

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6047 HOUSE RESOURCES

451

Potential for State Management of Fisheries

NMFS Regional Directors have indicated potential for state management of the following FMPs or Potential FMPs.

Southwest Region

Pacific Council

- Northern Anchovy

Western Pacific Council

- Bottomfish
- Crustaceans

Southeast Region

- Red Drum (Gulf) - good potential
- Coastal Migratory Pelagics
 - Spanish mackerel - good potential
 - King mackerel (Atlantic)
 - Cobia - some potential
 - Bluefish - good potential
 - Cero mackerel - good potential
- Stone Crab (Gulf) - good potential
- Spiny Lobster (Gulf and Caribbean) - good potential
- Shallow Water Reef Fish (Caribbean) - good potential

Potential FMPs

- Red Drum (Atlantic) - good potential
- Shrimp (Atlantic) - some potential
- Sharks - some potential
- Weakfish (Atlantic) (Sciaenids - Spot/Croaker)

Northeast Region

- American Lobster (but complimentary EEZ FMP still would be needed)
- Summer Flounder
- Surf Clams and Ocean Quahogs
- Atlantic Salmon

Potential FMPs

- Atlantic Bluefish
- Striped Bass

RECREATIONAL FISHING

Estimated Numbers of Fish (000's) By Coast and
Distance from Shore, MRFSS, 1987

Coast	Inland and Ocean \leq 3	Ocean > 3	Total
Atlantic	186,036	37,227	223,263
Gulf			
West Fla.	**	**	70,124
Texas (1985)	**	**	24,827
Other States	50,592	4,738	55,330
Pacific *	36,713	9,276	45,989
Total	273,341	51,241	419,533

Note: The most recent data for Texas are for 1985.

* Data for the Pacific does not include recreational catch of salmon or catch of any species for Alaska or Hawaii.

** Data for West Florida and Texas where jurisdictions extend to 3 marine leagues (approximately 10 ten nautical miles) are available only for inside and outside 10 miles (see below):

Coast	Inland and Ocean \leq 10	Ocean > 10	Total
West Fla.	59,929	10,195	70,124
Texas (1985)	23,978	849	24,827
Total	83,907	11,044	94,951

Karen Oakley
To: House Resource Agency
Pertaining to Alaska's offshore
resources to "12 mile limit"



This paper will be given by
Jim Barker, myself and Mark Robinson
at the Offshore Technology Conference in Houston
during May 89'

I summarize Alaska's offshore minerals.
call me if questions arise

Tom Bundtson 457-2771
(FBK)

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ABSTRACT

Alaska, with about 74% of the U.S. continental shelf, is largely unexplored for placers in its vast shallow marine waters. Nevertheless there are numerous occurrences of marine minerals including gold, platinum, and cassiterite. Offshore dredging has recently begun in the Nome area. State and Federal agencies are preparing additional acreage for leasing.

INTRODUCTION

Alaska, with 47,300 miles or 54 pct of the U.S. coastline and about 74 pct of the continental shelf, is a vast, largely unexplored frontier for shallow water marine placers. Despite the general lack of mapping and only sporadic past prospecting, many prospects are known and a major mining operation for gold has recently begun offshore of Nome. Due largely to the demonstrated success of the Nome operation, the U.S. Minerals Management Service is preparing to conduct a lease sale of additional acreage further offshore from Nome and future sales are being considered elsewhere by both the federal and state leasing agencies.

From a global prospective, as onshore deposits are depleted or mining is restricted by other competing land uses, the industry may have to turn to the world's oceans as a source of mineral supplies. Over the last decade the first indications of such a transition have occurred. It is now well known that a number of strategically important minerals are found in the oceans and exploration continues. Deep water

References and illustrations at end of paper.

manganese nodules, for instance, are an important resource, however, most of the world's nodule deposits occur where neither the U.S. nor any other nation, has jurisdiction. The world community has yet to agree on the "International Law of the Sea" treaty which will be essential before any government can ensure developers the necessary protection of the enormous investment in a deep water mining operation.

Closer to shore marine mineral exploration in the U.S. was given a boost in 1983, when President Reagan created the 200 mile Exclusive Economic Zone (EEZ). By this single proclamation the surface area under U.S. jurisdiction was nearly doubled, thus enabling offshore mineral development to take place under the protection of U.S. law. Within the EEZ are major deposits of both shallow water deposits of the continental shelf, and deep ocean minerals such as the "black smokers" sulfide deposits of the Gorda Ridge off the coast of Oregon. At depths of two to three miles, however, the technology to economically mine the deep water deposits is still a long way off. Only the shallow water phosphorites and unconsolidated placers of the shelf can be considered viable resources at this time, and for this reason much of the mineral wealth of the United States EEZ can be expected to be found on the expansive continental shelf off Alaska.

ECONOMIC GEOLOGY AND PHYSICAL SETTING

Much of Alaska is composed of distinct terranes of Paleozoic or older foldbelts, volcanic arcs, plutonic complexes, and intermontane basins which together form the northwestern-most extent of the mineral-rich North American Cordillera. Onshore, Alaska is relatively well mineralized with the largest or highest grade American deposits for half a dozen mineral commodities. For instance, within 100 mi. of the Alaskan

coastline are the United States most important deposits of molybdenum, tin, zinc, tungsten, nickel, gold, platinum, and chromite. Altogether over 5400 metallic lode deposits are known onshore. Tertiary and Quaternary uplift of the coastal regions, subsequent weathering and the cycles of sedimentation have shed huge quantities of metalliferous sediments and sand and gravel resources into the adjacent seas.

Alaska's coastal waters are known for high energy tidal and longshore currents which rework and transport bottom sediments. Alaska's position in the high latitudes means most of the alluvial sediments are derived from mechanical weathering and grain reduction, and transport commonly occurs by high energy fluvial, and glacial processes. Consequently, low grade mineralized source rocks, distributed over a relatively large region, can provide sufficient valuable minerals to form sizable placers, providing a suitable natural hydraulic sorting mechanism is present. This is an important consideration in comparison to tropical regions where chemical weathering of the bedrock typically creates clay-rich residual placers that are much more localized in extent and can only be economic if bedrock contains sufficient high grade mineralization. Consequently, for the afore-mentioned reasons (e.g. source rocks, degradation, transport, depositional sites, and high energy marine systems) there is an excellent favorability for unconsolidated marine mineral placer deposits in Alaska. The most likely placer minerals to be found include gold, platinum, cassiterite, magnetite, chromite, rare earth minerals, and ilmenite, as well as sand and gravel.

There are numerous prospects, mining sites, and known occurrences of marine placer minerals along Alaska's coastline (fig. 1). Although the mining industry has generally focused on metallic minerals, development of offshore aggregate sources in the arctic is also of increasing interest. Oil development during the past decade, particularly the construction of offshore drilling islands in the Canadian portion of the Beaufort Sea, has required considerable sand and gravel supplies. Similarly, the town of Barrow, Alaska has resorted to offshore aggregate sources. In the next few years, sand and gravel resources from Camden Bay may be essential to proposed development of the Arctic Coastal Plain (ANWR), as an alternative to limited, environmentally restricted onshore sites. From southeast to northern Alaska a general listing of marine mineral and aggregate occurrences are summarized in table 1.

The area of the Alaskan EEZ with the greatest mineral potential is the Bering Sea. With the fall and rise of the sea level accompanying Pleistocene glaciation, the Bering Sea has intermittently become an extensive coastal plain extending to the Asian mainland. Now flooded, it is one of the widest continental shelves in the world. Numerous alluvial channels carrying and sorting sediment from the metalliferous highlands incised the coastal plain during glacial advances. Later as the glaciers receded and sea level rose, eolian sorting, storm surf, and ocean

currents reworked these sediments into lag and strandline deposits, and created, for example, the gold-rich beaches at Nome. It is important to note that relic mineralized alluvial channels and strand lines (e.g. a platinum-bearing channel near Chagvan Bay and buried gold-bearing channels of the Snake River near Nome) have in at least some cases survived the subsequent transgression cycles of the sea coast. As recently as 8,000 years ago dry land was continuous to Asia and made possible the populating of North America. The rivers and coastlines of that time are among the marine placer exploration targets of today.

RECENT MARINE MINERALS ACTIVITIES

NORTON SOUND

The Nome Mining District of the southern Seward Peninsula, is an example of offshore placer development. Due to onshore Quaternary uplift, a succession of ancient raised beachlines lie up to several miles inland. At least several additional submerged beach deposits have been identified up to 10 mi. offshore (fig. 2). Nome district placer production totals 4.56 million t. oz. of refined gold through 1987, 3.45 million t. oz. of which was mined from strandline deposits and the remainder from stream and glacial deposits. The present beach was the scene of frenzied hand mining when the Cheechakoos landed there in 1899.

The gold miners at Nome have long been intrigued with the potential of the offshore deposits. In the early days, hard-helmeted divers attempted to explore and mine the offshore gravels, but with little success. Over the years bizarre attempts were made to build huge wheeled mining devices that could be driven through the surf, however most became tangled wreckage on the beach as a result of the fierce storms driven out of the southwest that have made the Nome waterfront infamous. Finally in 1986, Inspiration Mines, Inc. (now Westgold Minerals) brought in the world's largest bucket line offshore dredge and began mining operations on approximately 21,000 acres of State of Alaska leases. The operation produced 36,000 ounces of gold in 1987 and a similar amount in 1988. Formerly a Malaysian tin dredge, the 15,000 ton BIMA is equipped with 30 ft³ buckets and has a daily through-put of about 30,000 yd³. Gold placer enrichment is believed to underlie as much as 22 square miles offshore Nome and the ultimate limits of the deposit have still not been delineated. Westgold continues an active exploration program chiefly utilizing seismic refraction and a barge-mounted rotary drill. Additional winter drilling through the ice has also been successful. On adjoining state leases a joint venture of Giant Bay Resources and Coastal Exploration, Ltd. has been active with a drill program. Meanwhile two additional dredges, No-5 and -6, operated by Alaska Gold Company continue to mine the elevated beaches onshore and have recently commenced winter stripping operations. By 1987 the operations at Nome had resulted in over 300 direct mining jobs. Gold production in 1987 was 75,000 ounces worth \$34.5 million; additionally millions of dollars have been expended by the companies for goods and services in the Nome area. Because of the BIMA's successful

debut in Alaska's 3-mile-limit, the U.S. Minerals Management Service is proposing to lease approximately 120,000 acres offshore Nome and a second area offshore Bluff. The lease sale is presently scheduled for July of 1989.

The Bluff/Soloman District, about 40 miles east of Nome, also contains both onshore and offshore strandline deposits that have been mined for gold in previous years. During 1939 - 1941, Auric Resources exploited an offshore placer deposit using a small dredge operation during the winter. In 1983 Phoenix Marine Exploration Inc. towed a barge mounted dredge to Bluff to develop the offshore strandline. Unfortunately, a storm beached the mine plant and the project was cancelled.

The source of the gold at Bluff has been traced to lodes in the upland adjacent to the beach and in the Solomon River drainage where lodes such as the Big Murre Mine were discovered. According to Collier and others (1908), the onshore strandlines vary from 6 ft. in thickness one mi. inland from the coast to nearly 30 ft. thick one-quarter mi. from the beach, suggesting that the deposits hosting the gold placers thicken rapidly as they approach the sea. Generally these earlier workers believed that the auriferous gravels were a composite of colluvium, stream, and strandline concentrations.

Fine gold is also found along the coast and seafloor to the west, northwest of Nome. At Port Clarence and Grantly Harbor there are numerous gold placer streams that drain into tidewater. Bottom sampling in 1974 in Tuksuk Channel (between Imuruk Basin and Grantly Harbor) was conducted by personnel with the Dept. of Marine Science, University of Wisconsin. Results showed a range of gold values in heavy mineral concentrates between \$0.30/ton to \$83.20/ton (based on \$160.00 gold/oz) (Moore and Welkie, 1976).

GOODNEWS BAY AREA

Potential platinum placer areas include waters of Chagvan and Goodnews Bays and offshore Red Mountain in Kuskokwim Bay (fig. 3). Because 650,000 t. oz. of placer PGM have been recovered onshore, it is generally suspected that PGM also occur in the shallow (less than 40 ft.) marine environment that borders the same source rock. The State of Alaska, Division of Mining, is presently conducting an environmental review of applications for offshore prospecting permits and a decision relative to granting these permits is expected this year. To date no deposits have yet been delineated. Magnetic surveys and seafloor sediment sampling, however, by the Bureau of Mines show that platinum source rocks extend offshore where the seafloor was an emergent foreland plain as recently as 8000 years ago. High-energy ocean processes are presently transporting and depositing sediment such that PGM-bearing sediments are reworked during on-going transgression and later masked by barren littoral drift of glacial origin. Isoferroplatinum and osmiridium are the principal PGM minerals found in

the marine environment. The PGM minerals are generally very fine-grained (<100 μ m) and recovery by conventional gravity methods may not be possible.

Exploration targets include 1) lag-type placers and possible submarine strands formed since present transgression began, and 2) ancient buried marine scarps and strandlines, and drowned fluvial deposits. Examples of both categories are found offshore of Red Mountain in Kuskokwim Bay.

BERING STRAIT

The Cape Prince of Wales area is located in the Bering Strait in western-most Alaska and provides an excellent example of a future offshore exploration opportunity (fig. 4). Recent studies of a reconnaissance nature have been undertaken through combined efforts of the USBM and the USGS. Occurrences of heavy minerals in concentrates containing cassiterite, wolframite, xenotime, ilmenite, zircon, scheelite, monazite, and other ore minerals were identified, however no concentrations of economic value have yet been delineated and to date there has been no industry activity reported.

Regional geologic and oceanographic factors indicate that essential criteria are present for deposition of marine placers in the vicinity. An extensive east-west belt of tin-granites trend across the western Seward Peninsula and include the important lode tin deposits at Kougarok and Lost River. The belt of tin-granites also extends further west, well into northeast Siberia where other tin and tungsten deposits occur; several have sustained past and present production. In the Bering Strait area, the deeply eroded granitic massifs at Cape Prince of Wales, Fairway Rock, both Little and Big Diomed Islands, and East Cape (Siberia) are part of this belt. From late Tertiary to the present large quantities of sediment have been shed from all of these source rocks. Prevailing ocean currents flow northward from the northern Bering Sea into the Arctic Ocean and particularly intensify on approach to and through the Bering Strait. To the north of the Strait, current velocity decreases and entrained sediment deposition begins. Prevailing northeast-trending current and swells driven by southwest winds have modified the sediment to form the shallow Cape Prince of Wales Shoal. Ocean swells further rework and transport sediment (particularly the low specific gravity grains) across the shoal toward the surf zone where it is distributed by northeast-trending winds to form the Shishmaref Spit, one of the largest features of its kind in the world. The result of the combined littoral, surf, and eolian transport processes result in a prominent one-way movement and sorting of sediment through a high energy marine environment into a lower energy coastal regime.

BEAUFORT SEA

Limited studies of the Beaufort Sea and adjacent areas show buried sand and gravel fluvial

systems and beach strandlines extending for distances of up to 200 mi., from Alaska's arctic coast (Hopkins and others, 1979). Fluvial systems likely extend off the deltas of the numerous, braided channel rivers in the eastern arctic (e.g. Sagavanirktok, Canning Rivers), and gravel is widespread in barrier islands and beaches (fig. 5). Additionally, some heavy mineral concentrations have been noted in raised strandlines along the arctic coastal plain, but significant metallic concentrations have not been documented.

Sand and gravel occur in numerous dynamically active accumulations from shoreline out to the midshelf in the Beaufort Sea (Stauffer, 19). Barrier islands occur along one-third of the 400 mi. Beaufort Sea coast and are generally composed of coarse gravel. Further offshore, extensive areas of sand lie along the outer shelf.

Overall little is known of recent or fossil sand and gravel accumulations along the Beaufort Sea coast. There are abundant resources, however some potential areas may lie at uneconomic depths and covered by fine sand and marine muds. Additionally, the coast line is rapidly eroding (up to several meters per year) due to poorly understood marine and ice-pack processes coupled with permafrost thawing. Removal of aggregate from near shore sites and barrier islands will have to be carefully situated to prevent extreme erosional consequences.

COOK INLET

During the early 1980's Aspen Exploration Inc. reported encouraging concentrations of placer gold in marine sediments of Cook Inlet. It has long been known that minor amounts of gold can be panned from beaches along the lower Kenai Peninsula. Aspen applied for a 238,000 acre offshore prospecting site near Anchorage and a 38,000 acre site near Ninilchik on the Kenai Peninsula to evaluate possible economic concentrations of placer gold; however, the State of Alaska has denied these permits because of strong opposition from the commercial fishing industry.

YAKATAGA

During the 1980's there has been further exploration of the Yakutat-Yakataga gold-bearing beach sands on the north coast of the Gulf of Alaska by both industry and government groups. Small scale hand mining has occurred along the beach since the beginning of the century. In the 1970's the USGS and the USBM studied the placer potential and researchers from the University of Alaska tested mineral processing characteristics. During 1986 and 1987, Cusac Resources operated a 500 yd. day twin Richert Spiral concentrator on an onshore Yakataga strandline about 80 mi. east of Cordova. Fine-gold, ilmenite, and abundant garnet were recovered from the project. The garnet was thought to have equal value to the fine gold.

SOUTHEAST ALASKA

Several marine placer occurrences (table 1) and one former undersea hardrock mine are located in southeast Alaska waters. Between 1967 and 1979 barite was mined offshore of Castle Island near Petersburg. The ore was drilled and blasted underwater. The broken material was then recovered by a clam shell and loaded onto a bottom-dump barge, which was towed close to shore and opened. The rock was then pulled ashore with a drag line, crushed, and stock piled. Originally the barite was loaded directly onto an ocean vessel in lots of 20,000 tons or more. Later a heavy media cleaning circuit and bagging plant were added. About 100,000 tons of barite were mined each year.

Similarly, copper was also mined below tide level in Prince William Sound. At Ellamar, glory hole mining was conducted within a coffer dam.

Elsewhere in southeast Alaska, lode deposits of rare-earth mineralization extend offshore at several prospects, for example near Bokan Mountain, southern Prince of Wales Island. At Lime Point, most of the reserve potential of a large high-grade barite deposit extends offshore for a distance of at least 1000 ft. Offshore of Haines, a titaniferous magnetite placer deposit as large as 0.5 billion tons was formerly explored under lease to the U.S. Steel Corporation. The property is now inactive.

ENGINEERING AND ENVIRONMENTAL CHALLENGES

There are hurdles to overcome for any successful mine development in Alaska's EEZ. The future for marine placer development in Alaska is handicapped by a short operating season, late winter ice that doesn't melt until well into the spring, storms, high costs, and remoteness. Stringent environmental regulations must be met. However, it is the apparent belief of the dredge operators at Nome, for instance, that the season can be extended and the storms contended with by proper engineering and the sheer size of the equipment now employed. With proper mine planning the impact to the environment can also be mitigated.

Lengthening the mining season poses some challenging engineering problems. Pertaining to the Russian arctic, a news article printed in Pravda, April 1975, described winter offshore tin dredging in the Arctic Ocean. Suction cutter heads were employed and operated through the ice. Gravel was transported by pipeline to a concentrator plant set in an old ship hull and frozen in the ice. In 1940 at Golovin, Alaska, a mining operation reportedly was successful by utilizing a truck-mounted clam-shell bucket that also operated through the ice. Trucks then transported the gravel to shore where it was processed following the spring thaw.

Environmental assessment of offshore placer development will probably play a key role in determining whether or not mining can take place. The Federal Norton Sound offshore lease sale

scheduled for July of 1989, has focussed on sea bed disturbance and metal contamination, mainly by mercury. Subsistence and commercial fishing are given significant weight during deliberations and mine stipulations will reflect this. It is likely that specific requirements for tailings disposal, reclamation, and metal contaminant limits and monitoring studies will be a required part of any mining development offshore. Westgold Minerals Inc. and the State of Alaska are continuing to study the effects that the BIMA operation has on the environment.

CONCLUDING STATEMENT

Alaska's development of marine placers, is promising, although until recently, little was known of the coastal geology, physiography, or offshore mineral potential. In addition, the technical aspects of arctic marine engineering are not understood by the general mining industry and there is little documented experience to allow an assessment of the environmental consequences of mining. This situation continues to be aggravated by the lack of oceanographic data, and other resource-oriented surveys. State and Federal leasing and coastal zone management agencies have just recently demonstrated an attitude which will undoubtedly result in additional offshore areas being made available for leasing. The restrictive policies might well be replaced with environmental constraints which, while substantial, will reflect a growing confidence in the private sector to adhere to prudent technologic procedures to the benefit of all. The present marine mining operations near Nome demonstrate a successful venture with solid approval from the community and agency sectors. Development of mineral resources can only be done by industry which creates jobs and export products. Industry should be assisted and encouraged by 1) a scientific data base provided by government and university programs, and 2) favorable leasing policies.

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Table 1. - Alaskan marine mineral occurrences.

Map No.	Locality	Commodity	Reference ^{1/}
1.	Behm Canal	gold, garnet	1, 2
2.	Prince of Wales Is.	rare earth minerals, zircon ^{2/}	3
3.	Bradfield Canal	gold	2
4.	Castle Island	barite ^{2/}	2
5.	Taku Inlet	ilmenite, magnetite, gold	4
6.	Lituya Bay	gold, ilmenite, trace platinum	5-8
7.	Haines	magnetite	2
8.	Yakutat-Yakataga	gold, magnetite, ilmenite, garnet	5-7
9.	Ellamar	copper ^{2/}	9
10.	Cook Inlet	gold	10
11.	Claim Point	chromite	11
12.	Kodiak Is.	gold, trace platinum	12
13.	Shelikof Strait	gold	2, 12
14.	Ugak Bay	gold	2
15.	Togiak Bay - Ugashik	gold, ilmenite, zircon	2, 13
16.	Chagvan Bay	platinum, gold	4, 14, 15
17.	Kuskokwim Bay	platinum, gold, chromite, ilmenite	4, 14, 15
18.	Golovin Bay	gold, monazite	15, 16
19.	Bluff	gold	4, 17
20.	Nome	gold, minor scheelite, cassiterite	4, 18, 19
21.	Grantley Harbor	gold, minor scheelite, cassiterite	15
22.	Cape Prince of Wales	cassiterite, minor monazite, xenotime, wolframite, ilmenite	4
23.	Candle to Deering	gold	20
24.	Beaufort Sea	sand and gravel	4, 21-23

^{1/} List of references at end of paper; additional information sources cited in bibliographies of individual references.

^{2/} Marine lode deposits located below the low tide level also included in table 1.

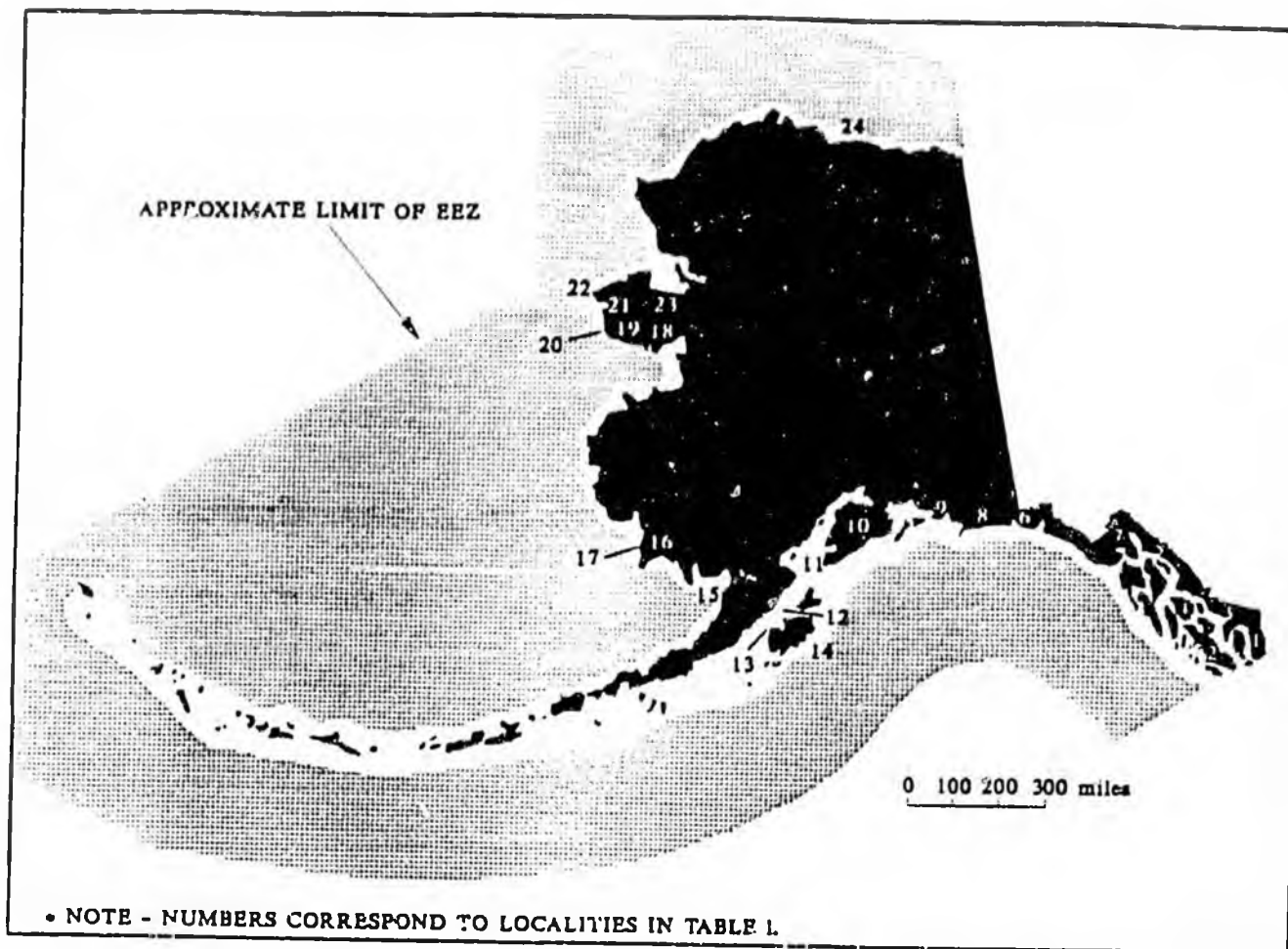


FIGURE 1. - Occurrences of Marine Minerals Offshore Alaska

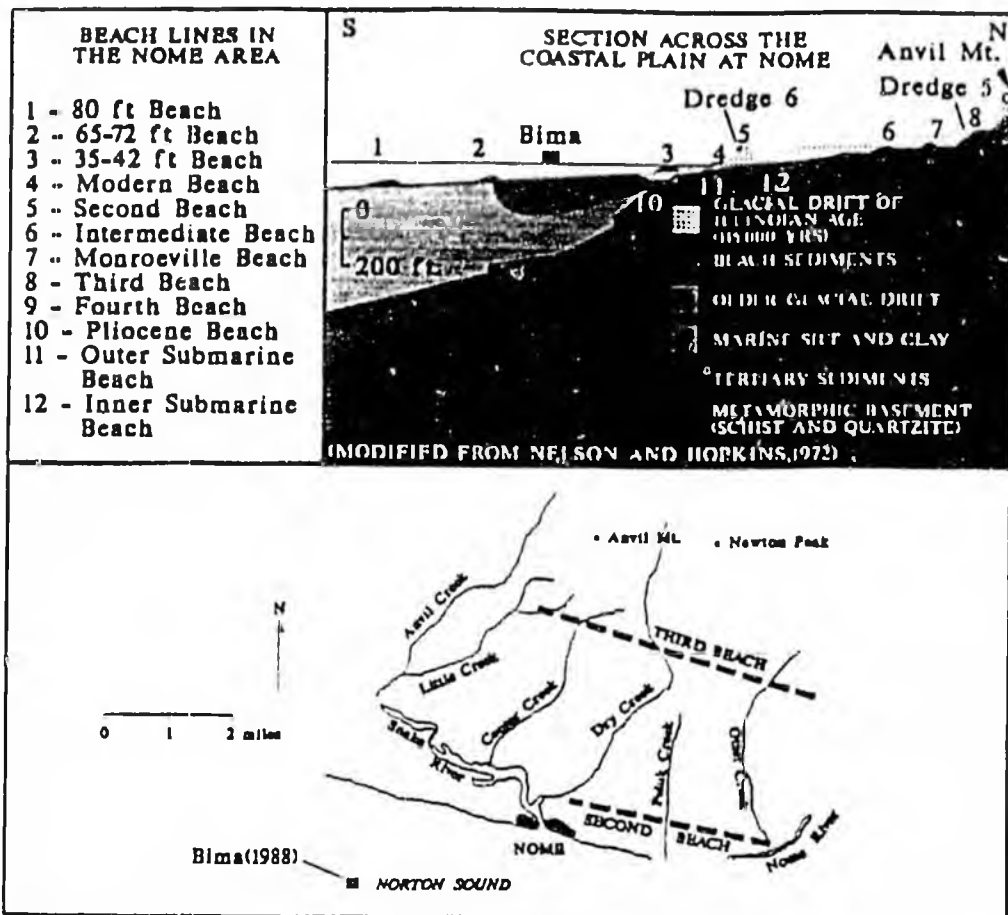


FIGURE 2. - Marine Placer Deposits at Nome, Alaska

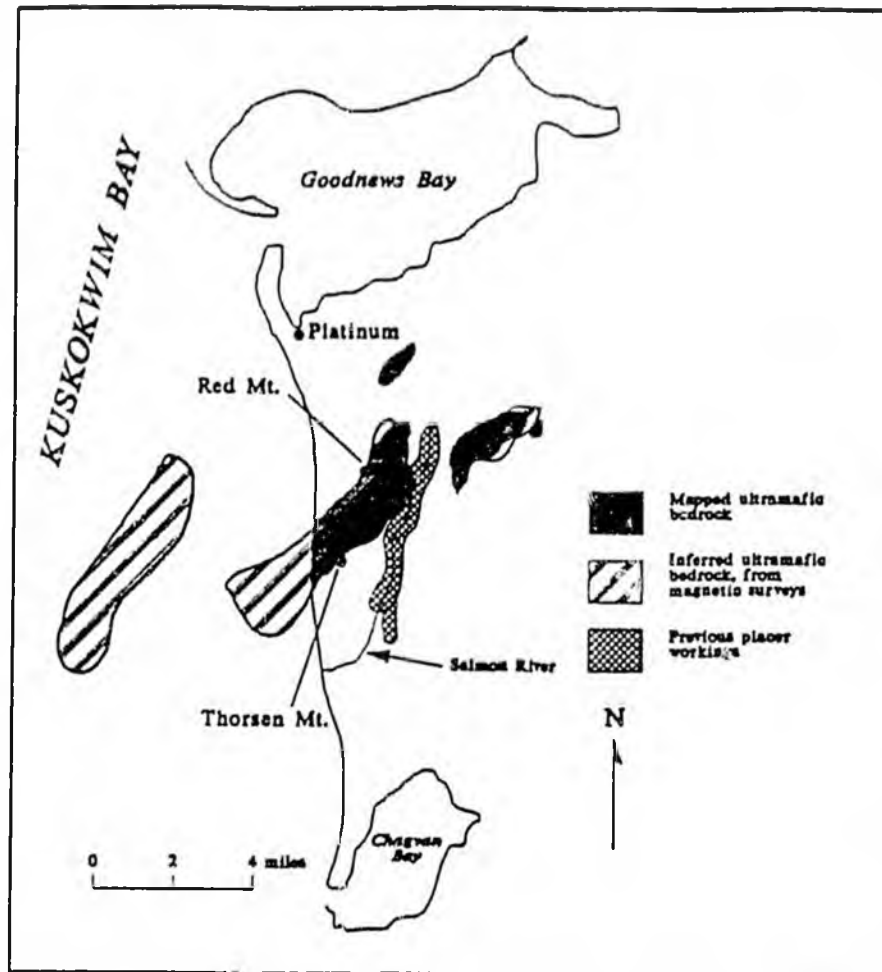


FIGURE 3. - Goodnews Bay Area

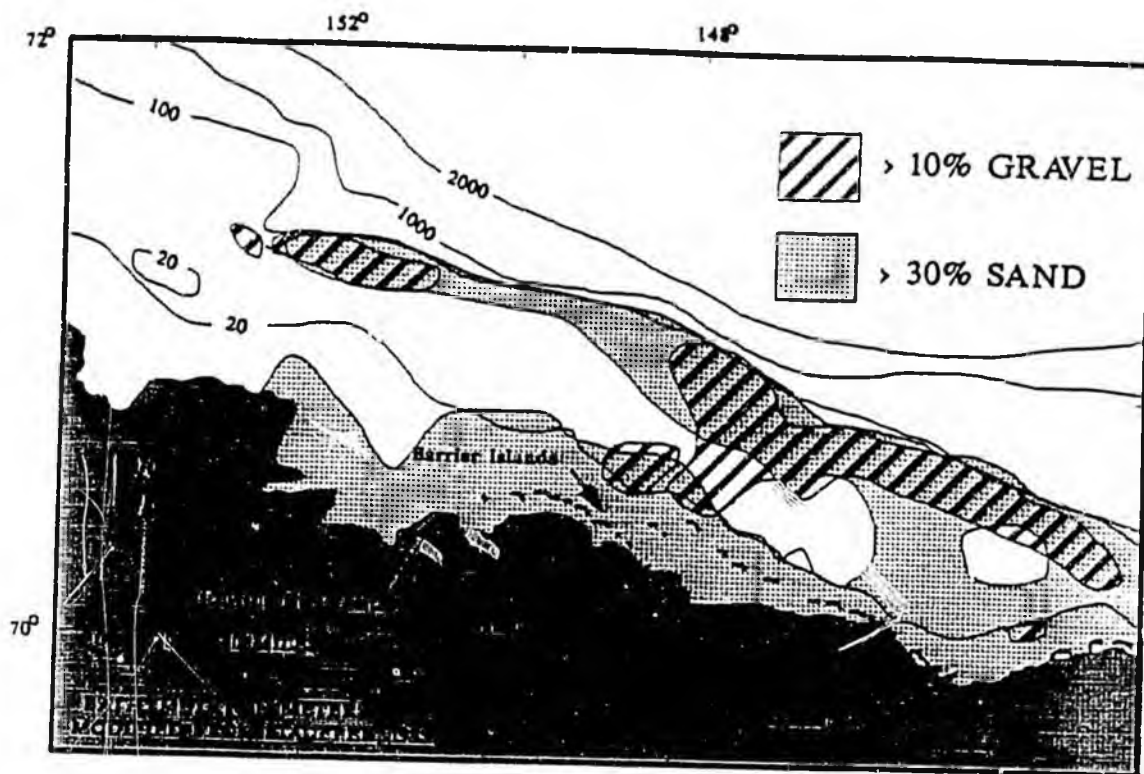


FIGURE 5. - Beaufort Sea off the Northeast Coast of Alaska

BILL NUMBER: AJR 22

BILL TEXT

INTRODUCED BY Assembly Member Farr

FEBRUARY 23, 1989

Assembly Joint Resolution No. 22 Relative to the 12-mile limit.

LEGISLATIVE COUNSEL'S DIGEST

AJR 22, as introduced, Farr. Ocean boundaries: United States, coastal states.

This measure would memorialize the President and Congress to extend the territorial limits of both the United States and coastal states from 3 to 12 geographical miles offshore and to amend the Submerged Land Act to so extend the ocean boundaries of coastal states. The measure would also request the State Lands Commission to study the impacts, as prescribed, of so extending the ocean boundary of California.

Fiscal committee: yes.

WHEREAS, For many years, the United States claimed a national boundary at sea of only three geographical miles offshore, while most other nations agreed on a 12-mile limit for their national boundaries; and

WHEREAS, President Reagan, through a presidential proclamation proclaimed on December 29, 1988, formally extended the limit of the United States' territorial waters to 12 miles off its coasts; and

WHEREAS, Many of the economic and environmental consequences of any federal decision regarding the United States boundary at sea fall upon coastal states such as California, including, but not limited to, decisions on the conservation and development of maritime resources; and

BILL NUMBER: AJR 22

BILL TEXT

WHEREAS, The United States has established an exclusive enterprise zone of 200 nautical miles offshore under which the federal government claims many of the exclusive rights to ocean resources that other countries claim as part of their territorial limits, while coastal states lose important benefits from

marine resource development by being restricted to operations within a limit of only three nautical miles; and

WHEREAS, Many maritime activities beyond the three geographical mile limit, but within the control of the federal government, directly affect the interests and concerns of coastal states, such as California; and

WHEREAS, It is the intent of California to share the financial gain from any resource development, as well as the responsibility for management of off-shore lands within the 12-mile limit, as partners with the federal government; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress to extend the territorial limits of both the United States and coastal states from 3 to 12 geographical miles offshore; and be it further

Resolved, That the President and Congress are memorialized to amend the Submerged Lands Act (43 U.S.C. Sec. 1301 et seq.) to extend the ocean boundaries of coastal states from 3 to 12 geographical miles offshore; and be

it further

Resolved, That the State Lands Commission is requested to study the impacts of extending the ocean boundary of California from 3 to 12 geographical miles offshore, including social, fiscal, and environmental impacts and the capacity of the commission to manage these additional submerged lands under current conditions; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the State Lands Commission.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HJR 30
PUBLISH DATE: 2/21/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Territorial Sea to 12 Nautical Miles
Sponsor: Davidson, et al.
Requestor: Resources and Finance

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousand: of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit
Approved by Commissioner: Hugh Maloney
Agency: Revenue

Phone: (907) 465-2320
Date: January 13, 1989
Date: 2/10/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Prepared by:
Steven E. Kettel
Income and Excise Audit Division
April 7, 1989

HJR 30
ANALYSIS

The Department has consulted with both in house counsel and the Attorney General's office concerning state taxation beyond the traditional 3 - mile limit. It is their advice that President Reagan's actions to extend the federal territorial waters out to 12 nautical miles did not likewise extend the state's taxing jurisdiction.

Assuming that Congress were to extend state's taxing powers to the 12 - mile limitation alluded to in HJR 30, the state would be entitled to collect several taxes from activities conducted there. These would include fisheries business tax (AS 43.75), corporate income tax (AS 43.20) oil severance taxes (AS 43.55) and motor fuel tax (AS 43.40). We do not presently have data which would allow us to estimate the revenues collectible in the additional 9 mile area. Our experience is that the cost to enforce tax compliance for offshore activities is very high.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HJR 29
PUBLISH DATE: 2/21/89

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: Territorial Sea to 12 Nautical Miles
Sponsor: Davidson, et al.
Requestor: Resources and Finance

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel *Steven E. Kettel*
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: April 7, 1989

Approved by Commissioner: Hugh Malone *Hugh Malone*
Agency: Department of Revenue

Date: April 7, 1989

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Prepared by:
Steven E. Kettel
Income and Excise Audit Division
April 7, 1989

HJR 29
ANALYSIS

The Department has consulted with both in house counsel and the Attorney General's office concerning state taxation beyond the traditional 3 - mile limit. It is their advice that President Reagan's actions to extend the federal territorial waters out to 12 nautical miles did not likewise extend the state's taxing jurisdiction.

Assuming that Congress were to extend state's taxing powers to the 12 - mile limitation alluded to in HJR 29, the state would be entitled to collect several taxes from activities conducted there. These would include fisheries business tax (AS 43.75), corporate income tax (AS 43.20) oil severance taxes (AS 43.55) and motor fuel tax (AS 43.40). We do not presently have data which would allow us to estimate the revenues collectible in the additional 9 mile area. Our experience is that the cost to enforce tax compliance for offshore activities is very high.

H J R

30

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HJR 30
PUBLISH DATE: 2/21/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Territorial Sea to 12 Nautical Miles
Sponsor: Davidson, et al.
Requestor: Resources and Finance

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: January 13, 1989

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 2/10/89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Prepared by:
Steven E. Kettel
Income and Excise Audit Division
April 7, 1989

HJR 30
ANALYSIS

The Department has consulted with both in house counsel and the Attorney General's office concerning state taxation beyond the traditional 3 - mile limit. It is their advice that President Reagan's actions to extend the federal territorial waters out to 12 nautical miles did not likewise extend the state's taxing jurisdiction.

Assuming that Congress were to extend state's taxing powers to the 12 - mile limitation alluded to in HJR 30, the state would be entitled to collect several taxes from activities conducted there. These would include fisheries business tax (AS 43.75), corporate income tax (AS 43.20) oil severance taxes (AS 43.55) and motor fuel tax (AS 43.40). We do not presently have data which would allow us to estimate the revenues collectible in the additional 9 mile area. Our experience is that the cost to enforce tax compliance for offshore activities is very high.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HJR 30
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 10-Apr-89 Agency Affected: Natural Resources
Title: Relating to transfer of title to BRU: Management & Administration
submerged land of territorial sea to 12 Mi
Sponsor: All Components: Commissioners Office
Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
Division: Commissioner's Office Date: 10-Apr-89
Approved by Commissioner: Lennie Gorsuch Date: 10-Apr-89
Agency: Department of Natural Resources

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: 10-Apr-89 Agency Affected: Natural Resources
 Title: Asserting sovereign jurisdiction BRU: Management & Administration
over the territorial sea out to 12 nautical miles
 Sponsor: All Components: Commissioners Office
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 10-Apr-89

Approved by Commissioner: Lennie Gorsuch Date: 10-Apr-89
 Agency: Department of Natural Resources

Distribution (by preparer) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HJR 30
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
Title: Ownership: Submerged Land -
Territorial Sea BRU: Business Development
Sponsor: Davidson, et al. Components: _____
Requester: House Resources

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Tom Lawson, Acting Director Phone: 465-2017
Division: Business Development Date: 4-7-89

Approved by Commissioner: Larry Merculieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 4/8/89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page _____ of _____

3775D-2/040789a

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HJR 29
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
Title: State Jurisdiction Over BRU: Business Development
Territorial Sea
Sponsor: Davidson, et al. Components: _____
Requester: House Resources

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Tom Lawson, Acting Director Phone: 465-2017
Division: Business Development Date: 4-7-89
Approved by Commissioner: Larry Mercurieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 4/8/89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page _____ of _____

3775D-1/040789a

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: _____
 Title: Ownership: Submerged Land-Territorial BRU: _____
Sea
 Sponsor: Prime: Rep. Cliff Davidson Components: _____
 Requestor: House Resources Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

Prepared by: House Resources Committee Phone: 465-2487
 Division: Chairman Cliff Davidson Date: 4/10/89

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED APR 5 1989

April 4, 1989

The Honorable Cliff Davidson
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Cliff,

Thank you for your letter about House Joint Resolutions (HJR) 29 and 30, which assert State jurisdiction over the extended 12-mile territorial sea. I have asked members of my staff, my resource agency commissioners, and the Department of Law to carefully review HJR 29 and 30, as well as to prepare testimony for a Congressional hearing on the topic. By now you should have received suggestions for restructuring the resolutions from the Attorney General's Office.

I believe a strong argument can be made to extend State jurisdiction and ownership out to 12 miles, based upon Alaska's excellent record of ocean management from the coast out to three miles. HJR 29 and 30 can be strengthened if they are based upon similar arguments. Enclosed is a copy of the State's Congressional testimony on this topic, which explains my position in more detail. Please contact Bob Grogan of the Division of Governmental Coordination at 465-3562 if you have questions.

Thanks again for your letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Cowper".

Steve Cowper
Governor

Enclosure

cc: Rob Grogan
John Katz
Denby Lloyd

Testimony of Suzanne Iudicello
Before the
House Subcommittee on Oceanography and Great Lakes
March 21, 1989

Mr. Chairman and Members of the Subcommittee:

My name is Suzanne Iudicello. I am the Associate Director for Fisheries and the Environment in Alaska Governor Steve Cowper's Washington, D.C. office. Thank you for the opportunity to present the views of the State of Alaska on the Presidential Proclamation extending the United States territorial sea.

As a State with 6,640 miles of coastline--more than half of the entire United States coast--Alaska has a strong interest in the expansion of the territorial sea. Moreover, as a state whose ocean resources are critical to its economy, Alaska is concerned with the stewardship of those marine resources. The wholesale value of Alaska's commercial fishing industry exceeded \$2 billion last year, and exports of fishery products were our largest source of income. But fishery resources are only the most obvious concern. The role the states will play in the nine miles of the expanded territorial sea will govern issues from environmental protection to community planning to resource development. Alaskans believe that role should be an active one, and we look forward to working with you to develop it.

Today, we would like to focus on four general areas, similar to the concerns expressed on behalf of the other coastal states by Mr. Shafer of the Coastal States Organization (CSO). Alaska is a member of CSO and we support their views. We do, however, appreciate the opportunity to elaborate on the Alaskan perspective on these issues.

Summary

First, the State of Alaska strongly supports Congressional action to resolve the many confusing legal and policy questions the Proclamation has raised. Second, it is our view that the vastness of this new area, the value of its abundant resources, and the scope and number of federal statutes dealing authority and jurisdiction over those resources merit more attention than one hearing by this committee. Third, H.R. 1405, which would freeze federal-state relationships in coastal waters despite expansion of the territorial sea, does not resolve federal-state relationships in a manner that is either realistic or satisfactory to coastal states. For that reason, the State of Alaska cannot support it. Finally, and most important, the State of Alaska believes that state jurisdiction and ownership over coastal waters should be extended to encompass the new 12 mile territorial sea. Such an extension will promote wise ocean stewardship.

Congress Should Clarify the Meaning of the Territorial Sea Expansion

Presidential Proclamation 5928, which extended the U.S. territorial sea from three to 12 miles, was signed to "advance national security and other significant interests of the United States." Although the Proclamation states that "nothing in this Proclamation extends or otherwise alters existing federal or state law or any jurisdiction, rights, legal interests or obligations derived therefrom," the matter is not so simply resolved.

While no one questions the President's authority to extend U.S. jurisdiction for foreign relations purposes, the Proclamation has raised the constitutional question of whether he may unilaterally acquire territory by an extension of sovereignty. Was the President's December 27 action an annexation of territory, and must Congress act in order for the United States to acquire the new area encompassed by the nine-mile expansion of the territorial sea? Legal scholars on both sides can, and likely will, debate these questions. Even the U.S. Department of Justice conceded, in its October 1988 Memorandum accompanying the Proclamation, that the domestic effect of the Proclamation on the relationship between the states and the federal government is not free from doubt.

As a matter of sound public policy, Alaska believes Congress should act to resolve questions of jurisdiction, sovereignty, and ownership over this new area. We encourage the members of this Committee to exert their leadership now, rather than wait for the expensive and time-consuming process of the litigation that undoubtedly will result without clear direction.

Jurisdictional Issues Raised by the Proclamation Merit Thorough Congressional Review

Not only is it important for Congress to act to answer basic questions about the national territorial effect of the proclamation, but action also is required to resolve the issues of jurisdiction over the conservation, management, and development of the myriad ocean resources in the three to 12 mile zone.

The term 'territorial sea' is used more than seventy times in the United States Code, in laws governing activity ranging from waterfowl hunting to smuggling. In the area of environmental protection alone, there are at least a half dozen statutes that define the territorial sea as three

miles. Further, the Proclamation creates anomalies between those laws whose seaward jurisdictional limit is defined simply as the "territorial sea" and those in which it is expressly defined as three miles. For example, the Magnuson Fishery Conservation and Management Act (MFCMA) gives the federal government management authority over fishery resources out to 200 miles, and gives the states authority in their coastal waters. The so-called "inner boundary" of that federal management zone is defined in the Act as a line "coterminous with the seaward boundary of each of the coastal states." Thus, if a case can be made that the Proclamation affects a state's seaward boundaries, state fishery jurisdiction could be expanded.

The courts will be asked to clarify some of these interpretational problems if Congress does not act. Because the Proclamation leaves unanswered questions about effects on domestic law, and because the potential issues are so diverse, we recommend that Congress hold more than one hearing to fully consider these conflicts.

The Alaska Attorney General and the state's resource management agencies presently are analyzing in more detail the legal, economic, and policy issues that arise in the territorial sea area off Alaska. We hope such information will be useful in your deliberations and look forward to providing it to you in future hearings.

The State of Alaska Supports Legislation To Extend State Jurisdiction and Ownership Over Coastal Waters

One piece of legislation that proposes to resolve questions raised by the Proclamation is H.R. 1405. This bill would maintain the 'status-quo' (prior to the signing of the Proclamation) with respect to state-federal jurisdiction and law. It is the State of Alaska's view that not only would H.R. 1405 contravene the congressional intent underlying certain laws delineating authority in the territorial sea, but this bill also would foreclose an important opportunity for Congress to consider, as a matter of national policy, how resources in the three to 12 mile zone can best be managed.

For example, the Coastal Zone Management Act (CZMA) simply defines the coastal zone as "seaward to the outer limit of the United States Territorial Sea." Looking more closely at the legislative intent when the CZMA was adopted, Congress considered using both the definition 'territorial sea' and a more specific definition based upon the Submerged Lands Act. Legislative history suggests that a future expansion of the

territorial sea was considered and that the flexible term 'territorial sea' was specifically chosen for that very reason. It thus appears that freezing all domestic law boundaries, as H.R. 1405 advocates, would be counter to the intent of the CZMA.

As this subcommittee and others in Congress consider implementation of the Proclamation, the State of Alaska strongly believes it is appropriate to extend state jurisdiction, which currently extends from the coastline to three miles, to include the entire 12 mile territorial sea.

Further, the same arguments that can be made for extending this jurisdiction apply to granting state ownership as well. While we understand that a case can be made, based upon historical and constitutional precedent, that new U.S. territory must be held in trust and ultimately granted to the states, we would rather focus on congressional precedent, and the public policy reasons why Congress should grant Alaska and the other states jurisdiction and ownership over this zone.

Alaska has consistently demonstrated great competence in managing ocean resources, not only from the coastline out to three miles, but in the 200 mile exclusive economic zone (EEZ) as well. We are not unique in our ability to successfully manage large territorial seas and ocean areas. As you know, the Great Lake States routinely manage large coastal seas (11-80 miles), and some Gulf states currently have jurisdiction over nine or 12-mile state coastal waters. Alaska has a proven record showing experience and skill at balancing protection, conservation and utilization of the living and non-living resources in the zero to three mile ocean zone and beyond. We have devoted a larger percent of available revenues to resource management than has the federal government. We are better able, in terms of fiscal resources and administrative abilities, to manage these relatively nearshore fisheries, minerals, oil and gas, and other resources that are so close to our state borders.

For example, Alaska now manages a multi-billion dollar a year seafood industry which includes the world's largest salmon fisheries and several world class salmon runs. We already exclusively manage some fisheries in federal waters such as the shelf commercial rockfish fishery, king and tanner crab, and the troll salmon fishery. The State of Alaska spends \$20 million dollars annually to manage its regional fisheries--ten times the federal government's expenditure to manage fisheries in the vast area of federal waters off Alaska's coasts. Further, the State has taken

the lead in joint efforts with the U.S. State Department on reducing foreign interception of salmon and other living marine resources, and has years of experience in negotiating the harvest of anadromous species with other states and with foreign nations.

Alaska has had a successful offshore mining program since statehood. The State's program has provided minerals such as gold and platinum to industry while providing for environmental protection. State regulations and the coastal zone management program ensure that offshore mining leases go through strict review by all state resource agencies. In contrast to the federal government, which has never issued a single offshore mining lease off the coast of Alaska, there are currently nine active offshore leases which have been issued by the State and more than 200 offshore prospecting permits, giving Alaska the benefit of experience in this area.

Looking at oil and gas resources, the State also has a successful track record of evaluating oil and gas potential, completing timely permitting, and balancing complex interests such as subsistence whaling and oil development. The federal government currently takes an average of five years to plan an oil and gas lease sale in the three to 12 mile zone, while Alaska typically completes a similar rigorous evaluation and analysis in two to three years. The state also maintains a consistent and predictable leasing schedule, providing oil companies a better opportunity to plan and execute exploration budgets. In addition, the State's stipulations and mitigating measures for oil and gas exploration and development offer better environmental protection for marine life, the multi-million dollar fishing industry, and the subsistence lifestyle of many coastal residents. Again, we believe Alaska can more efficiently and competently manage this resource in the three to 12 mile zone than can the federal government.

In another initiative regarding ocean resources, the State of Alaska already is working with other Pacific states to assess the resource potential of the EEZ in the Northeast Pacific Ocean. This includes an effort to identify priorities for research and management, and to analyze capabilities for ocean governance.

In addition to demonstrated competence in protecting and managing ocean resources off our coasts, we believe there is a sound policy basis for extending not only coastal state jurisdiction, but also our ownership over the expanded territorial sea. Congress concluded properly in 1953 that

the states were the proper owners of the submerged lands within their boundaries and over which they had jurisdiction. There are good reasons for this, and they are as valid as they were 35 years ago. First, the coastal states are most significantly impacted by activities in the territorial sea. Second, and most important, it makes good sense to unify jurisdiction and ownership in one sovereign so that the states and the federal government are not working at cross purposes.

In conclusion, we request that Congress act to resolve the many questions this Proclamation has raised: to reaffirm the policy made by this body in 1953, to extend the states' jurisdiction over the expanded territorial sea, and to grant them ownership of the lands beneath it. Thank you for your consideration. We look forward to working with this Committee to implement the Territorial Sea Proclamation.

News

from the Coastal States Organization

FOR IMMEDIATE RELEASE
January 5, 1988

FOR FURTHER INFORMATION
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PRESS STATEMENT OF THE
COASTAL STATES ORGANIZATION
ON THE
PRESIDENTIAL PROCLAMATION EXTENDING THE U.S. TERRITORIAL SEA

For over 200 years the United States territorial boundary extended three miles out to sea. On December 28, 1988, President Reagan extended that boundary from three miles to twelve, to "advance the national security . . . interests of the United States." This move brings the United States in line with 100 other coastal nations that claim a 12 mile territorial sea.

"The Coastal States Organization (CSO) supports the President's action as a logical step to serve the Nation's security needs better," stated CSO Chair, Chris Shafer in response to the proclamation. "However, the Proclamation raises significant legal and policy questions regarding its domestic effect, its effect on the citizens of the coastal states," he said.

"Of equal importance to what the Proclamation says is what it does not say. Many areas of significant interest to coastal states -- fisheries, offshore oil and gas production, air and water pollution, coastal management, even state boundaries -- are simply omitted from the proclamation," stated Shafer.

...ry as the President may to have this Proclamation affect only the international theater, it is clear to the coastal states that it will be the genesis of a new era in Federal-State relations on the management of the nation's offshore resources. The President should expect, as Truman did when he issued his 1947 Outer Continental Shelf Proclamation, that Congress and the coastal states will act to legally chart these seas.

The Proclamation recognizes the U.S. territorial sea as "a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction." This maritime zone is then extended to "12 nautical miles" from the previous three. At the same time, the Proclamation adds that this extension of U.S. territory another 9 miles out to sea does not "extend or otherwise alter existing Federal or State law or any jurisdiction, rights, legal interest, or obligations derived therefrom." In other words, the Proclamation's intent is to preserve the domestic legal status quo, while changing only the internationally recognized U.S. border.

There is now a 9 mile-wide belt of U.S. territory, from 3 to 12 miles offshore (over 100,000 square miles of U.S. territory), that is a legally uncharted sea with respect to the application of domestic law. All of the existing ocean resource laws are designed to fit a 3-mile territorial sea. This design no longer fits.

For example, foreign fishing has been banned within the U.S. territorial sea for many years. However, federal law allows foreign fishing (with a permit) within the U.S. Exclusive Economic Zone which extends, by definition, from 3 to 200 miles. Is foreign fishing now allowed within the U.S. territorial sea from 3 to 12 miles out? If not, under what authority are the foreign fishermen banned? If so, isn't this an amazing reversal of federal law and policy? The coastal states will pursue answers to this and other questions the proclamation leaves begging..

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STATEMENT OF

CHRIS A. SHAFER
CHAIRMAN, COASTAL STATES ORGANIZATION

BEFORE THE

SUBCOMMITTEE ON OCEANOGRAPHY AND GREAT LAKES
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

March 21, 1989

Mr. Chairman and Members of the Subcommittee, I am Chris A. Shafer, Chairman of the Coastal States Organization (CSO) and Chief of the Great Lakes Shoreland Section of the Michigan Department of Natural Resources. On behalf of CSO, a representative association of the Governors of the 35 coastal States, Commonwealths, and Territories (the coastal States), I appreciate the opportunity to present our views on the newly established 12 mile U.S. Territorial Sea, as well as H.R.1405, a bill to affirm and implement President Reagan's Proclamation #5928, issued December 27, 1988.

We believe that it is most timely for this Subcommittee to initiate hearings on this very important topic. Given the vastness of this new territorial sea, and the diverse interests in it, it is clear that the legal and policy questions raised by this action relate to the jurisdictions of many federal agencies and Congressional committees, as well as the interests, rights and responsibilities of coastal States. We welcome this opportunity to present our views at what we hope will be the first in a series of hearings to carefully review the complex and challenging aspects of the territorial sea extension.

Although the Territorial Sea Proclamation was anticipated since early last year, it has been less than three months since its issuance. In response, CSO, the Western Governors Association, the Western Legislative Conference, the Pacific Basin Development

Commission, and several individual States have initiated studies on the ramifications of the Territorial Sea Proclamation. These studies are not yet completed, however. Thus, it is not possible for the coastal States to present today a detailed, formal position on exactly how to legislatively implement the presidential proclamation. Nonetheless, we would like to share our views on some of the questions raised by the issuance of the proclamation, as well as some of the constitutional and historical perspectives on this topic. We would also appreciate the opportunity to submit for the hearing record or for the Subcommittee's information the territorial sea extension studies of the States as they are completed in the months ahead. These studies will form the basis of a comprehensive State policy on this matter, which is expected to be completed by the end of the Summer.

Congressional Action Required

The recent extension of the U.S. Territorial Sea presents fundamental questions of law and policy to the U.S. Congress. With the Territorial Sea Proclamation, the United States has annexed roughly 180,000 square miles of new territory, an area approximately the size of Texas. Within this tremendous area, the Nation now has full sovereignty, limited only by those international rights recognized in Proclamation #5928 for maritime and aeronautical navigation.

By exerting full sovereignty and jurisdiction, the Territorial Sea Proclamation appears to make the full 12 mile territorial sea "incorporated territory" of the United States, equal to the sovereignty and jurisdiction exerted over U.S. land. In other words, this newly annexed area, including the seabed, water and airspace, is the legal equivalent of U.S. land and the airspace above. Of course the land of this tremendous new area is physically different than most other territorial acquisitions of the United States. It is entirely

submerged, and without any population. Nonetheless, the natural resources located in this zone are greatly exploited, and coastal States and their populations are heavily dependent upon how these resources are managed.

We believe that the extension of U.S. jurisdiction over the U.S. Territorial Sea, vis-a-vis other nations, solely by proclamation is within the constitutional foreign affairs power of the President. There is both historic and Supreme Court precedence for this. However, there are strong constitutional arguments that the extension of U.S. sovereignty requires congressional, not solely executive, action to affirm and implement authority over this new area.

The distinction between an extension of jurisdiction on the one hand, and sovereignty on the other, is that with sovereignty, the territorial sea is now considered as much a part of the United States as the original land and three-mile territorial sea of the Nation. The legislative branch, not the executive, holds the constitutional power over federal property. Thus, there are strong constitutional concerns that suggest that Congress must act to annex new territory into the Nation, or at the minimum, to legislatively affirm any presidential annexation.

The U.S. Department of Justice shares this position. In its October 4, 1988 Memorandum to the U.S. Department of State concerning "Legal Issues Raised by the Proposed Presidential Proclamation to Extend the Territorial Sea" the Justice Department concludes that it is open to constitutional question whether the President can acquire territory acting alone. This position is also in accord with some constitutional scholars who have likewise concluded that Congress must act in order for the United States to acquire new territory.

In any event, regardless of whether Congress is constitutionally required to act, Congress should act.

Congressional Action Needed

In testimony last August, 1988, before this Subcommittee, we raised several troubling questions of interpretation of federal law that could arise as a result of the proclamation. Now, with the issuance of Proclamation #5928, these questions remain unanswered. Without clear Congressional action, it is quite predictable that federal courts will be called upon to resolve conflicting interpretations. Further, Proclamation #5928 raises questions concerning the validity of its proviso that Federal and State law are not affected. Thus, in addition to the constitutional questions whether Congress must act, we believe that Congress should act.

Throughout the 50 titles of the United States Code, the term "territorial sea" is used over 70 times. Notably, however, to our best knowledge, only twice is this term defined as a 3 mile zone, in: the Comprehensive Environmental Resources Compensation and Liability Act (CERCLA) [42 U.S.C. 9601(30)], and the Clean Water Act [33 U.S.C. 1362(8)]. In all other usages of the term no definition is provided. Thus, each time that the term is used, any person operating under, or relying upon, such legislation since the Proclamation will be confronted with the interpretational question of what is meant: a 3 mile, or 12 mile territorial sea. Further, the term "territorial sea" in turn defines other terms used throughout the U.S. Code, such as "high seas," "navigable waters," "continental shelf," "waters of the United States" and "in the United States." The federal tax code alone uses the phrase "in the United States" over 2,000 times. Is this nine mile wide belt "in the United States" for tax purposes?

It is obviously in the interest of good government for Congress to act to clarify this situation and avoid the interpretational problems, and litigation that will undoubtedly follow. One unfortunate result of such litigation will be delay and confusion which will only undermine the effectiveness of existing federal ocean law.

At the same time, although we believe that Congress should act, we find H.R. 1405 unacceptable in its present form. H.R. 1405 embraces the view that Congress intended, each and every time the term "territorial sea" is used, only a 3 mile zone without any consideration of a possible extension. In our view, H.R. 1405 takes the position that in none of the separate laws using this term did Congress ever take into account the likelihood that the U.S. Territorial Sea would be extended. That is a view that we cannot, at this time, accept.

During the 1960s, Congress considered extending the U.S. Territorial Sea to 12 miles on four separate occasions. Since the early 1970s, the United States participated in the United Nations Third Conference on the Law of the Sea (LOS). During the negotiations, the United States took the position that a 12 mile territorial sea was customary under international law, and should be so codified by the U.N. Convention. Congress held oversight hearings on the LOS Conference. These hearings included discussion of the U.S. negotiating position on the internationally recognized breadth of a nation's territorial sea. Congress was well informed of these ongoing international deliberations, and of the U.S. negotiating position. Thus, Congress has long been aware of the possibility that the seaward boundary of the territorial sea might be extended.

Given this history, it is clear that Congress was very aware that the United States could, at some time, extend its territorial sea from 3 to 12 miles. Indeed, the Defense Department was urging for this extension to be done as soon as possible. Thus, when the term "territorial sea," without further definition, has been used by Congress, it is difficult to conclude that Congress, in each and every usage of the term, meant only a 3 mile zone.

One prime example is the passage of the Coastal Zone Management Act (CZMA). When enacting the CZMA there was debate on whether to define the "coastal zone" in terms of the State's boundaries as codified in

the Submerged Lands Act, or in terms of the U.S. territorial sea. Bills were introduced defining the term "coastal zone" both ways. However, in the end, the CZMA, as signed into law, defines the coastal zone as extending to the seaward boundary of the territorial sea. The legislative history of the CZMA clearly indicates that Congress considered the question of whether an expansion of the territorial sea would affect an expansion of the coastal zone, and concluded that if the United States did extend its territorial sea from 3 to 12 miles "the coastal zone would likewise be expanded."

We do not accept the premise that Congress intended all laws using the term "territorial sea" to be fixed to the three mile zone. Congress has shown that when it desires to limit the reach of legislation, such as the Clean Water Act or CERCLA, it is fully capable of doing so. We strongly believe that Congress meant, in certain laws such as the CZMA, for the term to be a flexible one, able to fit the new situation of an expanded territorial sea if and when the U.S. made such a move. For this reason, we can not support H.R.1405 in its present form.

For the same reason, we must also question the legal validity of the Proclamation's proviso that:

"Nothing in this Proclamation: (a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom."

If it was the intent of Congress to extend the scope of a statute with the extension of the U.S. Territorial Sea, then it is not within the power of a President to override Congress by a proclamation. This proviso, however, attempts to do precisely that.

We must also point out that this proviso of Proclamation #5928 is contrary to the approach taken by the Justice Department. In its October 4, 1988 memorandum on the subject, the Justice Department

states that difficulties arise in determining the effect of the Proclamation on the 70 or more statutes where Congress uses the term "territorial sea" without further definition. "A determination of congressional intent in these circumstances will therefore require further inquiry into the purpose and structure of a particular statute ...". Thus, the Justice Department advises a statute-by-statute approach, while remaining open to the possibility that "Congress, may, however, have enacted statutes that are intended to be linked to the extent of the United States' territorial sea under international law."

In contrast, this proviso in the Proclamation forecloses the possibility that Congress intended certain statutes to track a territorial sea extension. The Justice Department never made this conclusion, and indeed expressly states that Congress may have intended for certain statutes to be linked to the U.S. assertion of a broader territorial sea. The Justice memorandum concludes that "The statutes potentially affected by the proclamation are too numerous to consider individually in the time permitted." Thus, the President, in this proviso in the Proclamation, goes much further than the U.S. Department of Justice was willing to go without considerably more research and analysis.

Thus, it is unclear whether this proviso can prevent an extension of Federal or State agency jurisdiction under those statutes which expressly define such jurisdiction in terms of the "territorial sea" without further definition of the term. In fact, one federal agency has already expanded its scope of jurisdiction in reaction to the proclamation. The Federal Aviation Administration (FAA) recently extended its jurisdiction (1/4/89 Federal Register), as set forth in the Federal Aviation Act of 1958, from 3 to 12 miles. This Act provides that the FAA has jurisdiction over "navigable airspace" within the "United States." The term "United States" is defined as including the airspace above "territorial waters." Beyond the territorial waters, operators of U.S. registered aircraft are to

comply with the rules for airspace above the "high seas." However, with the issuance of the proclamation, the FAA notes, "the area between 3 and 12 nautical miles will no longer be part of the high seas." In other words, this "area will neither be a part of the United States ... nor a part of the high seas."

As a result, the FAA concluded that it had to extend its own jurisdiction out to 12 miles in order to maintain a safe environment for aviation. This is certainly a legitimate reason, but nonetheless this action was done in clear conflict with the proviso in Proclamation #5928. Instead, the FAA based its action squarely on an Act of Congress, the Federal Aviation Act of 1958.

It is our belief that it will only be a matter of time before many other federal and State agencies, similarly operating under statutes using the undefined term "territorial sea" will likewise expand their jurisdiction. When doing so they will have legal precedence for extending their jurisdictions out to the 12 mile mark as they encounter the same type of legal "twilight zone" that the FAA did. Following the FAA's lead, these agencies may likewise extend their jurisdiction, despite the fact that such an extension conflicts with the proviso in the Proclamation.

In summary, Congress should act to legislatively implement the Territorial Sea Proclamation. Congressional action is necessary if for no other reason than to avoid numerous interpretational problems that will undoubtedly result in prolonged litigation. At the same time, we cannot presently support H.R. 1405. There has been virtually no analysis of the entire body of federal law that may have been affected by a change in the term "territorial sea" and the resultant change in other associated terms, let alone a complete policy review. H.R. 1405 prematurely forecloses the question of congressional intent in all of the laws using the term "territorial sea."

Eventual Statehood for Federal Territory
As Historical Precedence

Historical precedent, with few minor exceptions, holds that territory acquired by the federal government, whether by State cession, purchase, treaty, conquest or discovery, ultimately has been granted Statehood or a congressionally legislated form of local government.

In nearly all cases, newly acquired U.S. territory has eventually been granted Statehood, or incorporated into existing States, as was the case of the original 3 mile territorial sea. In those cases where territory has not been granted Statehood, almost without exception a local government has been established by Congress, whether it be a freely-associated State (the Marshall Islands, the Federated States of Micronesia), a Commonwealth (Commonwealth of the Northern Marianas, Commonwealth of Puerto Rico), a territory (Guam, Virgin Islands, American Samoa), a trust territory (Palau) or the Panama Canal Zone.

In only a few instances has federally acquired territory remained totally in federal hands. Midway, Johnston and Wake Islands are administered by the U.S. Department of Defense. These islands are exceptional because they are quite small, resources are not being developed on either island, and because they are of tremendous national security value. These cases are very different than the newly annexed 180,000 square miles of territorial sea. The United States also has jurisdiction over the islands of Navassa, Swan, Howland, Baker and Jarvis. These islands have the distinction of being brought within the territory of the United States because of their bird guano. None are inhabited, and indeed they are described as uninhabitable.

The fact that nearly all federally acquired territory eventually has been bestowed Statehood or local governmental rule follows from the constitutional design of the Nation. In only one instance does the Constitution provide authority to the Federal Government to hold

both National and Local governmental powers -- the District of Columbia. The Federal Government is one of limited, enumerated powers, none of which provide for the Federal government to hold both governmental powers, except for the District. It is not even "necessary and proper" for the federal government to hold both governmental powers for this new territory.

This is not to say that the federal government is powerless to acquire new territory for the nation. There clearly is constitutional authority, affirmed by the U.S. Supreme Court, for the federal government to acquire, by various methods, new territory. However, historical precedence provides, and Supreme Court decisions infer, that this new territory should be held in trust for eventual Statehood, or for some form of Congressionally legislated local government.

This is in accord with President Reagan's Executive Order on Federalism. In this Executive Order, President Reagan sets forth the principles of federalism relied upon by the Founding Fathers. The President states that "In the absence of clear constitutional or statutory authority, the presumption of sovereignty should rest with the individual States. Uncertainties regarding the legitimate authority of the national government should be resolved against regulation at the national level."

As noted, with minor exception, federally acquired territory has been granted Statehood or a congressionally legislated form of local government. These exceptions are due to compelling national security interests, or bird guano. H.R. 1405, however, would codify a major exception to historical precedence, contrary to established principles of federalism. H.R. 1405 would codify that this new 180,000 square mile territory remain Stateless, without any comprehensive governing authority. Why should this vast new area be a major exception to historical precedence, principles of federalism, and the constitutional design of the Nation?

State Experience and Expertise in Ocean Resource Management

Since the founding of the Nation the coastal States have had wide ranging experience in managing the living and non-living resources of the adjoining oceans. Today, all states bordering the territorial sea have statutes governing mineral exploration and mining on State lands, including submerged lands within State jurisdiction. Ten states are currently participating with the Interior Department in joint federal-state task forces to examine the option for leasing where minerals of interest occur. Further, the Governors of American Samoa, Guam, the Commonwealth of Northern Marianas Islands and Hawaii have completed an assessment of the importance of the resources in the 200 mile Exclusive Economic Zone (EEZ) off their shores, and are in the process of establishing an EEZ Coordinating Council. For the last twelve years the coastal States have acted with the federal government and the private sector in managing the fisheries resources of the 200-mile fishery conservation zone created by the Magnuson Fishery Conservation and Management Act.

Some coastal States have long-standing laws for the development of oil and gas resources within their coastal and territorial waters. The coastal states also have long-standing expertise in a variety of pollution programs. Chief among these that directly affect ocean resources are municipal waste treatment, water pollution control, and dredged material disposal. A number of coastal states have developed coastal or ocean sanctuary programs to protect sensitive habitats within their jurisdictions. Twenty nine States, and possibly 30 by next year, have federally approved coastal zone management programs. Through these programs States participate in the management of a wide variety of offshore resource activities conducted by private individuals, industry and the federal government. Historic shipwrecks have been managed by many coastal States for years, and under the Historic Shipwreck Act of 1988 all coastal States are now managing these "national treasures."

Several states have developed specific ocean resource policy or management initiatives. For example, North Carolina in 1984 completed a comprehensive ocean policy analysis, and is presently preparing a report on the economic feasibility of mining phosphorite deposits on the continental shelf adjacent to the State. Oregon is in the midst of preparing an ocean resources management plan to be completed in the next two years. Hawaii has legislatively authorized an Ocean Resources Management Council to oversee the preparation and implementation of an updated Ocean Resources Management Plan. Hawaii has also initiated a program to evaluate the potential impacts of a marine mining industry, and has prepared an environmental impact statement on ocean mining for the recovery of cobalt-rich manganese crusts off its shores. Legislation is pending in the legislatures of Alaska and California to inventory ocean resources and establish state ocean management programs.

Mr. Chairman, as a fellow citizen of a Great Lakes State you may very well share my sense of perspective on State competence for managing "ocean" resources. Since entering the Union the Great Lakes States have had exclusive management authority over extensive areas of water and submerged lands, and the aquatic resources found there. (See Figure 1) Those of us from the Great Lake States are not accustomed to dealing with the relatively short distance of 12 miles. As you probably know, the shortest State territorial water boundary is 21 miles offshore of Pennsylvania in Lake Erie. As for Michigan, the State manages our living and non-living aquatic resources out, in some locations, more than 72 miles to our boundary with Canada. Michigan alone owns 37,500 square miles of submerged lands.

Thus, from the perspective of the Great Lakes States, States can and have managed aquatic resources very successfully over areas extending far beyond 12 miles. Further, we have done so in concert with a foreign country. Today, the relations between Canada and the Great Lakes States are excellent, and the international institutions created by the Great Lakes States and Canada are testimony to our ability to manage our own resources.

CONCLUSION

Given their proximity to, and reliance on, the sea, and given the impact that management of these marine resources has on their economy and environment, the coastal States have direct and inherent interests, rights and expertise pertaining to resources of the new 12 mile territorial sea. The coastal States are directly affected by, and are experienced in, the management of the ocean resources off their respective shores which have now become adjacent "territory."

We believe that Congress must act on this issue. The incorporation of 180,000 square miles of new territory to the United States is simply too great a matter to be instituted by presidential proclamation alone. Constitutional questions arise over whether a proclamation alone, without congressional affirmation, is adequate to so incorporate this new territory to the United States. Without congressional action, legal interpretational problems will abound, as indeed they have already arisen.

Given previous congressional attempts to expand the Territorial Sea, and congressional awareness of the U.S. position at the LOS Conference where the United States supported an internationally recognized 12 mile territorial sea, the coastal States cannot accept, in general, that Congress intended in each of the 70 or so usages of the term "territorial sea" in the United States Code, a permanent 3 mile zone. More specifically, given the legislative history, and the fact that Congress was quite aware that the United States may extend its territorial sea, we cannot accept that the term "coastal zone" as defined in the Coastal Zone Management Act is fixed to a three-mile zone.

For these reasons we cannot support H.R. 1405. This bill, in its present form, would foreclose, without any analysis or review, the

question of whether Congress intended the undefined term "territorial sea" to mean only a three mile zone. Further, we question the validity of the proviso in the Proclamation which provides that federal and State law is unaffected by the Proclamation. A President lacks the authority to override congressional intent by means of a proclamation, and it is far from clear that in all cases, Congress meant only a three mile zone.

In view of historical precedence, the coastal States interests, rights and expertise in the management of these offshore resources, and constitutional principles, we believe that, at a minimum, the States should be equal managing partners over these resources, if not primary controllers over this new region. As a national organization of coastal States, we are prepared to work closely with Congress to develop legislation based on federalism and constitutional principles to ensure that the new 180,000 square mile area is governed and managed for the broadest and best public good for the Nation and the States.

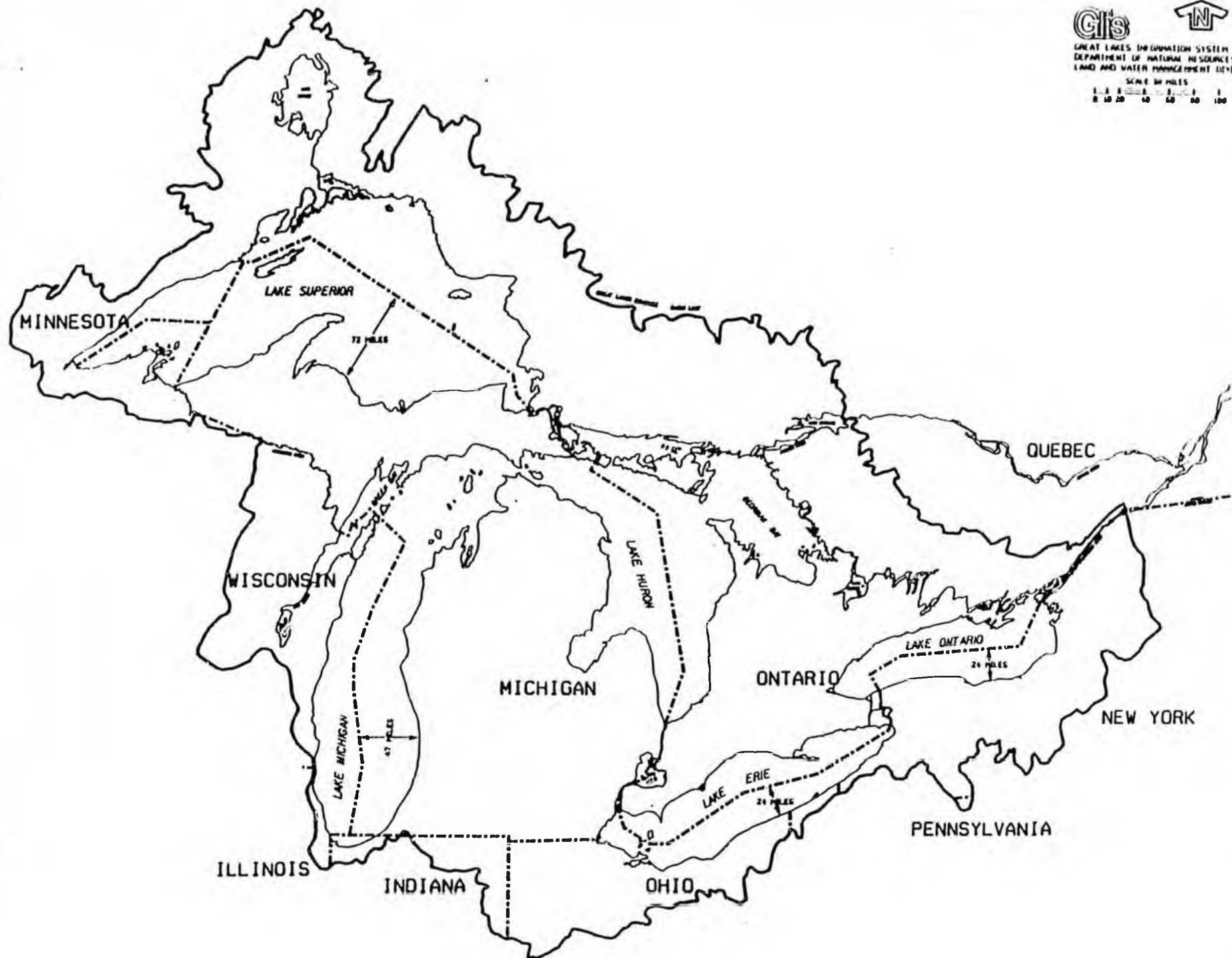
I appreciate this opportunity to testify hear today on this very important subject. I will be glad to answer any question the members of this Subcommittee may have. Thank you.

GIS



GREAT LAKES INFORMATION SYSTEM
DEPARTMENT OF NATURAL RESOURCES
LAND AND WATER MANAGEMENT DIVISION

SCALE IN MILES
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PART I

INTRODUCTION

Article 1
Use of terms and scope

1. For the purposes of this Convention:

(1) "Area" means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;

(2) "Authority" means the International Sea-Bed Authority;

(3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;

(4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

(5) (a) "dumping" means:

(i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

(ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;

(b) "dumping" does not include:

(i) the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

(ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

2. (1) "States Parties" means States which have consented to be bound by this Convention and for which this Convention is in force.

(2) This Convention applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(b), (c), (d), (e) and (f), which become Parties to this Convention in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Law of the Sea Convention
PART II

TERRITORIAL SEA AND CONTIGUOUS ZONE

SECTION 1. GENERAL PROVISIONS

Article 2
Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

SECTION 2. LIMITS OF THE TERRITORIAL SEA

Article 3
Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 4
Outer limit of the territorial sea

The outer limit of the territorial sea is the line over / point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 5
Normal baseline

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 6
Reefs

In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State.

United States Oceans Policy

*Statement by the President.
March 10, 1983*

The United States has long been a leader in developing customary and conventional law of the sea. Our objectives have consistently been to provide a legal order that will, among other things, facilitate peaceful, international uses of the oceans and provide for equitable and effective management and conservation of marine resources. The United States also recognizes that all nations have an interest in these issues.

Last July I announced that the United States will not sign the United Nations Law of the Sea Convention that was opened for signature on December 10. We have taken this step because several major problems in the Convention's deep seabed mining provisions are contrary to the interests and principles of industrialized nations and would not help attain the aspirations of developing countries.

The United States does not stand alone in those concerns. Some important allies and friends have not signed the convention. Even some signatory states have raised concerns about these problems.

However, the convention also contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all states.

Today I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the Convention and international law.

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans—such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance

of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

Third, I am proclaiming today an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast. This will provide United States jurisdiction for mineral resources out to 200 nautical miles that are not on the continental shelf. Recently discovered deposits there could be an important future source of strategic minerals.

Within this Zone all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the freedoms of navigation and overflight. My proclamation does not change existing United States policies concerning the continental shelf, marine mammals, and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction. The United States will continue efforts to achieve international agreements for the effective management of these species. The proclamation also reinforces this government's policy of promoting the United States fishing industry.

While international law provides for a right of jurisdiction over marine scientific research within such a zone, the proclamation does not assert this right. I have elected not to do so because of the United States interest in encouraging marine scientific research and avoiding any unnecessary burdens. The United States will nevertheless recognize the right of other coastal states to exercise jurisdiction over marine scientific research within 200 nautical miles of their coasts, if that jurisdiction is exercised reasonably in a manner consistent with international law.

The Exclusive Economic Zone established today will also enable the United States to take limited additional steps to protect the marine environment. In this connection, the United States will continue to work through the International Maritime Organization and other appropriate international organizations to develop uniform international measures for the protection of the

marine environment while imposing no unreasonable burdens on commercial shipping.

The policy decisions I am announcing today will not affect the application of existing United States law concerning the high seas or existing authorities of any United States Government agency.

In addition to the above policy steps, the United States will continue to work with other countries to develop a regime, free of unnecessary political and economic restraints, for mining deep seabed minerals beyond national jurisdiction. Deep seabed mining remains a lawful exercise of the freedom of the high seas open to all nations. The United States will continue to allow its firms to explore for and, when the market permits, exploit these resources.

The administration looks forward to working with the Congress on legislation to implement these new policies.

Exclusive Economic Zone of the United States of America

Proclamation 5030. March 10, 1983

By the President of the United States of America

A Proclamation

Whereas the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;

Whereas international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction; and

Whereas the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;

Now, Therefore, I, Ronald Reagan, by the authority vested in me as President by the

Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.

This Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for effective management.

The United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the

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Presidential Documents

Title 3—

Proclamation 5928 of December 27, 1988

The President

Territorial Sea of the United States of America

By the President of the United States of America

A Proclamation

International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.

The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.

Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution of the United States of America, and in accordance with international law, do hereby proclaim the extension of the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States, the ships of all countries enjoy the right of innocent passage and the ships and aircraft of all countries enjoy the right of transit passage through international straits.

Nothing in this Proclamation:

(a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom; or

(b) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

Alaska Statehood Act

Public Law 85-508
85th Congress, H. R. 7999
July 7, 1958
(72 Stat. 339)
As Amended

Cross references. — For sections implementing this act, see Act of December 2, 1980, P.L. 96-487, Title IX, 94 Stat. 2430-2448, set out at the end of this pamphlet.

Editor's notes. — The individual sub-

ject-matter headings, shown in brackets, were added by the publisher, based on marginal notations in the original.

The provisions of the Alaska Statehood Act may be found in the notes preceding 48 U.S.C. 21.

NOTES TO DECISIONS

Statehood Act fails to deal with native use of land. — The legislative history of the Statehood Act fails to clarify congressional intent with respect to native use and occupancy of Alaska lands. In fact, there is very little reference to native land claims in the legislative history on the Statehood Act. This is so because Congress was principally concerned with achieving statehood for Alaska, not with settlement of native land claims. Given the difficulty of winning congressional approval for Alaska statehood, Congress undertook to bypass, rather than to resolve, the complex and difficult questions arising out of native claims. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

But is part of background of

settlement act. — The Alaska Statehood Act is important insofar as it is a significant part of the background of the Alaska Native Claims Settlement Act and contributes to an understanding of legislative intent in the settlement act. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

Applied in *Edwardsen v. Morton*, 369 F. Supp. 1359 (D.D.C. 1973).

Cited in *File v. State*, Sup. Ct. Op. No. 1827 (File Nos. 3482, 3537), 593 P.2d 268 (1979); *DeBoer v. United States*, 470 F. Supp. 1137 (D. Alas. 1979); *United States v. Atlantic Richfield Co.*, 612 F.2d 1132 (9th Cir. 1980); *Marrone v. State*, Ct. App. Op. No. 156 (File No. 5368), P.2d (1982).

Collateral references. — 72 Am. Jur. 2d, States, § 72.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 8 (c) of this Act, the State of Alaska is hereby declared to be

a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, "An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska; to submit the constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date", approved March 19, 1955 (Chapter 46, Session Laws of Alaska, 1955), and adopted by a vote of the people of Alaska, 1955), and adopted by a vote of the people of Alaska in the election held on April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

[TERRITORY]

SEC. 2. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.

NOTES TO DECISIONS

Evidence was insufficient to establish that Cook Inlet is an historic bay. *United States v. Alaska*, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 423 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

Thus, the United States, as against

the state, has paramount rights to the subsurface lands of the lower, or seaward, portion of the inlet. *United States v. Alaska*, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 422 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

[CONSTITUTION]

SEC. 3. The constitution of the State of Alaska shall always be republican in form and shall not be repugnant to the Constitution of the United State and the principles of the Declaration of Independence.

NOTES TO DECISIONS

Quoted in *Delahay v. State*, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

Chapter 03. Sovereignty of State.

Section	Section
10. Offshore water and land	30. Construction of chapter
20. Ownership of water and submerged land	40. Reconciliation with other statutes

Sec. 44.03.010. Offshore water and land. The jurisdiction of the state extends to water offshore from the coast of the state as follows:

(1) the marginal sea to its outermost limits as those limits are from time to time defined or recognized by the United States of America by international treaty or otherwise;

(2) the high seas to the extent that jurisdiction is claimed by the United States of America, or to the extent recognized by the usages and customs of international law or by agreement to which the United States of America or the state is a party;

(3) submerged land including the subsurface of submerged land, lying under the water mentioned in this section. (§ 1 ch 89 SLA 1959)



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3031

April 8, 1989

MEMORANDUM

TO: Representative Cliff Davidson

ATTN: Lourene Miovski

FROM: Karen Oakley *KO*
Legislative Analyst

RE: Extension of State Jurisdiction in the New 12-Mile Territorial Sea:
Impact on Alaska
Research Request 89.172

You requested this agency to report on the likely impact on the State of Alaska if the U.S. Congress extends state jurisdiction in territorial waters to 12 miles offshore; currently states have jurisdiction within three miles of shore. You were particularly interested in the impact on fisheries management and on development of offshore mineral and oil and gas resources. You asked whether the benefits of extended state jurisdiction would be likely to outweigh the costs.

As you are aware, the State of Alaska supports the extension of state jurisdiction and has so testified before Congress.¹ The executive branch is in the process of preparing a detailed analysis of the impacts of extending the state's jurisdiction. You may contact Barb Sheinberg, with the Division of Governmental Coordination, for updates on the progress of this effort.

This memorandum provides background information on the recent extension of the U.S. territorial sea to 12 miles and provides an overview of impacts on the development and management of offshore natural resources--specifically fisheries, minerals and oil and gas--of extending state jurisdiction to 12 miles.

¹A copy of the testimony of Suzanne Iudicello, with the Governor's Washington D.C. office, before the House Subcommittee on Oceanography and Great Lakes on March 21, 1989, is provided as Attachment A.

Representative Davidson
April 7, 1989
Page 2

In summary:

- President Reagan extended the territorial sea of the United States from three miles to 12 miles by proclamation in late 1988; the purpose of the extension was to hinder the activities of Soviet spy ships.
- Congress granted coastal states jurisdiction within three miles of shore in 1953 under the Submerged Lands Act. Coastal states are expected to now lobby Congress to extend state jurisdiction to the new 12-mile boundary of the United States' territorial sea.
- Coastal states are eager to assume jurisdiction within 12 miles to increase their control over activities in coastal waters and to increase their revenues from such activities.
- Extension of state jurisdiction to 12 miles will probably increase the management responsibilities of the state with regard to certain offshore fisheries, primarily the groundfish fishery. The state will also receive additional revenues from the Fisheries Business Tax.
- Offshore mining now occurs only in state waters offshore of Nome. Unless the state changes the way it taxes production of offshore minerals, the extension of state jurisdiction offshore will not generate significant additional revenue for the state.
- Currently, there are some federal oil and gas leases within 12 miles of shore in the Beaufort and Chukchi seas, but none have been developed. Under current federal revenue sharing provisions, the state receives 27 percent of the bonuses, rentals and royalties from these leases.
- Extension of state jurisdiction to 12 miles will increase, possibly by a significant amount, state revenues from oil and gas. The state would receive 100 percent of bonuses, rentals and royalties. In addition, the state would receive severance and property taxes.
- Based on this preliminary analysis, the benefits of extending state jurisdiction appear likely to outweigh the costs. More detailed study is required, however.

BACKGROUND

On December 27, 1988, then-President Ronald Reagan extended by proclamation the territorial waters of the United States from its present breadth of three miles to twelve miles.² Although the reasons given for the extension in the proclamation were somewhat vague ("extension of the territorial sea to the limits permitted by international law will advance the national security and other significant interests of the United States"), the primary reason was apparently to hinder the activities of Soviet spy ships. In extending the territorial sea, the United States joined the 104 nations that have extended their territorial seas to 12 miles; only 12 nations now maintain a three-mile limit.

The territorial sea is the belt of water immediately adjacent to the coast of a nation. A nation is sovereign within its territorial sea and exercises the same sovereignty there as over its land. In contrast, nations are not sovereign over the high seas, which are the remainder of the ocean beyond the territorial sea. Nations may assert, however, limited forms of jurisdiction in portions of the high seas.³

In 1953, the Submerged Lands Act (SLA) granted coastal states the rights to offshore submerged lands within their "boundaries."⁴ The SLA was passed to override the effects of a 1947 case, California v. United States, in which the Supreme Court ruled that the United States had jurisdiction over submerged lands off the California coast.⁵ Prior to this decision, the coastal states were assumed to have jurisdiction out to the three-mile territorial limit. The

²Proclamation 5928 of December 27, 1988, published in the Federal Register, January 9, 1989, Vol. 54, No. 5., page 777. A copy of the proclamation is provided as Attachment B.

³For example, a nation may exercise authority necessary to apply its customs, fiscal, immigration and sanitary regulations in the territorial sea within immediately contiguous waters (the "contiguous zone"). On the continental shelf, a nation is restricted to the exploration and exploitation of natural resources. Within the Exclusive Economic Zone (EEZ), which extends 200 miles offshore, a nation is restricted to activities for economic exploration and exploitation, scientific research and environmental protection.

⁴For the states bordering the Atlantic and Pacific, their boundaries could not extend past three miles; states bordering the Gulf of Mexico were given the opportunity to prove that their historic boundaries extended up to nine miles from shore. Two states, Texas and Florida, were able to justify their ownership of submerged Gulf of Mexico lands out to nine miles.

⁵A copy of the Supreme Court decision in the California case is provided as Attachment C. As you requested, we have ordered copies of the briefs filed in this case through Interlibrary loan and will notify you when these materials are available.

Representative Davidson
April 7, 1989
Page 4

California decision established the principle that coastal states had no rights to submerged lands beyond the low-tide line or to coastal waters unless such rights were given to them by Congress.

The potential for extension of the territorial sea boundary to 12 miles--either by Congressional action or Presidential Proclamation--has been recognized for several years, and the effects of extending the territorial sea--and of extending state jurisdiction in an expanded territorial sea--have been considered by various federal agencies, coastal states, and other interested parties. Several of the reports published on this topic in recent years are described below.

- In 1985, the Texas A & M University Sea Grant Program sponsored a Conference on an Expanded Territorial Sea. A copy of the proceedings of this conference has been requested and will be forwarded upon arrival.
- Two California officials discussed whether the State of California should support extension of state jurisdiction in an expanded territorial sea in a 1984 paper published in the Coastal Zone Management Journal. They noted that "no fixed boundary can possibly separate federal from state interests in ocean management," and they argued against the extension of state jurisdiction. Based on their experiences in dealing with the federal government on ocean issues in California, they felt it would be more prudent for the state to argue for increased state clout in the federal decision making process and for increased revenue sharing than to argue for extended state jurisdiction. This article provides a good "checklist" of questions to be examined when considering extending state jurisdiction to 12 miles; a copy of the article is provided as Attachment D.
- In a 1986 article in the Journal of Maritime Law and Commerce, Attorney R.K. Littleton proposed that coastal states seek the support of inland states in their efforts to expand their boundaries from three miles to 12 miles. He argued that the federal government would be opposed to extending state jurisdiction; therefore, the only way to achieve extended jurisdiction would be to enlist the support of inland states by promising to share revenues (primarily from oil and gas) from the territory acquired by the coastal states with the inland states. A copy of this article is provided as Attachment E.
- The California Attorney General issued an opinion on March 15, 1989, concerning the effect of the President's Proclamation on the obligations of the California Coastal Commission. He concluded that the proclamation did not extend the boundary of the State of California nor did it extend the permit jurisdiction of the coastal commission. However, the Attorney General found that the

Representative Davidson
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Page 5

proclamation did extend the boundary of the coastal zone for the purposes of the Coastal Zone Management Act (CZMA); this extension of the coastal zone would mean that more activities will affect the coastal zone and thereby require consistency with the provisions of the CZMA. A copy of this opinion is provided as Attachment F.

Two resolutions relating to extension of state jurisdiction in the territorial sea, HJR 29 and HJR 30, are currently before the Alaska Legislature. HJR 29 asserts the sovereign jurisdiction of the State of Alaska over the territorial sea out to 12 miles; HJR 30 (respectfully) demands that the U.S. Congress 1) immediately authorize the transfer of title to all submerged lands below the territorial sea from three miles out to 12 miles, and 2) recognize the sovereign jurisdiction of the State of Alaska in the new territorial sea.⁶ Both resolutions were co-sponsored by all members of the house. The measures are expected to be considered by the House Resources committee during the latter part of the 1989 session.

IMPACT ON ALASKA

Fisheries

Currently, the State of Alaska manages fisheries which occur entirely within three miles of shore. Fisheries which occur between three miles and 200 miles offshore are managed by the North Pacific Fisheries Management Council (NPFMC) under the Magnuson Act. The State of Alaska, as a member of the NPFMC, participates in the management of these offshore fisheries. No fisheries that are currently managed by the NPFMC would occur totally in state waters if state jurisdiction were extended to 12 miles. Thus, the existing management program for fisheries offshore of Alaska would probably not be greatly changed. However, the responsibility for various aspects of the management program (e.g., enforcement and data collection) could shift. The Department of Fish and Game is currently considering the specific effects of an extension of state jurisdiction, and you may wish to contact Deborah Greenberg, with the commissioner's office, at 465-4100, for further information.

The primary fisheries that would be affected by an extension of state jurisdiction to 12 miles are the groundfish fisheries of the Bering Sea-Aleutians and the Gulf of Alaska. Tables 1 and 2 and Figures 1 and 2, found in Attachment G, present information on the volume and value of the 1987 Alaska

⁶It is commonly understood, based on the 1947 California case, that coastal states will receive jurisdiction in the expanded territorial sea only if Congress grants them jurisdiction by amending the Submerged Lands Act or by passing new legislation specifically addressing the issue. In this regard, assertion of State of Alaska sovereignty in the new portions of the territorial sea via HJR 29 appears to be an unnecessary and possibly counterproductive step.

groundfish harvest by the distance offshore of the harvest. Approximately 30 percent of the groundfish (representing 33 percent of the value) taken offshore of Alaska in 1987 were harvested between three and 12 miles.

The Magnuson Act prohibits processing and other support activities by foreign processors within state waters except for certain operations approved by the governor of the affected state. Applications by foreign processors to process fish in State of Alaska waters are reviewed under 5 AAC 39.198 by the Department of Commerce and Economic Development and approved by the Governor. A copy of the regulations governing issuance of these "internal waters permits" is provided in Attachment H.

The requirement for approval of processing by foreign ships within the three to nine mile zone will have its biggest effect on joint venture operations.⁷ Although joint ventures in Alaska offshore fisheries increased greatly in recent years, their numbers are now declining. The extension of state jurisdiction may, therefore, not greatly increase the number of applications for internal waters permits. Paul Peyton, Commercial Fisheries Development analyst with the Department of Commerce and Economic Development, is considering the effect on internal waters permits, and you may wish to contact him at 465-2162 for further information.

The extension of state jurisdiction will allow the state to collect additional revenues via its Fisheries Business Tax.⁸ Pursuant to AS 43.75, persons engaged in fisheries businesses within the State of Alaska are liable for a fisheries business tax applied to the value of fish processed. The tax rate varies from 1.5 to 5.0 percent depending on the species, the status of the fishery (developing versus established) and whether the fish are processed on shore or by a floating processor. Current revenues from the fish tax are on the order of \$20 million, of which from \$7 million to \$8 million is shared with local government jurisdictions in which the fish are processed.

Extension of the state waters to 12 miles means that fish harvested within 12 miles would be subject to the tax. The Department of Revenue is currently analyzing the potential revenue from the extension of state waters. Based on the value of groundfish harvested from waters between three and 12 miles offshore in 1987, approximately \$3 million in additional Fisheries Business Tax revenues would have been collected.

The federal government is likely to oppose extension of state jurisdiction for fisheries management. The National Marine Fisheries Service (NMFS) has twice evaluated the effects on fisheries of extending the territorial sea to 12 miles with and without concomitant extension of state jurisdiction, first in 1984 and most recently in November of 1988. A copy of the most recent

⁷Joint ventures involve domestic fishermen and foreign processors.

⁸See House Research Memorandum 89.303, State of Alaska Revenues from Natural Resources, for a more complete description of taxes on fishing.

Representative Davidson
April 7, 1989
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analysis is provided as Attachment I. In this analysis, the NMFS concluded that simply extending the territorial waters of the United States to 12 miles would have no significant effect on federal fishery management responsibilities. However, the NMFS opposed the extension of state jurisdiction. The report stated:

In general, if state jurisdiction were extended to 12 nm [nautical miles], several purposes of the Magnuson Act would be negated, or at a minimum, made much more difficult to achieve. Reexamination of the role and purpose of Federal fishery management would become necessary, in turn requiring redefinition of Council functions and the spectrum of State/Federal relationships (such as shared enforcement and data collection responsibilities) developed since passage of the Magnuson Act. New legislation would be required to address and balance the questions arising from reduced Federal authority, increased State responsibility, and a return to divided fishery management authority, which by defining a federal role, the Magnuson Act was in part designed to overcome. It would be ill-advised to extend state fishery jurisdiction without assurance that the resources would be adequately protected and managed.

Offshore Mining

Near shore marine mineral exploration was given a boost in 1983 when the 200-mile Exclusive Economic Zone (EEZ) was declared. The unconsolidated placers of the continental shelf can now be developed under the protection of U.S. law and can therefore be considered viable resources. Alaska, with 74 percent of the U.S. continental shelf, is expected to contain much of the mineral wealth of the U.S. EEZ. Although largely unexplored, there are numerous prospects, mining sites and known occurrences of marine placer minerals, including gold and platinum, along Alaska's coast. Three geologists with the Alaska Division of Geological and Geophysical Surveys recently completed a paper entitled "Marine Placer Development and Opportunities in Alaska." This paper, which describes the known occurrences of marine minerals off Alaska and discusses the past, present and future development of marine placers off Alaska, is provided as Attachment J.

Currently, the only offshore mining operation in Alaska is just offshore of Nome. The State of Alaska has leased approximately 21,000 acres to Westgold Minerals, which is using the world's largest bucket line offshore dredge. Gold placers are believed to occur over a wide area off Nome, and at the request of industry, the federal government recently commenced a mineral leasing program in that area under the auspices of the Outer Continental Shelf Lands Act (OCSLA). Although the state is participating in the review of the proposed lease sale, the state is also arguing that the OCSLA is inadequate for offshore mineral leasing and that legislation establishing a leasing

Representative Davidson
April 7, 1989
Page 8

system specifically for marine minerals should be passed. With other coastal states, Alaska is seeking provisions for sharing federal offshore mineral revenues and significant state consultation in the leasing process.

If state jurisdiction were extended to 12 miles offshore, more of the placers of the continental shelf, including the valuable gold placers off Nome, would be leasable by the state. Under the current federal mineral leasing system, the state would receive no revenue from leasing of submerged lands by the federal government, thus extension of state jurisdiction would increase the revenue potential of the state. However, under current state law, the state receives only minimal payments from mining, including offshore mining.⁹ Offshore prospecting permits yield \$3 per acre in annual fees, and leases produce \$1 per acre in annual rentals; expenses can be credited against annual rentals. In addition, there is no provision for royalty payments. Under these conditions, the state receives only a minuscule percent of the value of offshore mining. For example, in FY 88, offshore prospecting permits and leases generated a net total of \$11,509 for the state; at the same time, the Westgold Minerals dredging operation at Nome is estimated to have extracted 36,000 ounces of gold worth over \$16 million. Unless the state changes the way it taxes the production of offshore minerals, the extension of state jurisdiction offshore will not generate significant additional revenue for the state.

The extension of state jurisdiction will allow the state to control more of the mining that can be expected to occur offshore. In contrast to the federal government--which is just getting into the business of offshore mineral leasing--the state has an established program. The acquisition of additional submerged lands would allow the state to expand its role in offshore mineral development.

The mining industry may view expanded state jurisdiction favorably if the expansion reduces the number of prospects that are interjurisdictional. Mining companies proposing to develop prospects that include both federal and state submerged lands, e.g., Westgold Minerals at Nome, must go through two separate leasing processes. Because developable prospects are usually close to shore, the expansion of state territory may allow more prospects to be developed solely under the auspices of the state program. Industry may react to a less complicated regulatory regime with increased exploration and development.

⁹See House Research Memorandum 89.303, State of Alaska Revenues from Natural Resources, for further information on state revenues from mining.

Oil and Gas

Under the OCSLA, the federal government has pursued an aggressive oil and gas leasing program in Alaska.¹⁰ Currently, there are some federal oil and gas leases within 12 miles of shore in the Chukchi and Beaufort seas, however, none of these leases has been developed. Attachment K shows the location of these leases. If state jurisdiction were extended, the state would presumably take over management of these existing leases. The state would also be able to expand its own oil and gas leasing of submerged lands.

Extension of the state's offshore jurisdiction could significantly increase the revenue potential of the state, but the potential revenue gains cannot be quantified. Under the current revenue sharing provisions of the OCSLA, Alaska receives 27 percent of federal offshore oil and gas lease bonuses, rentals and royalties. If state jurisdiction were extended, the state would receive 100 percent of bonuses, rentals and royalties from leases in the new territory; in addition, the state would receive severance taxes and property taxes.¹¹

Although the revenue potential of expanding the state's offshore jurisdiction is significant, the opportunity for increased state control over offshore leasing is also compelling. As have other states, Alaska has had several major disputes with the federal government over the federal oil and gas leasing program. These disputes include the leasing of Bristol Bay and the measures to be imposed on Beaufort Sea lessees for the protection of bowhead whales. Expanded state jurisdiction would give the state control over the leasing of a much larger area. The state could dictate the areas to be offered, the pace of leasing, and the conditions under which exploration and development can occur.

Costs Versus Benefits

Based on this preliminary analysis, the revenues to be gained from extending Alaska's jurisdiction to 12 miles offshore appear to have the potential to be greater than the costs of managing resources in the additional territory. The state has management programs in place for fisheries and for offshore oil and gas and mining, and these programs could presumably manage the additional territory without major changes in structure, function or cost. The potential revenues from oil and gas and fishing in the new territory could be significant. Offshore mining, which is just beginning to develop, could

¹⁰The Department of Interior has proposed eight oil and gas lease sales off Alaska during the period 1989 - 1992. This level of leasing activity is not new.

¹¹See House Research Memorandum 89.303 for more complete description of State of Alaska taxes on oil and gas.

Representative Davidson
April 7, 1989
Page 10

generate revenues for the state with changes to the tax structure. Apart from the financial aspects of extending state jurisdiction, the state would benefit from increased control.

The executive branch agencies that would be involved in managing resources in the new territory are currently preparing a more detailed analysis of the costs and benefits of extending the state's jurisdiction. Please be aware that our conclusion that benefits are likely to outweigh costs is based on preliminary information.

I hope you find this information useful. If you need additional information, please let us know.

Attachments

FIGURE 1

1987 ALASKA GROUND FISH HARVEST (POUNDS)

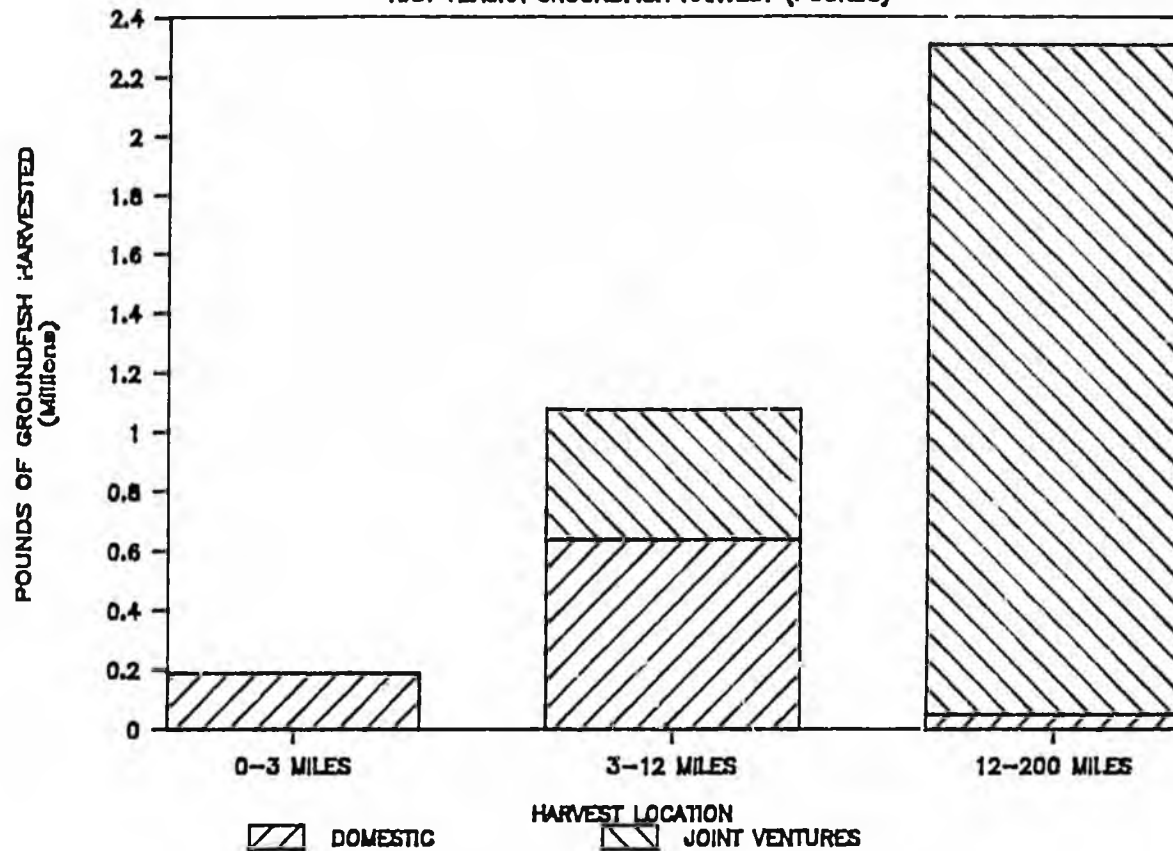


FIGURE 2

1987 ALASKA GROUND FISH HARVEST VALUE

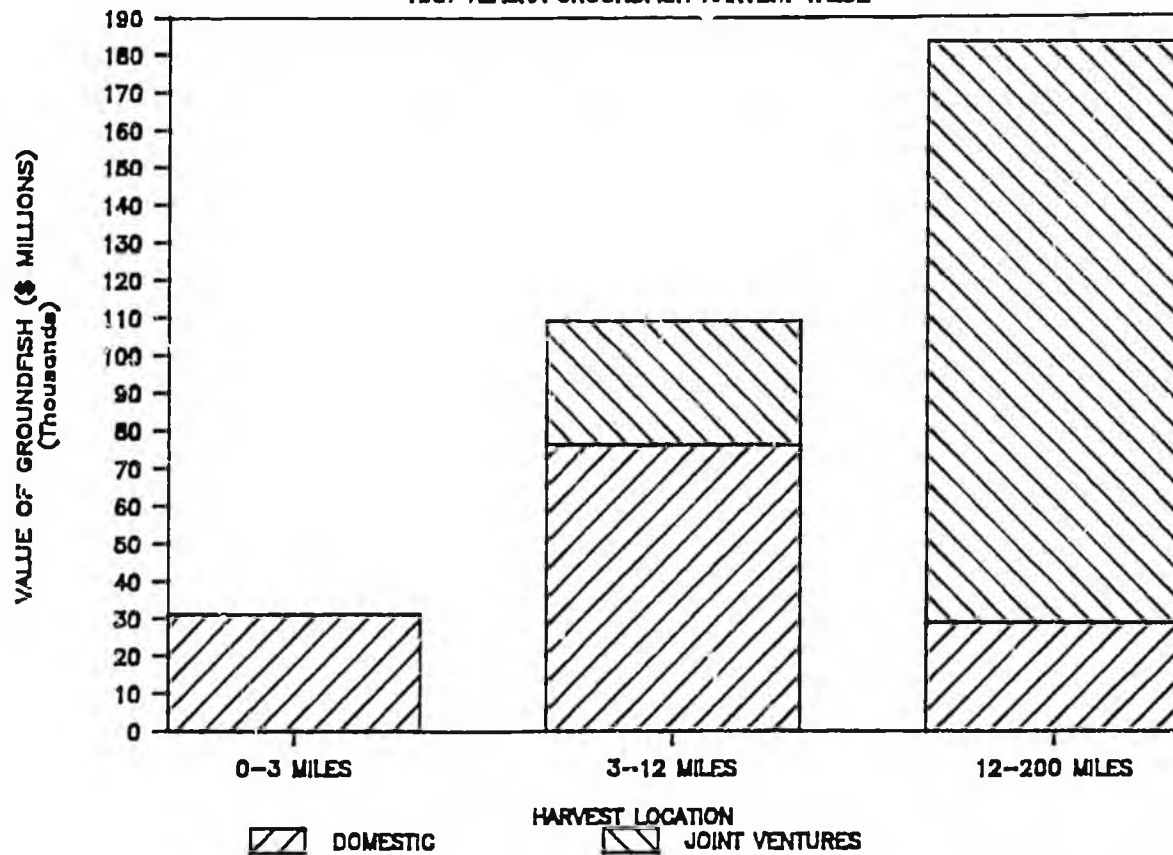


TABLE 1
 POUNDS OF GROUND FISH HARVESTED OFF ALASKA IN 1987 BY DISTANCE FROM SHORE
 (IN THOUSANDS OF POUNDS)

FISHERY	HARVEST LOCATION (DISTANCE FROM SHORE)			TOTAL
	0-3 MILES	3-12 MILES	12-200 MILES	
Bering Sea/Aleutians				
Domestic	140,618	500,799	0	641,417
Joint Venture	0	370,505	2,258,757	2,629,262
Subtotal	140,618	871,304	2,258,757	3,270,679
Gulf of Alaska				
Domestic	49,612	138,073	50,417	238,102
Joint Venture	0	69,704	0	69,704
Subtotal	49,612	207,777	50,417	307,806
TOTAL				
Domestic	190,230	638,872	50,417	879,519
Joint Venture	0	440,209	2,258,757	2,698,966
TOTAL	190,230	1,079,081	2,309,174	3,578,485
PERCENT OF TOTAL POUNDS				
Domestic	5.3	17.9	1.4	24.6
Joint Venture	0.0	12.3	63.1	75.4
TOTAL	5.3	30.2	64.5	100.0

Source: National Marine Fisheries Service

Prepared by the House Research Agency, April 1989 (89.172A1)

TABLE 2
 VALUE OF GROUND FISH HARVESTED OFF ALASKA IN 1987 BY DISTANCE FROM SHORE
 (IN THOUSANDS OF DOLLARS)

FISHERY	HARVEST LOCATION (DISTANCE FROM SHORE)			TOTAL
	0-3 MILES	3-12 MILES	12-200 MILES	
Bering Sea/Aleutians				
Domestic	\$20,073	\$58,110	\$0	\$78,183
Joint Venture	0	28,462	155,041	183,503
Subtotal	20,073	86,572	155,041	261,686
Gulf of Alaska				
Domestic	11,155	13,056	28,956	58,167
Joint Venture	0	4,490	0	4,490
Subtotal	11,155	22,546	28,956	62,657
TOTAL VALUE				
Domestic	31,228	76,166	28,956	136,350
Joint Venture	0	32,952	155,041	187,993
TOTAL	\$31,228	\$109,118	\$183,997	\$324,343
PERCENT OF TOTAL VALUE				
Domestic	9.6	23.5	8.9	42.0
Joint Venture	0.0	10.2	47.8	58.0
TOTAL	9.6	33.6	56.7	100.0

Source: National Marine Fisheries Service

Prepared by the House Research Agency, April 1989 (89.172B1).



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

NOV 1 1988

MEMORANDUM FOR: James W. Brennan
Assistant Administrator for Fisheries

FROM: William Matuszewska *William Matuszewska*
Executive Director

SUBJECT: Reexamination of NMFS 1984 Study of Extension
of the U.S. Territorial Sea to 12-miles

The Department of Defense (DOD) is seeking to extend the U.S. territorial sea to 12 nautical miles (nm) and the outer limit of the contiguous zone to 24 nm in order to enhance the national security and other essential interests of the United States. We are informed that the proposed extension is in accordance with recognized international law.

The Department of State, at the request of Secretary Carlucci, has asked the Interagency Group on Oceans Policy and Law of the Sea to begin consideration of this proposal. Tim Keeney, the NOAA General Counsel, is the DOC representative on this Group. DOD would like to move quickly and therefore proposes that it be done by Presidential proclamation. The Department of Justice is examining whether a Presidential proclamation is the most effective and expeditious way to accomplish this.

Although the DOD proposal is not intended to change existing state or Federal jurisdictions, it has prompted discussions about an extension of state authority over fishery resources to 12 nautical miles. Such an extension, in NOAA's view, would require Congressional action.

Representative Lowry recently introduced H.R. 5069, the "Territorial Sea and Contiguous Zone Extension Act", which would establish a 12 nm territorial sea and a 24 nm contiguous zone. H.R. 5069 does not purport to affect state authorities under Federal law or international agreements, but it does establish a 17 member National Oceans Policy Commission that is charged with developing recommendations on a broad spectrum of ocean policy issues. The Commission is required within two years to provide a report to the President and Congress regarding a comprehensive oceans policy with recommendations. Although not explicitly stated, the Commission would be examining whether or not to extend state jurisdiction over marine resources to 12 nm.



These recent actions have prompted us to revisit our 1984 study of the effect on fisheries and other NMFS living marine resource programs of extending the territorial sea with and without concomitant expansion of state jurisdiction. Our 1984 study concluded that an extended territorial sea under exclusive Federal jurisdiction would have no significant effect on Federal fishery management or other living marine resource responsibilities (Attachment 1). However, we opposed the extension of state fishery jurisdiction. The major argument against extension being the need to work together to protect fishery resources effectively and to provide fair and equitable treatment of users under fisheries management regulations, a need inhibited by fragmented jurisdictions and historic difficulties in cooperative interstate management. This argument is still valid. In general, if state jurisdiction were extended to 12 nm, several purposes of the Magnuson Act would be negated, or at a minimum, made much more difficult to achieve. Reexamination of the role and purpose of Federal fishery management would become necessary, in turn requiring redefinition of Council functions and the spectrum of State/Federal relationships (such as shared enforcement and data collection responsibilities) developed since passage of the Magnuson Act. New legislation would be required to address and balance the questions arising from reduced Federal authority, increased State responsibility, and a return to divided fishery management authority, which, by defining a Federal role, the Magnuson Act was in part designed to overcome. It would be ill-advised to extend state fishery jurisdiction over fishery resources without assurance that the resources would be adequately protected and managed.

Based on preliminary 1987 data, approximately 66% by volume and 64% by value of U.S. commercial catch, excluding tuna and catch taken in international waters, occurs within 0-12 nm from shore. Attachment 2 provides a breakout by zones (0-3; 3-12; and, 12-200) and Attachment 3 lists harvest of major U.S. fisheries by zones. Although statistics on marine recreational fishing by 3-12 and 12-200 nm are not available, we believe that roughly 90% of the catch in number occurs within 12 nm of shore (Attachment 8).

The following summarizes some of the key considerations of the 1984 study which projected the impact of extending state jurisdiction to 12 nm, as modified by subsequent events or new information.

Key Considerations

Directed Foreign Fishing: Under current law, foreign fishing is prohibited within state waters. The 1984 study showed that extension of state jurisdiction would have only a minor impact

on directed foreign fishing activities. The impact would be insignificant today, because directed foreign fishing has decreased substantially from that which took place at the time of the 1984 study.

Foreign directed fishing allocations in Alaska and for Atlantic squids were and current allocations for Pacific whiting and Atlantic mackerel are generally restricted to areas seaward of 12-miles. Certain areas within the 3-12 mile zone are open for loading and other support operations, conducted under foreign fishing permits. Three areas within 3-12 nm of the Aleutians are seasonally opened for foreign directed fishing. Extending state jurisdiction to 12-miles would preclude NOAA from issuing permits for such operations. This could affect safety of loading operations, e.g. by not allowing for transfers of cargo in calmer waters leeward of the Aleutian Islands.

Joint Ventures: Until or unless amended, the Magnuson Act would prohibit processing or other foreign fishing support activities within state boundaries except for certain operations approved by a governor in the internal waters of a state.

General: One result of the extension of state jurisdiction may be a large increase in foreign applications to State governors for internal waters joint ventures when U.S. fishermen conduct a fishery a few miles off shore, e.g. the Pacific whiting fishery. Governors may readily approve such operations if fishermen from their states benefit. Thus, the national security advantages sought by DOD by extending the territorial sea may not be fully realized if state Governors approve such applications, e.g. for Soviet and Polish vessels to operate in internal waters off the Pacific Northwest.

East Coast: Except for certain closed areas, joint ventures (JVs) for Atlantic mackerel and squids are not restricted to waters seaward of 12-miles. Extension of state jurisdiction to 12-miles could seriously affect these operations, particularly early in the season when U.S. vessels are operating near shore. Excessively long runs to the foreign processing vessels could affect product quality and prices to U.S. fishermen.

West Coast: Joint venture activity for whiting off the west coast occurs both inside and outside the 12-mile zone. The restriction of foreign processor operations to areas outside 12-miles may result in reductions or even termination of joint ventures for whiting. If so, U.S. vessels will face reduced income. The competitive position of U.S. shore-based processors would be improved if there were a drop in joint ventures, but the market for domestic processed whiting is relatively small and underdeveloped. Until there are advances in processing or new product

development, shore-based processing of whiting is not likely to take the place of joint ventures as the source of income to U.S. vessels.

Loss of joint venture activity is not expected to stimulate development of a fully domestic Pacific whiting industry to the same extent that domestic production might be stimulated off Alaska. Whiting are highly perishable and must be processed soon after capture to maintain quality. Because they must be caught relatively close to the processor and because they migrate, whiting are available to a shore-based processor for less than three months of the year. At-sea domestic processing which is still well in the future has not yet proven to be economically viable, and even if it were, most foreign markets for this product are in eastern bloc countries and not readily available to U.S. processors. The joint venture for whiting accounted for about \$11.6 million in revenues for U.S. fishermen and more than half of all domestic groundfish landings off Washington, Oregon, and California in 1987. Therefore, the exclusion of JVP operations in this fishery will have significant adverse economic implications for the existing domestic JV partners, as well as for many coastal communities in Washington, Oregon, and California.

Alaska: Joint venture activity off Alaska has increased substantially in recent years. Extension of state jurisdiction would end many of the joint venture arrangements. Whether this would be detrimental to the United States in the long term, however, is not easily determined. There would be near-term negative economic impacts related to the loss of income and jobs associated with joint ventures. Economic losses could be significant for many U.S. joint venture fishing vessel owners who have converted vessels without stern ramps for transferring fish to processors using cod end nets. These owners currently need the markets provided by foreign processing vessels. However, the loss of joint ventures could stimulate domestic expansion of off-shore processing capability providing greater positive economic impacts in terms of increased exports as well as income and jobs. Loss of joint ventures might eventually prove particularly advantageous to the growing surimi processing industry. Previous experience suggests that there would be a sharp increase in Japanese investment in Alaska. However, such expansions could occur if, and only if, the fisheries in question can be profitably developed by U.S. fishermen, given prevailing markets, both for financing necessary investment and for exporting product. Neither is assured nor instantaneous.

Trade: The 1984 report noted that the exclusion of foreign fishing within 12 miles would reduce the amount of fish available for foreign fishing and the amount of leverage the Federal government has in "fish and chips" initiatives. Federal policy no longer supports use of this leverage. With directed foreign fishing substantially reduced since the earlier study, there will be no long term adverse impacts on our trade efforts from extending state jurisdiction to 12 miles. However, to the extent that JVs are displaced, short run market adjustments to different suppliers, new contractual arrangements, and unfamiliar logistical requirements would result. The effect would depend on how long it takes domestic processors to compete for markets supplied by any displaced JVs.

Predominance: Attachment 4 lists those fisheries which are presently conducted predominantly in the EEZ that would probably be conducted predominantly within an expanded state jurisdiction. Most notable are Aleutian Islands groundfish, Gulf of Alaska groundfish, and commercial and recreational salmon. In addition, there are certain migratory species which, due to environmental cues, could just as well predominate in the area out to 12 nm during one year but not the next, making rational management of such resources extremely difficult to achieve.

Regional Fishery Management Councils: Presently, 28 fisheries are regulated under the Magnuson Act (Attachments 5 and 6). There would be a corresponding need to increase state management capability, particularly with respect to coordinating management activities among several states. This could result in a greater role for the Interstate Marine Fisheries Commissions.

The workload of all Councils (with the exception perhaps of those in the Northeast where an EEZ fishery would continue for all species except Atlantic salmon) would decrease substantially if state jurisdiction were extended to 12 miles (Attachments 4 and 7). A case could be made that the cost of supporting the Councils could not be justified by the expected conservation and management benefits. Existing FMPs might be able to continue by voluntary agreement, but there would be no way to counter the defection of a state from an agreed FMP. A few fishery units would remain to be managed in the EEZ, but these probably could be managed effectively and at less cost under Secretarial authority. The FMPs for other fisheries would likely have to be repealed, or possibly could be replaced by management plans adopted under interstate compacts. The likelihood of the latter result is low unless there is a substantial increase in funding for Interstate Marine Fisheries Commissions under the Interjurisdictional Fisheries Act or some other program (see below).

In addition, any reduced role of the Regional Fishery Management Councils due to the fragmentation of fisheries management

authority will most likely result in the reduced participation and cooperation of both the commercial and recreational sectors of the fishing industry in the overall fisheries management process. The loss of the Councils' ability to provide the forum for industry input into the fisheries management process will ultimately lead to individual rather than cooperative state management.

Interstate Fisheries: Extension of state jurisdiction would place much greater responsibility for effective fishery management on the states. If past performance is indicative of likely future results, coordinated and effective conservation and management of marine fisheries would likely decrease with extension of state jurisdiction because the states generally have neither the resources nor the political interest required to develop and implement the cooperative interstate management programs needed. One of the principal arguments behind passage of the Magnuson Act was the inability of the states to achieve sound conservation and management of fishery resources throughout the entire range of the stocks. The extension of state jurisdiction would increase the amount of fishery resources under state control without increasing their staff or funds for research, data collection, development of management plans, enforcement or other functions.

Interstate cooperation would be essential to ensure consistency of objectives and management regulations, but simple extension of authority would not require or even foster such cooperation. As existing FMPs were repealed or negated by changes in State regulations, there would likely be increased interstate conflicts with adverse impacts on stocks and in turn on the fisheries. For example, split jurisdiction could result in differing objectives or regulations for the same fisheries resulting in confusion for the coastwise fleets, uncertainty regarding interstate boundaries beyond three miles, difficulties of enforcement, and a potential increase in short-term exploitation at the expense of long-term maintenance of the interstate stock. There would be a need for an institutional mechanism to resolve interstate conflicts (as provided for in the Striped Bass Conservation Act); however, implementation of such mechanisms probably would not occur until there has been damage to some stocks. Increased funding under the Interjurisdictional Fisheries Act or other statutes could offset reduced Federal efforts, but there would be no mandate to achieve the purposes of the Magnuson Act.

It should also be noted that extended state jurisdiction could result in significant changes in fishery allocations. Many states are under strong pressure to reserve many or most stocks within state jurisdiction for recreational fisheries. This pressure could increase if the states had jurisdiction over all fishery resources within 12 miles. Commercial interests would

probably have less ability to counter this pressure at the state level than at the Council and Federal level.

Parochialism: Under a 12 mile state fishery jurisdiction, interstate rivalries are likely to be reinforced. Even now, many states impose differential license fees within their maritime boundaries upon out-of-state fishermen. If state jurisdiction were to be extended to 12 miles, and with that the power to license out-of-state fishermen, the potential for inequities in fishing opportunity would be considerably compounded in the coastal fisheries. In addition, states have sometimes attempted more stringent institutional barriers against out-of-state fishermen to protect the interests of the state-based fishermen and processors predominantly in their internal waters. Such barriers have included outright bans and prohibitive nonresident fees. Generally, when such issues have reached Federal courts, state statutes excluding nonresidents have been struck down.

Research and Enforcement: Extending state jurisdiction would decrease the Federal interest in research and stock assessments for a large number of stocks. It would be difficult to make a strong case for Federal research into stocks which are under state management jurisdiction. Because state research capabilities generally are limited, extension of state jurisdiction would result in a significant drop in research and stock assessments over time. The range of many important stocks would extend ~~extend~~ across many boundaries of many states, few of which are equipped to take over the assessments now conducted by or with the participation of NMFS. This could have long term adverse impacts because inadequate stock assessments could result in overharvest for long periods before the impacts on stocks were apparent.

Extending state jurisdiction could result in a multiplicity of regulatory differences which would require increased personnel funding for the states. While there would be fewer fishery management programs calling for Federal enforcement efforts, there could be more need for Federal activity related to Lacey Act enforcement, given the expectation of differing state regulations for shared stocks. In addition, existing Federal efforts under the Magnuson Act relative to foreign fishing and protected species would continue. Where Federal regulations were inconsistent with those of any state, the Federal Government would also require more personnel and funds for surveillance operations to ascertain which vessels were fishing under state jurisdiction and which under Federal jurisdiction. Research and enforcement efforts now carried out by Federal agencies inside the 12-nm boundary could not be cut significantly without severe impacts. States could not take over these functions immediately although they might eventually do so. Shared data collection systems might be disrupted and prevailing confidentiality restrictions may become substantially

more burdensome due to the larger share of the total fishery being affected. Federal research, data collection, and enforcement activities should not be reduced until the states demonstrate the ability and desire to take over such programs.

Transboundary Stocks: Negotiation problems and challenges regarding transboundary stocks between the United States and Canada, the United States and Mexico, and possible transboundary stocks between the United States and the USSR would be exacerbated with extended state jurisdiction. More of the resources will come under state jurisdiction which will introduce further complexity into the Federal Government's efforts to achieve international cooperation since state and Federal interests do not always coincide.

Recreational Fisheries: Statistics on recreational fishing by 3-12 and 12-200 nm segments are not available from the Marine Recreational Fishery Statistics Survey (MRFSS). However, data are available for inside and outside of 3 nm for the continental United States except for Texas and the west coast of Florida, where state jurisdiction extends to approximately 10 statute miles. Data for these two states are available for inside and outside 10 miles.

For states with jurisdictions of 3 nm, 84% of the 1987 catch in number was inside 3 nm, and 84% of the west Florida and Texas catch was taken within 10 miles (Attachment 8). These results suggest that 90% or more of the catch in number would be taken within 12 nm. It should be noted that in the waters off the New England and Mid-Atlantic states there is a trend towards increased recreational fishing further offshore and seaward of 12 nm.

As noted earlier, extended state jurisdiction could result in additional stocks being reserved for recreational fisheries at the expense of commercial fisheries.

Indian Treaty Rights: It is uncertain whether treaty rights of native Americans would be affected by extension of state jurisdiction. An increase in Alaska's jurisdiction over salmon would be of concern to northwest treaty tribes and other user groups in the Pacific Northwest. Any implementing legislation must clearly address this point.

Other Living Marine Resource Activities: No significant effects are anticipated for protected species nor are substantial adverse effects anticipated for habitat conservation. However, it should be noted that the 1986 amendments to the Magnuson Act increased the responsibility of the Regional Fishery Management Councils in the area of habitat conservation. The Councils are proving effective in helping NMFS protect and conserve important fishery habitat. To the extent that any change in state/Federal jurisdictions diminishes the Councils' role then their role in

habitat will also be reduced, to the probable detriment of fisheries habitats. On the other hand, to the extent that state coastal zone management plans protect the environment, there may be a benefit to habitat protection from extending jurisdiction. On balance, however, the disadvantages of lessened Council authority outweigh the potential advantages of a broadened coastal zone program.

Magnuson Act and Other Laws: Respective state and Federal interests under NOAA's principal resource management statutes would be realigned; each statute would need to be examined to determine whether the degree of alteration of state-Federal balance was acceptable.

Attachments

Attachment 1

Attachment 1 is the 1984 Policy Study which is available on request.

1987 U.S. COMMERCIAL HARVEST
By Distance from Shore

<u>Fishery</u>	<u>0-3 miles</u>	<u>3-12 miles</u>	<u>12-200 miles</u>
<u>Finfish</u>			
Pounds	36%	30%	34%
Value	50%	15%	35%
<u>Shellfish</u>			
Pounds	51%	18%	31%
Value	50%	12%	38%
<u>Total</u>			
Pounds	38%	28%	34%
Value	50%	14%	36%

MAJOR U.S. FISHERIES
Harvests by Distance from Shore
Based on 1987 Data

Fishery	0-3 mile		3-12 mile		12-200 mile		TOTAL	
	1,000 Pounds	\$1,000	1,000 Pounds	\$1,000	1,000 Pounds	\$1,000	1,000 Pounds	\$1,000
FISH								
Cod								
Atlantic	1,296	1,004	7,221	5,565	50,036	37,237	58,533	43,806
Pacific								
Alaska	24,177	4,256	136,999	24,115	-	-	161,176	28,371
West Coast	937	304	423	138	5,937	1,935	7,297	2,377
JV	-	-	67,686	7,899	63,534	7,435	131,220	15,334
Flounders								
New England	8,876	11,143	9,853	11,963	58,006	76,398	76,735	99,504
Gulf and S Atl	5,805	6,335	1,703	1,953	2,410	2,745	9,918	11,083
Alaska	35,960	3,344	3,050	345	-	-	39,010	3,689
West Coast	10,160	3,926	26,040	9,227	28,150	12,144	66,279	25,301
JV	-	-	254,810	17,189	239,572	16,083	494,382	33,272
Hake								
Red/White (Atl)	181	37	1,903	486	15,645	5,793	17,729	6,316
Pacific	27,853	1,228	NA	NA	NA	NA	NA	NA
JV	-	-	NA	NA	NA	NA	NA	NA
Halibut	27,186	30,741	14,159	16,213	34,694	41,108	76,091	81,041
Herring, sea								
Atlantic	42,782	2,390	32,133	1,486	9,621	492	84,536	4,368
Pacific	122,598	47,916	-	-	-	-	122,598	47,916
Mackerel								
Atlantic, Dom	1,158	216	399	125	7,918	678	9,475	1,019
Atlantic, JV	-	-	-	-	17,663	1,058	17,663	1,058
King	715	845	1,900	2,071	1,951	2,056	4,566	4,972
Pacific	38,116	2,615	55,636	3,818	-	-	93,752	6,433
Spanish	1,054	610	4,000	1,320	563	226	6,517	2,156
Atka, Dom	124	13	-	-	-	-	124	13
Atka, JV	-	-	66,206	4,775	-	-	66,206	4,775

MAJOR U.S. FISHERIES
Harvests by Distance from Shore
Based on 1987 Data

Fishery	0-3 mile		3-12 mile		12-200 mile		TOTAL	
	1,000 Pounds	\$1,000	1,000 Pounds	\$1,000	1,000 Pounds	\$1,000	1,000 Pounds	\$1,000
Menhaden	2,084,624	82,743	627,661	21,682	-	--	2,712,285	104,425
Mullet	30,124	8,224	1	-	-	-	30,125	8,224
Ocean Perch								
Atlantic	3	2	182	110	3,915	2,526	4,100	2,638
Pacific								
Alaska	8,046	1,470	5,059	922	528	96	13,633	2,488
West Coast	-	-	206	64	3,899	1,215	4,105	1,279
JV	-	-	234	33	992	140	1,226	173
Pollock								
Atlantic	129	51	4,580	1,569	40,706	16,190	45,415	17,800
Alaska	82,766	6,870	468,976	38,925	-	-	551,736	45,794
JV	-	-	50,313	2,921	2,280,643	131,381	2,330,957	134,302
Sablefish								
Alaska	9,724	5,783	15,383	9,783	48,862	28,633	73,969	44,199
West Coast	1,298	721	6,947	2,811	20,248	10,220	29,493	13,747
JV	-	-	256	35	15	2	271	37
Salmon, Pacific	544,968	560,150	14,379	31,401	2,258	4,169	561,605	595,720
Snapper								
Red	17	21	551	964	2,750	6,043	3,318	7,028
Other	495	865	1,400	2,450	2,565	4,488	4,460	7,803
Swordfish	8	27	-	-	7,455	27,364	7,463	27,391
Tilefish	-	-	120	134	7,830	8,718	7,950	8,852
Whiting	1,006	342	5,414	1,614	28,204	9,610	34,624	11,566

MAJOR U.S. FISHERIES
Harvests by Distance from Shore
Based on 1987 Data

Fishery	0-3 mile		3-12 mile		12-200 mile		TOTAL	
	1,000 Pounds	\$1,000	1,000 Pounds	\$1,000	1,000 Pounds	\$1,000	1,000 Pounds	\$1,000
Shellfish								
Clams								
Hard	11,418	49,593	-	-	-	-	11,418	49,593
Ocean Quahog	1,254	2,426	756	276	48,248	13,881	50,258	16,576
Soft	7,466	19,761	3	9	-	-	7,469	19,770
Surf	16,318	5,001	28,616	13,434	15,810	9,558	60,744	27,993
Crabs								
Blue	197,784	70,763	42	13	-	-	197,826	70,776
Dungeness	22,364	29,110	7,096	9,382	-	-	29,460	38,492
King	635	2,058	4,360	14,839	24,070	82,032	29,065	98,929
Snow	8,114	17,363	105,698	81,321	-	-	113,812	98,684
Lobsters								
American	38,133	107,543	725	2,285	6,640	23,154	45,498	133,310
Spiny, Atl/Gulf	941	3,272	2,680	9,353	1,161	4,083	4,782	16,708
Oysters								
	39,807	92,423	-	-	-	-	39,807	92,423
Scallops								
Bay	580	3,159	-	-	-	-	580	3,159
Calico	-	-	-	-	8,155	8,889	8,155	8,889
Sea	710	3,595	532	1,700	30,058	124,504	31,300	129,799
Shrimp								
New England	1,581	1,754	9,500	10,404	-	-	11,081	12,158
Gulf & S. Atl	164,813	256,696	28,906	53,187	86,334	205,794	280,053	515,677
Squid								
Atlantic								
Dom	6,647	2,551	2,325	712	29,653	9,148	38,625	13,784
JV	-	-	-	-	9,112	1,373	9,112	1,373
Pacific	9	4	43,157	4,296	-	-	43,166	4,300