and state governments in general would be presented with a number of clear advantages and disadvantages by the enactment of this management regime. The sections which follow will highlight many of the most significant of these costs and benefits.

3.8.2.1 General Advantages and Disadvantages

The exclusive federal management option offers a number of advantages over some of the options discussed above. First, the adoption of this management regime would not require many changes to existing legislation. Neither would it require major changes to current administrative arrangements. Second, the adoption of this option would not necessarily involve significant additional costs to either federal or state government. Third, this option places responsibility for the area of the expanded territorial sea on that level of government most able to bear the financial burden of management of the area. Fourth, the option assigns management of the 3-12 mile area of the expanded ter-

ritorial sea to the level of government with the greatest access to the technical resources necessary for efficient management of the resources of the area. Fifth, this option provides that coastal states will not receive a potential revenue windfall as they might under other options.

The federal management option, however, is not without a number of significant disadvantages. First, this option divides responsibility for the management of the territorial sea. It also continues the division of responsibility for the management United States coastal waters present in the existing ocean management regime. Second, the attempt to implement this management regime is likely to encounter strong opposition from many coastal states anxious to obtain additional revenue sources. Third, in contradistinction to the first option, the federal management option does not fit with the expressed policy of the current administration to return responsibility for regulation and management to the states when ever this is possible. Fourth, this option does not provide for expanded input by coasal states into the management of activities in waters beyond their immediate jurisdiction which may materially affect their interests. Fifth, the adoption of this management option will provide little impetus toward the development of a comprehensive management and development strategy for the resources of either the inner (0-3 mile) or outer (3-12 mile) territorial sea or the waters beyond them. Sixth, the management of the expanded portion of the expanded territorial sea in connection with the Exclusive Economic Zone (12-200 miles) might raise some objections from foreign states that the United States was in effect adopting a 200 mile territorial sea.

3.8.2.2 Specific Advantages and Disadvantages to the Federal Government

The federal managemnent option carries with it a limited number of advantages for the federal government. First, the option would allow the federal government to continue to receive all the revenues from leases within the 3-12 mile area. Second, the option would not place added burdens upon already over-burdened federal administrative personnel. Third, this option would allow the federal government to continue with its current operating procedure and structure. This, in turn, will to some extent forstall fight with vested interests, both within and without government, that would accompany an attempt at government re-organization or a repeal of long-standing legislation, such as the Submerged Lands Act.

The federal management regime opotion also presents the federal government with a number of disadvantages. First, this option would provide the federal government with less of a voice in the management of the 0-3 mile section of the territorial sea than it would have under several of the previous options. Second, the adoption or this option is likely to involve the federal government in prolonged disagreements with coastal states which wish a greater say in the management of the 3-12 mile area, and not incidentally a part in the disbursement or revenues from the area.

3.8.2.3 Specific Advantages and Disadvantages of the Option to States

From the point or view of the coastal states, the federal management option would provide a limited number of advantages. First, under this option, states would not have to assume added, and perhaps costly, new planning and enforcement responsibilities. Second, unlike a number of the options presented above, this option would not deprive the coastal states of their control over revenue sources within the 0-3 mile area of the expanded territorial sea.

The federal management option would also have at least two major disadvantages for coastal states over other management options. First, these states would not obtain the right to receive the potential revenues from the outer 3-12 miles of the territorial sea. Second, coastal states would not automatically receive a greater voice in the management of activities in the area of ocean space beyond the three mile zone.

3.9 CONCLUSIONS

The management of an expanded territorial sea raises a number of significant issues. First, it will be necessary to decide whether to administer the entire twelve mile territorial sea as a single unit or as multiple units. Second, it will be necessary to decide whether one or more levels of government (i.e. federal, regional or state) should play an active role in the management of the area, and if so, which level(s). Third, it will be necessary to decide what mechanisms the responsible level(s) of government should employ in the management process. Fourth, it will be neces-

sary to arrive at an equitable formula for the distribution of the potential revenues from the area. Fifth, and of perhaps paramount importance for the ultimate success of the chosen regime, it will be necessary to ensure that the level(s) of government responsible for the management of the resources of the expanded territorial sea have the financial and technical resources necessary to carry out the required administrative functions.

In this chapter we have sought to present a wide variety of possible management regimes. These options, however, are by no means exhaustive. Moreover, while many of the potential management regimes would appear to have significant general and specific advantages, each would also appear to be subject disadvantages of one sort or another. For example, several of the options would involve complex or cumbersome administrative arrangements. Other options could be expected to face strong opposition from one or more levels of government or private interests. Never the less, it remains in the interests of the United States to declare an expanded territorial sea and to develop a workable regime for the management of that and surrounding sectors of its coastal waters.

Chapter IV

IMPACT OF THE LAW OF THE SEA NEGOTIATIONS ON SOUTH CAROLINA

4.1 INTRODUCTION

When the Third United Nations Law of the Sea Conference opened in 1974, delegates from the developing states and the developed states, including the United States, expected that an acceptable treaty could be negotiated within a relatively short period of time, despite the complexity of the issues before the Conference. However, as noted in an earlier chapter, the progress of these negotiations has been extremely slow. While the number of issues on which the 140 nations at the Conference have reached agreement has grown with each succeeding session, there has remained a core of issues, chiefly surrounding the matter of the management of seabed resources, on which the delegates have failed to reach general agreement.

Although there was renewed hope over the last year that delegates could formulate a compromise on the seabed mining issues, this optimism does not appear to have been entirely justified. The position adopted by the Reagan administration at the negotiating session just concluded, coupled with renewed skepticism in Congress regarding the desirability of a number of the draft treaty provisions, seems likely to forestall the conclusion of a Law of the Sea Treaty in the near future. Nevertheless, several sections of the draft treaty, including those dealing with the territorial sea and the Exclusive Economic Zone, appear to have obtained sufficient recognition from the international community to have taken on the status of customary law. As a result, the United States government will most probably come under increasing domestic and international pressure to conform to the norm of a 12-mile territorial sea and a 200-mile Exclusive Economic Zone.

The declaration of a 12-mile territorial sea by the United States will raise a number of issues both domestic and

international. Among the most significant of these issues will be the question of what level or levels of government should administer the additional 9-mile area of an expanded territorial sea. The previous chapter outlined six potential regimes for the management of an expanded territorial sea together with their general advantages and disadvantages. This chapter will examine: (1) the likelihood that each of these regimes may be adopted; and, (2) the impact upon South Carolina of the adoption of the most likely choices.

4.2 ASSESSMENT OF MANAGEMENT OPTIONS FOR THE TERRITORIAL SEA

Three of the management options either present significant operational problems or do not enjoy sufficient support at the federal level. These are the state-regional option, the unified territorial sea option, and the single ocean zone option. As a result, their adoption as the basis for a management regime for an expanded territorial sea is unlikely. Of the remaining three management options, one would not affect current state responsibilities to a significant degree. Neither would it materially affect the current framework of federal-state interaction in the management of marine resources. The final two management options, however would to a greater or lesser degree affect both the responsibilities of state agencies and their interactions with federal agencies or agencies in contiguous states.

4.2.1 Management Options Which Have Marginal Support

Interviews with Congressional and Executive branch officials prompt the following conclusions.[14] First, it is extremely unlikely that the federal government would be prepared in the near future, or even the relatively remote future, to initiate a major redirection and expansion of the United States' ocean management system. This type of major

---

[14] These conclusions are based on extensive interviews with senior personnel within NOAA, the Department of the Interior, the Department of State, and the Coast Guard, as well as senior staff of relevant House and Senate Committees.

re-orientation of the United States' ocean management system would be necessary in order to institute the joint state-federal management regime for a combined territorial sea and Exclusive Economic Zone (OCS area). Such a major revamping of the U. S. ocean management system is thought to be both too financially costly and too politically costly in terms of state reactions. The cutbacks in federal programs which have been announced subsequent to our interviews would seem to confirm that this form of an expansion of federal effort is indeed very improbable.

Joint state-federal management of a unified 12-mile territorial sea also does not appear to enjoy wide support at either the state or federal level. Again, interviewees cited the difficulty of convincing states to give up their paramount authority over the 0-3 mile section of the territorial sea, granted under the Submerged Lands Act, in return for the uncertain benefits of participation in the joint management regime.

Although a state-regional management regime for an expanded territorial sea has some support among federal officials, this support is qualified. A number of those interviewed expressed skepticism about the utility of establishing another layer of administrative machinery for so small an area. Others pointed to the difficulties of adequately defining the boundaries of regions, and in particular the mid-Atlantic region, as a major impediment to the institution of a state-regional administrative regime for an expanded territorial sea.

4.2.2 Management Alternatives Enjoying Wider Support

The state management option, the federal management option and the state-federal transition zone option each appear to be practical alternatives for the management of the outer 9-mile area of an expanded territorial sea. Representatives of a number of coastal states have expressed interest in state management of the resources lying within an expanded 12-mile territorial sea.[15] A number of state governments have also attempted to gain management authority over the resources beneath a broader area of U. S. coastal

---

[15] see for example H. R. 4394, introduced in the 94th Congress.

waters through court action.[16] The federal management option quite naturally enjoys support at the federal level because this option would allow the federal government to retain the financial benefits to be derived from the management of the resources of this area. This option also receives support from a number of interior states because in allowing the federal government to retain this source of revenues, it would to some degree help to maintain a level federal assets sufficient for revenue sharing with these interior states. Although it was not the immediate choice of interviewees, the state-federal transition zone management option received support as a potentially workable compromise if neither federal nor state management of the resources of an expanded territorial sea proved to be politically acceptable.

Federal management of the outer 9-mile area of an expanded territorial sea would not affect either the level or kind of responsibilities of any South Carolina state agency to an appreciable degree. Because the outer territorial sea would, for all intents and purposes, be administered as a part of the outer continental shelf regime, state input into the management of this area could continue to follow existing patterns. Thus, NEPA compliance procedures, the consistency provisions of the Coastal Zone Management Act and OCS Lands Act procedures for state input would continue to serve as the principal vehicles for state input on the management of this area. As a result, the Coastal Council, the Department of Health and Environmental Control, and to a lesser extent the Department of Wildlife and Marine Resources could maintain their current operating procedures and staff levels. Federal management of an expanded territorial sea would not noticeably alter existing operating procedures. As a result, this report will not deal further with this option, with one exception. If a federal management system is chosen, South Carolina might seek to have the CZM Act provisions allowing for the imposition of federal standards in the waters of a non-CZM state applied in the case of Georgia.

The institution of either the state management or state-federal transition zone management option would almost certainly place added burdens on a number of state agencies. Both the state management option and state-federal transition zone option would expand the area of state planning responsibilities. As outlined in the previous chapter, the adoption of the state management option would also

---

[16] For example, see United States vs. Maine 95 S. Ct. 1155 (1975) in which Maine was joined by 12 states including South Carolina.

significantly expand the scope of state enforcement responsibilities.

4.3 THE IMPACT OF THE STATE MANAGEMENT OPTION ON SOUTH CAROLINA

While the waters off South Carolina are relatively rich in living marine resources, these waters and their underlying lands do not contain a wide variety of other resources. Unlike the waters off the Gulf Coast states, the waters off South Carolina do not have a sufficient temperature differential to make them suitable for OTEC development in the forseeable future. Further, neither oil or gas deposits have been identified beneath the submerged lands off South Carolina. In addition, while some hard mineral resources have been identified in the area off the South Carolina coast, industry has as yet expressed little interest in exploiting these resources.[17] Further, unlike a number of east and west coast states, South Carolina has readily available land-based sources of sand and gravel for construction purposes, which should be sufficient to meet projected needs for a number of years. Thus, there is less incentive for commercial development of offshore sand and gravel deposits (for purposes other than beach renourishment) in South Carolina than in many states. As a result, it is likely that the expansion of the area of state management authority from the present 3 miles, to 12 miles from shore, will affect South Carolina to a much lesser degree than many Gulf, East or West coast states. Moreover, given the absence of proven off-shore soft mineral deposits, the marginal nature of the hard mineral resources off South Carolina, and the absence of interest in exploiting these latter resources, the state's management system for these resources would appear to be adequate for the immediate future.

State agencies such as the Public Service Authority, the Budget and Control Board, and the Land Resources Conservation Commission (with responsibility for the administration of oil and gas leases, leases of phosphate deposits and general oversight of mining operations, respectively) would be immediately affected by an extension of state authority to a distance of 12 miles from shore. However, several other

---

[17] Though the Kerr-McGee Company at one time expressed some interest in developing hard mineral deposits on the continental shelf off South Carolina, it has not followed up on these initial inquiries.

state agencies could be substantially affected by such an expansion of state authority. These are the South Carolina Coastal Council, the Department of Health and Environmental Control, and the Department of Wildlife and Marine Resources. Of these three agencies, the latter would be most affected on a continuing basis.

4.3.1 Impact on the South Carolina Coastal Council

State management of the additional 9-mile area of an expanded territorial sea would impact upon the responsibilities and operations of the Coastal Council in a number of ways. First, the Council would be required to devote a greater proportion of its attention to water-related as opposed to land-related issues. Second, the Council could be prompted to take a stronger stand on the lack of proper planning efforts by Georgia, as the potentially detrimental effects of this lack of planning and regulation could be more widespread.

In the five years since the South Carolina Coastal Management Act, the vast majority of the staff work for and activities of the Coastal Council has involved the development and implementation of plans and regulations for the management of land-based activities within the South Carolina coastal zone. Given the balance of activities requiring management within the area subject to the authority of the Coastal Council up to the present time, such a weighting of priorities was probably justified. However, if the coastal states were given authority over the additional 9-mile area of an expanded territorial sea, the balance between land- and ocean-based administrative responsibilities could be to some extent altered. This would be particularly true if in granting authority over the additional 9 miles of an expanded territorial sea to the coastal states, the federal government were to require that the recipient states develop a comprehensive plan for the management of the resources of this area.

The development of a comprehensive plan for the management of the resources of an expanded territorial sea would place a number of additional demands upon the Coastal Council. To develop such a comprehensive plan, the Council would probably have to arrive at some form of prioritization of resources and/or activities directed at exploiting these resources. In arriving at a set of priorities regarding the need for regulatory action or resource development incen-

tives for the resources of the expanded territorial sea, the Council would probably require additional information on a number of factors. For example, the Council might require more complete information concerning the nature of the mineral resources beneath the inner (0-3 mile) and outer (3-12 mile) territorial sea, because while such information is to some degree already available, it appears to be incomplete or based upon fragmentary samples. In addition, the Council might require a more systematic evaluation of industries' levels of interest, under various regulatory frameworks and forms of incentives, in exploiting various resources present within and beneath coastal waters. On the basis of such studies, the Council could more readily determine whether new uses of coastal waters, such as mariculture, might be expected to become more significant or interfere in future with traditional ocean uses. The Council might then be in a better position to determine what forms of regulations might be promulgated in order to maximize the potential for multiple use of these waters. In addition, the Coastal Council might be better able to determine what actions it might take in cooperation with other state agencies in order to promote the development of under-exploited resources.

The development of a comprehensive plan for the management of the resources within the territorial sea would also place additional burdens on the staff of the Council. Given the current responsibilities of the existing staff, the development of a comprehensive ocean management plan would require a delay or at least a rescheduling of present planning responsibilities. However, if the present planning staff is to complete on schedule its current projects related to the management of land-based activities, one or perhaps two additional planners might have to be hired to take primary responsibility for the development of a management plan for ocean-based activities. Alternately, the Council could choose to contract out the development of the ocean management plan to a private concern or to one or more of the colleges or universities of the Sea Grant Consortium.

At present, the lack of a CZM program in Georgia represents a significant problem for South Carolina. Georgia's failure to produce a plan has meant that CZM consistency provisions are not applicable to that state. In addition, the lack of a coastal zone management plan in Georgia may be a factor in that state's failure to adequately regulate certain types of waste disposal, with the result that activities in Georgia are having an impact on South Carolina's ability to adequately protect its marine resources. In the absence of a requirement that states develop a comprehensive plan for the management of the resources within the expanded territorial sea, expansion of state authority to include

this additional 9-mile area could exacerbate the problem of Georgia's failure to participate in the CZM program. This could be particularly true if mineral resources lying in the area of the outer territorial sea off Georgia were to be exploited under existing Georgia law.

4.3.2 Impact on Department of Health and Environmental Control

Of the state agencies which could be moderately affected by an expansion of state authority over coastal waters, the Department of Health and Environmental Control (DHEC) would be required to make the fewest modifications to its operating procedure. Within the existing 3-mile area of its authority, DHEC has generally adopted existing federal standards without major modifications. As a result, this department would generally not have to adopt any new standards or regulations for the extended area of its competence.

The principal effect upon DHEC would be a potential increase in the number of permit applications coming before the agency and an increase in the area which the agency is required to monitor. Unless there are significant unexpected increases in waste disposal or mining activities within the area of the expanded territorial sea, the increased burden on DHEC in connection with the additional permit applications may be expected to be light. Monitoring and enforcement responsibilities within the additional 9 miles of state waters, however, could require that DHEC either place further burdens on already heavily occupied personnel or hire an additional number of monitoring personnel.

4.3.3 Impact on the Department of Wildlife and Marine Resources

State management of the resources of the additional 9-mile area of an expanded territorial sea could impact most heavily on the Department of Wildlife and Marine Resources (WMR). Under the state management option, this agency would assume authority over the living resources within the additional 9-mile stretch of ocean space. Thus, WMR would have to take on the responsibility for redrafting fisheries management plans for the stocks within this area as well as

responsibility for monitoring and enforcement functions within the area. Each of these additional responsibilities could require an increase in personnel and/or equipment for WMR.

It might be possible to extract much of the information necessary for the development of an initial state plan for the management of fisheries stocks within the 9-mile outer territorial sea area from the Regional Fisheries Management Council data for the existing 200 mile Fisheries Conservation Zone. However, since the FCZ data is aggregate, some reinterpretation of the data, and possibly some additional studies of migratory patterns, would be necessary in order to develop a state plan. Further, because it is often difficult to determine exactly where many of the species are principally resident within the FCZ, WMR, like similar agencies in other coastal states, would have to develop more sophisticated methods of determining compliance with established quotas. In addition, if the state's management program is to be truely effective, WMR will have to increase the extent and frequency of its consultation with appropriate agencies in bordering states. The development of plans and the consultation process would, of course, place an additional burden on existing personnel within the department. As a result, there would either have to be cutbacks in effort on existing programs or an increase in the size of the planning staff.

The planning process could be undertaken with a minimum increase in the size of the WMR staff if the department were prepared to make sacrifices in the timetables for implementation of existing programs and the efficiency with which these programs are conducted. However, monitoring and enforcement activities would almost certainly require an increase in financing and personnel for the agency. Quadrupling the area of state monitoring and enforcement responsibilities would necessitate either an increase in the number of vessels and personnel engaged in monitoring activities or a switch in the form of monitoring to a greater reliance on aerial monitoring. In addition, pier-side enforcement measures might have to be expanded. Each of these measures could involve a significant increase in the costs of the state fisheries management program. An increase in costs would present a major problem for the department because, the current budgetary prospects are such that the state is not in a position to make additional funds available to agencies for new program initiatives. In fact, the budget situation in the next two years may be such as to require further cutbacks in the level of funding to state agencies. Moreover, in the absence of other leasable resources within its outer territorial sea, South Carolina

will not have the advantage enjoyed by some states of subsidizing additional costs in marine fisheries management out of added revenues from the lease of these resources.

4.4 IMPACT OF A STATE-FEDERAL TRANSITION ZONE ON SOUTH CAROLINA

The adoption of a state-federal transition zone management regime in connection with the declaration of an expanded territorial sea would affect South Carolina state agencies to a much lesser extent than the institution of a state management regime for the area. Because federal authorities would have primary responsibility for monitoring and enforcement operations within the transition zone, state agencies such as DHEC and WMR would not be required to place added burdens on already overtaxed monitoring and enforcement personnel. Further, because state-federal consultation in the operation of the transition zone would in many ways be similar to procedures undertaken in connection with coastal zone management activities in the existing territorial sea, state agencies would not have to redirect additional personnel into these activities. Rather, existing personnel could assume liason responsibilities for the transition zone with a minimum disruption of their present duties. Because existing federal regulations could be in place during any interim period, transition zone planning functions could be implemented over a period of years. Thus, state planning personnel could devote increasing effort to transition zone planning as their work level in the planning of management activities within the inner territorial sea diminishes.

The adoption of the transition zone management system could to some degree also lessen the interstate coordination burden that the state would experience under the state management system. In tying participation in the joint state-federal management regime to the receipt of partial title to the resources of the 9-mile outer territorial sea, the transition zone management option would assure that consistency provisions would operate in the area. Further, the transition zone option would provide a mechanism for more coordinated interstate consultation in the management of all resources within the area. Finally, participation in the joint state-federal transition zone regime could predispose heretofore recalcitrant states, such as Georgia, to participate in the coastal zone management program for the inner territorial sea as well, particularly as they see benefits from state-federal and interstate cooperation in the management of the outer territorial sea area.

4.5 POTENTIAL STATE REACTIONS TO A 12-MILE TERRITORIAL SEA

There is little prospect that the submerged lands within 12 miles of the South Carolina coast contain sufficient quantities of valuable mineral deposits or other resources which are likely to provide the state with significant revenues from lease arrangements. Further, although the fisheries resources within the outer territorial sea represent a valuable resource for private interests within the state, state management of the stocks within this area would not provide the state with additional direct or indirect (tax) revenues beyond those provided under the present Regional Fisheries Management system. Rather, direct state responsibility for the management of these fisheries resources could be an additional burden on the state treasury. Thus, in general, state management of the additional 9-mile area of an expanded territorial sea would not be as advantageous to South Carolina as participation in a joint state-federal system of management for the area. Because, under such a joint management system, the state would enjoy added input into the management of the outer territorial sea area, plus the potential of receiving a portion of any revenues which might be derived from the lease of resources within this zone, if such resources are ultimately discovered. Neither would the state be burdened by the significantly greater financial and personnel costs which would occur under the state management system.

If the costs of state management outweigh the the potential benefits to the state, as would appear to be the case for South Carolina, the state should actively lobby for the adoption of a form of management regime other than state management if the federal government moves to declare an expanded territorial sea. Although it might not be as preferable as a state-regional management system, the state-federal transition zone system would be the logical choice to promote. This latter management regime already appears to enjoy moderate support at the federal level. In addition, it could provide the state with an increased voice in the management of a significant sector of ocean space without significantly increasing costs to the state.

4.6 POTENTIAL RESPONSES TO ADOPTION OF A STATE MANAGEMENT SYSTEM

While state management authority over the resources of an expanded territorial sea probably would not represent a net benefit to South Carolina, such a predominant role in the management of the resources of this area could be to the advatage of a number of coastal states. Moreover, these states are among the most populous coastal states. As a result, they could mount a strong lobbying effort within Congress, and at the federal level in general, for the adoption of a state management system. If such a loobying effort were to prove successful, and the expanded portion of the territorial sea were to be placed under state jurisdiction, South Carolina could take a number of steps aimed at minimizing the detrimental effects to the state.

The state could adopt one or a combination of several approaches to reduce the burden of state responsibility for the management of living marine resources within the additional 9-mile area of the expanded territorial sea. Two of these approaches would rely upon obtaining additional sources of federal funding. Another approach would be to explore user service charges as a funding mechanism. The final approach would be to redirect responsibility for the management of living marine resources back toward the federal level.

One option for obtaining both a nigher level of federal funding support for state fisheries management efforts, and a greater degree of interstate coordination in the management of fisheries stocks in the territorial sea would be to revive and revise the 'so-called' Mason proposal. This approach would expand activities under the State-Federal Fisheries Management Program by establisning interstate coordination bodies similar to the Regional Fisheries Management Councils to draw up and oversee fisheries management plans for the territorial sea. These provisions might be included in the legislation granting the states authority over the expanded area of the territorial sea.

A second approach whereby the state could seek to extract additional funds for fisheries management from the federal government would be to activate provisions contained in sections 305 and 306 of the Coastal Zone Management Act. As in the case of the previous option, this approach would require the cooperation of bordering states in order to justify receipt of the funds. This could be somewhat difficult in view of Georgia's failure to adopt an acceptable Coastal

Zone Management Plan. However, North Carolina would probably be receptive to such a program. Under the CZM Act provisions, the state could probably receive additional funds to pay for a significant portion of the development and initial operation of interstate management plan for territorial sea stocks. On the other hand, CZM funds would probably not be available in sufficiently large amounts to cover the full costs of monitoring and enforcement activities within the expanded zone. Of perhaps greater significance, this and the previous approach would be limited by the willingness of the federal government to continue to provide funds for grants under these programs. In view of the recent cuts in federal program funding, it is questionable whether there will continue to be federal funding for these types of programs.

A third approach which might be explored as a means of providing funds to finance monitoring and enforcement activities within the expanded territorial sea would be the user service charge. Funding for the activities of NMR could come from additional license fees or levies on catch at dockside. Such fees would undoubtably evoke protest from fishing interests. However, fees could be justified on the grounds that management activities are assuring that fishermen will have a sustained yield. Alternately, the service charge might be justified on the ground that the transition zone is of greater benefit to domestic fishermen than the FCZ because foreign fleets would be entirely excluded from the transition zone. Additional user service charges might also be levied upon users of the Port of Charleston, particularly for the delivery of potentially toxic substances such as oil. Revenues from this source could be used to help to defray the costs of DHEC activities in the territorial sea area.

If other funding options do not prove feasible, the state could consider the possibility of lobbying the Southeastern Regional Fisheries Management Council to activete the provisions of section 306 (b) (1) (B) of the Fisheries Conservation and Management Act. Under the provisions of this section, the NFMC could again assume responsibility for the management of fisheries stocks in the 3-12 mile area as the state would have abrogated its responsibility. The major drawback to this option would be the fact that the state would give up its lead role in the regulation of these stocks.

In addition to measures directed at providing the funds necessary for carrying out management activities in the outer territorial sea area, the state should consider either legal or political measures directed toward establishing a

requirement that consistency regulations shall also apply to those states which do not have approved coastal zone management plans. Toward this end, the Coastal Council could seek either federal legislation or a federal court order to the effect that non-CZM states shall not permit activities within their borders which are likely to interfere with the attempts of neighboring CZM states to maintain their regulatory standards if these activities do not meet consistency requirements.

Apart from the above measures which might be taken soon after the state is granted authority over the resources of an expanded territorial sea, one long-term change in state law might be contemplated. If minerals were to be discovered in commercially recoverable quantities, and if industry began to express an interest in commercial recovery of these minerals, it might be prudent to consolidate final authority over all off-shore mineral resources in a single agency. In this way a more coordinated approach to the management of these mineral resources could be facilitated. One option for achieving this coordination would be to reassign final authority over the management of all marine minerals to the Budget and Control Board. Another option would be to specifically grant this authority to the Coastal Council, which could continue to rely on the relevant state agency for staff work in this regard.

4.7 CONCLUSION

As a result of the Third United Nations Law of the Sea Conference, interest in establishing 12 miles as the generally accepted limit for the breadth of the territorial sea has grown among nations. Over the next few years, pressure on the United States to conform to this general norm is expected to increase as well. In the absence of any compelling reason for not doing so, the United States is likely to declare a 12 mile territorial sea, if only to have more secure ground on which to attack those states claiming broader territorial seas.

Having declared a 12 mile territorial sea, the federal government will have to decide which level or levels of government should administer the area. This report has examined the six most widely discussed options for the management of such an expanded territorial sea. These include state management, state-regional management, three forms of joint state-federal management, and federal management of the expanded area.

Of these six options, three appear to enjoy some general support at the federal and state level. These are the state management option, the federal management option and the joint state-federal transition zone option. State management of the additional 9-mile area of an expanded territorial sea could provide substantial financial advantages to states with proven mineral deposits lying beneath this area. However, a state management regime could be considerably less attractive to a state such as South Carolina which would gain title to no such resources as a result of the grant to the state of management authority over the resources of this area. Although somewhat more attractive to South Carolina than a state management regime, in terms of financial burden on the state, the federal management option would not provide South Carolina with any increased input into the management of resources in the outer territorial sea. From the point of view of a state such as South Carolina, the transition zone management option represents perhaps the most advantageous regime. First, under this form of management regime, the state would enjoy an added degree of input into the management of the 9-mile outer territorial sea area. Second, the transition zone management system would provide the state with a portion of any revenues derived from the lease of rights to the resources within this area. On the other hand, the state would not have to shoulder the bulk of the financial or personnel burden of administering the area. Thus, if it appears that the federal government is moving toward the declaration of a 12-mile territorial sea, it would be in the interests of the state of South Carolina to lobby actively for the adoption of a state-federal transition zone management regime for the expanded territorial sea.

Chapter V

FINAL REMARKS AND RECOMMENDATIONS

In this study, we have addressed four major issues. First, we have attempted to assess the extent to which the United States may be prompted by international pressure to declare an expanded territorial sea. Second, we have attempted to identify the most significant options for managing an expanded territorial sea. Third, we have sought to describe in some detail the potential benefits and liabilities of these options. Fourth, we have attempted to assess the impact of the adoption of these options on one state, South Carolina.

5.1 IMPETUS TOWARD A CHANGE IN THE BREADTH OF THE TERRITORIAL SEA

Since 1945, the international ocean regime based upon national control of a three nautical mile territorial sea and freedom of the high seas beyond this zone has eroded seriously. Increased awareness of both the value and fragility of the resources beyond the three mile zone, and the need to manage these resources, have contributed to this creeping national jurisdiction at the expense of freedom of the high seas. Although the United States has through its own well-intentioned actions contributed to the pace of creeping national jurisdiction, it has an overriding interest in halting the further erosion of the concept of freedom of the high seas at some reasonable point. In particular, the United States has an interest in forestalling the claims of coastal states to territorial seas of vastly expanded breadth. This interest was underscored by the events over the waters 60 miles off the coast of Libya on 19 August 1981.

The provisions of the current draft of the Law of the Sea Treaty, the ICNT rev. 3, would tend to stabilize claims to a territorial sea at 12 miles. At the same time, the provisions of this treaty would grant general international recognition to the legitimacy of a number of unilateral ac-

tions by the United States to protect or manage the resources within 200 miles of its coast. It was the opinion of most of of those interviewed in the course of this study that support in the international community for these provisions is such that they have increasingly taken on the status of customary law. Thus, while ratification of the Law of the Sea Treaty may or may not be in the interests of the United States in view of problems with other provisions in the Treaty, it would appear to be in the interests of the United States to accede to these two provisions, regardless of the ultimate outcome of the Law of the Sea negotiations.

5.2 IMPACT OF A CHANGE IN THE BREADTH OF THE TERRITORIAL SEA

As noted by Milner S. Ball, "the immediate effects of a change in <the> boundaries <of the territorial sea> would be domestic rather than international.[18] The declaration of an expanded territorial sea by the United States would raise a series of questions. First, which level or levels of government should be assigned responsibility for managing the expanded area of the territorial sea? Second, what will be the management framework for the expanded territorial sea? Third, who will bear the costs of managing the area in question?[19] Fourth, how shall the potential revenues from the area be distributed? The actual impact of an expansion of the territorial sea on the federal government or individual state governments will vary depending upon the answers to these questions.

5.2.0.1 Impact on the Federal Government

In the period since 1950, the United States' ocean management system has developed incrementally. Although many of the legislative components of this management system have

---

[18] Ball (1978:23)

[19] As demonstrated by numerous federal and state programs, the level of government responsible for administering regulations need not necessarily have to bear the full burden of costs. For example, block grants or transfer payments can be used to defray a part of the costs of a particular management system.

been directed toward the definition and management of specially designated zones, such as the outer continental shelf area, more recent legislation has tended to blur the distinction among zones. For example, the CZMA provides for federal input into the management of the territorial sea zone, while the OCS Lands Act as amended provides for state input into the management of activities within the federal management beyond the territorial sea.

Since the enactment of the Submerged Lands Act and OCS Lands Act in 1953, the federal government has enjoyed a relatively predictable level of income from the sale of leases within the OCS area amounting to over 20 billion dollars. While this may appear yo be a small figure in the face of the yearly budgets of the past several years, it is nevertneless a significant steady source of revenue to the federal treasury.

The majority of options presented in Chapter 3 would either expand or build upon one or more aspects of the existing marine management system. For example, the state-regional option would draw on the management concepts included in the FCMAS. The transition zone and the state management options would incorporate various aspects of the CZMA regime. Other options, such as the single zone system, could require the establishment of entirely new management apparatus.

The principal impact of the management options presented in Chapter 3 would be twofold. First, the options would either expand federal authority in the 0-3 mile zone or circumscribe that authority in the 3-12 or 3-200 mile area. To the extent that the particular option circumscribes federal authority it may be less desirable to the federal government. On the other hand, those options providing for greater state initiative may be more in keeping with current federal policy. Those options providing for a greater degree of coordination or more comprehensive management of marine resources also may be more desirable to the federal government. Among these options would be the single zone option and those options providing for greater federal input into the management of the 0-3 mile area of the territorial sea.

Second, the options would affect the amount of potential revenues from the sale of leases in the OCS area that would be available to the federal government. Although the majority of the options would reduce federal income to some degree, some options, such as the state management option and the state-regional option, could cost the federal government

more than other options. The federal management option, on the other hand could keep federal revenues at their presently projected levels.

5.2.0.2 General Impact on States

The series of potential management regime structures presented in Chapter 3 provides a wide variety of jurisdictional, management, and revenue distribution options. The impact of these options will vary according to a number of factors. Chief among these is the actual or potential significance of coastal waters to the particular state.

Coastal waters are significant for a variety of reasons. They represent a medium of transport. They are a ready, though not always environmentally sound, dumping ground. They also represent a significant aesthetic resource. In addition, these waters, and the submerged lands beneath them, contain an extensive and diverse array of resources. However, the distribution of these resources is not even. Some sections of coastal waters contain vast fisheries stocks, while other sectors are comparatively unproductive. Hard and soft mineral resources are also unevenly distributed along the inner and outer continental shelf of the United States. As a result, the potential benefits to states of receiving title or management authority over an expanded area of ocean space will vary. Unless special provision is made for interior states to share in the revenues from the area either directly or indirectly as provided for in two of the options, these states will receive no particular benefit, and may experience an indirect loss of revenues as a result of the expansion of the territorial sea. Coastal states will also experience differential impact. If the area of ocean space is thought to contain valuable resources, the benefits to the coastal state could be substantial. If, on the other hand, the sector of ocean space beyond the existing 3 mile territorial sea is relatively barren of resources, the benefits to the coastal state could be minimal, particularly if the costs of administering the area are high.

Just as the resources in the coastal waters off states differ, so too do the administative priorities of states differ. Many states have a strong interest in the management and development of a wide range of marine resources. Other states have placed a lower priority on the management or development of the resources of their coastal waters.

Some states with a strong interest in the management and/or development of their marine resources have developed elaborate administrative structures for this purpose. Other states have established minimal administrative structures devoted to this purpose. Thus, some states may be better able to bear the additional burden of paramount or partial responsibility for the management of an expanded territorial sea. This, in turn, will affect to some degree their opinion of the acceptability of the individual management options presented in Chapter 3.

5.2.0.3 Impact on South Carolina

Although the waters off South Carolina are relatively rich in living resources, neither these waters nor the submerged lands beneath them have been proven to be rich in other resources.[20] Therefore, the state would not obtain any immediate revenue benefits from the receipt of title to an additional 9-mile wide section of these waters. In fact, in the absence of any revenue producing (leasable) resources, the receipt of title to these waters and their underlying lands could be an additional burden on the states' financial and personnel resources. This could be particularly true in the case of the Department of Wildlife and Marine Resources. As a result, the state would in all probability be negatively impacted by the adoption of the state management option for the expanded territorial sea. On the other hand, the joint state-federal transition zone option could benefit South Carolina because the state would have the potential of receiving a portion of any revenues from future leases within this area without the immediate burden of or exercising full management control over the area in the absence of any revenue producing leases.

---

[20] The possible exception would be aesthetic or recreational resources.

5.3 RECOMMENDATIONS

This study examined options for the management of one sector of United States' coastal waters, the territorial sea. To a large extent, however, such divisions are based more on legal fictions than physical properties. As a result, the management of one sector of ocean space is inevitably effected by actions or decisions taken in the administration of other sectors. If it does little else, any management regime for an expanded territorial sea must take these mutual interests into account, and provide a framework in which they may be accommodated. Each of the six management frameworks presented in this report to some extent addresses this issue. However, because none of the six principal management options is clearly preferable for the nation as a whole, the authors specifically do not make any recommendations as to the general acceptability of any of the six management options.

The authors do, however, offer the following limited suggestions for the state of South Carolina. First, for the reasons outlined in Chapter 4, the state should actively promote the adoption of the transition zone management option if it appears that the federal government is moving to declare an expanded territorial sea. Second, if general support for the state management option is such that it is adopted, South Carolina should explore one or more of the following means of obtaining additional revenue to defray the added management costs of this option. The state could invoke sections 305 and 306 of the Coastal Zone Management Act to establish an inter-state management program for the area. In addition, the state could revive the Mason proposal for the expansion of inter-state fisheries management efforts under the State-Federal Fisheries Management Program. Further, the state could explore the possibility of instituting limited user service charges for revenue producing activities within the zone. Finally, the state could abrogate its fisheries management responsibilities within the expanded 9-mile area by invoking section 306 (b) (1) (B) of the Fisheries Conservation and Management Act, thereby passing the fisheries management burden within the 9-mile zone back to the Regional Fisheries Management Councils.

BIBLIOGRAPHY

Aitkins, Arthur. 'The New Outer Continental Shelf Operations and Leasing Regulations and Oil and Gas Lease Form'. Natural Resources Lawyer v3 #2 (1970). 298-316.

Andrews, David. 'EPA Authority and Responcibility Under the Coastal Zone Management Act of 1972'. Natural Resources Lawyer v10 #2 (1977). 249-255.

Armstrong, John M. & Peter C. Ryner. Ocean Management: Seeking a New Perspective. Washington, D. C.: U. S. Department of Commerce. n. d.

Ball, Milner S. The Law of the Sea, Federal-State Relations and the Extension of the Territorial Sea. Athens, Ga.: Monograph #1, School of Law, University of Georgia. 1978.

Baram, Michael S., David Rice and William Lee. Marine Mining of the Continental Shelf Cambridge, Mass.: Ballinger Publishing Co. 1978.

Barrett, John C. 'Jurisdiction Over the Seabed: Persistent Federal-State Conflicts'. Urban Law Annual V12 (1976). 291-300.

Barry, Frank J. 'The Administration of the Outer Continental Shelf Lands Act'. Natural Resources Lawyer v1 #1 (1968). 39-48.

Bradford, David F. and Harold A. Pieveson. 'Benefits and Costs, Winners and Losers'. in H. A. Pieveson et al. Boundaries of Analysis Cambridge, Mass.: Ballinger Publishing Company. 1976. 125-159.

Breeden, Richard. 'Federalism and the Development of Outer Continental Shelf Mineral Resources'. Stanford Law Review v28 (1976). 1107-1159.

Brown, Seyom, Nina W. Cornell, Larry, L. Fabian, and Edith Brown Weiss. Regimes for the Ocean, Outer Space, and Weather. Washington, D. C.: The Brookings Institution. 1977.

Cameron, Eugene N., ed. The Mineral Position of the United States 1975-2000. Madison: University of Wisconsin Press. 1975.

Cicin-Sain, Biliana. Management of Fisheries Stocks in the Territorial Sea: A Discussion Paper. Washington, D. C.: NOAA, Office of Policy and Planning. 1979.

Cohen, Robert. 'Energy from Ocean Thermal Gradients'. Oceanus v22 #4 (Winter 1979/1980). 12-22.

Craven, John C. 'National Needs, Opportunities, and Constraints' Seaward Development. Washington, D. C.: United States Government. 1980. 6-15.

Curlin, James W. 'From Hobbyhorse to Workhorse: U. S. Ocean Policy in the 80's'. Address to Coastal Zone 80. Hollywood, Fla. November 11, 1980.

Curlin, James W, et. al. United States Ocean Policy in the 1970's: Status and Issues. Washington, D. C.: Department of Commerce. 1978.

Dehais, J. A., L. Lofgren, and W. A. Wallace. Analysis of the Economic and EnvironmentalImpact of the Off-shore Mining of Construction Minerals: A Decision Support System. Troy, N. Y.: School of Management, Renssalaer PolytechnicInstitute. 1979.

Doumani, George A. Ocean Wealth: Policy and Porential. Rochelle Park, N. J.: Spartan Books, Hayden Book Company, Inc. 1973.

Drew, Jean Talley. 'Continental Shelf Law: Out-distanced by Science and Technology'. Louisiana Law Review v31 (1970). 108-120.

Fay, J. M., R. E. Chaisson, and L. B. Smith, Jr. 'Resource Management in the OCS: The State Role'. in Coastal Zone 78, Vol. 1. New York: The American Society of Civil Engineers. 1978. PP. 1-15.

Gates, Paul W. History of Public Land Law Development. Washington, D. C.: United States Government. 1968.

Gendler Mickey. 'Toward a Better Use of Coastal Resources: Coordinated State and Federal Planning Under the Coastal Zone Management Act'. Land Use and Environmental Law Review (1978). 225-246.

Goodier, J. L. U. S. Federal and Sea Coastal State Off-shore Mining Laws. Washington, D. C.: Nautilus Press. 1972.

Hess, Harold D., et al. Program Feasibility Document: OCS Hard Mineral Mining. Prepared for the Assistant Secretaries of Energy and Minerals, and Land and Water Resources. Washington, D. C.: Department of the Interior. 1979.

Hildreth, Richard G. 'The Operation of the Coastal Zone Management Act as Amended'. Natural Resource Lawyer v10 #2 (1977). 211-223.

Jacobson, Jon L. & Thomas A. Hanlon. 'Regulation of Hard Mineral Mining on the Continental Shelf'. Oregon Law Review v50 (1971). 425-461.

Jones, Russell O., Walter J. Mead, and Philip E. Sorenson. 'The Outer Continental Shelf Lands Act Amendments of 1978'. Natural Resources Journal v19 (1979). 885-908.

Joseph, Edwin. 'Impact of Fisheries Management Plan Implementation: A State Perspective'. Extened Fisheries Jurisdiction: Problems and Progress, 1977. Chappel Hill: U of N. C. Sea Grant Program, 77-19. 1978.148-154.

Kiser, Stephen M. & Dan A. Aldridge, Jr. 'Right, Title and Interest in the Territorial Sea: Federal and State Claims in the United States'. Georgia Journal of International and Comparative Law' v4 #2 (1974). 463-480.

Kotas, G. F. and R. H. Clemens. "Interstate Coordination in Coastal Zone Management". Coastal Zone 78, Vol. 1. New York: American Society of Civil Engineers. 1978. PP. 300-309.

Krueger, Robert B. 'An Overview of Changes Occurring in the Law of the Sea-Implications for Federal State Relations'. Natural Resources Lawyer v10 #2 (1977). 225-235.

Krueger, Robert B. and Louis H. Singer. 'An Analysis of the OCS Lands Act Amendments of 1978'. Natural Resources Journal v 19 #4 (1979). 909-927.

Laylin, John G. 'Hard Mineral Development Under the Outer Continental Shelf Lands Act- Legal and Economic Requirements of the Industry'. Natural Resources Laswyer v4 #3 (1971). 654-659.

Lee, William W. L. Decisions in Marine Mining: The Role of Preferences and Trade-offs. Cambridge, Mass.:Ballinger Publishing Co. 1979.

Lewis, Austin W. 'A Capsule History and the Present Status of the Tidelands Controversy'. Natural Resource Lawyer v3 #2 (1970). 620-636.

Lewis, Austin W. 'Off-shore Boundry and Title Issues'. Natural Resource Lawyer v4 #4 (1971). 737-746.

Lissaman, P. B. S. 'The Coriolis Program'. Oceanus v22 #4 (Winter 1979/1980). 23-28.

Montgomery, John E. 'The Multiple Use Concept as the Basis of a New Outer Continental Shelf Legislative Policy'. Kentucky Law Journal v62 (1974). 327-365.

Nelson, David G. 'State Disposition of Submerged Lands Versus Public Rights in Navigable Waters'. Natural Resources Lawyer v3 #3 (1970). 491-511.

Newman, J. N. 'Power from Ocean Waves'. Oceanus v22 #4 (Winter 1979/1980). 38-45.

Oda, Shigeru International Law of the Resources of the Sea'. Alpen aan den Rijn, The Netherlands: Sijthoff & Noordoff. 1979.

Olen, H. A. and M. A. Turner. "Federal-State Coordination on OCS Development". Coastal Zone 78, Vol. 1. New York: The American Society of Civil Engineers. 1979. pp. 27-36.

Osgood, Robert E., ed. 'Perspectives on Ocean Policy, Proceedings of the Conference on' 'Conflict and Orier in Ocean Relations, October 1974'. Washington, D. C.: Ocean Policy Project, The Johns Hopkins University. 1974.

Osgood, Robert E., Ann L. Hollick, Charles S. Pearson, and James C. Orr. 'Toward a National Ocean Policy: 1976 and Beyond'. Washington, D. C.: Ocean Policy Project, The Johns Hopkins University. 1976.

Rusk, Dean & Milner S. Ball. 'Sea Changes and the American Republic'. Georgia Journal of International and Comparative Law v9 #1 (1979). 1-19.

Ryner, P. C. and John M. Armstrong. "Coastal Waters: A Management Issue". Coastal Zone 78, Vol. 1. New York: American Society of Civil Engineers. 1978. pp. 285-299.

Shaffer, Karen A. 'OCS Development and the Consistency Provisions of the Coastal Zone Management Act-Legal and Policy Analysis'. Ohio Northern University Law Review v4 (1977). 595-623.

Shoenbaum, Thomas G.& Frank Parker, Jr. 'Federalism in the Coastal Zone: Three Models of State Jurisdiction and Control'. North Carolina Law Review v57 (1978). 231-260.

Smith, Douglas A. 'States Rights in the Outer Continental Shelf denied by United States Supreme Court'. University of Miami Law Review v30 (1976). 303-223.

Smith, J. Owens & David L. Marshall. 'Mariculture: A New Ocean Use'. Georgia Journal of International and Comparative Law v4 #2 (1974). 307-342.

Snow, Rodney A. 'Extended Fisheries Jurisdiction in Canada and the United States'. Ocean Development and International Law v5 #2/3 (1978). 291-344.

Stewart, Richard B. 'Pyramids of Sacrifice? Problems of Federalism in Maintaining State Implementation of National Environmental Policy'. Land Use and Environmenntal Law Review (1978). 147-223.

Stone, Oliver.'Petroleum Development Under the Outer Continental Shelf Lands Act'. Natural Reasources Lawyer v4 #4 (1971). 732-736.

Stromberg, Ann. 'Engangered Species Act Amendments'. Natural Resource Journal v19 #4 (1979). 933-941.

Vadus, J. R. Long-Term Federal Policy and Overall Role in the Development of Offshore Energy Resources: Issue Paper Rockville, Md.: The Office of Ocean Engineering, National Oceanic and Atmospheric Administration. 1978.

Von Ark, William S. 'Prospects: A Social Context for Natural Science'. Oceanus v22 #4 (Winter 1979/1980). 3-11.

Walsh, Don. 'The Law of the Sea: Issues in Ocean Resource Management'. New York, N. Y.: Praeger Publishers, Inc. 1977.

Wick, Gary Shishin. 'Salt Power: Is Neptune's Ole Salt a Tiger in the Tank?'. Oceanus v22 #4 (Winter 1979/1980). 29-37.

Wrede, Robert K. 'Pre-emption and the Role of State Legislation in the Coastal Zone'. Natural Resource Lawyer v10 #2 (1977). 237-248.