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• **HARD MINERALS** — Although commercial recovery of hard minerals is still in its infancy, the U.S. EEZ is likely to hold bright prospects for a number of hard mineral resources. Six types of potentially economic hard mineral resources have been identified: 1) sand and gravel, 2) heavy-mineral placer deposits (containing tin, titanium, gold, platinum), 3) phosphorites, 4) manganese nodules, 5) cobalt-rich manganese crusts, and 6) polymetallic sulfides. Several of these resources contain critical and strategic minerals as referred to in the Strategic and Critical Materials Stock Piling Act.[8] The U.S. presently imports over 60 strategic and critical minerals (see Figure 2). This is an important consideration in the development of these marine minerals.

Ocean mining of cobalt crusts is only in the preliminary planning stages. Cobalt-rich manganese crusts occur on the flank areas of numerous U.S. Pacific Islands and on the tops of many central Pacific seamounts within the U.S. EEZ. An environmental impact statement (EIS) for ocean mining off Hawaii and Johnston Island is in preparation by a joint Minerals Management Service (MMS) — State of Hawaii task force. Commercial mining operations, however, are not likely to begin until the mid-to-late 1990's. The strategic importance of the cobalt component in these crusts and the fact that a single seamount could provide the United States with a three-year supply, could make mining of these crusts a national priority.

Polymetallic sulfides, another important potential EEZ resource, have been discovered in many parts of the Eastern Pacific Ocean. Polymetallic sulfides exist at several seafloor spreading centers, some with active hydrothermal vents, including the Gorda Ridge 125 miles off northern California and southern Oregon. Other promising areas for hydrothermal activity within the EEZ include the Aleutian arc in Alaska and the Marianas Islands in the Central Pacific.[9]

• **OCEAN ENERGY** — Although not yet tested on a commercial scale, the feasibility of producing electrical energy from the temperature differences between warm surface water and much colder deep water has been demonstrated. Ocean thermal energy conversion (OTEC) technology is ideally suited to islands or coastal areas with thermal gradients of 20 degrees centigrade or more between the surface waters and depths of 1000 meters. Numerous potentially attractive locations for OTEC facilities exist in the coastal zones and EEZ of Puerto Rico, Virgin Islands, Hawaii, Guam, and the other U.S. territories in the tropical Pacific.[10] Should oil prices again rise, the work remaining to be done to prove the commercial viability of OTEC should be completed to open the way for the application of this promising technology in the U.S. EEZ.

• **WASTE DISPOSAL IN THE OCEAN** — The use of the ocean for waste disposal is likely to continue, and perhaps increase. Although the ocean does have some assimilative capacity for some wastes, ocean waste disposal should not be a first choice option. In the case of non-toxic substances, ocean disposal may be judged less dangerous to the environment than alternative land disposal options. On the other hand, the tendency of some organisms to concentrate toxic substances (bio-accumulation), potential loss of habitat, and the possibility of toxics making their way back through the food chain to humans must be taken into account in such decision making. Before ocean disposal is utilized, all other feasible options must be evaluated. Site specific information must also be collected to ensure that adverse impacts to water quality and aquatic habitat are minimized.

At present, two issues — at-sea incineration of toxic wastes and ocean disposal of radioactive wastes — seem to be increasingly prominent. The safe disposal of highly toxic liquid wastes such as polychlorinated biphenyls (PCBs) and high and low level nuclear wastes are vexing national problems. Satisfactory solutions must be found since significant quantities of these dangerous materials continue to accumulate. Without doubt, emergency contingency plans, storage and transshipment within coastal areas, and the possible use of the EEZ (and perhaps the more remote deep seabed [11]) for waste disposal will be studied and debated in the coming years.[12]

• **QUALITY OF THE MARINE ENVIRONMENT** — The rich life and relatively pristine marine environment within the EEZ is perhaps its most valuable resource. The affects of pollution in the near-shore waters due to runoff from land are less pronounced in the EEZ, although ocean disposal of municipal sewage and industrial wastes places added strains on marine environmental quality. Only by maintaining and improving the environmental quality of the EEZ is it possible to maximize the value of its other resources, such as fisheries, marine wildlife, oxygen production, pharmaceuticals, recreation, and the basic security of a healthy, rich community of marine life.

The U.S. EEZ is home to a rich variety of marine life, inhabiting a range of arctic to tropical marine ecosystems. Abundant fisheries, marine mammals, reptiles, sea birds, coral reefs, chemosynthetic communities of hydrothermal vents and cold water seeps, kelp forests, and other plant and animal life are among the great diversity of life within the U.S. EEZ. There is an obvious strong coastal State interest in maintaining this resource.

• **ADDITIONAL USES OF THE EEZ** — The U.S. EEZ has many other uses beyond the major ones listed above. Sport fishing, diving, and boating make the offshore areas attractive to growing numbers of recreationists. Ocean-borne commerce is a regular use of the U.S. EEZ, including the specialized traffic lanes that extend into the EEZ that increasingly guide passage to and from U.S. coastal ports. Finally, military "exclusion zones" represent yet another use of ocean space that is of national importance and which sometimes competes with resource-related activities.

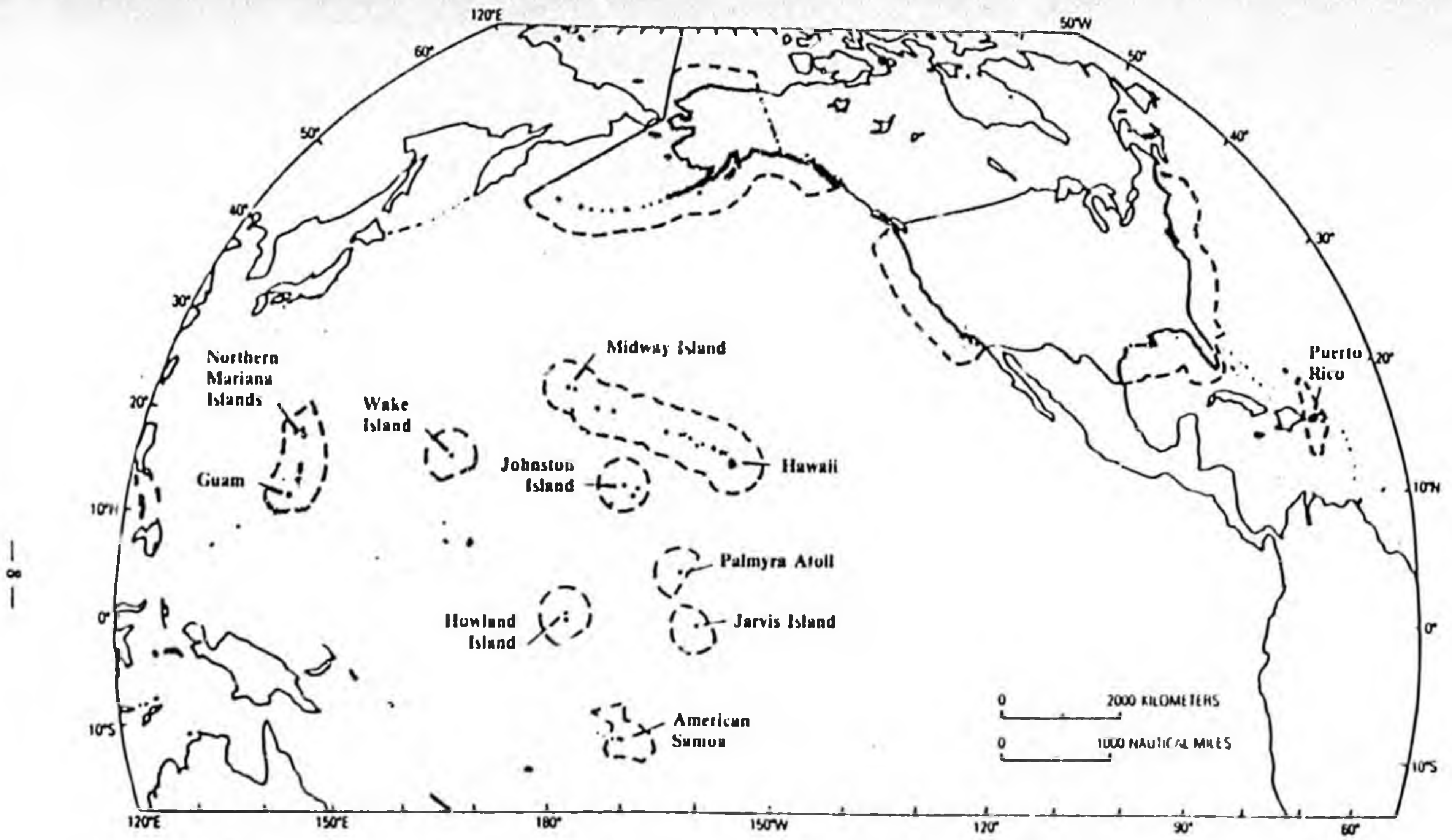


Figure 1.— Exclusive Economic Zone (EEZ) of the United States, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, and United States overseas territories and possessions (outlines of map are approximate). Acreage now deemed within the U.S. EEZ includes: United States proper, 2.787 billion acres; Commonwealth of Northern Mariana Islands, 0.299 billion acres; territories and possessions, 0.839 billion acres.

Source: Rowland, R.W., M.R. Goud and B.A. McGregor, *The U.S. Exclusive Economic Zone - A Summary of its Geology, Exploration and Resource Potential* (U.S. Department of the Interior, Geological Survey Circular 912, 1983).

Table 2-6.—Sources of U.S. Chromium Imports

Country	1979-82 (percent)	1982 (percent)
Chromite:[a]		
South Africa	48	59
Soviet Union	17	6
Philippines	13	11
Turkey	7	6
Albania	6	1
Finland	5	7
Madagascar	4	9
Ferrochromium:		
South Africa	61	35
Zimbabwe	12	25
Yugoslavia	12	12
Brazil	4	11
Sweden	4	4
Turkey	2	4
West Germany	2	3
Japan	1	—
China	1	4
Other	1	2

[a]Chromite = chromium ores.

NOTE: Major world producers of chromite and their contribution to world supplies in 1982 were: Soviet Union (34 percent), South Africa (22 percent), Albania (12 percent), Brazil (10 percent), Zimbabwe, Philippines, Turkey, and Finland (4 percent each), India (3 percent). See table 5-4 of ch. 5 for more detail, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Yearbook*, 1980, 1981, 1982, and 1983.

Table 2-10.—Sources of U.S. Manganese Imports

Country	1979-82 (percent)	1982 (percent)
Manganese ore:		
South Africa	30	52
Gabon	27	21
Australia	22	17
Brazil	13	3
Mexico	4	1
Morocco	4	4
Other	—	2
Ferromanganese:		
South Africa	43	49
France[a]	26	21
Mexico	6	7
Brazil	3	6
Australia	2	1
Other[a]	20	16

[a]Processes manganese ore originating from other countries.

NOTE: Major world producers of primary manganese ores and their contribution to world supplies in 1982 were: Soviet Union (41 percent), South Africa (23 percent), Gabon (7 percent), China (7 percent), Brazil (6 percent), Australia (5 percent), Mexico (2 percent). See table 5-22 of ch. 5 for further details, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Yearbook*, 1980, 1981, 1982, and 1983.

Table 2-8.—Sources of U.S. Cobalt Imports

Country	1979-82 (percent)	1982 (percent)
Zaire	37	39
Zambia	13	9
Canada	8	12
Belgium-Luxembourg[a]	8	5
Finland	7	6
Japan[a]	7	8
Norway[a]	7	7
Botswana	3	3
France[a]	3	3
Other	7	8

[a]Processes cobalt ore originating from other countries.

NOTE: Major world producers of primary cobalt and their contribution to world supplies in 1982 were: Zaire (45 percent), Zambia (13 percent), Australia (9 percent), Soviet Union (9 percent), and Canada (6 percent). See table 5-16 of ch. 5 for more detail, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Yearbook*, 1980, 1981, 1982, and 1983.

Table 2-12.—Sources of U.S. Platinum Group Metal Imports

Country	1979-82 (percent)	1982 (percent)
South Africa	56	48
U.S.S.R.	16	16
United Kingdom	11[a]	13
Other	17	23

[a]PGM production from the United Kingdom is from ores originating in South Africa and Canada and from secondary materials.

NOTE: Major world producers of PGM and their contribution to world supplies in 1982 were: Soviet Union (54 percent), South Africa (40 percent), and Canada (4 percent). See table 5-33 of ch. 5 for further details, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Mineral Commodity Summaries*, 1983 and 1984.

Figure 2.— Sources of Strategic Metals for the United States

Source: *Strategic Materials: Technologies to Reduce U.S. Import Vulnerability* (Washington, D.C.: U.S. Congress, Office of Technology Assessment, OTA-ITE-248, May 1985).

"Because major segments of their coastal populations can be affected, coastal State governments have strong interests in how these governmental roles are performed in the EEZ."

SECTION III

FEDERAL & STATE INTERESTS IN THE EEZ

Federal and coastal State interests in the EEZ rest in part on the legitimate and necessary functions of government in the offshore area. The manner of administration of these functions affects national and coastal State interests. Table 1 lists six broad purposes which government serves in the ocean. The top two are clearly "national" in nature and must be carried out by the federal government. However, to assure citizens that the duties and responsibilities of State governments are carried out, the remaining roles require coastal State involvement.

Important sectors of coastal State economies depend directly on the EEZ and its resources. In Louisiana, for example, the oil and gas, and commercial fishing, industries depend heavily on the EEZ. Coastal States and their local governments — the planners and managers of the Nation's coastal zones — oversee the ports, harbors, and shore space that are essential to ocean development. Physical linkage inextricably couples the shoreland to the sea. Through the bonds of common air basins, the actions of waves and currents on the shoreline, and the effects of rivers and run-off on ocean water quality, the land and the sea are joined together in an inseparable relationship. Thus, an equitable governance scheme for the EEZ must acknowledge the quality of interests — national and State — that exist in the U.S. EEZ.

Because major segments of their coastal populations can be affected, coastal State governments have strong interests in how these governmental roles are performed in the EEZ. Coastal States are "home" to most users of the EEZ. Their citizens have major economic interests in the conservation and rational development of the EEZ. Coastal States have important public trust responsibilities within their jurisdictions. They are concerned with "spillovers" and other adverse environmental effects emanating from poorly regulated uses in the adjacent EEZ that could damage State resources. New EEZ-related activities compete with other ocean ac-

TABLE 1
GOVERNMENTAL ROLES IN THE EXCLUSIVE ECONOMIC ZONE

Role	Function
1. INTERNATIONAL RELATIONS	—Insure consistency with foreign policy goals
2. NATIONAL SECURITY	—Maintain the national defense
3. INTERSTATE & FOREIGN COMMERCE	—Regulate commerce between the States and other countries
4. PROPRIETARY	—Secure maximum earnings for the public
5. PUBLIC TRUST	—Conserve resources for present and future generations
6. REGULATORY	—Protect the public welfare, prevent and solve conflicts

tivities of economic interest to the coastal States. For example, access to valuable and limited coastal space for necessary shoreside facilities (ports, processing plants, etc.), is often at the expense of the traditional users. Coastal States are proprietors of the ocean resources in their State waters, and are concerned with possible reductions in the value of State resources, such as the drainage of State oil and gas fields or overfishing in the EEZ of fish stocks that also exist in State waters.

Given these interests, the coastal States are naturally concerned with the actions of federal agencies taken in connection with the governmental purposes set out in Table 1. The degree of coastal State interest depends upon the nature of the demands placed upon State and local resources as well as on EEZ resources. Some of the possible effects (positive and negative) of the development of EEZ resources are listed in Table 2 below.

"Without effective local participation in the decision-making process, no amount of 'national interest' justification is likely to overcome local opposition."

TABLE 2
POSSIBLE EFFECTS OF OFFSHORE (EEZ) DEVELOPMENT

National Benefits
- improved domestic supply of strategic and critical resources
- reduced trade deficit
- improved food supply
- increased national security
- enhanced economic growth
- increased federal revenues

Regional/Local Benefits
(some public, some private)
- increased jobs
- increased investment earnings
- increased tax revenue

Offshore Environmental Impacts
- deterioration of marine water quality
- deterioration of air quality
- addition of toxins to the environment, and possibly the food chain
- visual disturbance
- potential accidents

Onshore Environmental Impacts
- increased risk of accidents
- degradation of coastal esthetics
- reduction in quality of coastal recreation experience
- reduction in tourism

Offshore Displacement Impacts
- prevention or disruption of usual fishing patterns
- interference with commercial and recreational navigation

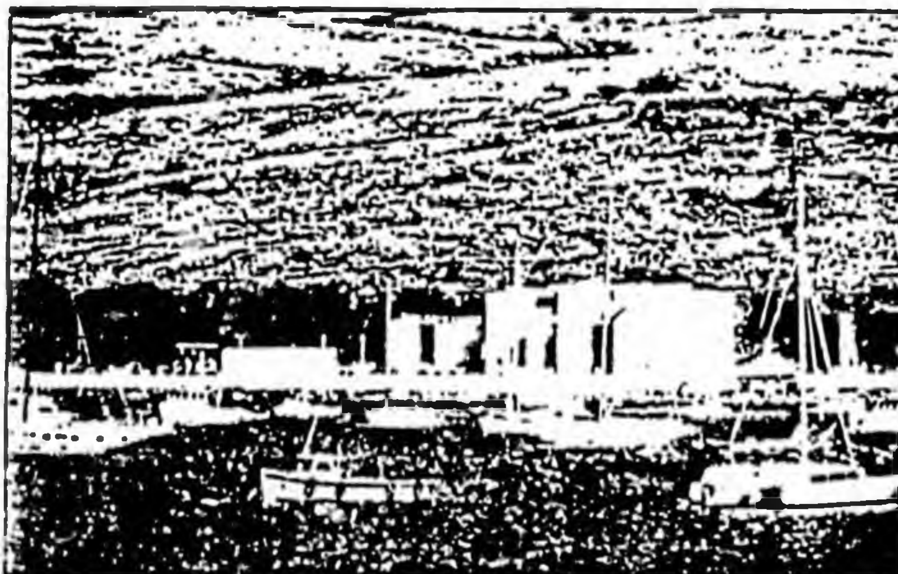
Onshore Displacement Impacts
- competition for limited commercial and recreational port and harbor space
- competition for sites for processing, storage and transportation facilities
- competition for limited recreational beach space

Onshore Socio-economic Impacts
- increased population
- public facilities and infrastructure
- public services
- housing, water supplies
- additional requirements on local government planning processes

For any particular activity in the EEZ, one would have to evaluate each of the possible effects listed in Table 2 to obtain the cumulative impact. Generally, the impact will be greater from EEZ activities closer to the coastal zone, when activities of greater importance to the State are displaced, and when significant, yet uncompensated, demands are placed on local public infrastructure due to increases in population. Perhaps, in the long run, the economic benefits associated with a new EEZ activity could partially or even totally offset these social, i.e. non-economic, costs. But this fails to address the importance of the non-economic aspects of local decision-making, i.e., the need for "self-determination."

A community, or State, will be the recipient of the costs and benefits, both economic and non-economic, of development in the EEZ off of its shores. Without effective local participation in the decision-making process, no amount of "national interest" justification is likely to overcome local opposition. Nor would the best interest of the community, State or nation be served by the resulting delay in the orderly development of these resources due to the forseeable political obstacles or, worse, protracted litigation. Thus, a true Federal/State partnership in the decision-making process is clearly necessary for the management of the living and nonliving resources in America's EEZ.

The establishment of a true Federal/State partnership, founded on cooperation and mutual benefit, requires an equitable sharing of both the benefits and costs derived from the development of EEZ resources. The sharing of benefits, including revenues, from EEZ resource development is a natural extension of shared decision-making. It is both realistic and just to recognize the interests of the federal government and the States in the EEZ while bearing in mind the possible effects of EEZ development.



SECTION IV

RECENT DEVELOPMENTS IN INTERNATIONAL LAW AFFECTING THE ROLE OF STATES IN EEZ RESOURCE MANAGEMENT

Prior to World War II:

International ocean law has undergone significant change in the past four decades. Prior to World War II the ocean waters beyond a nation's territorial sea were nearly universally regarded as "high seas." Within these waters any nation was free to do whatever it chose, including navigate, fish, conduct research, drill for oil, perform military maneuvers or any of the other high seas freedoms, unless it agreed otherwise by international agreement or treaty. But in waters that were once pure high seas that are now EEZs, there has been a fundamental change.

1945-1983:

In 1945 President Truman proclaimed U.S. jurisdiction and control over the resources of the continental shelf adjoining the United States.[13] Other nations quickly followed suit, asserting various forms of national control over ocean resources off their coasts. Mexico, also in 1945, asserted similar jurisdiction over its continental shelf. Argentina in 1946, and Peru and Chile in 1947 asserted jurisdiction over not only the sea bottom of the continental shelf, but also the water above it. Honduras, in 1951, established a 200-mile "resource protection zone," the first such zone that would later be referred to as an exclusive economic zone. In the next 30 years over 50 nations claimed varying degrees of jurisdictional authority over ocean resources out to 200 miles from their shores. As a result, the international recognition of the "high-seas" character in these 200-mile zones became less and less pronounced.

Overlapping the last decade of this period the nations of the world negotiated the United Nations Law of the Sea Convention (LOS Convention), culminating in 130 nations signing the treaty in 1982. The LOS Convention is the sole internationally recognized text defining the legal parameters of exclusive economic zones. Although the United States announced that it would not sign the LOS Convention, the President's EEZ Proclamation conforms closely to the LOS articles on exclusive economic zones.[14] In addition, the President announced that the United States would act in accordance with the provisions of the LOS Convention relating to "traditional uses of the oceans — such as navigation and overflight."[15]

After the 1983 U.S. EEZ Proclamation:

The EEZ Proclamation fundamentally altered the legal character of the 200 mile zone around the United States. Prior to the Proclamation, the body of U.S. law pertaining to this zone, while asserting U.S. jurisdiction in piecemeal fashion over select resources, nonetheless continued to apply in the internationally recognized regime of "high seas." . . .

"Prior to World War II the ocean waters beyond a nation's territorial sea were nearly universally regarded as 'high seas.' But in waters that are now EEZs, there has been a fundamental change."

"The EEZ Proclamation fundamentally altered the legal character of the 200 mile zone around the United States."

"Unless another country's recognized rights are impinged upon, no other nation can question the management decisions of the United States concerning its EEZ resources."

Although the pure concept of the "high seas" was eroding within 200 miles of this country and others, the status of ocean resources in this zone did not unequivocably change from high seas resources to U.S. domestic resources until the U.S. EEZ Proclamation. At the same time, in accordance with international law, the high seas rights of non-resource related activities, such as navigation and overflight, among others, are expressly recognized and preserved in the President's Proclamation.

The United States now has sovereign right. over the living and nonliving resources within its EEZ. How to exercise these rights is an internationally recognized sovereign, i.e. domestic, question. That is, unless another country's recognized rights are impinged upon, no other nation can question the management decisions of the United States concerning its EEZ resources. In terms of U.S. federal law, this is a fundamental change with potentially profound domestic consequences.

"For decades the U.S. Supreme Court has consistently ruled that only the federal government possessed full and paramount authority to manage the natural resources outside the territorial sea. However, the legal basis upon which these cases rest no longer applies."

Supreme Court Rulings, International Law and EEZ Resource Management

For decades the U.S. Supreme Court has consistently ruled that only the federal government possessed full and paramount authority to manage the natural resources outside the territorial sea. In fact, until Congress passed the Submerged Lands Act in 1953, the Court ruled that even within the three mile "marginal sea" the federal government had full and paramount natural resource mangement authority. However, the legal basis upon which these cases rest no longer applies.

In the landmark case *United States v. California*[16], the court ruled against California's assertion of "dominion" over the submerged lands within its three nautical mile zone of State ocean waters. The court based its decision on the rationale that:

> "But whatever any nation does in the open sea, which detracts from its common usefulness to the nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units."[17]

As a result, the Court ruled that because marine resource management could affect international relations, the "Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area."[18]

This rationale is the basis for a series of Supreme Court rulings that followed. In 1950, in *United States v. Louisiana*,[19] the Court rejected Louisiana's claim of rights over the resources in, and beyond, the three mile zone, holding that "The ocean seaward of the [three mile zone] is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so."[20] The same year, in *United States v. Texas*,[21] the Court also rejected Texas' claim to the resources in its three mile zone of ocean waters. Texas argued that because it was an independent Republic prior to admission to the Union it thus held full authority over these resources. The Court, however, ruled that upon entering the Union Texas was placed on an "equal footing" with all other States.

and that "The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation."[22]

Congress reacted to these Supreme Court cases by passing the Submerged Lands Act of 1953,[23] signed into law by President Eisenhower, that vested in the States title to the seabed of their ocean waters. Later the same year Congress passed a companion act, the Outer Continental Shelf Lands Act (OCSLA).[24] The OCSLA provided that the waters above the continental shelf are recognized as high seas[25], while establishing exclusive federal jurisdiction over the continental shelf seaward of the territorial limit of the States.

Nonetheless, in 1969, in *United States v. Maine*,[26] 13 Atlantic States challenged the federal government's paramount rights over the submerged lands beyond State waters, claiming that as successors to the Crown of England (or Holland in the case of New York) they possessed full authority over the seabed beyond the three mile State waters. The Supreme Court, rejecting this argument, reaffirmed the rulings *California, Lousiana* and *Texas*, and ruled that the international character of these waters required the federal government to retain full dominion over the seabed of the continental shelf beyond the three mile line.

These rulings, both before and after the Submerged Lands Act or the OCSLA were implemented, were based on the Supreme Court's determination that the ocean area beyond State territory was international in character, and thus the management of these resources could affect relations with foreign nations. Because the U.S. Constitution expressly grants to the federal government all powers to conduct foreign affairs, the States had no role to play in marine resource management beyond their ocean waters.[27] This has changed.

A Sea Change with the EEZ Proclamation

With the EEZ Proclamation, resource management within the EEZ is no longer international in character, but rather is a purely domestic matter. The basis upon which the above Supreme Court cases rest no longer applies. The EEZ is no longer an "open sea." No other nation can charge that a resource management decision by the United States detracts from the "common usefulness" of this zone. The resources of the U.S. EEZ are not to be managed for their international "common usefulness," but rather for the usefulness of the United States. Thus, domestic management of U.S. EEZ resources has become a question for consideration by the "separate governmental units," i.e. the federal government and the coastal States. This does not mean that the coastal States automatically acquired resource management authority in the EEZ with the issuance of the presidential EEZ Proclamation. It simply means that no constitutional barrier now exists to deny States their proper role in sharing the responsibilities and benefits of resource-management authority with the federal government.

Thus, to the extent that management of the resources of the U.S. EEZ does not directly affect the rights of other nations, this management is now purely a domestic question, a question that can be answered only with full participation by both the coastal States and the federal government.

"With the EEZ Proclamation, the EEZ is no longer an 'open sea.' The resources of the U.S. EEZ are not to be managed for their international 'common usefulness,' but rather for the usefulness of the United States. Thus, domestic management of U.S. EEZ resources has become a question for consideration by the 'separate governmental units,' i.e. the federal government and the coastal States."

"The orderly development of EEZ resources would be impossible without efficient access to, and interconnections with, ports, harbors, shoreside support, processing and storage facilities, markets, transportation routes and the countless other needs that accompany offshore development."

SECTION V
THE OCEAN GOVERNANCE CHALLENGE

JURISDICTIONAL COMPLEXITIES

The human side of the equation governing America's ocean resources can be stated in five parts: local authorities, State governments, the federal government, the private (commercial) sector, and the general public. Local authorities control the location and operations of facilities, such as ports and harbors. State governments control environmental aspects, such as air and water quality, as well as protection, conservation and development of resources in State ocean waters. The federal government has authority over the international aspects of the EEZ, such as law enforcement and national security, as well as, currently, dominant authority in the management of the living and nonliving resources. The private sector is often the prime mover in offshore development. What does, or does not, happen offshore, and at what pace, usually depends on market conditions and the judgment of corporate officials. And finally, the general public has an important role in the decision-making process. Public hearing are a legal requirement in many resource-use decisions, at both the federal and State levels.

Because the orderly development of EEZ resources would be impossible without efficient access to, and interconnections with, ports, harbors, shoreside support, processing and storage facilities, markets, transportation routes and the countless other needs that accompany offshore development, it is clear that all five parts of the ocean governance equation must participate in the decision-making process.

The jurisdictional division between levels of government — Three separate bands of jurisdiction divide the coastal and ocean area — local and State governments generally control shoreline use; in most cases State government has jurisdiction in the belt of ocean from the tidemark out to the three-mile limit; and the federal government has general jurisdiction from three out to two hundred miles.[28] The problems thus created for the planning and management of these activities are:

—most important ocean activities involve all three jurisdictions, a major complexity; and
—the benefits and costs of ocean resource exploitation frequently fall on different, or multiple, jurisdictions.

The jurisdictional division in the management of different ocean resources/uses — Within the two offshore jurisdictions (federal and State), each resource/use is typically under the jurisdiction of a different agency operating under a different legislative framework. For example, a specific federal agency manages offshore oil development, while another agency handles water quality and related matters. The problems created by this single purpose approach include:

—difficulty in advance planning for heavily used ocean areas;
—lack of early identification and resolution of conflicts among users;
—few opportunities for accommodating alternative or competing uses; and
—difficulty for general purpose local governments to relate to single purpose offshore agencies.

"*The ocean's fluid and dynamic properties mean that effects from activities at one offshore location can spread quickly to other locations, including the shoreline.*"

Ocean Complexity

In addition to these human factors, the nature of the ocean itself must be considered. The ocean's fluid and dynamic properties mean that effects from activities at one offshore location can spread quickly to other locations, including the shoreline. Further, the complex relationship of ocean and coastal ecosystems — between interdependent organisms and their habitats and the larger dynamic environment upon which they depend — together with our incomplete knowledge of these systems, virtually guarantees that any ocean development activity will produce unexpected effects well removed from the project itself. As a result, predicting the impacts of an ocean use is exceptionally difficult. The management problems that arise include:

—unintended, unforeseeable consequences of ocean exploitation;
—uncertainty over the fate and effects of discharges; and
—uncertainty about the geographic extent and duration of impacts.

Congress has wrestled with the jurisdictional and natural complexities of ocean and coastal resource governance. In October of 1972, recognizing the fundamental importance of the coastal zone of the United States, the Congress enacted the Coastal Zone Management Act of 1972 (CZMA). This legislation authorized the coastal States to develop and implement coastal zone management programs for the shorelines of the United States, including the State ocean waters. Building on significant coastal management efforts already underway in California, Oregon, Delaware, Washington, Rhode Island, North Carolina, Michigan, Wisconsin, and Minnesota, most coastal States took the federal legislative challenge seriously, completing and obtaining federal government approval of their coastal zone management programs. At present, 29 States and territories have federally approved programs, covering more than 90% of the U.S. shoreline.

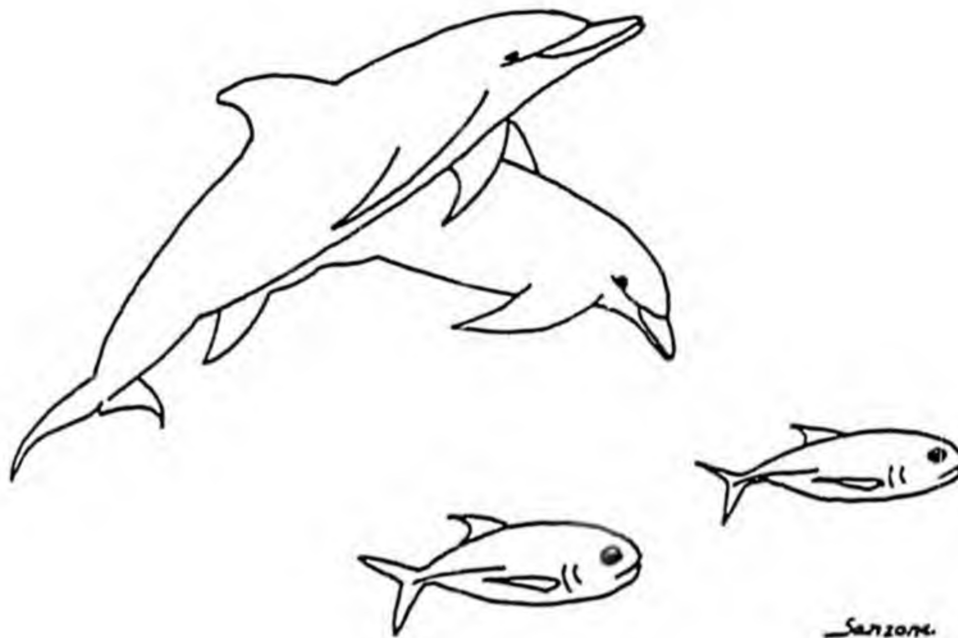
A major objective of these State coastal zone management programs is to provide a coordinated decision-making mechanism to reconcile conflicting uses of the coastal zone. Congress intended that through this mechanism, coastal areas and resources requiring protection would receive that protection while water-dependent activities that must exist in the coastal zone would receive priority consideration. At the same time, the mechanism fosters public participation and streamlines the decision process.

Central to the entire process is the requirement of "consistency" with a federally approved State coastal zone management program. Generally, any federal agency, or any person operating under a federal permit or license, that conducts an activity that affects a State's coastal zone must do so in a manner

consistent with a State's approved management plan. While the CZMA has only been in effect for 15 years, it is generally accepted that State coastal zone management programs are performing rather well and program improvements are occurring on a regular basis.[29]

The coastal zone management process has been very effective in reconciling the multiple interests associated with most coastal uses. Yet from the coastal State perspective, even beyond recent efforts to reduce or terminate federal coastal zone management funding assistance, there are some serious shortcomings with the present system, especially when viewed against the new challenges posed by America's new Exclusive Economic Zone.

Up to 1982, tensions between the coastal States and the federal government had largely focused on offshore oil. The prospect of ocean incineration of toxic wastes, seabed disposal of decommissioned nuclear submarines, and plans for ocean mining have also provoked additional coastal State concern. In each of these instances, the concern is fueled by two factors: 1) uncertainty as to the effects of the proposed activity on the marine and coastal environments, and 2) the feeling of coastal States and communities that they lacked the legal authority needed to participate in the formal decision-making processes. In light of increasing pressure to develop and use the resources of the EEZ, the coastal States view these concerns as harbingers of potential conflict unless some important changes are made in present ocean governance arrangements.



SECTION VI
FORGING THE PARTNERSHIP

> *"There is nothing in the concept of legal jurisdiction over resources in a given area that leads to the non-recognition of valid 'outside' interests that also exist in the management of those resources."*

The geographic range of State and national interests in the oceans bears relatively little resemblance to the extent of formal State and federal jurisdiction. Strong national interests (e.g., security and interstate commerce) exist throughout the entire ocean area. Similarly, as discussed in the previous section, strong State-local interests exist well beyond the limit of State waters. In State ocean waters, the State government has jurisdiction and ownership of resources; hence State agencies have been delegated management authority over those resources. This authority, however, must be carried out in manner that acknowledges and protects co-existing national interests in these same waters. Similarly, federal agencies that are delegated authority to manage resources in the EEZ, must, we believe, take account of State and local interests that, in many cases, co-exist with national interests beyond the three-mile limit. There is nothing in the concept of legal jurisdiction over resources in a given area that leads to the non-recognition of valid "outside" interests that also exist in the management of those resources.

It is implicit, therefore, that a set of duties and responsibilities accompanies the benefits of ownership and exploitation of publicly held ocean resources. One important element of the governmental presence in the oceans, therefore, is made up of both the management of the benefits that flow from sovereign rights and the discharge of the duties and responsibilities associated with the exercise of those rights.

In the Exclusive Economic Zone, three different duties fall to federal resource managers:

Duties to the Nation: includes maximizing the financial benefits that flow from control of the resources, while minimizing the impacts from such exploitation to other ocean users, resources and the environment.

Duties to the international community: maintaining navigational and other high seas freedoms for the world community in compliance with international law. Also, a duty exists to prevent pollution in the U.S. EEZ from spilling over to the high seas or into the EEZs of adjacent nations.

Duties to adjacent coastal States: to prevent, reduce or compensate for pollution and other effects shown in Table 2 that affect resources under State ownership or control.

A similar set of duties falls on the coastal State ocean resource manager, including:

Duties on behalf of the State's citizens: to maximize earnings while minimizing environmental impacts.

Duties to the Nation: Prevention of pollution entering the EEZ; protection of endangered species and marine mammals; facilitation of interstate commerce and safe navigation, acting consistent with national security interests.

"In the past, the interests of the States and local communities have usually been projected from the shoreland seaward. A more appropriate approach is to start from the location of the activities in the EEZ and project the effects and impacts shoreward."

Duties to the coastal local governments: Prevention of air and water pollution that would affect them, assistance in dealing with planning and socio-economic impacts.

Of course, federal and State resource management agencies operate under the terms of ocean resources management law. However, two additional norms generally guide public decision-makers: agency policy and public duties. But, only a portion of these are ever formally written into law.

The law: a framework of procedures and processes duly adopted by a legislative body guiding decision-making in a given area, not necessarily predetermining every outcome, usually not exhaustive, usually not eliminating all discretion in decision-making.

Agency policy: the objectives that a particular governmental agency wishes to achieve during its tenure, working within the broad limits established by the law. Usually not so comprehensive or all inclusive as to eliminate discretion in dealing with matters not directly in conflict with agency objectives.

Public duties: an inherent part of the execution of public tasks, related to norms of fairness and justice, that flow from considerations of equity. On a par with the law, sometimes spelled out in the law, sometimes not.

Much of the difficulty associated with the operation of the present OCS oil and gas leasing program, for example, centers around the different weights that various interests tend to give to these three norms.

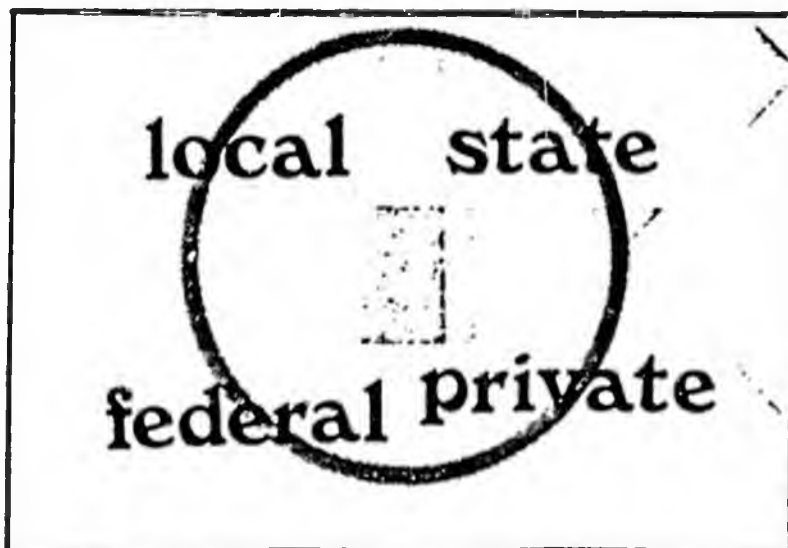
In the past, the interests of the States and local communities have usually been projected from the shoreland seaward, and terminated arbitrarily at the boundary of State ocean waters. A more appropriate approach, however, is to start from the location of the activities in the EEZ and project the effects and impacts shoreward to the State coastal zone and shorelands. This lends a more accurate view of the range and extent of the State interests that need to be protected in State-Federal arrangements governing the EEZ.

Furthermore, the concept of "shore-linked" impacts of ocean development is useful in gauging the roles of the State and federal governments in ocean development. Long-term commitments for the exclusive use of ocean space, and the resultant long-term commitment of the shoreside support facilities, require the concurrent approval of both the federal government and the involved coastal States. The Deepwater Ports Act and the Ocean Thermal Energy Act set a precedent for shared decision-making in the case of ocean developments of this type.

An efficient EEZ management process will also have to address the uncertainty due to the complexity of ocean processes. Given our incomplete understanding of ocean dynamics, accurate predictions of effects of a given ocean activity are usually not possible. Nonetheless, new ocean developments will not be held back until all of the necessary knowledge about ocean processes is known. Improved ways are clearly needed to deal with these uncertainties.

To minimize uncertainty, operationally-linked monitoring programs should be used. Prior to the start-up of a new ocean activity, baseline studies should be performed. Then, agreement should be reached among the potentially affected interests, on levels (thresholds) of key parameters that, if reached, would trigger pre-agreed changes in the operation of the activity (or full shut-down, in the worst case situation). Too often there is no mandated connection between monitoring and the operation of the program. Operational rules and procedures are established at the onset of a new ocean program, based on the best information available at that time. The tendency is for these procedures to remain fixed throughout the operation despite the fact that a properly designed monitoring effort could be providing highly relevant and useful information to the ongoing program.

In some ocean situations, we know too little to design an operationally-linked monitoring program. If the gaps in our understanding are of that magnitude, an even more conservative approach should be adopted (e.g., a scaled-down project) until the needed basic research has been completed and a proper monitoring program can be designed. Too little effort has been put into this aspect of the ocean management problem. The result has been unprofitable debates over the likely consequences of a proposed ocean development activity and final decisions that are often largely political rather than technical in nature. Even our current understanding of ocean science should permit us to do better than that.



SECTION VII
CONCLUSION

"Whether the words are 'consultation,' 'joint participation,' or 'concurrent authority,' the message is the same — the process of managing America's EEZ resources must involve all who are affected."

"Our goal is to establish an effective, joint participatory process with the federal government that recognizes the legitimate interests of the coastal States and their citizens, and best serves the interests of the Nation."

Whether the words are "consultation," "joint participation," or "concurrent authority," the message is the same — the process of managing America's EEZ resources must involve all who are affected.

The coastal zone will continue to be "home" for land-based facilities — ports, piers, warehouses, docks, and processing plants — so integral to EEZ activities. As these activities expand and intensify in the future, the need for coastal support facilities will also increase and with it, the growth of associated and necessary local "infrastructure"— roads and related municipal and county services. The construction and operation of these facilities and urban infrastructure will place financial, social and environmental demands on coastal governments and their citizens. Likewise, the environmental impacts offshore from ocean resource development are of direct interest and concern to the citizens of the coastal States. These citizens therefore must be part of the EEZ resource management process.

There is some statutory precedence for involving coastal States in ocean resource management. For example, consultation authority is available to coastal State governors and local governments under the Outer Continental Shelf Lands Act. A joint participation mechanism is available under the Fisheries Conservation and Management Act, where the federal government, coastal States, commercial and recreational fishing interests are all involved. Coastal State concurrent authority is available under the Deepwater Ports Act. But all too often the degree of involvement of coastal State governments in the EEZ resource decision-making process does not match the impacts of the EEZ resource activity on the coastal States.

Our proclamation, asserting the rights and responsibilities pertaining to the protection, conservation and development of resources of the United States Exclusive Economic Zone, and the accompanying policy statement speak to this process and partnership. The coastal States' Proclamation does not, however, call for an extension of State boundaries, or more water or submerged land "ownership." An extension of the State waters boundary to 12 miles, while it may have specific benefits, would not address the larger issue of effectively managing this vast interdependent ecological system.

Rather, our goal is to establish an effective, joint participatory process with the federal government that recognizes the legitimate interests of the coastal States and their citizens, and best serves the interests of the Nation. The elements of this joint participatory process include: an equitable division of EEZ resource development costs and benefits, full recognition of the duty to future generations, the need for ocean research

and environmental protection, and shared decision-making for all ocean activities affecting the interests of the citizens of coastal States. These elements will be our guide as we actively seek to improve the existing piecemeal, and all too often confrontational, approach to EEZ resource management. An effective intergovernmental process must, and can be achieved if this nation is to reap the full benefit of its EEZ resources.

The coastal States have already been active in pursuing this EEZ partnership with the federal government through proposed EEZ hard mineral mining legislation and national oil spill liability and compensation legislation. Other proposals being considered include: completion of comprehensive State Coastal Zone Management programs for the territorial sea, coordination of State ocean management agencies and policies, greater ocean awareness through Coastweeks and other public education programs, examination of an equitable EEZ revenue sharing formula, development of legal agreements between the coastal States and the federal government regarding the exchange of ocean research data and information, strengthening of State concurrence authority over federal ocean activities having direct effects on coastal States, and enactment of legislation establishing a national ocean policy commission.

The coastal States are committed to taking their rightful place as full partners with the federal government in managing the resources of the U.S. EEZ. Together, our nation will move forward to meet the challenges and develop the potential of its ocean heritage.

"An effective intergovernmental process must, and can be achieved if this nation is to reap the full benefit of its EEZ resources."

Footnotes

1. For example, the Coastal Zone Management Act grants States the authority to require federal activities [illegible] in a State's coastal zone, and activities that are federally licensed or permitted that directly affect a State's coastal zone, to be "consistent" to "the maximum extent practicable" with that State's coastal management program. 16 U.S.C.§1456 (c).

   The Outer Continental Shelf Lands Act provides for limited input by a State Governor regarding the size, timing or location of a proposed lease sale. A Governor "may submit recommendations to the Secretary" of the Interior Department, and the Secretary must "communicate to the Governor, in writing, the reasons for his determination to accept or reject" the Governor's recommendations. 43 U.S.C.§1345.

   The Deepwater Ports Act requires the approval of a Governor of an "adjacent coastal State" before the Secretary of Transportation can issue a license for a Deepwater Port. Further, the Secretary is required to condition a Deepwater Port license, upon such notification by the Governor, "so as to make [the license] consistent with" State programs "relating to environmental protection, land and water use, and coastal zone management." 33 U.S.C.§1508.
2. On behalf of the coastal States, Michael Fischer, then Executive Director of the California Coastal Commission, drafted a proposal outlining the parameters of such a study and approached the William H. Donner Foundation of New York City regarding funding. After a period of negotiation, the Donner Foundation provided a grant to the CSO to undertake the EEZ study.
3. The Magnuson Fishery Conservation and Management Act provides that the exclusive management authority of the U.S. "shall not include, nor shall it be construed to extend to" species of tuna. 16 U.S.C.§1813. The Proclamation likewise expressly provides that "highly migratory species of tuna ... are not subject to United States jurisdiction and require international agreements for effective management."
4. Gordon, W.G., and R.E. Gutting, Jr., Winter 1984/85. "The Coastal Fishing Industry and the EEZ," *Oceanus*, Vol. 27, No. 4.
5. Id.
6. Watkins, Joel S., 1984. "Petroleum Exploration and Production in the EEZ," Chapter 4 of *Symposium Proceedings, A National Program for the Assessment and Development of the Mineral Resources of the United States Exclusive Economic Zone*. Sponsored by the Department of the Interior.
7. Curlin, J.W., 1984 "Technology and Oil and Gas Development in the Exclusive Economic Zone," in *Exclusive Economic Zone Papers*, reprinted from *Proceedings of Oceans '84*, Washington, D.C., Sept. 1984.
8. 50 U.S.C. Sec.§95-98h.
9. *See* Ballard, R.D., and J.S. Bischoff, 1984, "Assessment and Scientific Understanding of Hard Mineral Resources in the EEZ," in *Symposium Proceedings, A National Program for the Assessment and Development of the Mineral Resources of the United States Exclusive Economic Zone*. Sponsored by the Department of the Interior.
10. Champ, M.S., and N.A. Ostenso, Winter 1984/85. "Future Uses and Research Needs in the EEZ," *Oceanus*, Vol. 27, No. 4.
11. *See* Sandia National Laboratories, 1984. The Subseabed Disposal Program: 1983 Status Report. Report No. SAND 83-1387, Albuquerque, New Mexico.
12. *See* Booz-Allen, 1980. "Hazardous Waste [illegible]eration and Commercial Hazardous Waste Management Capacity: An Assessment." U.S. GPO No. SW894.
13. Presidential Proclamation 2667 of September 8, 1945.
14. Compare Part V, United Nations Convention on the Law of the Sea, with the March 10, 1983 U.S. EEZ Proclamation.
15. Statement by the President on the Executive Economic Zone of the United States (March 10, 1983).
16. 332 U.S. 19 (1947).
17. Id. at 35.
18. Id. at 38-39.
19. 339 U.S. 699.
20. Id. at 705.
21. 339 U.S. 707.
22. Id. at 7[illegible]
23. 43 U.S.C.§13[illegible] *et* [illegible].
24. 43 U.S.C.§1331 *et seq.*
25. 43 U.S.C.§1332 (2)
26. 420 U.S. 515.

FOOTNOTES, continued

27. Note that Florida and Texas have federally recognized boundaries in their Gulf of Mexico waters out to 3 marine leagues, or roughly 10 miles.
28. Id.
29. "A review conducted by NOAA's Office of Ocean and Coastal Resource Management (OCRM) of Federal consistency actions during 1982 indicated that the states reviewed approximately 300 direct Federal activities under Section 307(c) (1) with non-concurrences in about 3 percent of the cases. Approximately 7500 Federally licensed and permitted activities were reviewed under Section 307(c)(3)(A) and the states objected in about 2 percent of the cases. Approximately 500 Federally licensed activities described in detail in OCS plans under Section 307(c)(3)(B) were reviewed by the states with nonconcurrences in about 0.5 percent of the cases. Finally, the states reviewed approximately 600 Federal assistance proposals to state and local governments under Section 307(d) and objected in about 0.5 percent of the cases. These numbers are approximate since precise data was unavailable in a few cases; but they also reflect a tremendous level of success under existing mechanisms.

    "the litigation history of the consistency provisions provides further evidence that the Federal consistency system works. NOAA's research indicates that in the twelve years since the passage of the CZMA 23 lawsuits have been brought against Federal agencies on consistency grounds. Of these, 9 of the cases involved OCS leasing, 2 involved fishery management plans, 5 involved activities on Federal enclaves within the coastal zone, and 7 involved activities, including permits located within the coastal zone." CZM Federal Consistency, H.R. Rep. No. 98-52, 98th Cong. 2d Sess., 59, March 27 and June 26, 1984.

APPENDIX A

History of the Coastal States Organization's Exclusive Economic Zone Project

The two year course of the work, commencing in January 1985, can be divided into six segments:

1. **January to May 1985 — Preparation of a draft report for use at the EEZ Symposium**

   The 300-page report included a description of current and projected EEZ activities, a discussion of national and State interests in the EEZ, an analysis of the fundamental problems of ocean resources management, and an assessment of the presently available legal tools for protecting coastal State interests.

2. **June 24 to 26, 1985 — The CSO-Sponsored EEZ Symposium, Orcas Island, Washington.**

   The Symposium involved about 60 participants representing a range of ocean users, levels of government, and academic specialties. The meeting focused on the significance of the EEZ proclamation, resources and uses of the EEZ, current and emerging problems in the management of ocean resources, present tensions between State and federal levels of government, and options for improved management.

3. **July to August 1985 — Formulation of a Set of EEZ Policy Options for the Coastal States**

   Five sets of options were formulated: strengthening the fundamentals of the existing CZM system; strengthening the financial base of State coastal programs; improving the effectiveness of Federal-State working relations; changing the basic ground rules through legislative amendment; and developing an enhanced ocean education, awareness, and planning effort. These were complied in a report prepared for a CSO meeting in Bar Harbor, Maine, in August 1985.

4. **September to December 1985 — Consideration of a Tentative CSO Plan of Action Based on the Policy Options Discussed at the Bar Harbor Meeting.**

   The tentative plan included general recommendations in four areas: strengthening of the existing CZM program; developing an ocean awareness program; legislative action to better define the coastal State role in major EEZ development activities; and seeking support for a legislatively-created national ocean policy commission.

5. **March to August 1986 — Development of a Modified Approach: Emphasis to be on a Proclamation of States' Rights and Responsibilities in the EEZ and an Accompanying Policy Statement.**

   Based on discussions at CSO meetings in Corpus Cristi, Texas (December 1985), Washington, D.C. (January 1986), and Seattle, Washington, (March 1986), a coastal State proclamation and a supporting policy statement were prepared as the more appropriate way of expressing the present policy positions of the coastal States with regard to the EEZ.

6. **September to December 1986 — Completion of a Final Report, Including Final Versions of the Proposed Coastal State Proclamation and the Accompanying EEZ Policy Statement.**

   Preparation of the present report and submission to the annual meeting of the CSO membership in Florida in December 1986.

   Much of the work of the study was accomplished in a series of meetings between the Consultant, the EEZ Steering Committee, and the Executive Committee of CSO. These meetings were held every two to three months during the course of 1985 and 1986.

   The Consultant's final report was submitted to CSO in late October 1986. After consideration by the Steering and Executive Committees, the report was presented to the CSO Governing Board during its annual meeting in December.

7. **December 1986 — April 1987 — Adoption of Final Report.**

   The Proclamation and Policy Statement, as revised, were adopted by the CSO Governing Board at the [illegible]th Annual CSO meeting, with the understanding that the Executive Committee give final approval on the balance of the report at its March 1987 meeting. The CSO Executive Committee approved the full final report, giving direction for its publication by early April 1987.

APPENDIX B

CSO EEZ STEERING COMMITTEE

Arthur J. Rocque, Jr.
Chairman
Connecticut

Richard F. Delaney
Massachusetts

Robert Grogan
Alaska

John Hunter
California

Rod Mac[illegible]
Washington

Jim Ross
Oregon

Murray Towill
Hawaii

EEZ Steering Committee Staff

R. Gary Magnuson
Director

David C. Slade
Counsel

Catherine B. Nash
Assistant to the Director

The Coastal Fishing Industry and the EEZ

by William G. Gordon
and Richard E. Gutting, Jr.

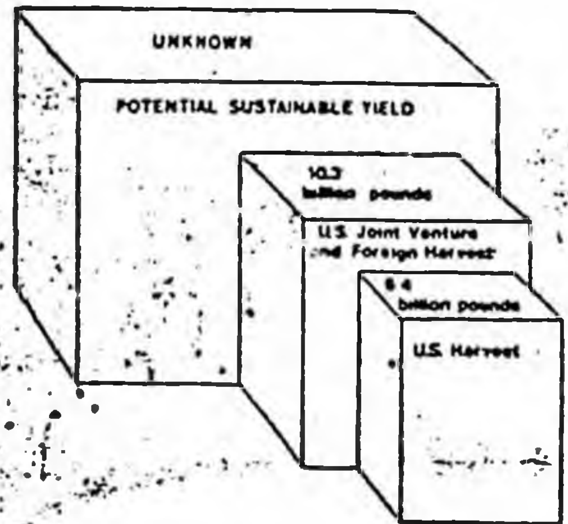
On 10 March, 1983, President Reagan proclaimed the establishment of a 200-mile Exclusive Economic Zone (EEZ) for the United States. The Proclamation and accompanying statement contain two points of importance to coastal fisheries. First, the United States will exercise "sovereign rights" over the living resources within 200 nautical miles of our coasts. Second, one purpose of the Proclamation is to "reinforce the government's policy of promoting the United States fishing industry."

By itself, the Proclamation does not appear to materially change U.S. jurisdiction over its coastal fisheries as set forth in the Magnuson Fishery Conservation and Management Act (MFCMA) of 1976. This act had declared that the United States has "exclusive fishery management authority" over all fish (except tuna) within the Fishery Conservation Zone, a zone essentially identical to the EEZ. The President's action does provide, however, an opportunity for Congress to reexamine our approach to developing these fisheries.

Leaders of the U.S. fishing industry consistently express the industry's desire to fully use the fishery resources within our new 200-mile zone; how the United States chooses to implement the President's Proclamation could provide the key to this development. The basic issue is whether our industry will be given the opportunity to grow in a manner that promotes efficiency and brings long-term prosperity, or whether we will allow this opportunity to be traded off to satisfy other political interests.

A Healthy Harvest

Our nation's coastal fisheries are an important source of nutrition and recreation, and contribute significantly to our economy, health, and quality of life. They are enormous, yielding about 10 billion pounds of food each year, or nearly 50 pounds for each person in the United States. Added to this amount is another 750 million pounds caught each year by recreational fishermen. Counting all subsidiary effects, our coastal fisheries contribute more than $23 billion to the economy each year and provide employment for more than a million people.



Fifteen percent of the world's fish and shellfish are found within the U.S. EEZ. Although American fishermen take the majority of the catch, there is significant room for expansion.

No other country has such abundance and diversity of fish and shellfish off its coasts; fully 15 percent of the world's living resources are contained within the U.S. EEZ. But the United States ranks only fourth* among the fishing nations of the world. Indeed, less than half the potential yield from U.S. fisheries is harvested and processed by U.S. fishermen and processors. The remainder is harvested by U.S. fishermen but sold to foreign processors, harvested by the fishing fleets of more than a dozen countries, or is left unused.

In 1976, through the MFCMA, the United States declared "exclusive fishery management authority" over its coastal fisheries and established "optimum yield"** as the primary goal of fishery management and development. Only that portion

* The first 12 fishing nations (in order) are: Japan, the Soviet Union, China, the United States, Chile, Peru, Norway, India, South Korea, Indonesia, Denmark, and Thailand.
** Under the MFCMA, optimum yield is defined as the amount of fish "which will provide the greatest overall benefit to the Nation" and as the [illegible] yield ... as modified by any relevant economic, social, or ecological factor" (emphasis added).

Haddock

of the optimum yield not needed by the American industry was to be made available to foreign fishing fleets. This preference to American fishermen for access to the resources, along with other provisions regarding the regulation of foreign fleets, was intended to spur rapid expansion of the U.S. fishing industry, provide jobs, and reduce the U.S. balance of trade deficit in fishery products. The act also emphasized that a national program was necessary to develop fisheries that were not being used by our industry.

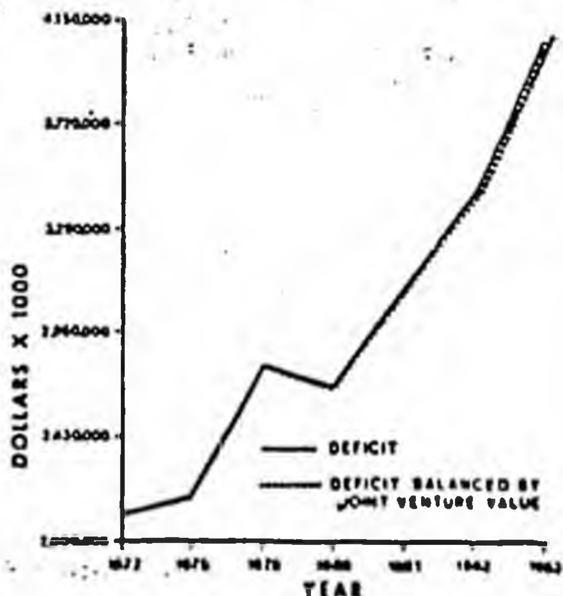
U.S. fishermen began to benefit almost immediately. Foreign fishing was reduced to help several stocks of fish* recover and American vessels began fishing for species that had been of interest only to the foreign fleets. This diversification was prompted in part from the existence of more fishing vessels in some fisheries than the resource and the economic situation could support, and from drastic reductions in traditional stocks. It would not have occurred, however, unless new markets had opened up for American fishermen. These markets were found offshore in new fishing arrangements known as "over-the-side" sales or "joint venture fishing." Under these arrangements, American fishermen catch the fish and deliver them to foreign processing vessels while still on the fishing grounds. Although these at-sea arrangements were new to the United States at the time the MFCMA was enacted, they had been common off the coasts of other countries for many years.

Joint fishing operations involving U.S. fishermen began in the Pacific in the summer of 1978, when the Soviet Union purchased about 2 million pounds of Pacific hake. Growth came rapidly. In 1983, over-the-side deliveries reached 959 million pounds, worth $51 million. Vessels from eight nations** conducted at-sea operations with American fishermen in both the Atlantic and Pacific fisheries. These arrangements have proved, on an interim basis, to be a major boon to building and maintaining the U.S. fishing fleets needed to replace the foreign fleets.

The willingness of foreign vessels to buy from American fishermen has not been matched by a similar willingness to buy new U.S.-processed products. Instead, the home countries of the foreign fleets continued to guard their domestic markets against American products. In Japan, for example, the U.S. industry continued to face protective tariffs and quotas as well as informal discrimination—such as intimations of poor quality in U.S. products—that provided substantial advantages to Japanese producers. In another instance, Spain discouraged market access by withholding import licenses or making them difficult to obtain. Similarly, the European Economic Community (EEC) used reference prices and high product tariffs to keep imports into member countries at a minimum. The development of overseas markets also has been impeded by the relatively high cost of U.S. production and the extraordinary strength of the U.S. dollar. As a result, the processing sector of the American fishing industry lagged behind the expansion of our fishing fleet. This trend is apparent from U.S. fishery statistics, which show a growing trade deficit despite increasing sales to foreign processing vessels in the same period.

These trends have prompted Congress to amend the MFCMA several times. The initial growth of "joint venture" fishing in 1978, for example, led to an amendment which made it clear that preference in access to fishery resources was to be given to both American harvesters and processors over the foreign fleets—resulting in the reduction of foreign processing offshore.

In 1980, Congress recognized that as long as foreign nations were permitted to continue a high level of fishing in the U.S. zone while U.S. fish exporters were denied access to important foreign markets, the United States would be unable to achieve full development. In response, the Act was



Joint ventures between U.S. fishermen and foreign processing ships have helped to offset the growing U.S. fisheries trade deficit

* Haddock and cod off New England, mackerel along the Atlantic seaboard, and ocean perch and Pacific hake off the Pacific Northwest

** Japan, South Korea, the Soviet Union, Italy, Spain, Portugal, Taiwan, and East Germany

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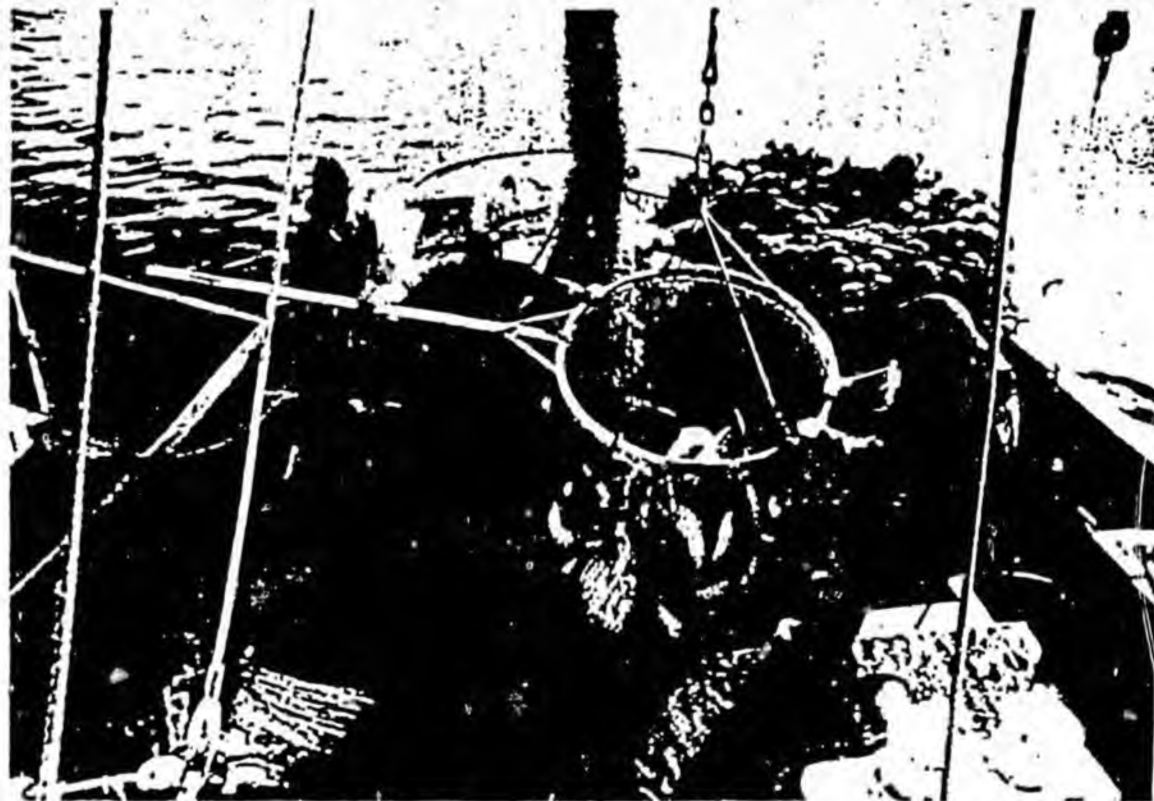


Hauling salmon off the coast of Washington. Photo by [illegible]

amended again. This time a "reduction formula" was devised which provided that as U.S. fishing increased, the level of foreign fishing would be reduced by an even greater increment. This formula was a compromise between those interests that sought to impose strict exclusion of foreign fishing and those interests that viewed mandatory reductions as contrary to the principle of full utilization endorsed at the Law of the Sea Conference. The formula, however, was so complicated that it essentially was never implemented.

Far more important was the 1980 codification of the so-called "fish and chips" policy, which linked the right of foreign fleets to fish in U.S. fisheries to the purchase of U.S. fish products. The fish and chips policy prescribes eight criteria for making allocation decisions, including such factors as whether the nation has tariff or non-tariff barriers to restrict importation of U.S. fish or fish products, the level of cooperation with the United States, and so on. Clearly, under this policy, market access was to be the touchstone of the federal government's decisions to allocate surplus fish to the foreign fleets. Nevertheless, while foreign companies often will buy fish from American fishermen in their effort to secure allocations, they continue to resist importing U.S.-processed products.

Foreign Relationships

The President's EEZ Proclamation raises the issue of whether the relationship between the United States and the foreign fishing fleets should be altered.

At the present time, the federal government allocates "surplus" fish to several different countries on a year-to-year basis. The process is exceedingly complex and time consuming. Last year, for example, allocations were made to 11 nations,* of which six fished,** and—as noted earlier—eight different countries were permitted to buy fish directly from American fishermen. Some 19 different allocation decisions were reviewed or made by numerous officials in the Departments of Commerce and State.

At the heart of all this activity is the fish and chips policy, but the future effectiveness of this approach to opening overseas markets is uncertain. In recent years, the number of foreign countries involved has increased, threatening to make the process even more complex.

The system also is becoming more and more political as growing numbers of lobbyists and applicants argue over fewer and fewer fish. Major disruptions of the allocation process have been prompted by such unrelated issues as the public's concern over whales and the Soviet Union's

* Bulgaria, West Germany, Italy, the Netherlands, Faroe Islands, East Germany, Japan, Portugal, South Korea, Spain, and Taiwan.
** West Germany, Italy, East Germany, Japan, South Korea, and Spain.

invasion of Afghanistan. These factors are weakening the industry's ability to plan for future growth and the federal government's ability to insist that foreign nations extend economic benefits to the U.S. fishing industry in exchange for the right to operate in U.S. coastal fisheries.

The President's EEZ Proclamation may help to counter these forces. Prior to the Proclamation some nations had disputed the right of the United States to impose economic conditions, arguing that we only had the right to scientifically manage and conserve fishery resources. The Proclamation makes it clear that the federal government views the access of foreign nations to our fisheries to be a privilege that is to be earned, and not a right. Since the Proclamation, agreements with several foreign nations have incorporated this principle. Along similar lines, Senators Robert Packwood (R.-Ore.) and Slade Gorton (R.-Wash.) sponsored an amendment to the Magnuson Act that would deny allocations to foreign nations as a matter of right. Similar proposals were made last year by Senator Ted Stevens (R.-Alaska) and Congressman John Breaux (D.-La.).

Congress is also working on ways to improve the government's implementation of the fish and chips policy. The changes in the MFCMA proposed by Senators Packwood and Gorton link allocations to the purchase of U.S. processed fishery products on a species-specific basis.* In other words, if a foreign nation wants an allocation of pollock, it must buy U.S.-processed pollock products. Representative Don Young (R.-Alaska) also has proposed to eliminate the government's authority to take factors unrelated to the fishing industry into account when allocations of fish are made to foreign fleets.

Not everyone is convinced that the fish and chips approach to opening foreign markets will work in the future. Senator Stevens, for example, advocates a scheduled phaseout of foreign fishing. In his view, the very existence of allocations inhibits the ability of our fishermen and processors to replace the foreign fleets. He points out that there is a possibility that U.S. fishermen will be denied increases in allocations for Pacific ocean perch in the Gulf of Alaska this year, while foreign fleets are permitted to continue their harvest.

This inequity stems from a large foreign allocation and an underestimation of the needs of U.S. fishermen delivering fish to foreign processing vessels. With the elimination of allocations, problems such as this would become nonexistent. Senator Steven's basic argument for a phaseout, however, is that an elimination of the foreign fleets would provide the incentive needed to overseas buyers to purchase U.S. products in order to fulfill the demands of their existing markets.

Senator Stevens argues that we need to send foreign nations a clear signal of our commitment to full domestic utilization of these resources. Foreign nations must be made aware that their fishing in our waters will soon be a thing of the past. A phaseout over a specified number of years, he argues, would send this signal, and would encourage foreign companies to invest in cooperative ventures with U.S. harvesters and processors. These cooperative arrangements would guarantee foreign companies access to the fisheries resources and all of the resulting privileges of U.S. harvesters and processors mandated under the MFCMA.

Private Versus Public Property

The President's EEZ Proclamation also raises another issue. Under the legal framework established by the Magnuson Act, the federal government has more of a public trust rather than an ownership relationship over coastal fishery resources. Under this philosophy, fish are viewed as common property available on a first-come, first-served basis to all Americans.

This open access to fisheries has led to rapid fleet expansion in those fisheries with products in high demand. Regulations necessary to conserve those fisheries have curbed the opportunities of individual vessels to maintain production levels. As a result, vessel productivity has dropped sharply in some fisheries and output costs have escalated.

The New England otter trawl fleet, for

* Editor's Note: On 10 October 1984, the Congress passed an amendment to the MFCMA clarifying that the United States is not required by law to allocate the total allowable level of foreign fishing, and requiring an evaluation of what a particular nation is doing to improve U.S. access to its markets for the particular species for which an allocation is sought. On 8 November 1984, President Reagan signed the bill.

A fishing vessel tied up to a Soviet factory ship. (Photo courtesy of the National Marine Fisheries Service)

example, grew from about 600 vessels in 1977 to nearly 1,000 vessels in 1982. Fleet landings increased, but not enough to warrant the increased number of vessels. Productivity declined and costs shot up. Between 1977 and 1982, the catch per unit of effort for the fleet dropped 15 percent. The effects of the decline, combined with rising input costs, resulted in a doubling of the cost to the fishermen per pound of fish caught. Prices received by fishermen barely rose enough to cover the increased costs, and there was no real improvement in the fleet's profitability.

One implication of the reference to sovereign rights in the President's Proclamation is ownership. This implication raises the issue of whether or not the federal government should vest itself with property rights over fisheries and rent or sell opportunities to fish to private industry. Legislation would be needed before such a change were made. Such a change, however, would mark a radical departure from the way fisheries are presently managed and developed.

Indeed, the legislation that has been proposed to implement the Proclamation goes out of its way to say that "Nothing in this Act is, nor shall be deemed to be, a basis for any royalty, fee, tax or other assessment of revenue, for fishing by United States flag vessels." But is this the best policy? Some argue that actions such as this should be taken to increase the economic return from our coastal fisheries.

A few state fishery agencies and regional fishery management councils have attempted to make fisheries more efficient by limiting the number of vessels. For a number of reasons, these "limited entry" programs have not been universally accepted. The licensing procedures used often appear very mechanistic and unresponsive to the interests of the resource users.

Some argue that a more acceptable way of controlling entry into our fisheries would be to allocate resource shares directly among the participants, perhaps via an auction. In this way, the resource shareholders, individually or collectively, could decide on the best harvesting system to take their share of the resource. As opposed to the first-come, first-served chaos of today, under a resource share approach it would be in the interests of the shareholders to apply fishing effort judiciously so as to insure perpetuation of the resource and the greatest long-term net economic gain. Proponents also point out that along with establishing a system to allocate resource shares, it is equally important that the shareholders be able to follow fishing strategies and marketing plans with a minimum of outside interference.

Proponents of this approach say that there is an urgent need to put some type of resource sharing plan into place to protect the gains made by domestic fishermen since the Magnuson Act was enacted. If this is not done, they argue, we will

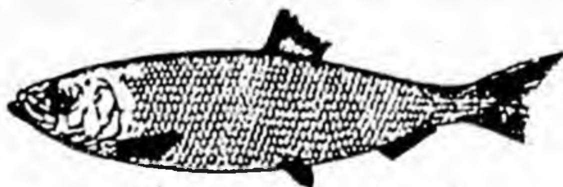
A West German fishing boat with a load of cod on Georges Bank. (Photo courtesy of the National Marine Fisheries Service)

see one fishery after another become overcapitalized with resulting adverse social and economic consequences.

What can happen without a share system is illustrated by the halibut fishery, which is managed on a first-come, first-served basis. To conserve the resource, fishery managers have had to drastically reduce the fishing season. What exists today is a mad scramble of intensive effort over a short period of time. This results in a massive infusion of fresh halibut into the market in a very short period of time. Under a share system, halibut fishermen would be able to exercise their personal judgment, based on resource, weather, and market conditions, to determine when to fish. The season could be spread over time with substantial reduction in conflict. Added to this would be reduced government involvement and regulations. Similar examples could be drawn from the Atlantic coast clam, scallop, and haddock fisheries.

Those opposed to resource sharing programs argue that they would be counterproductive, unfair, and too complicated to operate. The American commercial fishing industry, they argue, has economic problems that would be aggravated by share systems requiring payments or assessments for the opportunity to fish. Fishermen, they argue, make their contributions to society through the taxes they pay. They produce food products of high quality and domestic importance, generate substantial employment, and contribute to the international economic strength of the United States. They should not be required to pay

* A method of fishing that involves towing a net along the ocean bottom.



Herring

for the fish which are the common property of all Americans.

Clear Policy Needed

The American fishing industry has made substantial progress. Significant investments have been made, and new markets have opened up. The additional investment needed to develop these fisheries to their full potential, however, is massive and the direction of future market growth is unclear. Foreign governments are becoming increasingly resistant to further trade concessions and the political struggle over access to our fisheries has intensified. Several of our more traditional fisheries are overcrowded. Many people in government and industry believe we have come to a crossroads and need a clear and consistent policy to guide and foster future development.

The President's EEZ Proclamation said that our coastal fisheries belong exclusively to the citizens of the United States. It did not say what the United States intended to do with them. It does, however, give us an opportunity to fashion the national policies needed to insure that the American people obtain the maximum benefits from these resources. We believe that an enormous economic opportunity is waiting offshore for our domestic fishing industry and our nation. Whether or not we fully realize this potential depends on our courage to grasp it.

William G. Gordon is Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Washington, D.C. Richard E. Gutting, Jr. is Vice-President for Government Relations at the National Fisheries Institute, Washington, D.C.

The views presented in this article are those of the authors and not necessarily of their respective organizations.

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HJR

72

Alaska State Legislature

House of Representatives

Official Business

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Juneau, Alaska 99811

TO: MEMBERS OF THE SENATE LABOR AND COMMERCE COMMITTEE

FROM: Representative Steve Rieger, Co-Chair
Subcommittee on Housing and Banking
HOUSE JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

DATE: May 3, 1988

RE: HJR 72 am RELATING TO THE RESIDENTIAL REAL ESTATE MARKET

* *

This resolution was developed after hours of testimony was heard in the Subcommittee on Housing and Banking for the House Joint Economic Recovery Committee on current problems facing the Alaska residential real estate market. The purpose of the resolution is to give some backing to state agencies in their negotiations with mortgage insurers. The intent is to indicate legislative support to state agencies their efforts to work out cooperative restructuring programs designed to assist the residential real estate market.

This resolution cites the current difficult economic period for the state, particularly in the residential real estate market. The problem would be greatly helped by cooperation among the various participants in the market. It requests that various participating entities find creative and innovative approaches in dealing with the current crisis.

HJR 72 urges various financial participants in the Alaska real estate market to cooperate in developing innovative ways to restructure debt and to buy, sell, and trade properties for their collective benefit. It also addresses joint cooperation of various state, private financial and federal agencies to participate in economic stabilization.

Further, the legislature fully supports efforts by the Alaska Housing Finance Corporation, the Department of Commerce and Economic Development, the Department of Community and Regional Affairs, the Department of Revenue and the Alaska Permanent Fund Corporation to hold foreclosed-upon residential properties off the market in instances where such action makes long-term economic sense.

State of Alaska

House Majority Leader

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Representative Max F. Gruenberg, Jr.
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MEMORANDUM

TO: SENATOR TIM KELLY, CHAIR
SENATE LABOR AND COMMERCE COMMITTEE

FROM: MAX F. GRUENBERG, JR., HOUSE CHAIR
JOINT COMMITTEE ON ECONOMIC RECOVERY

DATE: APRIL 26, 1988

RE: JOINT COMMITTEE LEGISLATION

I would appreciate consideration in your committee of the attached resolutions at your earliest convenience. HJR 72, relating to the residential real estate market, and HJR 73, urging the Federal Home Loan Bank Board to consider extension of assistance to Alaska financial institutions similar to the Board's "Southwest Plan", were developed and considered extensively by the subcommittees and members of the House side of the Joint Committee on Economic Recovery. Both resolutions were introduced at the House members' request by the House Rules Committee.

After moving through committees, both resolutions passed the House on April 25. HJR 72 passed by a margin of 39 - 1. HJR 73 passed unanimously.

HJR 72 encourages flexibility and cooperation among various state and federal lending agencies with regard to the stabilization of the residential housing market. This resolution also recommends that state agencies hold foreclosed-upon residential properties off the market when such action makes economic sense.

HJR 73 seeks to extend financial assistance to the state's lending institutions similar to provisions found in the Federal Home Loan Bank Board's "Southwest Plan." Assistance would include an infusion of capital from the Federal Home Loan Bank Board to lower costs of troubled lending institutions while preserving services, competition and basic structures.

Thank you for your consideration of this request.