FREEDOM OF FISHING IN DECLINE: THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 AND THE IMPLICATIONS FOR JAPAN

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> We live in a period of uncontrolled and accelerated change, an age in which technology has raced ahead and in which hallowed social values have tumbled. . . We live in an age of paradox: an age in which the politician has been straining after the scientist and technologist, and in which the latter have been trying to understand the social consequences of the innovations to which their work has led. *The world is clearly living through a period in which the aims of politics and the outcome of scientific endeavor appear to clash.*[1]

On March 1, 1977, the United States enacted the Fishery Conservation and Management Act of 1976 (FCMA).[2] On the authority of this Congressional enactment[3] the United States unilaterally claimed exclusive management authority[4] over all fish, except high-

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1. Quote by Sir Solly Zuckerman (1971) in Alverson, *Management of the Ocean's Living Resources: An Essay Review*, 3 OCEAN DEV. & INT'L L. 99 (1975) (emphasis added). For a thoughtful discussion on natural resource decision making *see* Young, *Natural Resources Policy: A Modest Plea for Political Analysis*, 8 OCEAN DEV. & INT'L L. 183 (1980).

2. 16 U.S.C.A. §§ 1801-1882 (West Supp. 1980) [hereinafter cited as FCMA]. H.R. 200, 94th Cong., 1st Sess. (1975), passed the House of Representatives by a vote of 208 to 101 on October 9, 1975, and passed the Senate in lieu of S. 961, 94th Cong., 1st Sess. (1975), on January 28, 1976. President Ford signed the 200-mile zone into law on April 13, 1976.

3. 16 U.S.C.A. § 1811 (West Supp. 1980).

4. *Id.* § 1812 states that:

> The United States shall exercise exclusive fishery management authority, in the manner provided for in this [Act], over the following:
> (1) All fish within the fishery conservation zone.
> (2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.
> (3) All Continental Shelf fishery resources beyond the fishery conservation zone.

ly migratory species,[5] within 200 miles from its coasts.[6] This extension of national jurisdiction, intended to protect threatened contiguous fisheries,[7] has special implications for Japan, a major maritime nation[8] and close ally of the United States.[9] Japan depends on continued access to United States fishing grounds, especially the rich harvest off the coast of Alaska, as a source for food. Passage of the FCMA threatens continued Japanese access to United States fishing grounds.

The Law of the Sea is undergoing fundamental changes[10] as a result of the increase in newly independent states;[11] rising national-

5. *Id.* § 1813. The FCMA defines "highly migratory species" as "species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the oceans." *Id.* § 1802(14). In addition, the definition of "fish" excludes "highly migratory species." *Id.* § 1802(6). Thus, the United States does not claim any management authority over tuna, even while they are within the 200-mile zone.

6. *Id.* § 1811 provides that:

> There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

7. Although Congress placed blame for the depletion of United States fishery resources on extensive foreign fishing, it recognized that the depressed condition of offshore marine resources was also attributable to inadequate fishery conservation and management regulations. With the enactment of the FCMA, Congress declared:

> As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

Id. § 1801(a)(2).

8. *See generally* Oda, *Transportation of Japanese Seaborne Trade and Related Laws and Regulations*, 6 OCEAN DEV. & INT'L L. 237 (1979).

9. *See generally* Hummel, *The Foundation of U.S.-Japan Ties: Common Interests and Shared Values*, 75 DEP'T STATE BULL. 582 (November 8, 1976).

10. An unprecedented rate of change in the past several decades has had an impact on the operations of international and national institutions. Nations are caught in situations that demand wholesale changes in their social institutions in order to deal with the present complex technological, economic, and political relationships.

Although change is not new to human experience, the speed of and the need for change in contemporary society presents a new social challenge. As a scholar on social change observed: "If the human race is to survive it will have to change its way of thinking more in the next 25 years than it has done in the last 25,000 years." G. JONES, PLANNED ORGANIZATIONAL CHANGE 3 (1969).

11. As a consequence of the large number of newly independent States, memberships in international organizations have significantly increased, diminishing the political power which enabled the Great Powers to dominate these organizations. Kildow, *The Law of the Sea: Alliances and Divisive Issues in International Ocean Negotiations*, 11 SAN DIEGO L. REV. 558, 559 (1974).

ism in the older, more developed, nations;[12] world population growth;[13] heightened awareness of the potential for wealth from the oceans;[14] and the technological capabilities to develop that wealth.[15] While much of the rate of change is attributable to scientific discovery and technological innovation, many of these changes reflect the emergence of a new world order.[16] International ocean negotiations[17] present a real confrontation between developed and developing nations as well as a symbolic attempt to alter traditional patterns of resource distribution and international law.[18]

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12. The rising nationalism in the developed countries and the decline in the international economic position of the United States have produced an emphasis on domestic development over foreign programs, resulting in a gradual withdrawal of foreign aid commitments. *Id.* at 559.

13. Gaither & Strand, *The Fishing Conservation and Management Act of 1976: Economic Issues Associated with Foreign Fishing Fees and Foreign Allocations*, 5 OCEAN DEV. & INT'L L. 135 (1978).

The world's population by the turn of the century will be six billion and the strain on the earth's resources to sustain such numbers will be enormous. This is illustrated by the fact that in 1950 only six major cities had more than five million people but in the year 2000 there will be sixty, forty-five of them in developing countries. Over ninety percent of the population increase will be in the developing countries so that four out of every five people will be living in less-developed areas of the world.

World population growth could have a dramatic effect upon international politics. The forty-two million population of Egypt, the Arab country on which the United States places hopes for Middle East stability, is expected to double in twenty years. Muslims, who have one of the highest birthrates in the world, will account for one-fourth of the world's population by the year 2000. In Soviet Central Asia politically restless Muslims will number one-fourth or one-third of the total Soviet population by the year 2000. Arabs in Israel proper and Israeli-occupied lands will outnumber Jews by the turn of the century. World population growth will continue to exert an influence over international maritime matters as countries increase their efforts to tap ocean resources to meet rising domestic needs and expectations. The Christian Science Monitor, Sept. 11, 1980, at 12-13.

14. Kildow, *supra* note 11, at 559. *See* Pontecorvo & Mesnik, *The Wealth of the Oceans and the Law of the Sea: Some Preliminary Observations*, 11 SAN DIEGO L. REV. 679 (1974).

15. Kildow, *supra* note 11, at 559.

16. Juda, *UNCLOS III and the New International Economic Order*, 7 OCEAN DEV. & INT'L L. 211, 223 (1979).

17. As the United Nations Conference on the Law of the Sea illustrates, the uses of the oceans and ownership of vast marine resources present numerous complex issues. International standards must be formulated to deal with: the breadth of the territorial sea; freedom of transit through, over, and under international straits; access to, as well as revenue from, mining of minerals under the sea; a means of compelling settlement of disputes; marine pollution; coastal State jurisdiction in an economic resource zone over living and non-living resources, including oil and gas deposits within and beyond the zone; and scientific research. Prospects for an acceptable international agreement on the Law of the Sea are discussed in Breaux, *The Diminishing Prospects for an Acceptable Law of the Sea Treaty*, 19 VA. J. INT'L L. 257 (1979) and Goldberg, *State of the Negotiations on the Law of the Sea*, 31 HASTINGS L.J. 1091 (1980). For an introduction to the LOS negotiations *see* McWhinney, *The Codifying Conference as an Instrument of International Law-Making: From the 'Old' Law of the Sea to the 'New'*, 3 SYRACUSE J. INT'L L. & COM. 301 (1974-75).

18. Developing nations maintain that customary international law is a remnant of colo-

One of the most significant events in the recent history of man's use of the oceans has been the accelerated exploitation of its living resources. Since World War II, the world catch of fish has increased considerably,[19] from seventeen million metric tons in 1948,[20] to sixty-eight million metric tons in 1968[21] and an estimated 100 million metric tons in 1980.[22] World demand for fish by the year 2000 will be approximately 400 million metric tons, or about six times the present harvest of living resources from the oceans.[23]

While the total world fish catch has more than tripled since World War II,[24] the United States' commercial catch has remained relatively stable, fluctuating between 2.0 and 2.2 million tons.[25] This has resulted in a decline of the United States' position from second in 1956 to sixth in 1970 among the fishing nations.[26] While the total volume of catch by the United States has remained constant, American consumption of seafoods has grown rapidly resulting in the importation of substantial quantities of fish products.[27]

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nial imperialism and is therefore not binding on the newly independent States of the Third World who did not participate in the formulation of customary international law. The emergence of new States within the international community has produced a diversity of interests and these new States have formed international associations, such as the Group of 77, to implement their needs. Thus, developing nations frequently view the traditional law of the sea as serving primarily the interests of the colonial maritime powers. Nelson, *The Emerging New Law of the Sea*, 42 MOD. L. REV. 42 (1979).

19. Excluding whales, the total catch of fish products was approximately 1.5-2.0 million metric tons in 1850; 4.0 million metric tons in 1900; and 10 million metric tons in 1930. Eisenbud, *Understanding the International Fisheries Debate*, 4 NAT. RESOURCES L. 19, 20 (1971). *See also* Chapman, *Food From the Sea and Public Policy*, in OCEAN RESOURCES AND PUBLIC POLICY 64 (T. English ed. 1973).

20. Alexander, *New Approaches to Control of Ocean Resources*, in INTERNATIONAL RELATIONS AND THE FUTURE OF OCEAN SPACE 68 (R. Wirsing ed. 1974).

21. Eisenbud, *supra* note 19, at 20.

22. It has been estimated that 100 million tons is the maximum number of fish capable of being harvested from the oceans without biological harm to world breeding stocks. MARINE FISHERIES CONSERVATION ACT OF 1975, H.R. REP. NO. 445, 94th Cong., 1st Sess. 33 (1975), *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 593, 606 [hereinafter cited as HOUSE REPORT].

23. Schram, *Proposed International Fishery Regimes and the Accommodation of Major Interests*, in THE LAW OF THE SEA: NEEDS AND INTERESTS OF DEVELOPING COUNTRIES 130 (L. Alexander ed. 1972).

24. HOUSE REPORT, *supra* note 22, at 31, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 603.

25. *Id.* at 35, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 607.

26. In terms of annual catch, the six leading nations in 1956 were Japan, the United States, China, the Soviet Union, Norway, and Peru in that order. In 1970, however, they were Peru, Japan, China, the Soviet Union, Norway, and the United States. Alexander, *supra* note 20, at 68-69.

27. In 1950 the United States imported only 23.4 percent of its seafood while in 1974 imports were over sixty percent. The American increased demand for seafood led to a 1972

Foreign fishing off American waters has increased significantly over the past thirty years,[28] due, in part, to the different character of United States and foreign fishing efforts. Foreign fishing nations, like Japan, possess large factory fleets that are frequently subsidized and carry the latest technological equipment to permit extensive distant-water fishing. In contrast, the United States' commercial fishing industry consists primarily of small-unit enterprises, individually owned and operated close to home waters.[29]

The enactment of the FCMA has far-reaching implications for Japan. In 1975 the total catch made by Japanese distant-water fisheries within the United States' 200-mile zone was approximately 1.4 million metric tons.[30] The FCMA will reduce the Japanese

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deficit of 1.3 billion dollars in fish and fisheries products payments — up 318 percent since 1960. HOUSE REPORT, *supra* note 22, at 32, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 604, 605.

In 1975 it was estimated that if domestic production replaced imports of foreign fisheries products the United States economy would increase approximately three billion with an increase of 200,000 man-years in employment. *Hearings on S.961 Before the Subcommittee on Oceans and International Environment of the Senate Committee on Foreign Relations*, 94th Cong., 1st Sess. 80 (1975) (statement of Senator Ted Stevens) [hereinafter cited as *Senate Hearings*].

28. *Id.*

29. The United States commercial fishing industry was described in 1975 as follows:

> The U.S. commercial fishing industry consists of approximately 150,000 fishermen, 1,800 processors, 1,200 wholesalers, and 2,000 importers/exporters, plus frozen and canned food distributors and chain store, restaurant, and institutional buyers. There are also approximately 85,000 people employed in processing and wholesaling fish products.
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> It is largely although not entirely composed of many small enterprises spread along the coastal States and throughout much of the interior of the country. An estimated 80 percent of the fishing craft in the United States is individually owned and 84 percent is under 5 tons. Small-unit operation also is characteristic of the processing industry. Only a few large companies exist. About 42 percent of the plants have sales of less than $100,000. Only 17 percent have sales of over $1 million and only 2.7 percent (43 plants) have sales of over $10 million. The few companies that may be considered giants in the fish industry are quite small when compared to large companies in other areas of food processing.

HOUSE REPORT, *supra* note 22, at 30-31, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 603.

30. Yonezawa & Suda, *Effects of Extended Jurisdiction on Japanese Fisheries*, in EXTENDED FISHERY JURISDICTION: PROBLEMS AND PROGRESS 1977, 172 (K. Jurgensen & A. Lovington eds. 1978) (Proceedings of the North Carolina Governor's Conference on Fishery Management under Extended Jurisdiction).

Japan is not the only nation that has engaged in extensive fishing within 200 miles of American shores which is illustrated by the following table.

Nation	Fish Caught Near U.S. Coastline (metric tons)
Japan	1,205,604
U.S.S.R.	1,100,520
Poland	243,841
East Germany	96,729
Canada	68,438

catch and United States fees imposed on foreign vessels operating within the zone will add to the costs of Japanese fisherman working American fishing grounds.[31] Japan's dietary habits, economy and domestic and foreign politics could be altered by the FCMA.

This paper will examine the FCMA and the implications of the Act for Japan. The reader will be introduced to: (1) the development of ocean law; (2) the evolution and significance of the exclusive economic zone concept; (3) the Fishery Conservation and Management Act of 1976; and (4) the implications of the FCMA for Japan.

I. THE DEVELOPMENT OF OCEAN LAW

A. Early Views

Throughout history the oceans have played a major role in international affairs.[32] Nations have depended on the seas for their

Nation	Fish Caught Near U.S. Coastline (metric tons)
Bulgaria	29,548
West Germany	26,760
Spain	24,247
Romania	9,890
Italy	4,680
France	3,832
United Kingdom	666
United States	2,678,510
Total	5,493,265

U.S. NEWS AND WORLD REPORT, Feb. 28, 1977, at 69.

31. 16 U.S.C.A. § 1824(b) (10) (West Supp. 1980).
It was estimated that the 1.4-1.5 million tons of fish caught by the Japanese off the United States coasts every year may be reduced by thirty to forty percent after the enactment of the FCMA. Additionally, United States fees levied on foreign fishing could add twelve million dollars a year to the costs of Japanese fishermen working in the American zone. U.S. NEWS AND WORLD REPORT, Feb. 28, 1977, at 70. Currently, United States fees on foreign fishing and fish processing in the United States FCZ are as follows: $1.00 per gross registered ton (GRT) for catchers; $0.50 per GRT (up to $2,500) for processors; $200 per vessel for non-retention on fishing vesels (Japanese tuna long-liners); and 3.5% poundage fee on ex-vessel value of the catch. This system produced about $18.5 million in fees from foreign operations in 1979. However, approximately $14 million of the fees may be refunded, due to the failure of foreign fishermen to harvest their full allocations. AMERICAN FISHERIES PROMOTION ACT REPORT, H.R. REP. NO. 96-1138, Part 1, 96th Cong., 2d Sess. 71 (1980) (Dissenting Views of Congressman Paul N. M'Closkey, Jr.) [hereinafter cited as AMERICAN FISHERIES REPORT]. For a discussion of fees imposed on foreign fishing by the FCMA *see generally* Anderson & Wilson, *Economic Dimensions of Fees and Access Control Under the Fishery Conservation and Management Act of 1976*, 52 WASH. L. REV. 701 (1977); Gaither & Strand, *supra* note 13.

32. *See generally* INTERNATIONAL RELATIONS AND THE FUTURE OF OCEAN SPACE (R. Wirsing ed. 1974); P. RAO, THE PUBLIC ORDER OF OCEAN RESOURCES (1975); and Huisken, *Naval Forces*, *reprinted in* 1 OCEAN YEARBOOK 412 (M. Borgese & N. Ginsburg eds. 1978).

economies, for political power, and for military effectiveness.[33] With this dependence laws were formed to regulate the use of the oceans.[34] Roman law developed the theory that the sea is common to all and that animals, *ferae naturae*, including fish, belonged to no one until caught. This Roman concept is illustrated in Ovid's admonition "that the world of water was free to all, that Nature made neither the sun nor air nor water private property but rather made them public gifts, belonging to human society as a whole."[35]

The first global threat to the Roman concept that the sea is common to all was asserted by Spain and Portugal in the sixteenth century. These two powers divided the vast oceans between them from authority granted by Papal Edict. Spain's claim included the exclusive right of navigation in the western Atlantic, in the Gulf of Mexico and in the Pacific. Equivalent claims were granted to Portugal in the Atlantic south of Morocco and in the Indian Ocean. The Edict restricted commerce with other nations, especially with the emerging markets in the New World and the East Indies.[36] There were few protests against the exclusive maritime dominion enjoyed by Spain and Portugal.[37]

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33. The United States Department of Defense opposed the FCMA because it feared that any extension of coastal State jurisdiction would eventually infringe on the freedom of navigation, thereby restricting the mobility of the Navy's nuclear submarines and the effectiveness of the entire American nuclear deterrence strategy. *Senate Hearings*, *supra* note 27 at 84-85 (statement of Hon. Gerry E. Studds). United States dependence on imported energy and mineral supplies will enhance the United States Navy's role as guardian of the world's maritime trade routes. The Navy has advocated an unlimited expansion program to meet the challenge of likely resource wars. A proposed Fifth Fleet in the Indian Ocean to protect Persian Gulf oil supplies is currently being discussed. Klare, *Resource Wars*, 262 HARPER'S 20-23 (Jan. 1981); *see also* Richardson, *Power Mobility and the Law of the Sea*, 58 FOR. AFF. 902 (1980).

34. The Roman Empire probably first codified the concept of free ocean use in the sixth century in the Code of Justinian. Fenn, *Justinian and the Freedom of the Sea*, 19 AM. J. INT'L L. 716, 716-20 (1925).

The Romans, however, were not great seafarers and their lawyers, who had so much influence on the western legal system, were not to interested in maritime law. When the Roman Empire was confronted by strong external enemies they came not from some distant land transported to the boundaries of Rome by the sea, but came from the interior of the continent. The vast barbaric races that descended to destroy the glories of Rome had no acquaintance with the sea or with the legal order that worked the empire. Thus, for centuries the sea was to remain an area of "no-law," by general juridical consent. D. JOHNSTON, THE INTERNATIONAL LAW OF FISHERIES 158-59 (1965). For an interesting discussion about fishermen in ancient civilization *see* Kruezer, *The Cradle of Sea Fisheries*, *reprinted in* 1 OCEAN YEARBOOK 102 (M. Borgere and N. Ginsburg eds. 1978).

35. E. JONES, LAW OF THE SEA: OCEANIC RESOURCES 6 (1972).

36. *Id.* at 7-8.

37. *Id.* at 7. Spain and Portugal enforced the exclusive rights conferred upon them by the Pope with harsh sanctions, the death penalty or confiscation of goods. *Id.* at 8.

During this period there were basically two important uses of the oceans: surface navigation, including commercial and military uses, and fishing.[38] Few nations possessed ocean-going vessels and fleets were usually small.[39] Thus, sixteenth century authors who considered the question of appropriation of the seas generally accepted the theory that the seas were capable of appropriation and that they were under the sovereignty of some nation.

B. The Grotius-Selden Debate: Freedom of the Seas or State Ownership

Extensive worldwide exploration in the sixteenth century and the colonial settlements multiplied the number of ocean users. More importantly, these developments focused attention on the need to resolve two conflicting philosophies of ocean use; national ownership of the oceans, implicit in Spanish and Portuguese claims, and freedom of the seas which was vital to the great trading companies such as The Dutch East Indian Company.[40]

During the seventeenth century the Dutch extended their maritime interest into the East Indies and thereby challenged the Papal Edict which had reserved this area for the Portuguese. Controversies ensued and The Dutch East Indian Company solicited the eminent Dutch scholar and jurist, Hugo Grotius, to prepare a defense of the trading policy with the East. His defense began with the publication of *Mare Liberum*, or free sea,[41] in 1609. The treatise advocated not only the right of the Dutch, or any other nation, to participate actively in the East Indian trade, but also articulated a competing concept of ocean use: "[t]hat all nations should have free and equal access to the seas and its resources."[42]

Grotius based his argument upon three interrelated assumptions: (1) that nations cannot occupy or enforce claims of ownership to whole oceans; (2) that the resources of the oceans are

38. Newton, *Seabed Resources: the Problems of Adolescence*, 8 SAN DIEGO L. REV. 551 (1971).

39. *Id.*

40. Swing, *Who Will Own the Oceans?*, 54 FOREIGN AFF. 527 (1976).

41. Jones, *supra* note 35, at 8-9. Gold, *The Rise of the Coastal State in the Law of the Sea*, *reprinted in* MARINE POLICY AND THE COASTAL COMMUNITY 13, 17 (D. Johnston ed. 1976).

Mare Liberum. "The sea free. The title of a work written by Grotius against the Portuguese claim to an exclusive trade to the Indies, through the South Atlantic and Indian Oceans; showing that the sea was not capable of private dominion." BLACK'S LAW DICTIONARY 119 (4th ed. 1968).

42. Christy, *Marine Resources and the Freedom of the Seas*, 8 NAT. RESOURCES J. 424, 425 (1968).

inexhaustible; and (3) that a specific use of the oceans does not impair other uses.[43] These assumptions were based on Grotius' view of the seas "[a]s incapable of being seized as the air (and therefore), cannot have been attached to the possessions of any particular nation."[44]

As part of his thesis, Grotius asserted that all property is based upon occupation; and that "[t]hings which cannot be seized nor be subject to enclosure may not become property: they are common to all, and their usage pertains to the entire human race rather than to a particular people."[45] By maintaining that "every nation is free to travel to every other nation and to engage in trade with it,"[46] Grotius incorporated the Roman concept that the sea is common to all.

It is interesting to note that the major arguments against Grotius did not come from Spain or Portugal, but from England. In 1580 Queen Elizabeth declared that England would adopt the principle of freedom of the seas as a rule of the Law of Nations.[47] By the seventeenth century England had become a major maritime power with distant colonial possessions and freedom of the seas was no longer an advantageous doctrine. As a result, England reversed its position and claimed dominion over the seas surrounding her coasts.[48]

English claims were supported by the erudite British scholar John Selden. In 1635 Selden articulated his support of the English position in his book *Mare Clausum*, or closed sea.[49] Selden asserted that oceans were capable of appropriation and that in several instances they have been appropriated. He noted that Grotius

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43. A. KOERS, INTERNATIONAL REGULATION OF MARINE FISHERIES 17 (1973).

44. Swing, *supra* note 40, at 528.

45. Jones, *supra* note 35, at 9.

Roman law characterized things that belonged to no one as "res nullius," and things that belonged to everyone as "res communis" including air, running water, and the sea. These things were considered incapable of private ownership and could be enjoyed by all. Things which were deemed to be "res nullius" included wild animals and abandoned property, and "[w]ere open to acquisition under a rule of capture by the first person to properly claim them and reduce them to physical possession." Collins, *Mineral Exploitation of the Seabed: Problems, Progress, and Alternatives*, 12 NAT. RESOURCES L. 599, 615 (1979). For a discussion on natural resource property rights *see Symposium on Natural Resource Property Rights*, 15 NAT. RESOURCES J. 639 (1975).

46. Jones, *supra* note 35, at 10.

47. *Id.*

48. *Id.*

49. Gold, *supra* note 41, at 17.

Mare Clausum. "The sea closed; that is not open or free. The title of Selden's great work, intended as an answer to the *Mare Liberum* of Grotius; in which he undertakes to prove the sea to be capable of private dominion." BLACK'S LAW DICTIONARY 119 (4th ed. 1968).

made an exception for bays, inlets and coastal waters, for these were, according to Grotius, traditionally part of the mainland. Selden reasoned that if such open waters as bays and inlets could be appropriated, then the high seas could also be subject to national jurisdiction by publishing maps which detailed enclosures by latitude and longitude.[50]

The real issue in the Grotius-Selden debate was not the feasibility of nations appropriating the oceans, but the paying of tariffs to a nation for navigational use of the high seas. Grotius maintained that ships should not have to pay for a license to navigate and trade with a distant nation. He feared the levying of fees by different countries along the commercial route. Selden, however, concluded that the imposition of navigational license fees would benefit not only the trade between England and her colonies, but also trade through the Straits of Gibraltar.[51]

Although the Grotius-Selden debate continued into the late eighteenth century, the Grotian view ultimately prevailed.[52] The adoption of the Grotian view did not mean that coastal States were without any control over adjacent waters. The doctrine of freedom of the seas prohibited the establishment of national sovereignty over the high seas, but, from its inception in the seventeenth century, the doctrine was not applied to coastal waters. Because of the defense needs of coastal States, a three-mile[53] territorial sea was generally recognized in which the coastal State was sovereign, subject only to a right of innocent passage for foreign vessels. The oceans of the globe have therefore been traditionally divided into two basic components: the high seas, which are free for the use of all nations, and the territorial seas, over which coastal States exercise jurisdiction.

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50. J. HARGROVE, WHO PROTECTS THE OCEAN? 20 (1975).

51. *Id.* at 21.

52. The doctrine advocating freedom of the seas was articulated in 1509 by the Spanish jurist de Vitoria. However, it was Grotius who established the principle on a firm legal basis. Jones, *supra* note 35, at 11-12.

53. There is a difference of opinion over the origin of the three-mile territorial sea. Some authors maintain that the three-mile territorial sea was established because that was the distance an eighteenth-century cannon could reach. Swing, *supra* note 40, at 528. Other authors claim that the three-mile territorial sea was established when Galiani the Italian jurist suggested that the marine league, a standard measure, be taken as the breadth of the territorial sea. These authors assert that three nautical miles was well in excess of the range of any eighteenth century cannon. Alexander & Hodgson, *The Impact of the 200-Mile Economic Zone on the Law of the Sea*, 12 SAN DIEGO L. REV. 569 (1975). For further discussion on the origin and development of the three-mile limit *see* Jones, *supra* note 35, at 56-60.

C. *The 1958 and 1960 Law of the Sea Conferences*

In an effort to codify and develop the Law of the Sea, the United Nations International Law Commission prepared four draft conventions concerning specific uses of the territorial sea, the high seas, the continental shelf and fisheries conservation. These formed the basis for the four conventions adopted at the 1958 and 1960 Geneva Law of the Sea Conference,[54] and have been ratified by enough governments so that they have the force of international law.[55]

The conventions partition the oceans into five jurisdictional zones.[56] Beginning with the zone nearest to the coast, the State exercises complete sovereignty over its internal waters, including bays, inlets and other adjacent waters. Seaward of the internal waters is the territorial sea,[57] the second jurisdictional zone, over which the State's sovereignty is limited only by the right of innocent passage by foreign vessels.[58] Beyond the territorial sea is the contiguous zone. Within this third zone the State may exercise the necessary control over foreign vessels to prevent and punish violations of their customs, fiscal, immigration or sanitary regulations.[59] The fourth jurisdictional zone is the continental shelf, the shallow platform extending out from the land for varying distances beneath the sea.[60] Over its continental shelf, the coastal State exercises ex-

54. The 1958 conventions of the United Nations codified the prevailing law of the sea including the Convention on the High Seas April 29, 1958, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82; Convention on the Territorial Sea and Contiguous Zone, April 29, 1958, 15 U.S.T. 1606, T.I.A.S. 5639, 516 U.N.T.S. 205; Convention on Fishing and Conservation of the Living Resources of the High Seas, April 29, 1958, 17 U.S.T. 138, T.I.A.S. 5969, 559 U.N.T.S. 285; Convention on the Continental Shelf, April 29, 1958, 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311.

55. The Fishing Convention has failed to establish an internationally accepted fishing policy because the negotiators at the Geneva Conference of 1958 followed Grotius' doctrine on freedom of the seas, but the participants in the present Law of the Sea Conference are seeking agreement on the allocation and management of ocean resources. Mirvahabi, *Significant Fishery Management Issues in the Law of the Sea Conference: Illusions and Realities*, 15 SAN DIEGO L. REV. 493, 506 (1978).

56. Alexander, *National Jurisdiction and the Use of the Sea*, 8 NAT. RESOURCES J. 373, 375-76 (1968).

57. There is no agreement among nations on a standard breadth for the territorial sea, which varies from 3 to 200 miles.

58. Article 14 of the Convention on the Territorial Sea and the Contiguous Zone defines innocent passage as: "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State." April 29, 1958, 15 U.S.T. 1606, T.I.A.S. 5639, 516 U.N.T.S. 205.

59. A State may exercise control over these infringements only if they are committed within the coastal State's territory or territorial sea.

60. Article 1 of the Convention on the Continental Shelf defines the Continental Shelf

clusive rights for the purpose of exploring and exploiting its natural resources.[61] The fifth and outermost jurisdictional zone is the high seas, which is open to all nations. Within this zone countries are guaranteed the four freedoms of the seas: freedom of navigation; freedom of fishing; freedom to lay submarine cables and pipelines; and freedom to fly over the high seas.[62]

D. The Consequences of Technology

Post World War II technical achievements have provided nations with the technical capacity to employ the oceans for an increasing variety of uses.[63] Modern fishing technology now threatens the ancient practice of unrestricted ocean fishing. These technological advances — more powerful ships, larger nets,[64] fish detection by radar and earth satellites, and high seas processing have combined with the expansion of fishing nations and long-distance fishing fleets to make ocean fishing a significant international activity. With these rapid changes fish stocks have been exploited, resulting in an economic scarcity of marketable fish. While there are more than 20,000 species of marine fish in the oceans,[65] commercial demand is mainly for cod, haddock, tuna, halibut, lobster,

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as "(a) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands." April 29, 1958, 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311.

61. Article 2 of the convention on the Continental Shelf describes the coastal State's right to exploit continental shelf resources as follows:

> 1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
> 2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.
> 3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
> 4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species that is to say, organisms which, at the harvestable state, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

April 29, 1958, 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311.

62. States are required to exercise these and other freedoms recognized by the general principles of international law with reasonable regard for the interests of other States. April 29, 1958, 17 U.S.T. 138, T.I.A.S. 5969, 559 U.N.T.S. 285.

63. Hollick, *The Roots of U.S. Fisheries Policy*, 5 OCEAN DEV. & INT'L L. 61 (1978).

64. The replacement of cotton with nylon fishing nets has increased the durability of fishing equipment. *Id.*

65. Clingan, *A Second Look at United States Fisheries Management*, 9 SAN DIEGO L. REV. 432, 433 (1972).

salmon and a few other species.[66]

In addition, the supply of fish is also restricted by natural conditions of the sea. Living and non-living resources are unevenly divided throughout the world. As deserts exist on land where few plants or animals of economic value can be sustained, so too, do the oceans contain areas of little or no fishing life.[67] Except for highly migratory (tuna) or anadromous species (salmon), the living resources of the sea tend to be concentrated in the shallow shelf or bank areas of the world or where plankton exists to sustain living marine resources.[68] Within these shallow waters the most fertile grounds for fishing are found in the middle-latitudes: the Canadian, the Icelandic, and the North Sea Banks.

The supply of fish is further limited by over-exploitation, since there is a maximum annual catch that can be maintained over time.[69] If larger amounts of fish are taken, fewer fish will be available in subsequent seasons. However, present reductions in the harvest of fish may lead to higher future annual yields.

The outlook is not encouraging. As demand increases there is increased fishing in those regions where the high valued species occur, reducing both the stocks and the total seasonal catches. Hence, one of the fundamental freedoms of the high seas, fishing, is no longer a viable principle for world management of the oceans. In Grotius' time the relatively simple fishing techniques led to the reasonable conclusion that the living resources of the sea were inexhaustible, and therefore represented common property to be appropriated at will. This assumption can no longer be maintained.[70]

Man's increased capacity to explore and exploit the oceans has also produced rising expectations among the world's developing nations. Meaningful third world participation in the development

66. Some changes in commercial demand occur in response to changes in taste preferences and to changes in the ability to disguise the source of the protein. However, these changes are not likely to decrease the demand for the well-known species of fish. Christy, *supra* note 42, at 426.

67. Alexander & Hodgson, *supra* note 53, at 576.

68. *Id.* The exceptionally fertile waters off the coast of Peru produce 300 or more pounds of protein per acre per year. Christy, *supra* note 42, at 426.

69. While the total potential production of marine fisheries is estimated to range from fifty-five million to two billion metric tons, the latter figure represents the theoretical total fishery production available. The majority of commentators estimate the production of marine resources at less than 100 million metric tons annually. Eisenbud, *supra* note 19, at 20; *see also supra* note 22.

70. Jacobson, *Bridging the Gap to International Fisheries Agreement: A Guide for Unilateral Action*, 9 SAN DIEGO L. REV. 454, 458 (1975).

of ocean policy as a means of narrowing the economic gap between themselves and the developed world[71] has occurred through the United Nations. In 1967 Ambassador Pardo of Malta addressed the U.N. General Assembly and declared that the wealth to be found in or on the seabed in ocean areas beyond national jurisdiction should constitute the "common heritage of mankind."[72] To

71. This economic gap is illustrated by the fact that in 1973, the developed world, with less than twenty percent of the world's population, enjoyed a combined gross national product of $3.2 trillion dollars, some sixty-six percent of the world's product. Thus, the Third World asserts that this high standard of living in the industralized world is attained by the exploitation of the resources of the developing countries. Further, developing States argue that since the international system economically and politically supports the interests of the developed nations, a new international economic order must be established to narrow the gap between themselves and the rich nations. Juda, *supra* note 16, at 224.

Developed nations justify their wealth as resulting from their skill, organization and technology operating in competitive world markets and not from the exploitation of the peoples and resources of developing countries. Developed States maintain that, with some assistance and similar efforts, developing nations should be able to narrow the existing economic gap between developed and developing countries without the dislocation caused by the implementation of a new international economic order. Bilder, *International Law and Natural Resources Policy*, 20 NAT. RESOURCES J. 450, 466-67 (1980). For a discussion on international development *see generally* Goldie, *Rich and Poor Countries and the Limits of Ideology — An Introduction to the Day's Proceedings*, 1 SYRACUSE J. INT'L L. & COM. 92 (1972); Haq, *The Problem of Global Economic Inequity: Legal Structures and Some Thoughts on the Next 40 Years*, 9 GA. J. INT'L & COMP. L. 507 (1979); Haq, *From Charity to Obligation: A Third World Perspective on Concessional Resource Transfers*, 14 TEX. INT'L L. J. 389 (1979).

72. The basic elements of the common-heritage concept, as proposed by the government of Malta, were as follows: (a) the area under the common-heritage regime may not be appropriated (it may be used but not owned); (b) all rights to resources in the common-heritage area are vested in mankind as a whole acting through an international organization; (c) the common-heritage area and its resources are managed through an international organization in which all States have the right to participate; (d) benefits, both financial and deriving from participation in management and exchange and transfer of technologies, are shared; (e) the common-heritage area may be used only for peaceful purposes; and (f) the common-heritage area must be transmitted environmentally unimpaired to future generations. Pardo, *The Evolving Law of the Sea: A Critique of the Informal Composite Negotiating Text (1977)*, *reprinted in* 1 OCEAN YEARBOOK 9 (M. Borgese & N. Ginsburg ed. 1978).

Ambassador Pardo's statement was not the first one to refer to mankind in an international document. Among prior statements is the United Nations Charter, which characterizes wars as a "scourage of mankind"; the Antarctic Treaty, which refers to the "interests of science and mankind"; the treaty on the non-proliferation of nuclear weapons, which refers to "the devastation that would be visted upon all mankind by a nuclear war"; and the United Nations General Assembly recognized the "common interest of mankind as a whole" in furthering the peaceful uses of outer space. Gorove, *The Concept of 'Common Heritage of Mankind': A Political, Moral or Legal Innovation?*, 9 SAN DIEGO L. REV. 390, 391 (1972). *See also* Christol, *The Common Heritage of Mankind Provision in the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies*, 14 INT'L LAW. 429 (1980).

Ambassador Pardo's remarks reflected the views of developing countries who were concerned that newly developed deep sea technology by a few advanced industralized nations, would permit mining of valuable manganese nodules scattered over the deep seabed. These

provide for a more equitable distribution of wealth resulting from seabed exploitation, Ambassador Pardo proposed the creation of an international agency with authority to lease seabed areas beyond national jurisdiction. The revenue to be derived from the leasing program would be made available for international development.[73] On December 17, 1970, the U.N. General Assembly approved a resolution which stated that the seabed and subsoil beyond the limits of national jurisdiction, together with their resources, were to be developed for the common benefit of mankind.[74]

II. THE EVOLUTION AND SIGNIFICANCE OF THE EXCLUSIVE ECONOMIC ZONE

Historically, the nations of the world have usually complied with the concept of freedom of the seas and the principle of open fishing. Today, this doctrine is seriously questioned with the growing number of coastal States asserting jurisdiction over an exclusive economic zone extending 200 miles from their coasts.[75]

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nodules are composed of manganese, iron, nickel, copper, colbalt and various other valuable minerals needed by industralized nations. Bilder, *supra* note 71, at 462. For a discussion on deep seabed resources *see* J. BARKENBUS, note 73 *infra*; Collins, *supra* note 45; and *Symposium, Mining the Deep Seabed: A Range of Perspectives*, 6 SYRACUSE J. INT'L L. & COM. 167 (1978-79).

73. J. BARKENBUS, DEEP SEABED RESOURCES 32-33 (1979). Developing nations feel that it would be unfair for a few industralized nations currently capable of mining seabed resources to obtain the benefits of this "common heritage." In their view, the only just solution is to give seabed resources to the developing world who represent the mass of the world's population and are in the greatest need of the resource. To developed States, however, it would be unjust for their private companies which have invested capital, time and effort in seabed mining technology, to have the rewards go to nations who have invested little or nothing. Bilder, *supra* note 71, at 470. *See also* Tee, *Deep Seabed Mining and Developing Countries*, 6 SYRACUSE J. INT'L L. & COM. 213 (1978-79); and Young, *Indurement for Exploration by Companies*, 6 SYRACUSE J. INT'L L. & COM. 199 (1978-79); and Newlin, *An Alternative Legal Mechanism for Deep Sea Mining*, 20 VA. J. INT'L L. 257 (1980) and Arrow, *The Proposed Regime for the Unilateral Exploitation of Deep Seabed Mineral Resources by the United States*, 21 HARV. INT'L L.J. 337 (1980).

74. R. DUPUY, THE LAW OF THE SEA 24 (1974).

75. Well before the Papal Edict in the sixteenth century, nations have asserted national sovereignty over adjacent waters since at least the thirteenth century.

Venice, eminent in commercial activities, affluence, and maritime power, assumed sovereignty over the entire Adriatic Sea before the conclusion of the thirteenth century. Tributes were levied on ships to navigate the Adriatic or the passage of ships was prohibited. Adjacent cities and States were compelled to agree to the demands of Venice, which were ultimately recognized by other European powers and by the Pope. Jones, *supra* note 35, at 6. The Venetian claim to the Adriatic went unchallenged by the Christian States of Europe so long as her maritime supremacy served as a bulwark against the possible encroachment of the Muslim Turkish Empire in Europe. Johnston, *supra* note 34, at 164.

Similar claims were also made by other Mediterranean States, including Genoa in the Liguarian Sea and by the Tuscans and Pisans in the Tyrrhenian Sea. However, the Venetian

The current movement toward unilateral control over ocean resources can be traced to President Truman's proclamation regarding the Policy of the United States with respect to Coastal Fisheries in Certain Areas of the High Seas.[76] The Truman Proclamation, issued in 1945, declared that the government of the United States had the authority to establish conservation zones in the high seas contiguous to the coast of the United States. The proclamation also asserted the United States' power to regulate and control fishing activities within these zones.[77]

Although the proclamation did not establish any conservation zones,[78] it provided a precedent for several Latin American nations concerning their rights in waters contiguous to their coasts. On June 23, 1947 Chile became the first country to claim a 200-mile zone.[79] Shortly thereafter, Peru adopted a 200-mile zone to protect

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claim exceeded all others of its day. It went so far as to claim actual ownership, not merely exclusive jurisdiction, to the whole of the Gulf and Sea of the Adriatic as well as the islands contained therein. *Id.*

76. The motivating purpose behind President Truman's proclamation was conservation and arose out of the incursion of Japanese fishermen into the Alaska Bristol Bay red salmon fishery. HOUSE REPORT, *supra* note 22, at 25, *reprinted in* [1976] U.S. CODE CONG. AND AD. NEWS 597. For a discussion on the Truman Proclamation *see generally* Hollick, *U.S. Oceans Policy: The Truman Proclamations*, 17 VA. J. INT'L L. 23 (1976).

77. Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, Presidential Proclamation No. 2667, *reprinted in* 59 Stat. 884, and 13 DEP'T STATE BULL. 485 (1945). President Truman explained the Proclamation in the following manner:

> In view of the pressing need for conservation and protection of fisheries resources, the Government of the United States of America regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coast of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale . . . and all fishing activities in such zones shall be subject to regulation and control . . . The right of any State to establish conservation zones off its shores . . . is conceded . . . The character as high seas of areas where such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected. . . .

HOUSE REPORT, *supra* note 22, at 25, *reprinted in* [1976] U.S. CODE CONG. AND AD. NEWS 597.

78. The Truman fisheries proclamation was never actually implemented into law and, according to the Digest of International Law, the proclamation per se asserts no claim to exclusive fisheries jurisdiction over high seas fishing areas off the coast of the United States. Instead, the purpose of the fisheries proclamation was to establish, as United States policy, that where fishing activities were developed or maintained jointly by the United States and other nations, conservation zones would be established, but only pursuant to agreement between the United States and such other nations. The effect of the proclamation has caused attempts by the State Department to negotiate international agreements to protect certain species of fish, especially the salmon which were threatened by the Japanese. *Id.*

79. The Chilean claim was motivated by domestic business interests who sought to protect their developing offshore whaling operations from encroachment by post World War II European whalers. During the Second World War, European whaling operations in Antarctic waters were discontinued. Isolated from European sources of fats and cooking oils

the abundant fisheries off its shore; Ecuador followed with a similar claim in 1951.[80] The Santiago Declaration of 1952, issued by Chile, Ecuador and Peru (CEP), was the first multilateral agreement which established maritime zones of 200 miles. The Latin American States justified their claims by asserting that the unique interests of coastal States in the "partimonial sea" dictated their establishment.[81]

However, it was the nations of Africa, led by Kenya and Tanzania, who created and popularized the terms "economic zone of exclusive coastal state jurisdiction" or "exclusive economic zone" to describe the area beyond the territorial sea claimed by coastal States for their exclusive resource development.[82] In its resolution of 1971, the Organization of African Unity (OAU) established a national economic zone of 212 miles from the baseline in the oceans and seas surrounding Africa.[83] The exclusive economic zone concept spread quickly, with more than one hundred States supporting its adoption at the 1974 UNCLOS III meetings.[84]

Newly independent countries have claimed 200-mile economic zones for political and economic reasons. Politically, the 200-mile zone claims were supported by newly independent States as a means of challenging the rules of international law laid down by colonial powers before their independence.[85] In an effort to promote economic development newly independent States have claimed control over offshore resources. Fisheries, for example, are of great importance for the economy of countries like Peru and Ecuador. Fishing creates a much needed source of employment, generates foreign exchange and provides protein supplement for the deficient local diets.[86] It has been estimated that approximately

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and protected from competition with foreign vessels, a Chilean firm entered the whaling business to supply these items. The conclusion of the war renewed European interest in Antarctic whaling and prompted the Chilean claim to coastal waters to protect a growing national industry. Hollick, *The Origins of 200-Mile Offshore Zones, Notes and Comments*, 71 AM. J. INT'L L. 494, 495-96 (1977).

80. *Id.* at 499.

81. Patrimonial is not synonymous with territorial, but protects an inherent right of the coastal State based on geographical continuity and preexistent international claims. Mirvahabi, *Conservation and Management of Fisheries in the Exclusive Economic Zone*, 9 J. MAR. L. & COM. 225, 229-30 (1978).

82. Pollard, *The Exclusive Economic Zone — The Elusive Consensus*, 12 SAN DIEGO L. REV. 600, 606 (1975).

83. *Id.*

84. *Id.* at 607.

85. Mirvahabi, *supra* note 55, at 497.

86. Liston & Smith, *Fishing and the Fishing Industry: An Account With Comments on Overseas Technology Transfer*, 2 OCEAN DEV. & INT'L L. 285 (1974).

sixty-four percent of the world's fisheries are off the coastal regions of the developing world[87] and the Third World maintains that this resource should be developed for their benefit.[88] The establishment of legal ownership to offshore resources is, however, only an initial

87. Shyam, *The Emerging Fisheries Regime: Implications for India*, 8 OCEAN DEV. & INT'L L. 35, 52 (1980).

88. The ongoing Law of the Sea Conference has special provisions to assist geographically disadvantaged (those with a limited coastline), land-locked, and developing States in the allocation of ocean resources. The provisions are noteworthy because most of the land-locked States (LLS) are also developing countries. Of the twenty-one developing LLS (there are thirty LLS in the world), fifteen are among the twenty-five States designated by the United Nations as the least developed countries. *See* U.N. DOC. E/AC.54/L. 72 (1975); Kronfol, *The Exclusive Economic Zone: A Critique of Contemporary Law of the Sea*, 9 J. MAR. L. & COM. 461, 473 (1977).

Articles 69 and 70 of The Informal Composite Negotiating Text, U.N. DOC. A/CONF. 62/WP.10 (1977) [hereinafter cited as ICNT] outlines the right of LLS and developing coastal States to participate in the exploitation of the living resources of the exclusive economic zone (EEZ) of adjoining coastal States "on an equitable basis":

> Article 69. Right of land-locked States
> 1. Land-locked States shall have the right to participate in the exploitation of the living resources of the exclusive economic zones of adjoining coastal States on an equitable basis, taking into account the relevant economic and geograpical circumstances of all the States concerned. The terms and conditions of such participation shall be determined by the States concerned through bilateral, subregional or regional agreements. Developed land-locked States shall, however, be entitled to exercise their rights only within the exclusive economic zones of adjoining developed coastal States.
> 2. This article is subject to the provisions of articles 61 and 62.
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> * * * *
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> Article 70. Right of certain developing coastal States in a subregion or region
> 1. Developing coastal States which are situated in a subregion or region whose geographical peculiarities make such States particularly dependent for the satisfaction of the nutritional needs of their populations upon the exploitation of the living resources in the exclusive economic zones of their neighbouring States and developing coastal States which can claim no exclusive economic zones of their own shall have the right to participate, on an equitable basis, in the exploitation of living resources in the exclusive economic zones of other States in a subregion or region.
> 2. The terms and conditions of such participation shall be determined by the States concerned through bilateral, subregional or regional agreements, taking into account the relevant economic and geographical circumstances of all the States concerned, including the need to avoid effects detrimental to the fishing communities or to the fishing industries of the States in whose zones the right of participation is exercised.
> 3. This article is subject to the provisions of articles 61 and 62.

Reprinted in Krueger & Nordquist, *The Evolution of the 200-Mile Exclusive Economic Zone: State Practice in the Pacific Basin*, 19 VA. J. INT'L L. 321, 387-88 (1979).

Article 69 affords special treatment to developing LLS by restricting developed LLS to the EEZ's of adjoining developed coastal States. For a discussion on the geographically disadvantaged States in the Law of the Sea, *see* Alexander & Hodgson, *The Role of the Geographically Disadvantaged States in the Law of the Sea*, 13 SAN DIEGO L. REV. 58 (1976); Phillips, *The Economic Resource Zone — Progress for the Developing Coastal States*, 11 J. MAR. L. & COM. 349 (1980). Developing LLS may not reap the benefit provided for by Articles 69 and 70. ICNT Article 71 provides that "the provisions of articles 69 and 70 shall not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone." Krueger & Nordquist, *supra* note 88, at 388.

step toward the development of the resource. Many developing nations who support the exclusive economic zone are not presently equipped to develop their maritime resources because they lack the scientific information, capital, technical and managerial expertise necessary to fully exploit offshore resources.[89]

The final definition of the economic zone which emerged from the Law of the Sea Conference provided the coastal State with soverign rights to all living and non-living resources within the 200-mile exclusive economic zone.[90] In addition, the coastal State has authority regarding the protection of the marine environment, con-

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89. India is a good example of a developing country that is not presently equipped to fully exploit coastal resources. A 200-mile exclusive economic zone will provide India with jurisdiction over maritime resources in approximately 587,600 square nautical miles of the Indian Ocean, the least exploited of all the world's oceans. The potential fish catch from the Indian Ocean has been estimated to be approximately fifteen million tons a year compared to the 1976 harvest of about 3.3 million tons. India took forty-six percent of the total Indian Ocean catch in 1976. However, Indian's catch per fisherman is among the lowest in the world. About sixty percent of India's total marine catch comes from fishermen who operate about five to ten miles from shores, using a variety of primitive fishing craft-catamarans, dugout canoes, and plank-built boats. India illustrates the challenge facing developing coastal States who need capital, managerial skill and coastal infrastructure to effectively develop coastal resources. Shyam, *supra* note 87, at 36, 43.

While developing coastal nations lack the means to fully exploit offshore resources, these States may still acquire an economic benefit in the form of rents from distant-water fishing fleets for the privilege of fishing within the economic zone of developing nations. Gaither & Strand, *supra* note 13, at 136.

For an interesting analysis of a fishing village in a developing country *see* Alexander, *The Modernization of Peasant Fisheries in Sri Lanka*, *reprinted in* MARINE POLICY AND THE COASTAL COMMUNITY 279 (D. Johnston ed. 1976).

90. Articles 55, 56 and 57 of the ICNT describe the exclusive economic zone, its breadth, and the rights of the coastal State within the EEZ in the following manner:

Article 55. Specific legal regime of the exclusive economic zone.

The exclusive economic zone is an area beyond and adjacent to the territorial sea subject to the specific legal regime established in this Part, under which the rights and jurisdictions of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of the present Convention.

Article 56. Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:
   (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or 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;
   (b) jurisdictions as provided for in the relevant provisions of the present Convention with regard to:
      (i) the establishment and use of artificial islands, installations and structures;
      (ii) marine scientific research;
      (iii) the preservation of the marine environment;
   (c) other rights and duties provided for in the present Convention.

* * * *

Article 57. Breadth of the exclusive economic zone

servation, scientific research and the establishment and use of artificial islands, installations and structures.[91]

The proposals also impose several duties on the coastal State to:[92] (1) adopt conservation measures;[93] (2) maintain maximum sustainable yield through full utilization and elimination of overexploitation;[94] (3) determine the allowable catch of the living resources in its EEZ, and give other States access to the surplus of the allowable catch if the coastal State does not have the capacity to harvest such catch;[95] and (4) in giving access to other States to its

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The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

ICNT, *supra* note 88, *reprinted in* Krueger & Nordquist, *supra* note 88, at 380.

Article 58 provides for the rights of other States, whether coastal or land-locked, in the EEZ, and includes the freedoms of navigation and overflight, and the laying of submarine cables and pipelines.

Id., *reprinted in* Krueger & Nordquist *supra* note 88, at 381.

91. *Id.* art. 56(1).

92. The duties of the coastal State within the EEZ are enumerated in Articles 61 and 62 of the ICNT which state:

Article 61. Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.

2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by overexploitation. As appropriate, the coastal State and relevent subregional, regional and global organizations shall co-operate to this end.

3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing countries, and taking into account fishing patterns, the interdependence of stocks and any generally recommended subregional, regional or global minimum standards. . . .

Article 62. Utilization of the living resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.

2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch.

3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including *inter alia*, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing countries in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

Id., *reprinted in* Krueger and Nordquist, *supra* note 88, at 382-84.

93. *Id.* art. 61.

94. *Id.*

95. *Id.* art. 62(2).

EEZ, the coastal State shall take into account the significance of the living resources of the area to the economy of the coastal State concerned,[96] the requirement of developing countries in the subregion or region in harvesting part of the surplus and "the need to minimize economic dislocation in States whose nationals have habitually fished in the zone"[97] or which have made substantial efforts in research and identification of stocks.[98]

The 200-mile limit is an arbitrary figure that has no scientific basis and is not related to any geographical or geological data. The reason why the 200-mile figure was chosen, instead of 100 or 150 or 300, is essentially political.[99]

For various reasons, States have claimed different forms of sovereignty in zones up to 200 miles from their shores. According to the development of international law, where norms of acceptable conduct are not legislated, but are established by the practice of nations,[100] they may become part of customary international law.[101]

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96. *See* note 88 *supra* for the provisions of Articles 69 and 70.

97. This provision is designed to protect the interests of distant-water fishing nations, like Japan, who have historically fished in waters adjacent to foreign countries.

98. ICNT, *supra* note 88, at art. 62(3).

99. Chile, the first country to claim a 200-mile offshore zone, thought that a 200-mile claim was necessary to be consistent with the security zone adopted in the 1939 Declaration of Panama. The declaration, a product of United States initiative, proclaimed a neutrality zone of about 300 miles around the Western Hemisphere, except Canada, where hostilities between the European belligerents were prohibited as long as the American republics remained neutral. Chile, whose whaling interests needed protection only to about fifty miles, felt it was necessary to base their unilateral claim to expanded offshore jurisdiction on international precedent and chose the Declaration of Panama to justify the new claim. Thus, 200-mile claims to offshore maritime zones find their origin in the concerns of a small whaling industry to protect their exclusive access to a marine resource and in the mistaken interpretation of a 1939 neutrality declaration.

Scientific research has established that the most abundant fishing grounds of the ocean are located within eighty miles from shore. Despite this fact, there are relevant arguments to support the 200-mile figure for an exclusive economic zone. First, EEZ's were established for the exploitation of both living and non-living resources of the ocean. Second, the majority of nations are coastal States and therefore can benefit from EEZ's. Third, the zone usually includes the Continental Shelf of the coastal State. Finally, the EEZ may protect adjacent coastal fishery resources from foreign fishing fleets.

There are, however, counter-arguments to the 200-mile exclusive fishery zone. First, the 200-mile zone does not cover highly migratory fish species. Second, the high cost of effective enforcement of fisheries jurisdiction. Finally, the economic gain from an eighty-mile abundant fishing zone may be more desirable than the political gains from a 200-mile fishing zone. Mirvahabi, *supra* note 55, at 499.

100. N. LEECH, C. OLIVER, & J. SWEENEY, THE INTERNATIONAL LEGAL SYSTEM 25 (1973).

101. One commentator has stated: "[T]here is an overwhelming consensus at the [U.N. Law of the Sea] conference favoring recognition of the right of coastal states to exercise resource jurisdiction in an 'exclusive economic zone' extending at least 200 miles from their

In the past most nations limited their claims of offshore jurisdiction to twelve miles or less.[102] The areas affected by such claims were the narrow water bodies, particularly straits.[103] However, the adoption of a 200-mile offshore zone greatly increases the areas affected.

As a consequence of such extensive jurisdictional claims and of geographical positioning, the 200-mile zone encloses a significant portion of the global ocean, particularly the world's enclosed and semi-enclosed seas. Seas such as the Baltic, North, Red, Java, Caribbean, Mediterranean, Norwegian, Ockhotask, and Arabian will be under the jurisdiction of nearby coastal States. Furthermore, other semi-enclosed water bodies like the Gulf of Mexico, the Persian Gulf and the Bay of Bengal[104] would be almost completely enclosed by jurisdictional claims. If all the coastal States claimed

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coasts. Relying on this consensus, the United States, Canada, Japan, the Soviet Union, and other nations including those of the European Economic Community, have established 200-mile fishery limits." Bilder, *supra* note 71, at 454. On July 11, 1974, in a major speech by Ambassador John R. Stevenson, Special Representative of the President and United States Representative to the Law of the Sea Conference, Mr. Stevenson noted the international consensus of an exclusive economic zone as part of a final Law of the Sea Agreement. Mr. Stevenson stated:

> In the course of listening to and reading the statements made during the last 2 weeks, I have been struck by the very large measure of agreement on the general outlines of an overall settlement. Most delegations that have spoken have endorsed or indicated a willingness to accept, under certain conditions and as part of a package settlement, a maximum limit of 12 miles for the territorial sea and of 200 miles for an economic zone, and an international regime for the deep sea bed in the area beyond national jurisdiction.

HOUSE REPORT, *supra* note 22, at 27, *reprinted in* [1976] U.S. CODE CONG. AND AD. NEWS 600.

102. Alexander & Hodgson, *supra* note 53, at 572.

103. *Id.*

104. *Id.*

"The following Table reflects the total areal effects of the 200-mile claims. The presence of semi-enclosed seas and scattered islands in the Atlantic and Pacific Oceans account for the proportionately greater percentage under national jurisdictions in contrast with the more open Indian Ocean."

Allocation of Areas in Square Nautical Miles to Coastal States

Ocean	Total Area	Area (and Per Cent of Total) Closed Off by the 200-Mile Limit
Atlantic and Arctic	31,040,000	11,668,000 (37.59%)
Indian	21,842,000	7,064,000 (32.34%)
Pacific	52,385,400	19,013,000 (36.29%)
Total	105,267,400	37,745,000 (35.86%)

Id. at 573.

200-mile zones, 105 million square nautical miles or thirty-six percent of the earth's ocean surface would be enclosed.[105] Within this area, fishermen harvest ninety-four percent of the world's fish catch;[106] eighty-seven percent of the globe's known oil and gas deposits are located;[107] eighty percent of marine scientific research occurs;[108] and most shipping takes place.[109]

Coastal States do have a legitimate interest in the exploitation

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105. Krueger & Nordquist, *supra* note 88, at 321.

The allocations to coastal States of their national zones of jurisdiction will clearly relate to (1) the size of the State, in particular, the length of its coastline; (2) the number and distribution of islands under its sovereignty; (3) its location in the open ocean, in contrast to an enclosed or semi-enclosed sea; and (4) the nature of the ultimate boundary delimitation with adjacent or opposite States.

Until all baselines are delimited and all boundaries agreed upon by adjacent and/or opposite States, it is impossible to determine the area of national jurisdiction for each coastal country. However, assuming an equidistant boundary and a normal baseline, it appears that the largest economic zones will belong to the following States:

States with the Largest Economic Zones

State	Area (approximate) in Square Nautical Miles
United States	2,222,000
Australia	2,043,300
Indonesia	1,577,300
New Zealand	1,409,500
Canada	1,370,000
Soviet Union	1,309,500
Japan	1,126,000
Brazil	924,000
Mexico	831,500
Chile	667,300
Norway	590,500
India	587,000
Philippines	551,400
Portugal	517,400
Madagascar	376,800
Total	16,103,500

These fifteen coastal States would receive among them approximately forty-two percent of the world's 200-mile economic zone area.

Significantly, these States are among the world's largest, or possess a large number of islands scattered over the oceans.

Alexander & Hodgson, *supra* note 53, at 574-75.

106. Alexander, *supra* note 20, at 68.

107. Krueger & Nordquist, *supra* note 88, at 321. In 1974 approximately seventeen percent of the world's oil came from off-shore wells, and it is estimated that by 1980 one-third of the world's oil will come from offshore production. Alexander, *supra* note 20, at 71.

108. Kissinger, *The Law of the Sea: A Test of International Cooperation*, 74 DEP'T OF STATE BULL. 533, 537 (April 26, 1976).

109. Kronfol, *supra* note 88, at 463.

and management of fisheries and mineral resources off their coasts. The United States, as a coastal State shares this interest, and to effectuate it, Congress passed and President Ford signed the FCMA.

III. THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

A. General Provisions

Congress enacted the FCMA to protect and conserve valuable and necessary national fishery resources as well as to restore the United States position among the major fishing nations.[110] The FCMA seeks to restore and maintain the nation's fisheries by a two-step process: (1) to extend the jurisdiction of the United States for the purpose of regulating fisheries in the newly created fishery conservation zone (FCZ) that extends 200 nautical miles from the coast;[111] and (2) to develop a comprehensive fishery management program within the FCZ to be administered by Regional Fishery Management Councils and the Department of Commerce.[112] Congress realized that this program of conservation and management was necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation and to realize the full potential of the na-

110. MAGNUSON FISHERIES MANAGEMENT AND CONSERVATION ACT, S. REP. NO. 416, 94th Cong., 1st Sess. 1 (1975) [hereinafter cited as MAGNUSON REPORT]. Canada and Mexico have also claimed exclusive fishery zones. *See* Johnson & Middlemiss, *Canada's 200-Mile Fishing Zone: The Problem of Compliance*, 4 OCEAN DEV. & INT'L L. 67 (1977); Snow, *Extended Fishery Jurisdiction in Canada and the United States*, 5 OCEAN DEVL. & INT'L L. 291 (1978); and Szekely, *Mexico's Unilateral Claim to a 200-Mile Exclusive Economic Zone: Its International Significance*, 4 OCEAN DEV. & INT'L L. 195 (1977).

111. 16 U.S.C.A. §§ 1801(b) (1), 1811 (West Supp. 1980).

112. *Id.* § 1801(b) (5). The Act creates eight councils, as follows: New England, mid-Atlantic, South Atlantic, Caribbean, Gulf, Pacific, North Pacific and Western Pacific. *Id.* § 1852(a).

While the total council membership depends on the regions and the number of states involved, the following council members were designated by the Act: (1) the principal state official with responsibility for marine fishery management from each State in the region; (2) the regional director of the National Marine Fisheries Service; (3) one qualified person per State to be nominated by the Governor and selected by the Secretary of Commerce; and (4) additional qualified individuals to be appointed at large by the Secretary of Commerce from nominations by the Governor, the number of which depends on the number of states that are members of the council. *Id.* § 1852(b). Nonvoting members of each council include the regional or area director of the United States Fish and Wildlife Service, the commander of the United States Coast Guard district, the executive director of the Marine Fisheries Commission, and a representative of the Department of State. *Id.* § 1852(c). For a discussion on the regional fishery management councils, *see* Pontecorvo, *Fishery Management and the General Welfare: Implications of the New Structure*, 52 WASH. L. REV. 641 (1977).

tion's fishery resources.[113]

The Act is organized in four titles. Title I authorizes fishery management. Title II outlines the conditions under which foreign fishing is permitted in the fishery conservation zone. Title III specifies the management powers of the Act, including the establishment of regional fishery management councils to prepare fishery management plans. Finally, Title IV addresses the effect of an UNCLOS treaty on the Act.

The Fishery Conservation Zone (FCZ) established in Title I extends from the individual State's seaward boundaries to a line drawn 200 miles from the baseline of the territorial sea.[114] The States retain authority over the fisheries within the three nautical mile territorial sea.[115] Within the FCZ the United States exercises exclusive fishery management authority over all fish,[116] with the exception of highly migratory species defined in the Act.[117] This includes all anadromous species that spawn in United States waters, except when they are within foreign territorial seas or fishery conservation zones recognized by the United States[118] and all Continental Shelf fishery resources beyond the zone.[119]

Title II enumerates the conditions under which foreign fishing may be conducted in the FCZ[120] requiring: (1) an existing international fishery agreement currently in force (such fishing may continue until the agreement expires or is renegotiated)[121] or the nation enters into a governing international fishery agreement with the United States;[122] (2) a permit issued annually by the Secretary of

113. 16 U.S.C.A. § 1801(a)(6) (West Supp. 1980).

114. *Id.* § 1811.

115. *Id.* § 1856. Comment, *The Fishery Conservation and Management Act of 1976: State Regulation of Fishing Beyond The Territorial Sea*, 31 MAINE L. REV. 303 (1980).

116. *Id.* § 1812(1).

117. *Id.* §§ 1813, 1802(14).

118. *Id.* § 1812(2). For a discussion on the management of anadromous fish stocks *see* Copes, *The Law of the Sea and Management of Anadromous Fish Stocks*, 4 OCEAN DEV. & INT'L L. 233 (1977).

119. 16 U.S.C.A. § 1812(3) (West Supp. 1980).

120. The restriction on foreign fishing is to correct the fact that in 1960 the United States took 92.9 percent of the total catch off the Atlantic coast but by 1972 the United States' share of the total Atlantic catch had declined to 49.1 percent. HOUSE REPORT, *supra* note 22, at 34, *reprinted in* [1976] U.S. CODE CONG. AND AD. NEWS 607.

121. 16 U.S.C.A. § 1821(b) (West Supp. 1980).

122. *Id.* § 1821(c). Each Governing International Fishery Agreement (GIFA) shall acknowledge the exclusive fishery management authority of the United States, as set forth in the Act, and shall include a binding commitment on the part of the foreign nation and its fishing vessels to: (1) abide by all regulations promulgated by the Secretary pursuant to this Act; (2) permit any officer authorized to enforce the provisions of this Act to board, and search or inspect, any such vessel at any time, and to make arrests and seizures; (3) permit

State, with the concurrence of the Secretary of Commerce;[123] and (3) reciprocity by the foreign nation to fishing vessels of the United States.[124] Foreign vessels shall be charged reasonable non-discriminatory license fees for the issuance of a fishing permit. The amount of such fees are to be based upon the costs of management, research, administration, enforcement and other factors relating to the conservation and management of fisheries.[125]

Foreign fishermen will be permitted to harvest only that portion of the optimum yield[126] that is not caught by United States fishermen.[127] Preference, therefore, is granted to American fishermen in allocating the portion of the stocks that may be harvested annually. The Secretary of State, in cooperation with the

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authorized United States observers on board any such vessel and reimburse the United States for the cost of such observers; (4) pay in advance any required fees; (5) appoint and maintain agents within the United States who are authorized to receive and respond to any legal process issued in the United States; (6) assume responsibility, in accordance with requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation; and (7) not exceed such nation's allocation of the total allowable level of foreign fishing. *Id.* §§ 1821(c) (1)-(4). For a discussion on the Congressional role in the GIFA's, *see* Crystal, *Congressional Authorization and Oversight of International Fishery Agreements Under the Fishery Conservation and Management Act of 1976*, 52 WASH. L. REV. 495 (1977).

123. 16 U.S.C.A. § 1821(a) (West Supp. 1980).

124. The Act states:

> Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

Id. § 1821(g).

This "reciprocity provision" is known as the Bentsen amendment, and was added to the Act as an incentive for foreign governments to extend similar privileges to United States fishing vessels. *See Hearings in Regard to H.R. 2564 Before the Subcomm. on Fisheries and Wildlife Conservation of the House Comm. on Merchant Marine and Fisheries*, 95th Cong., 1st Sess. 166 (1977) (unpublished) (remarks of Rep. Robert L. Leggett); and Comment, *Foreign Access to U.S. Fisheries in the Wake of the Fishery Conservation and Management Act*, 18 VA. J. INT'L L. 513, 519 (1979).

125. 16 U.S.C.A. § 1824(b) (10) (West Supp. 1980). For a discussion on fees and access controls under the FCMA, *see* Anderson & Wilson, *Economic Dimensions of Fees and Access Control Under the Fishery Conservation and Management Act of 1976*, 52 WASH. L. REV. 701 (1977); Burke, *Recapture of Economic Rent Under the FCMA: Sections 303-304 on Permits and Fees*, 52 WASH. L. REV. 681 (1977); Christy, *The Fishery Conservation and Management Act of 1976: Management Objectives and the Distribution of Benefits and Costs*, 52 WASH. L. REV. 657 (1977).

126. The Act defines "optimum yield" as the amount of fish "(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor." 16 U.S.C.A. § 1802(18) (West Supp. 1980).

127. *Id.* § 1821(d); *see also Id.* § 1853(a) (4).

Secretary of Commerce, shall determine the allocation among foreign nations of the total allowable level of foreign fishing within the FCZ. In making such determinations, the Secretary of State and the Secretary of Commerce shall consider whether and to what extent the foreign nation has traditionally engaged in fishing within the FCZ;[128] and whether the foreign nation has cooperated with the United States in fishery research and the conservation and management of fishery resources.[129]

The management powers of the FCMA are enumerated in Title III. The Act establishes eight Regional Fishery Management Councils whose principal function is to formulate fishery management plans upon which management and conservation regulations are to be based. Each fishery management plan must be developed in accordance with national standards[130] and contain provisions to govern both foreign and domestic fishing.[131] They must contain a description of the fishery,[132] an assessment of present and probable future conditions of the fishery (including both maximum sustainable yield and optimum yield),[133] the capacity of United States vessels to harvest the optimum yield and the portion of the optimum

128. The Act recognized the special interests of distant-water fishing nations, like Japan, who have traditionally engaged in fishing within the newly created FCA.

129. 16 U.S.C.A. § 1821(e) (West Supp. 1980).

130. The Act provides that any fishery management plan prepared, and any regulation promulgated to implement any such plan shall be consistent with the following national standards for fishery conservation and management:

> (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.
> (2) Conservation and management measures shall be based upon the best scientific information available.
> (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
> (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
> (5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
> (6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.
> (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

Id. § 1851(a). *See also Id.* § 1853(a)(1)(c).

131. *Id.* § 1853(a)(2).

132. *Id.*

133. *Id.* § 1853(a)(3).

yield that can be made available for foreign fishing.[134] The plans may also require United States fishermen to obtain a permit and pay a fee to fish in the FCZ,[135] prohibit or limit fishing by United States vessels,[136] limit the catch of fish,[137] restrict the type of fishing equipment,[138] establish a system for limiting access to the fishery to achieve optimum yield[139] and prescribe measures necessary for conservation and management.[140] Although the Regional Council's may submit to the Secretary of Commerce proposed regulations that would implement the management plans,[141] it is the Secretary who must promulgate and implement the regulations.[142] The Secretary of Commerce has sixty days to review and notify the Regional Council of its approval, disapproval, or partial disapproval of management plans.[143] Once a plan is approved it is published in the *Federal Register*,[144] and after hearings[145] and administrative action, goes into effect. The enforcement provisions of the FCMA[146] include civil penalties,[147] criminal penalties[148] and

134. *Id.* § 1853(a)(4). This provision of the FCMA has been adopted by UNCLOS proposals. *See* ICNT *supra* note 92, art. 61(1) and art. 62(2).

135. 16 U.S.C.A. § 1853(b)(1) (West Supp. 1980).

136. *Id.* § 1853(b)(2).

137. *Id.* § 1853(b)(3).

138. *Id.* § 1853(b)(4).

139. In establishing a system for limiting access to the fishery in order to achieve optimum yield, the Council and the Secretary must take into account the following:

(A) present participation in the fishery,
(B) historical fishing practices in, and dependence on, the fishery,
(C) the economics of the fishery,
(D) the capability of fishing vessels used in the fishery to engage in other fisheries,
(E) the cultural and social framework relevant to the fishery, and
(F) any other relevant considerations.

Id. § 1853(b)(6). This provision is one of several that acknowledges the historical fishing practices of nations like Japan, in the newly created FCZ. *See also* note 129 *supra*.

140. 16 U.S.C.A. § 1853(b)(7) (West Supp. 1980).

141. *Id.* § 1853(c).

142. *Id.* § 1855(c).

143. *Id.* § 1854(a).

144. *Id.* § 1855(a).

145. *Id.* § 1855(b).

146. The prohibited acts are enumerated in *Id.* § 1857, and the powers of authorized law enforcement officers are set forth in *Id.* §§ 1861(b)-(c).

The provisions of the FCMA are primarily enforced by the United States Coast Guard. The Coast Guard estimated it would cost $87.5 million in acquisition and reactivation costs for the equipment that would be needed to enforce the provisions of the FCMA, and another $56 million in annual operating funds. *Senate Hearings*, *supra* note 27, at 309 (letter to Senator John Sparkman, Chairman, Senate Foreign Relations Committee from Adm. Owen W. Siles, Commandant, United States Coast Guard, dated October 31, 1975). For a discussion on enforcement of the FCMA *see* Fidell, *Enforcement of the Fishery Conservation and Management Act of 1976: The Policeman's Lot*, 52 WASH. L. REV. 513 (1977); and Venzke, *Fishery Conservation and Management Act Enforcement: A Coast Guard Perspective*, in Ex-

civil forfeitures of vessels, equipment and fish.[149]

Title IV of the Act deals with the effect of an UNCLOS treaty and provides that if the United States ratifies a comprehensive UNCLOS treaty which includes provisions on fishery conservation and management jurisdiction, the Secretary of Commerce, after consultation with the Secretary of State, may promulgate amendments to the regulations adopted under the FCMA if such amendments are necessary and appropriate to make the Act's regulations conform to the Law of the Sea treaty.[150] Since the Secretary's authority to amend the FCMA is discretionary,[151] an UNCLOS treaty would not automatically preempt conflicting FCMA provisions.

B. The Debate

The proponents of the FCMA, who included coastal fishing interests emphasized that:[152] (1) stocks of fish of direct interest and importance to United States fishermen have been overfished;[153] (2) the over-fishing of these stocks of fish are in large measure attribu-

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TENDED FISHERY JURISDICTION: PROBLEMS AND PROGRESS, 1977 34 (Proceedings of the North Carolina Governor's Conference on Fishery Management under Extended Jurisdiction) (K. Jurgensen & A. Covington eds. 1978). (Mr. Venzke was Rear Admiral, Chief, Office of Operations United States Coast Guard Headquarters).

147. The amount of the civil penalty shall not exceed $25,000 for each violation, and each day of a continuing violation shall constitute a separate offense. 16 U.S.C.A. § 1858(a) (West Supp. 1980).

148. Criminal punishment may include a fine, imprisonment or both. *Id.* § 1859.

The United Nations proposal on enforcement of laws within the EEZ does not include imprisonment as permissible punishment unless there is an agreement to the contrary by the States concerned. ICNT article 73 states:

> Article 73. Enforcement of laws and regulations of the coastal State
> 1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations enacted by it in conformity with the present Convention.
> 2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
> 3. Coastal State penalties for violations of fisheries regulations in the exclusive economic zone may not include imprisonment, in the absence of agreement to the contrary by the States concerned, or any other form of corporal punishment.
> 4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify, through apropriate channels, the flag State of the action taken and of any penalties subsequently imposed.

ICNT, *supra* note 88, art. 73, *reprinted in* Krueger and Nordquist, *supra* note 88, at 388-89.

149. 16 U.S.C.A. § 1860(a) (West Supp. 1980).

150. *Id.* § 1881.

151. *Id.*

152. For a summary of the arguments proponents advanced in favor of the FCMA *see* MAGNUSON REPORT, *supra* note 110, at 17.

153. *Id.*; *see also* 16 U.S.C.A. § 1801(a)(2) (West Supp. 1980).

table to massive foreign fishing efforts in waters immediately off the shores of the United States;[154] (3) international fishery agreements to which the United States is party and which purport to regulate and control fishing efforts on overfished stocks have been ineffective in that goal;[155] (4) an acceptable international agreement on marine fisheries management jurisdiction will be negotiated, signed, ratified and implemented only after a long delay, during which overfishing would continue to occur;[156] and (5) therefore, the United States in its own interest and in the interest of preserving threatened stocks of fish must take emergency action to manage, regulate and control fishing within 200 nautical miles of its shore.[157] Advocates of the Act also noted that the world community is ready to adopt a 200-mile limit;[158] that there is a need for management and conservation in an extended fisheries zone on the Federal level;[159] and that the FCMA will ultimately reduce international fishing disputes.[160]

Some proponents argue that coastal nations should be allowed, even encouraged in some instances, to implement protective conservation measures if: the protective action is in response to a demonstrable conservation crisis; the protective action is concerned solely with protection of the endangered resource; it does not unreasonably discriminate against nations; the protective action automatically terminates and is accompanied by a call for international agreement.[161]

The FCMA conforms to the criterion for protective action and is essentially a temporary law designed to deal with the emergency situation that exists and will continue to exist until an international agreement is reached. The Act does not intend to interfere with or preempt pending negotiations aimed at such a treaty, but rather

154. *Id.*; *see also* 16 U.S.C.A. § 1801(a)(3) (West Supp. 1980).

155. *Id.*; *see also* 16 U.S.C.A. § 1801(a)(4) (West Supp. 1980).

156. *Id.*

157. *Id.* § 1801(a)(1).

158. MAGNUSON REPORT, *supra* note 110, at 10-11.

159. *Id.* at 15-16. *See also* Comment, *Fishery Conservation and Management Act of 1976: an Accommodation of State, Federal, and International Interests*, 10 CASE W. RES. J. INT'L L. 703 (1978).

160. Congressional proponents of the Act argued that international fishing disputes would be reduced because it "[would] begin the path to stabilization of coastal fishery management limits and bring about more certain rules for the conduct of fishing operations. And . . . the bill will provide an incentive to concluding, as soon as possible, a comprehensive law of the sea treaty, the preferred solution to the question of fishery jurisdiction." MAGNUSON REPORT, *supra* note 110, at 16-17.

161. Jacobson, *supra* note 70, at 457.

seeks to preserve the fisheries until an international agreement is in force.[162] Coastal fishing interests stressed that fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be restored and maintained for the benefit of the United States and the international community.[163]

The opponents to the legislation included the executive branch,[164] the distant-water tuna and shrimp fishermen[165] as well as some members of Congress.[166] They objected to the legislation because[167] unilateral action by the United States could seriously

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162. The FCMA declared that it was Congressional policy to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources. 16 U.S.C.A. § 1801(c)(5) (West Supp. 1980).

163. *Id.* § 1801(a)(5).

164. At a special meeting of the International Commission for the Northwest Atlantic Fisheries, President Ford stated: "I am strongly opposed to unilateral claims by nations to jurisdiction on the high seas." *Senate Hearings*, *supra* note 27, at 153 (statement by President Ford at September 22, 1975, ICNAF meeting). Secretary of State Kissinger, in an address to the annual meeting of the American Bar Association in Montreal, on August 11, stated that "[U]nilateral action is both extremely dangerous and incompatible with the thrust of the [Law of the Sea] negotiations. . . ." He added:

> The United States has consistently resisted the unilateral claims of other nations, and others will almost certainly resist ours. Unilateral legislation on our part would almost surely prompt others to assert extreme claims of their own. Our ability to negotiate an acceptable international consensus on the economic zone will be jeopardized. If every state proclaims its own rules of law and seeks to impose them on others, the very basis of international law will be shaken, ultimately to our own detriment.

Reprinted in Senate Hearings, *supra* note 27, at 300.

165. In a letter from Harold F. Cary, Tuna Research Foundation, Inc., to Senator John Sparkman, Mr. Cary, on behalf of American distant-water fishermen stated: "S.961 (FCMA legislation) will not work. It will create international confrontations. It will sacrifice our high seas distant water fisheries off other coasts. The United States will lose more than it hopes to gain." *Senate Hearings*, *supra* note 27, at 352 (series of letters to Senator John Sparkman, Chairman, Senate Foreign Relations Committee from Harold F. Cary, Tuna Research Relations Committee Inc., dated October 13, 1975).

166. Senator Mike Gravel of Alaska originally cosponsored the 200-mile bill but later changed his mind and opposed it. Senator Gravel submitted a series of fact sheets which purported to show that the enactment of the FCMA would result in an overall loss of $288 million and approximately 60,000 jobs. *Senate Hearings*, *supra* note 27, at 139 (S.961 Fact Sheet No. 2 submitted by Senator Gravel). Senators Warren Magnuson, Washington, and Ted Stevens, Alaska, submitted a lengthy memorandum of rebuttal to the fact sheets presented by Senator Gravel. *See Senate Hearings*, *supra* note 27, at 180-93 (letter to Senator Clairborne Pell from Senators Warren Magnuson and Ted Stevens, dated November 7, 1975, enclosing memorandum in rebuttal concerning Senator Mike Gravel's statement on S.961).

167. These objections were listed in HOUSE REPORT, *supra* note 22, at 23; *reprinted in* [1976] U.S. CODE CONG. AND AD. NEWS 595. The most consistent criticism against the FCMA was that it represented "unilateral" United States action to address an international issue. For an interesting discussion on unilateral acts in international affairs *see* Theberge,

undermine efforts in the Law of the Sea Conference and hamper chances for a satisfactory multilateral settlement of the fisheries question.[168] In addition, they believed that such unilateral action runs counter to established fundamental principles of international law[169] and would encourage similar jurisdictional claims by other countries, thereby prejudicing United States distant-water fishing interests such as tuna and shrimp.[170] If distant-water nations re-

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Unilateralism: The Direct Challenge To International Law, 9 CALIF. W. INT'L L.J. 553 (1979). Mr. Theberge characterized United States unilateral action in the following manner. "Each unilateral effort has several features in common: (1) the position adopted assumes a very high moral purpose; (2) it is taken by the United States either without a realistic assessment or consideration of the international impact or, after consideration, the international impact is discounted in the political process; (3) it will affect international law and policy; (4) it is likely to create conflict and be self-defeating; and (5) it fails to assess the needs and aspirations of other nations and the obvious limits of United States influence abroad." *Id.* at 55. For additional readings on the effect of unilateral action in international affairs *see* Biggs, *Deep Seabed Mining and Unilateral Legislation*, 8 OCEAN DEV. & INT'L L. 223 (1980); and McCloskey & Losch, *U.N. Law of the Sea Conference and the U.S. Congress: Will Pending U.S. Unilateral Action on Deep Seabed Mining Destroy Hope for a Treaty?*, 1 NW. J. INT'L L. & BUS. 240 (1979).

168. *Senate Hearings*, *supra* note 27, at 159-62 (prepared statement of Hon. John Norton Moore, Chairman, National Security Council Interagency Task Force on the Law of the Sea); *Id.* at 319-21 (letter to Senator John Sparkman, Chairman, Senate Foreign Relations Committee from Jonathan I. Charney, Associate Professor of Law, Vanderbilt University, dated October 6, 1975).

169. *Id.* For a discussion on the potential conflicts between a future LOS treaty and the FCMA *see* Jacobson & Cameron, *Potential Conflicts Between a Future Law of the Sea Treaty and the Fishery Conservation and Management Act of 1976*, 52 WASH. L. REV. 451 (1977).

The United States unilateral extension of fishery jurisdiction is supported, in part, by the United Nations Convention on Fishing and Conservation of the Living Resources of the High Seas, April 29, 1958, 17 U.S.T. 138, T.I.A.S. 5969, 559 U.N.T.S. 285. Article 6(1) of the Fishing Convention recognized that "a coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea." Article 7 of the Convention provides coastal States the authority to adopt unilateral conservation measures.

> Article 7
> 1. Having regard to the provisions of paragraph 1 of article 6, any coastal State may with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.
> 2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:
> (a) That there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;
> (b) That the measures adopted as based on appropriate scientific findings;
> (c) That such measures do not discriminate in form or in fact against foreign fisherman.

170. *Senate Hearings*, *supra* note 27, at 322-25 (letter, with attachments, to Senator John Sparkman, Chairman, Senate Foreign Relations Committee from Harold F. Cary, General Manager, Administration, Ocean Fisheries, Inc., dated October 9, 1975).

fused to recognize our unilateral claims[171] serious foreign policy and enforcement problems could result. This is due in part to the lack of certain provisions in the FCMA which are contained in the United States proposal at the Law of the Sea Conference include consideration of the diverse interests of the international community and compulsory dispute settlement,[172] both of which are necessary to protect the interests of all states and the international community in general.

The divergent fisheries interests within the United States makes a comprehensive national fishing policy inherently difficult. American coastal fishermen are strong advocates of a fisheries zone that will provide them with preferential rights within 200 miles of the nations shore. The interests of American distant-water fishermen, such as the tuna and shrimp fishermen, run almost directly counter.[173] The American tuna-fishing fleet depends on access to wide-ranging tuna schools frequently found within 200 miles of the shores of other countries. Shrimp fishermen, who account for almost twenty-five percent of the total United States catch in terms of dollar value, are also dependent on fishing grounds within the 200-mile limits of Mexico, Guyana and Brazil.[174] Thus, American distant-water fishermen opposed the legislation because they feared that unilateral action on the part of the United States would trigger further unilateral action on the part of certain foreign

171. One argument advanced by opponents of the FCMA was that other nations will not respect the extension of American fisheries jurisdiction and that accordingly, there is a risk of conflict, particularly with the Soviet Union and Japan. *Id.* at 74 (remarks of Senator Pell).

172. Article 59 of the ICNT provides that conflicts among States over their rights within an EEZ should be resolved on the "basis of equity."

> Article 59
>
> Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone.
>
> In cases where the present Convention does not attribute rights of jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

ICNT, *supra* note 88, art. 59, *reprinted* in Krueger & Nordquist, *supra* note 88, at 381. *See also* Rosenne, *Settlement of Fisheries Disputes in the Exclusive Economic Zone*, 73 AM. J. INT'L L. 89 (1979).

173. *See generally* Fisher, Wood, & Burge, *Latin American Unilateral Declarations of 200-Mile Offshore Exclusive Fisheries: Towards Resolving the Problems of Access Faced by the U.S. Tunafish Industry*, 9 SW. U. L. REV. 643 (1977) and Comment, *The 200-Mile Exclusive Economic Zone: Death Knell for the American Tuna Industry*, 13 SAN DIEGO L. REV. 707 (1976).

174. Swing, *supra* note 40, at 538.

nations, preventing their continued fishing in such waters and causing the demise of their industries.

Such fears have proven justified. Within two years after passage of the FCMA eighty-six other countries followed suit and claimed jurisdiction to offshore living resources.[175] Mexico's claim has resulted in the rapid and absolute phase out of United States shrimp vessels from the Gulf of Mexico.[176]

C. Industry Performance Since the FCMA

Although the FCMA is primarily a conservation and management statute, it was also designed to provide priority access for United States fishermen to the fishery resources, thereby assisting in the development of the United States fishing industry.[177] However, the performance of the United States fishing industry since the enactment of the FCMA has been disappointing. The following table illustrates the volume and the value of the harvests by United States and foreign fishermen in the FCZ in the years 1976-1979:[178]

Volume in thousands of metric tons and percent of total

	U.S. landings	Foreign catch	Total
1976	720 (23%)	2,368 (77%)	3,088
1977	689 (29%)	1,699 (71%)	2,388
1978	641 (27%)	1,754 (73%)	2,395
1979	803 (33%)	1,641 (67%)	2,444

Value (estimate) in millions of dollars and percent of total

	U.S. landings	Foreign catch	Total
1976	561 (56%)	433 (44%)	994
1977	689 (60%)	445 (40%)	1,134
1978	641 (58%)	460 (42%)	1,101
1979	945 (66%)	470 (34%)	1,415

175. AMERICAN FISHERIES REPORT, *supra* note 31, at 71 (Dissenting Views of Congressman Paul N. M'Closkey, Jr.).

176. In accordance with the United States-Mexico Fisheries Agreement, which entered into force November 24, 1976, hundreds of United States vessels were forced out of the rich nearby Mexican shrimping grounds. This produced an intensification of competition for shrimp in United States waters.

The Gulf of Mexico shrimp industry is encountering severe difficulties as a result of the Mexican 200-mile zone, high fuel costs, competition from subsidized foreign imports, and bad weather. This industry has been described as "in a disaster situation." *Id.* at 18.

177. It has been estimated that full development of United States fishery resources by

As indicated by the table, the growth of the United States harvest has been slow. In 1979, American fishermen harvested only thirty-three percent of the fish by volume and thirty-six percent by value within the United States FCZ. Adjusted to take into account the decreased total catch since 1976, the United States displacement of foreign fishing by volume of fish harvested in the FCZ has been only one percent per year. That one percent by volume translates to less than three percent by value.[179] While the volume of the foreign catch has decreased, the value of the foreign catch has actually increased by thirty-seven million dollars since 1976.

Growth in the United States fish processing industry has also been slow. The following table illustrates this point.[180]

[In billions of dollars]	
1976	3.2
1977	3.9
1978	4.6
1979	4.7

This represents an increase of approximately eleven percent per year and given the high rate of inflation, the increase probably does not represent real growth.[181]

While the growth in American exports of fishery products has been substantial, the increase in imports has been greater. This is illustrated in the following table.[182]

[In millions of dollars]

	Imports	Exports	Net
1976	2,277	382.0	−1,895.0
1977	2,621	520.5	−1,900.5
1978	3,099	905.5	−2,193.5
1979	3,811	1,082.4	−2,728.6

The result has been an expanding fisheries trade deficit for the United States. The $2.7 billion deficit in 1979 accounted for approximately ten percent of the total United States negative trade

American fishermen and processors would contribute over one billion dollars per year to the national economy, make the United States a net exporter of fish products, and lead to the employment of 43,000 persons. *Id.*

178. *Id.* at 17.
179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.*

balance. At the consumer level, of the $12.6 billion spent in the United States on fish products in 1979, $6.3 billion, or fifty percent, was on imports. Thus, with twenty percent of the world's fishery resources located off American coasts, the United States imports substantial quantities of fish products.[183]

There are several reasons for the disappointing performance of America's fishing industry since the enactment of the FCMA.[184] These reasons are addressed below.

1. *Foreign fishing in the FCZ.* As noted above, foreign fishing has not been substantially reduced since the enactment of the FCMA. It has been argued that while foreign nations are able to continue a high level of fishing in the FCZ, they are able at the same time to deny United States fishermen access to their markets. This seriously hampers the development of the United States fishing industry, and pressure is therefore building for a complete phase-out of foreign fishing within the FCZ.

2. *Market access.* Improved access for American fish products to foreign markets is essential to the development of the United States fishing industry. United States exports of fish products encounter severe trade barriers abroad, particularly in Japan.[185] Japan maintains a system of import quotas, exclusive of

183. Twenty percent of the fish products (by value) that enter world commerce from over eighty nations are shipped to the United States. *Id.* at 17-18.

184. Congress is considering legislation to amend the FCMA to promote the development of America's fishing industry. The House Merchant Marine and Fisheries Committee recently passed H.R. 7039, the "American Fisheries Promotion Act of 1980." The Bill contains four provisions antithetical to Japanese interests. The legislation would provide for: 1) increased fees on foreign fishing within the FCMA; 2) establishment of a phase-out mechanism for foreign fishing within the United States fisheries zone with an automatic fifteen percent reduction of such fishing beginning in 1981 and reductions of ten or fifteen increments in future years, depending on the increased harvests by domestic fishermen (thus, the bill provides that all foreign fishing in the United States zone will be prohibited by 1990, if United States fishermen harvest at least fifty percent of the amount denied the foreign fishermen in the previous year); 3) establishment of an express link between improved access to foreign markets and allocations of surplus fish to foreign nations; and 4) establishment of a 100 percent observer coverage on all foreign vessels within the United States fisheries zone. *Id.* at 15-16.

Congressman Don Young (R-Alaska) cosponsored the proposed legislation. The bill has been characterized by Congressman Paul M'Closkey as an "[U]nabashed barrel of pork." Congressman M'Closkey also stated that "[T]he bill is a turkey. Stripping away the patriotic trappings and unnecessary sections leaves only provisions with very adverse foreign policy implications and new subsidies to a yet unknown group in amounts which cannot be predicted." *Id.* at 69, 73 (Dissenting Views of Congressman Paul M'Closkey, Jr.).

185. Japan is the largest harvester of fish in the FCZ. In 1979, Japan took seventy-two percent, by value, and sixty-eight percent, by volume, of all of the fish harvested by foreign

restrictive import licenses and high import tariffs that limit imports of United States fish products.[186] If full development of the United States fishing industry is to be achieved, greater access to Japanese markets is necessary.[187] Thus far Japan has resisted easing restrictions on American imports of fishing products.

3. *Enforcement*. United States enforcement of the FCMA's regulations is essential if full development of America's fishing industry is to be achieved. However, the National Marine Fisheries Service (NMFS) and the Coast Guard lack the capability to satisfy all FCMA enforcement requirements. As a National Marine Fisheries Service memorandum dated May 14, 1980, points out:

> Twelve major violations of foreign fishing regulations, all involving the attempted concealment of total catches by erroneous entries into ships' logs, made 1979 the worst year yet for such activities under the FCMA. Eleven of these violations occurred in water off Alaska, and when combined, the retention and concealment of several thousand metric tons of fish seriously frustrates our efforts to effectively conserve and manage our resources. The violations depict underlogging as ranging from 25 to 60 percent of the total catch on board, a serious and repetitive effort at non-compliance with the FCMA.[188]

In response to the increase of serious violations, NMFS has in-

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fishermen in the United States FCZ. Japan's harvest was 1,184,420.3 metric tons, valued at $297 million. According to NMFS, this is an increase for Japan of $87 million over the value of its 1976 catch in the same area. *Id.* at 30-31.

186. One government report explains:

> Despite marketing opportunities in Japan, tariff and non-tariff trade barriers hamper U.S. marketing efforts there. Japan maintains a tariff of between five and fifteen percent on most imported fresh and frozen fish, including pollock. Non-tariff restrictions, such as import quotas, present an even more important barrier to U.S. exports to Japan . . . In 1978 Japan's dollar volume import quota (for groundfish) was $20 million for 98 countries, including the United States. The limitation is on all bottomfish, including pollock. However, using pollock alone as an exemple, the $20 milllion limitation, which is spread over 98 nations, represents a harvest of 90,000 metric tons (using the ex-vessel price of pollock established by NMFS at 50 CFR 611.32(b)). Given that the development of the U.S. pollock resource requires U.S. access to Japan's market, this import quota effectively precludes development of the U.S. industry, particularly since Japan's 1979 harvest of pollock in the U.S. FCZ was 779,003.6 metric tons.
>
> The quota and licensing arrangements in Japan result in heavy control of imports by the major Japan trading companies, which also enjoy preferential financial links to banks and can outbid smaller concerns. Prices and supplies can be manipulated.

Id. at 31.

187. The growth of the United States fishing industry will depend to a considerable extent on access to Japanese markets. In 1979, Japan imported more than fifty percent of United States fish exports, $568 million out of a total of $1.082 billion. For the period, January-April 1980, United States exports to Japan declined by $8.9 million from the same period last year (that is, from $75.4 million to $66.5 million). *Id.* at 32.

188. *Id.* at 33-34.

creased its enforcement. The NMFS memo of May 14, 1980 goes on to state: "This [enforcement] emphasis has resulted in exposing what appears to be a formidable and possibly pre-planned effort at non-compliance with the [FCMA] regulations. . . ."[189]

It is not difficult to understand why violations of the FCMA are so numerous and why more enforcement is needed. The NMFS has only eighty-four personnel assigned to enforcement of the FCMA. They can only cover twenty to twenty-five percent of Coast Guard trips. Further, the Coast Guard has few vessels (somewhere between five and nine) to enforce the FCMA and NMFS has only four vessels available for that duty. Some 562 boardings of foreign fishing vessels were made by United States enforcement officials in 1979 and 127 through May of 1980. In 1979, Coast Guard costs to enforce the FCMA (and to a minor extent, other fisheries laws and international agreements) were about $98 million. NMFS's enforcement costs were $6.4 million.[190]

To supplement the enforcement efforts of the NMFS and the Coast Guard, Congress is considering requiring the placement of 100 percent observer coverage on board foreign fishing vessels while fishing within the United States zone. The cost of such coverage would be borne by foreign fishing vessels operating in the

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Violators of the FCMA in 1979 were the following:

	Incidents
Japan	147
Italy	87
Spain	50
U.S.S.R.	48
Mexico	35
Poland	10
Korea	4
Canada	1
Total	382

As of mid-May 1980, NMFS reported five serious underloggings in percentages ranging from seventeen to thirty-five. There were seventeen major violations in 1979 and 1980, a major increase over 1977 and 1978. Those violators were as follows:

	Incidents
Japan	9
Korea	3
Taiwan	3
U.S.S.R.	1
Poland	1
Total	17

Id. at 34.

189. *Id.*

190. *Id.* at 34-35.

FCZ.[191]

4. *Fees on foreign fishermen*. The FCMA provides that reasonable non-discriminatory license fees shall be charged foreign vessels for the privilege of fishing within the FCZ.[192] It has been argued that this system does not fairly return to the United States government the value of the foreign catch in the FCZ. This is illustrated by the fact that in 1979 the United States taxpayers bore eighty percent of the cost of the FCMA, more than $145 million. However, foreign fishermen caught thirty-four percent of the value of the total fish harvest in the FCZ, worth $470 million. Less fees to the United States government, the benefit for foreign fishermen was more than $455 million.[193] Thus, many believe that foreign fishermen should pay an increased share of the costs of the FCMA.[194]

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191. Presently, observer coverage within the FCZ is limited. Overall observer coverage is on 17.1% off Alaska, 22.1% in the South Atlantic and 23.2% in the mid-Atlantic and New England area. *Id.* at 34.

192. *See* note 126 *supra*.

193. AMERICAN FISHERIES REPORT, *supra* note 31, at 36.

194. The total cost of administering fishing off United States coasts in 1979 is preliminarily estimated by NMFS and the Coast Guard as follows:

[In thousands of dollars]

NOAA:	
General Counsel	700
NOAA/NMFS:	
Fisheries enforcement	5,914
Fisheries enforcement system	500
International office	100
Economics and statistics	7,400
Fishery management councils	8,838
Office of Conservation and Management	532
Management plan review	499
Permits and regulations	316
Regional offices fisheries management	930
MARMAP (research)	25,784
NOAA/NOS:	
Ship operations	10,284
NOAA/Sea Grant:	
Research	555
State Department:	
FCMA operations	236
Transportation/Coast Guard:	
Fisheries enforcement	98,000
Total FCMA cost	160,588

Id. at 35.

The mere establishment of the 200-mile zone by the FCMA has not resulted in a rapid expansion of the United States fishing industry. If the United States fishing industry is to achieve full utilization of fishery resources there must be reduced foreign fishing in the FCZ; greater market access for fish products, particularly in Japan; more effective enforcement by United States agencies, including an expanded observer program; and increased fees on foreign fishing vessels to pay for the costs of administering the FCMA.

The FCMA does, however, represent a unique approach to conservation and management of coastal fisheries. It has provided a foundation for further growth by America's fishing industry, and presents serious implications for Japan.

IV. THE IMPLICATIONS OF THE FCMA FOR JAPAN

A. The Importance of the Sea to Japan

The Japanese have a long history of extensive fishing activity and have enjoyed a developed fishing industry since the beginning of the eighteenth Century. By 1752 Japanese fishermen had expanded their fishing operations as far north as the Maritime Province of Siberia.[195] In 1972 the Japanese fishing industry was described by the United Nations Food and Agriculture Organization (FAO) as "the most important, diversified, extensive and far ranging in the world."[196]

The effectiveness of Japanese fishing efforts has not been without its drawbacks. Japan shares an equally long history of fishery disputes[197] with her competitors and close neighbors, the Soviet

195. Ohira, *Fishery Problems Between Soviet Russia and Japan*, 2 THE JAPANESE ANNUAL OF INT'L L. 1 (1958).

196. United Nations Food and Agriculture Organization, *Country Fishery Profiles* (1972); Wells, *Japan and the United Nations Conference on the Law of the Sea*, 2 OCEAN DEV. & INT'L L. 65, 67 (1974).

In 1971, Japan caught 9,890,000 tons, the second largest national catch, after Peru who caught 10,610,000 tons. In terms of value, however, the Japanese catch was worth about $3.206 billion whereas that of Peru was about $187 million, less than a sixteenth of Japan's. Over ninety-five percent of Peru's catch was anchovies for reduction to fish meal. Park, *Fishing Under Troubled Waters: The Northeast Asia Fisheries Controversy*, 2 OCEAN DEV. & INT'L L. 93, 97 (1974).

197. In promoting Japan's fishing industry after World War II, the Japanese government took various measures under the slogan of "From coast to offshore, from offshore to distant waters." Tanaka, *Japanese Fisheries and Fishery Resources in the Northwest Pacific*, 6 OCEAN

Union,[198] China,[199] Korea,[200] and the United States.[201]

DEV. & INT'L L. 163, 164 (1979). Such a policy brought Japan into competition and confrontation with other states over fishery resources.

Conflict over ocean fisheries is not new. Fisheries off northwestern Europe were matters of conflict from early times. For example, English fishermen resented the license granted by Edward I in 1295 to Zeeland vessels to fish in Yarmouth; and in 1413 the King of England and the Count of Holland agreed on the appointment of government representatives to stop repeated clashes between fishermen of their respective nations. The northern seas between Norway, the Faeroes, Iceland and Greenland have been the scene of prolonged disputes over maritime jurisdiction and fishery rights since the beginning of the seventeenth Century. Fawcett, *How Free are the Seas?*, 49 INT'L AFF. 14, 15 (1973).

The application or threat of armed force to resolve fishery disputes has frequently occurred in modern international affairs. For illustration, a lobster war broke out between France and Brazil over lobster resources on the Brazilian Continental Shelf; the tuna war between the United States and several Latin American countries over the tuna, which occasionally roam into and through the 200-mile zones claimed by Central and South American countries; and the cod war between Iceland and Great Britain caused serious strain within the North Atlantic Treaty Organization. MAGNUSON REPORT, *supra* note 111, at 7.

One author has postulated that conflict over fishery resources is due to the fact that fishing is one of the few activities of man in which different nations are in direct competition, and therefore frequent confrontation, with each other over the same resource. Thus "nowhere in the oceans is there a source of conflict so sustained and prevalent as in the international use of marine fisheries." Christy, *Fisheries and the New Conventions on the Law of the Sea*, 7 SAN DIEGO L. REV. 455, 456-57 (1970).

198. Conflict over fishery relations between Japan and the Soviet Union have been due to two factors. First, Japan and the Soviet Union have historically claimed different delimitations of the territorial sea, Japan claiming a three-mile limit and the Soviet Union a twelve-mile limit. Second, fishery disputes between the two countries have been confined to fishing that took place in the offshore waters of the Soviet Union, which Japan has fished in since the eighteenth century. However, in 1974-75 Soviet fishing vessels in large numbers commenced fishing in waters immediately outside the Japanese three-mile limit and this intrusion angered Japanese coastal fishermen who pressed for greater protection. Park, *Marine Resource Conflicts in the North Pacific, reprinted in* MARINE POLICY AND THE COASTAL COMMUNITY 215, 222-24 (D. Johnston ed. 1976).

For a general discussion on maritime relations between the Soviet Union and Japan *see* Ohira, *supra* note 196; Oda, *Japan and the International Fisheries*, 4 THE JAPANESE ANNUAL OF INT'L. L. 50, 53-56 (1960); Kawakami, *Outline of the Japan-Soviet Fishery Talks (1962)*, 7 THE JAPANESE ANNUAL OF INT'L L. 24 (1963); and Tanaka, *supra* note 197, at 176-81.

199. The first armed clash between the People's Republic of China (PRC) and Japan over fishery issues occurred in December 1950, when five Japanese fishing vessels were seized by the PRC in the East China Sea allegedly for violations of what the PRC regarded as its own fishing grounds. Park, *supra* note 198, at 216-20.

For studies on ocean relations between Japan and China *see generally* Note, *International Law and the Sino-Japanese Controversy Over Territorial Sovereignty of the Senkaku Islands*, 52 B. L. REV. 763 (1972); Comment, *The East China Sea: The Role of International Law in the Settlement of Disputes*, 1973 DUKE L. J. 823; Park, *supra* note 196, at 110-22; Park, *Oil Under Troubled Waters: The Northeast Asia Sea-Bed Controversy*, 14 HARV. INT'L L. J. 212 (1973); Park, *The Sino-Japanese-Korean Sea Resources Controversy and the Hypothesis of a 200-Mile Economic Zone*, 16 HARV. INT'L L. J. 27 (1975); Allen & Mitchell, *The Legal Status of the Continental Shelf of the East China Sea*, 51 ORE. L. REV. 789 (1972); Nakauchi, *Problems of Delimitation in the East China Sea and the Sea of Japan*, 6 OCEAN DEV. & INT'L L. 305 (1979); Note, *Sino-Japanese Dispute Over the Tiaoyut'ai (Senkaku) Islands*, 14 VA. J. INT'L L. 221 (1974); Ohira & Kuwahara, *Fishery Problems Between Japan and the People's*

Lacking natural resources and arable land,[202] Japan imports large quantities of raw materials[203] and foodstuffs.[204] The majority

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Republic of China, 3 THE JAPANESE ANNUAL OF INT'L L. 109 (1959); and Tanaka, *supra* note 197, at 183-84; Dellapenna & Wong, *The Republic of China's Claims Relating to the Territorial Sea, Continental Shelf, and Exclusive Economic Zones: Legal and Economic Aspects*, 3 B.C. INT'L & COMP. L. REV. 353 (1980).

200. One author has stated: "Fishery relations between Japan and Korea have always been volatile and, at times, extremely hostile." Traditionally, Korean fishermen have fished in home waters but their own fishing grounds have been frequented by Japanese fishermen for centuries. Regulation of Japanese fishing in Korean waters dates back to 1426 and in 1442 the two nations concluded a fisheries treaty for the first time. These agreements authorized the increase of Japanese fishermen operating in waters adjacent to Korea. Korean fishermen resented the increased Japanese presence and the situation culminated in the "Japanese Fishermen's Uprising" of 1510 and the breaking of diplomatic relations between the two countries. Park, *supra* note 198, at 219-22. Fishing relations between Korea (North and South) and Japan have been successfully stabilized through negotiations. However, the competition between fishermen of these countries over a common stock of resources within a small area will make fishery rights a constant issue in Japanese-Korean relations.

For a general discussion on ocean issues between Japan and Korea *see* the studies listed in note 199 *supra*; and Tanaka, *supra* note 197, at 181-83.

201. Conflict over fishery relations between Japan and the United States began in 1936 when Japan started surveying Alaskan salmon fisheries in Bristol Bay. Measures were quickly introduced in Congress to restrict Japanese fishing in the North Pacific and Japan withdrew its surveying operations from Bristol Bay in 1938. Park, *supra* note 198, at 224-26.

From Japan's surrender in August 1945, until the San Francisco Peace Treaty of April 28, 1952, Japanese fishing was placed under restrictions by the United States. The restrictive measures were implemented within what came to be called the "MacArthur Line" which regulated Japanese fishing activity. Article 9 of the treaty obligated Japan to "promptly negotiate with the allied powers so willing for the conclusion of fisheries agreements." Pursuant to this provision Japan, Canada and the United States held negotiations that concluded with the creation of the North Pacific Fisheries Convention. By the terms of the convention, Japan agreed to abstain from fishing for halibut, herring, and salmon in certain waters off the coasts of North America. This was the origin of the so-called "principle of abstention" by which Canada and the United States received preference over certain North Pacific fisheries. *Id.* at 225.

For a Japanese view of United States-Japan fishery negotiations *see* Nakamura, *The Japan-United States Negotiations Concerning King Crab Fishery in the Eastern Bering Sea*, 9 THE JAPANESE ANNUAL OF INT'L L. 36 (1965).

202. Japan is an archipelago made up of four large islands and some 4,000 smaller ones that stretch as an island chain for over 2,000 miles. Over seventy percent of Japan is steep mountains and most of the country's 117 million people live on only a small portion of the remaining lowlands area. K. KAWAMURA, FACTS AND FIGURES OF JAPAN, 1980 8, 10 (1980) [hereinafter cited as KAWAMURA]. JAPAN'S FARMING LAND ACCOUNTS FOR FIFTEEN PERCENT OF THE COUNTRY'S TOTAL AREA. *Id.* at 65.

Japan has argued that "allowing less advantaged countries access to the food resources in the ocean has played a paramount role in counterbalancing the inequalities in the size of territorial land among different nations. The ocean always has been available to all nations that need to rely on that resource for foods. Yonezawa & Suda, *supra* note 30, at 169.

203. For example, in 1977 foreign sources provided Japan with 99.8 percent of petroleum consumption, 99.6 percent of iron ore needs and 100 percent nickel and bauxite requirements. ECONOMIC AFFAIRS BUREAU, MINISTRY OF FOREIGN AFFAIRS, STATISTICAL SUR-

of Japan's foreign trade is transported by sea.[205] Japan's shipbuild-

VEY OF JAPAN'S ECONOMY 29 (1972). Table 21: "Import Dependence of Selected Natural Resources."

In 1977, domestic sources provided Japan with 11.8% of her energy requirements and imports 88.2%, whereas domestic sources provided the United States with 77.9% of her energy needs and imports only 22.1%. KAWAMURA, *supra* note 202, at 70.

Table I-1: "Primary Energy Self-Sufficiency." The following table illustrates Japan's dependence on oil imports as the major source of Japan's energy supply.

Dependence on Oil Imports and Consumption in Major Countries

(unit: %)

	Ratio of oil in primary energy	Ratio of imports in total oil
Japan	71.9	99.8
Britain	44.2	64.2
Canada	43.9	32.1
France	64.3	99.1
Italy	68.3	99.0
U.S.A.	46.3	47.4
West Germany	53.0	94.8

Source: Tsusho hakusho (White Paper on International Trade), Ministry of International Trade and Industry, 1979).

Id. at 71.

Japan's "economic miracle" expansion in the 1960's was built on cheap, readily available oil. Due to the insecurity and high cost of imported oil, estimated at sixty-seven billion dollars for 1980, the Japanese government will spend $113 billion on alternative energy. Murray, *Japanese Scurrying to Get Out of Oil*, The Christian Science Monitor, Sept. 12, 1980, at 10, col. 1, *see also* Eguchi, *Japanese Energy Policy*, 56 INT'L AFF. 263 (1980).

204. Japan's imports of foodstuffs in 1979 amounted to $14.4 billion. MINISTRY OF FOREIGN AFFAIRS, JAPAN, THE JAPAN OF TODAY 70 (1980) [hereinafter cited as MINISTRY OF FOREIGN AFFAIRS].

205. In 1978, Japan's foreign trade, the majority of which was transported by sea, totalled about $177.0 billion. The following table illustrates the growth in Japanese foreign trade.

Total Exports and Imports (unit: $ million)

Year	Exports	Imports	Balance
1965	8,452	8,169	283
1966	9,776	9,153	254
1967	10,442	11,663	−1,222
1968	12,972	12,987	−16
1969	15,990	15,024	966
1970	19,318	18,881	437
1971	24,019	19,712	4,307
1972	28,591	23,471	5,120
1973	36,930	38,314	−1,384
1974	55,536	62,110	−6,574
1975	55,753	57,863	−2,110
1976	67,225	64,799	2,427
1977	80,495	70,809	9,686

ing industry is the world's largest[206] and fish provide over half the animal protein in the national diet.[207] As an island nation the sea is

Total Exports and Imports			(unit: $ million)
Year	Exports	Imports	Balance
1978	97,543	79,343	18,200

Source: Gaikoku boeki gaikyo (The Summary Report—Trade of Japan), Ministry of Finance, February 1979.

Reprinted in KAWAMURA, *supra* note 202, at 46.

Japan's foreign trade in 1979 was distributed as follows:

Region	% Exports	% Imports
Asia	25.4%	23.7%
Middle East	10.4%	26.5%
Western Europe	15.9%	9.1%
Socialist Countries	7.2%	4.9%
North America	27.3%	22.2%
Latin America	6.4%	4.1%
Africa	4.0%	2.6%
Oceania	3.4%	6.9%

MINISTRY OF FOREIGN AFFAIRS, *supra* note 204, at 142-43. Table on "Foreign Trade by Areas and Countries 1979."

206. In 1976 forty-six percent of worldwide ship construction was completed in Japanese yards. *Id.* at 63.

207. The significance of fish in the national diet of the major maritime countries is shown in the following table:

Fish as Percent of Protein Supply in the Major Maritime Countries

Country	Fish as per cent of total protein supply	Fish as per cent of animal protein supply
Japan	20.5	57.8
Iceland	22.8	30.5
Norway	11.9	19.4
Denmark	11.0	16.5
Democratic Republic of Germany	7.1	13.3
France	5.8	10.0
Italy	4.0	9.8
U.S.S.R.	3.3	8.4
U.K.	4.7	7.9
Poland	3.2	7.0
Federal Republic of Germany	4.4	6.8
Canada	3.8	5.7
Bulgaria	1.3	4.8
U.S.A.	3.4	4.8
The Netherlands	2.8	4.4

FAO, Dept. of Fisheries, *The Economic and Social Effects of the Fishing Industry—A Comparative Study*, Rome, FAO, 1973, Doc. No. FIE/C/314, Table I, at 3-5.

Miles, *The Dynamics of Global Ocean Politics*, *reprinted in* MARINE POLICY AND THE COASTAL COMMUNITY 147, 170 (D. Johnston ed. 1976).

crucial to the defense of Japan.[208]

The head of the Japanese delegation explained the importance of the sea to Japan during the 1958 Geneva Convention on the Law of the Sea:

> Japanese territory, supporting some 90 million people, consists of small mountainous islands with but very small arable space and meagre natural resources. Consequently, the life of the Japanese people depends heavily upon the sea, which is the source of livelihood for a large segment of the population.[209]

The remarks made by the chairman of Japan's Fisheries Association to members of the United States North Pacific Fisheries Management Council, (a body which has a major voice in establishing new quotas for foreign fishing within the FCZ) illustrates the significance Japan places on open fishing and its opposition to the FCMA. The Council was warned that "America would be playing into the hands of Japanese Communists if Japan is not given special consideration in implementation of the 200-mile limit. . . ."[210] The Japanese delegation reasoned that "[u]sing the extended offshore jurisdiction to reduce Japan's fishing quotas in the North Pacific could cause massive unemployment and political upheaval."[211] The Council was further told that "[W]e need very

208. The introduction of the steam engine in the eighteenth century and the development of the whaling industry in the North Pacific in the beginning of the nineteenth century brought foreign vessels into the seas surrounding Japan. China's defeat in the Opium War (1840-1842) by the European "barbarians" made the Japanese aware of their need for sea defense, which had previously been neglected. Thus, the Imperial Court in Kyoto issued in 1846 an Imperial Message that emphasized the importance of sea defense to prevent the intrusion of foreigners. Otsuka, *Japan's Early Encounter With the Concept of the Law of Nations*, 13 THE JAPANESE ANNUAL OF INT'L L. 35, 36-37 (1969).

209. U.N. DOC. A/CONF. 13/39, at 24 (1958); Oda, *Japan and the United Nations Conference on the Law of the Sea*, 3 THE JAPANESE ANNUAL OF INT'L L. 65, 66 (1959).

210. *Japanese See Red Over Fish*, The Anchorage Times, July 31, 1976, at 1, col. 2. While the Japanese had reason to be concerned over the FCMA, their appeal, based on a "communist threat," illustrates Japan's negotiating method. According to one noted observer of Japan: "[t]he Japanese are masters of brinkmanship, stalling until the eleventh hour before making a concession or two that mollifies their critics." Chrysler, *Japan: U.S. Must Stay Strong, Stay Put*, U.S. NEWS AND WORLD REPORT, Nov. 15, 1976, at 73. Regardless of the Japanese choice of negotiating tactics, they are successful. The FCMA favored nations with a tradition of fishing within the FCZ. *See* notes 129, 140 *supra*.

211. The Anchorage Times, *supra* note 210. Japan quickly considered relief measures to assist the industry's 490,000 fishermen after the FCMA. The measures included retraining fishermen or other jobs and low-interest loans to fishermen operating within the FCZ to help defray new fishing fees. *Japan: Pinched Between 200-Mile Limits*, U.S. NEWS AND WORLD REPORT, Feb. 28, 1977, at 70. It has been estimated that 100,000 Japanese workers will lose their jobs if Japanese fishing within the FCZ is completely prohibited. Ouchi, *A Perspective on Japan's Struggle for its Traditional Rights on the Oceans*, 5 OCEAN DEV. & INT'L L. 107, 132 n.2 (1978).

much for you to understand how deeply we are shocked[212] and afraid of what will happen from the new fisheries law and the 200-mile limit."[213]

Traditional international law of the sea has furthered Japanese interests by guaranteeing the freedoms of navigation, scientific research and fishing on the high seas. However, the recent expansion of claims has seriously restricted the traditional Japanese freedom of fishing on the high seas.

For instance, in 1977 Japan's total fish catch was approximately 10.8 million tons, with twenty-five percent of this total being caught by the distant-water fishing fleet.[214] In 1975 approximately thirty-six percent of Japan's total catch was caught in waters which would be included in the 200-mile zones of foreign countries if ex-

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212. The Japanese delegate may have intentionally used the word "shock" to describe their concern over the FCMA. The FCMA reminded them of the two Nixon "shokku," described from a Japanese view as follows:

> On July 15, 1971, without consulting Japan in advance, President Nixon suddenly announced his plan to visit Peking. This was a great shock to the conservative Japanese leadership, which had been closely coordinating its China policy with the United States. After all, the United States had made Japan sign a peace treaty with the Taiwan government in 1952 in a containment policy against Peking. The United States was now proposing a rapproachment with Peking 'over the head of Japan.' In a similarly abrupt way, Nixon announced his New Economic Policy a month later, suspending the convertibility of good into dollars and imposing a 10 percent surcharge on imports. While these two Nixon 'shokku' were not aimed at Japan alone, they did affect Japan most severely, and the manner in which these actions were taken reduced America's credibility in the eyes of most Japanese, including the conservative government elites.

Sato, *United States - Japanese Relations: A Japanese View*, 68 CURRENT HIST. 154, 157 (April 1975).

The "Nixon shocks" of 1971 were criticized by experts in United States-Japan relations as heavy-handed, insensitive, and would weaken relations between Washington and Tokyo. One author, however, has argued that Washington administer a selective "shokku" to nudge the Japanese toward cooperation on such vital issues as trade and defense where the United States has given more than it has received. Such "[B]luntness would give the Japanese opportunities to resolve outstanding issues they know they ought to cope with but find themselves unable to explain in terms the Japanese public can accept." On selected issues "[T]he Japanese government may secretly welcome strong foreign pressures. It could provide a needed excuse for doing what they would like to do if they thought they could get away with it back home." Olsen, *When Ties with Japan Need a Little Shock*, The Christian Science Monitor, July 10, 1980.

213. *The Anchorage Times*, *supra* note 210.

214. MINISTRY OF FOREIGN AFFAIRS, *supra* note 204, at 55-56. Future relations between Japan and the United States may be characterized as diplomacy by shock. One observer of Japanese-United States relations has noted that the 1980's and 1990's will witness the emergence of a politically independent Japan. Strong nationalist policies will occasionally lead Japan to take positions on significant issues that are not consistent with those of the United States. For an interesting discussion on the issues facing Japan-United States relations *see* Shapiro, *The Risen Sun: Japanese Gaullism?*, 41 FOR. POL. 62 (1980-81).

clusive fishery zones were adopted on a world-wide basis.[215]

B. The Japanese Position

Immediately after Japan was admitted to the international community[216] they declared that the principle of freedom of the open seas should be respected. Japan formally adopted a three-mile limit of territorial waters in 1870.

The expansion of offshore jurisdiction since World War II has been consistently opposed by Japan. At the 1958 Law of the Sea Conference, Japan warned that unilaterally determining the width of territorial waters would produce anarchy in ocean affairs. The Japanese delegate to the Convention stated:

> The claims made by some States that each State is free to determine unilaterally the width of its territorial waters to meet its own needs certainly cannot be reconciled with the basic principles of international law, and such claims would have no validity in the eyes of international law. If such practices were permitted, it would inevitably bring about a state of chaos and anarchy in the regime of the territorial sea.[217]

Japan also argued against the right of coastal States to establish a fishing monopoly zone distinct from fishing rights within the territorial sea. The Japanese delegate stated the Japanese position as follows: "[T]he Japanese delegation cannot accept any proposal which will provide the coastal States with exclusive fishing rights beyond the limits of territorial sea."[218]

At the Third Law of the Sea Conference Japan identified three reasons why the proposed exclusive economic zone was unacceptable. First, the 200-mile exclusive economic zone deprives other

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215. Yanai & Asomura, *Japan and the Emerging Order of the Sea — Two Maritime Laws of Japan*, 21 THE JAPANESE ANNUAL OF INT'L L. 48, 49 n.3 (1977).

216. The appearance of four "Kuro-fune" (black ships) led by Commodore M. Perry of the United States Fleet, East India, on July 8, 1853 at the Bay of Tokyo ushered in an era of Japan's participation in the family of nations and introduced Japan to the concept of the law of nations. Otsuka, *supra* note 208, at 35.

Japan's encounter with western legal systems has not led to the complete adoption of western law in Japan. For an interesting discussion on the Japanese view toward law *see* Kim & Lawson, *The Law of the Subtle Mind: The Traditional Japanese Conception of Law*, 28 INT'L. & COMP. L. Q. 491 (1979).

217. U.N. DOC. A/CONF. 13/39, at 24 (1958); Oda, *supra* note 209, at 67.

218. U.N. DOC. A/CONF. 13/39, at 149 (1958); Oda, *supra* note 209, at 69.

Among the various proposals in the 1958 Geneva Convention on the extent of the territorial sea, in which nation's exercise complete sovereignty, were some which attempted to recognize fishing monopoly zones of the coastal State beyond its territorial sea. For example, Canada proposed a zone of twelve miles reserved to coastal State's for their exclusive fishing. Japan voted against the Canadian proposal, which was rejected. *Id.* at 68-69.

States of their legitimate right to fish in a very extensive area of the sea.[219] Second, the proposals inequitably favor those countries with long coastlines or those in proximity to rich fishing grounds. Finally, the recognition of exclusive fishing rights within an EEZ would not promote effective conservation and management of living ocean resources.[220] Therefore Japan's strategies in international negotiations were: (1) to stop the 200-mile economic zone and attempt to keep the high sea as close as possible to the twelve-mile territorial sea; (2) to retain coastal jurisdiction within territorial waters and provide for the conservation and management of living ocean resources under an international, regional or bilateral regime; and (3) to protect Japan's traditional fishing rights.[221]

Japan proposed that international and regional fishery commissions could provide appropriate forums to devise cooperative arrangements for fishery conservation and management. Japan prefers to work through international organizations to negotiate fishery policies because the snail-like pace of the negotiations would keep the high seas open to Japan's vast distant-water fishing fleet until an international agreement is reached. Japan's preference for solving international fishery issues through international conventions is expressed in the following statement:

> The conservation and development of marine resources should not be promoted by unilateral actions of the coastal countries, and should not be settled by extending the limits of territorial waters. It must be emphasized in this connection that the principle of distribution concerning marine resources should conform to the traditional rules of the high seas and be dealt with at all events through international conventions.[222]

Congress, however, concluded that international management of the living resources of the sea through bilateral treaties and multi-

219. The Japanese delegate to the ongoing LOS Conference characterized the EEZ in the following manner: "Unfettered freedom of the high seas, where deficient, should be limited and rectified rather than destroyed by a poor substitute. . . ." Ouchi, *supra* note 211, at 117.

220. *Id.*; *see also* Wells, *supra* note 196, at 82.

221. Ouchi, *supra* note 211, at 120-21.

In the Caracas Session of the LOS Conference Japan sought recognition of its traditional rights as a distant-water fishing nation. The Japanese delegate stated:

> Fish had long been a necessity for the survival of the Japanese people because of the limited agricultural and livestock-raising potential of Japanese territory, and the Japanese population had also depended on fish and fish products for the major part of their protein supply. Fishing would therefore continue to be vital to his country regardless of the overall development of its national economy. The solution reached at the Conference, if it was to be viable and generally acceptable, must provide for protection and due respect for traditional fishing rights.

Id. at 120.

222. Ohira, *supra* note 195, at 18.

lateral commissions had failed.[223] Therefore, it was United States policy that the coastal State should exercise exclusive authority to develop and implement conservation and management plans for off-shore fisheries.

Despite Japan's efforts at the Third Law of the Sea Conference to block the EEZ concept, the majority of nations, including land-locked and geographically disadvantaged States, reached agreement on 200-mile economic zones giving coastal nations exclusive rights over living and non-living resources. The Japanese government acknowledged the growing international acceptance of the EEZ and stated:

> The establishment of a sea area of 200 nautical miles from the shore, in some meaning or another, will be unavoidable. The situation is severe for Japan, which stands in a solitary position. . . There are only two alternatives, that is, to push the rallying together of like-minded countries, whose positions are rather close to that of Japan, and to undermine the majority opinion, or to jump into the majority and find a way by which we can survive among them. . . . [the assertion that] our country's vested fishing rights should be recognized [is no longer acceptable, and so] [t]here is no other way but to push the work of winning friends, by taking the direction of recognizing the interests of the other side, while protecting our own interests, too. . . .[224]

Japan, therefore, sought to limit EEZ's to developing coastal States only.

> [W]e must recognize that the infant coastal fisheries, particularly of developing countries, are seldom in a position to compete on equal terms with the distant water fisheries of developed countries. We therefore consider that it is amply justifiable to recognize, as a general principle, that developing coastal states will be entitled, in the waters adjacent to the twelve-mile limit from the coast, to preferential fishing rights which will ensure them an allocation of resources in terms of the maximum annual catch that is attainable on the basis of their individual fishing capacity. . . [P]referential fishing rights should be recognized for the coastal states to help promote expansion of the fishing industry in developing countries, and also to minimize or redress certain disruptive socioeconomic effects of competition on the small-scale

223. 16 U.S.C.A. § 1801(a)(4) (West Supp. 1980) states in pertinent part the Congressional finding that "International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources."

224. Wells, *supra* note, 196, at 83-84.

fisheries of developed coastal states.[225]

Japan defined the term "maximum fishing capacity" as:

> In other words, a developing coastal state will be assured of a preferential share in the allocation of fishery resources according to its maximum fishing capacity, not only as it is now but also with some reasonable allowance for its future growth. If, however, the existing capacity is already large enough to enable the coastal fisheries to account for a major portion (e.g., more than 50%) of the allowable catch of the stock of a fish concerned, the preferential catch will be determined on the basis of the existing capacity without taking into account the possibility of its future expansion. This limitation on the preferential catch is considered reasonable inasmuch as reconciliation of interests will have to be made of coastal and distant-water fisheries.[226]

Japan was prepared to grant developing coastal States preference in offshore fisheries only up to fifty percent of the catch. The proposal was not supported by either the developing coastal States or the international community at large.

The United States enactment of the FCMA provided a precedent for similar claims by Japan's neighbors, the Soviet Union, South Korea, North Korea, the People's Republic of China, and Canada. Unilateral action by the United States[227] and the Soviet Union[228] were especially harmful to Japan, since in 1975 fishing off the coasts of the United States and the Soviet Union represented approximately three-fourths of the Japanese catch made within 200 miles off the coasts of foreign countries.[229]

By 1977 Japan's distant-water fishing fleets were operating within a decreasing sphere of open ocean. Japan was pinched between 200-mile claims by neighboring countries and her coastal fisheries were increasingly fished by foreign fishing fleets. These circumstances led Japan to begin fishery talks with the Soviet

225. Ouchi, *supra* note 211, at 118.

226. *Id.* at 119.

227. A professor of law at Seinan Gakuin University, Fukuoka, Japan summarized Japanese feelings toward the United States over the enactment of the FCMA in the following manner: "It was a matter of great disappointment for the Japanese people that their closest political ally, which was well aware of the importance of the living resources within the alleged 200-mile zone for the well-being of the Japanese, should take such a unilateral action." *Id.* at 108. The same author also stated: "Public sentiment in Japan has become especially bitter toward the United States for such an allegedly unfriendly act [FCMA]. . . ." *Id.* at 130.

228. For a discussion on Soviet views on ocean affairs *see generally* Carlson, *Soviet Policy on the Sea-Bed and the Ocean Floor*, 1 SYRACUSE J. INT'L. L. & COM. 104 (1972).

229. Yonezawa & Suda, *supra* note 30, at 173. The following table illustrates Japan's traditional dependence upon fishing in Soviet and American waters.

Union in March, 1977. The talks deadlocked and the Japanese government enacted the "Law on Provisional Measures Relating to the Fishing Zone" in November, 1977, which established Japan's own 200-mile fishing zone.[230] The purpose of the law was to provide a way out of the diplomatic impasse by placing Japan on a more or less equal footing with the Soviet Union in regard to juris-

	In waters within 200 miles off the coasts of foreign countries	Catch (unit: 1,000t)	Ratio (per cent)
	U.S.A.	1,410	
	U.S.S.R.	1,396	
	Republic of Korea & North Korea	241	
	China	152	
	New Zealand	80	
	Canada	21	
	Australia	12	
	Other countries	432	
	Total	3,744	36
2.	In waters within 200 miles off the coasts of Japan	5,503	52
3.	In waters beyond 200 miles	326	3
	Total Catch in sea waters	9,573	91
	Total Catch of Japan (including catch in inland waters and marine culturing)	10,545	100

Source: Fishery Agency of Japan (as of April 1977)

Reprinted in Yanai & Asomura, *supra* note 215, at 73. The United States, however, does not harvest any living resources within the coastal waters of Japan.

Catch by Foreign Fishing Vessels in Waters within 200 miles off the Coasts of Japan (estimates for recent years)

		Catch (unit: 1,000t)
U.S.S.R.	About	300-400
Republic of Korea	About	5- 10
North Korea	Unknown	
China		0
(Taiwan)	About	1
U.S.A.		0

Source: Fishery Agency of Japan (as of April 1977)

Id. at 74.

230. *Id.* at 66. The law is a provisional measure only designed to protect Japanese coastal fisheries pending the outcome of the Law of the Sea Conference. The FCMA has a similar provision, *see* 16 U.S.C.A. § 1881 (West Supp. 1980). For a thorough discussion on Japan's 200-mile fishing zone law *see* Yanai & Asomura, *supra* note 215, at 65-91; and Krueger & Nordquist, *supra* note 88, at 359.

diction over fishery resources. The primary motivation behind Japan's 200-mile fishing zone was the need to have a bargaining power comparable to that of the Soviet Union in the Japan-Soviet fishery talks.[231] By creating their own 200-mile fishery jurisdiction zone, Japan abandoned its position that "[A]ll marine resources should be conserved for the benefit of all mankind, and not subjected to the monopoly of any specific coastal State,"[232] and joined the international movement toward recognizing EEZ's.

The United States considers Japan's friendship and economic growth important and valuable assets. The two nations share a mutual security treaty[233] and for the past several years the United States has had more trade with Japan than with any other country

231. Yanai & Asomura, *supra* note 215, at 76.

232. Oda, *supra* note 209, at 75.

233. MINISTRY OF FOREIGN AFFAIRS, *supra* note 204, at 37. Article 9 of the Japanese Constitution renounces war, forbids the possession of war potential, and denies the right of belligerency. But it does not go so far as to negate the right of self-defense inherent in a sovereign state or the exercise of the right of self-defense by individual countries as stipulated by Article 51 of the United Nations charter. In the government's interpretation of the Constitution, any armed action taken by Japan must be exclusively of a defensive nature, and any overseas dispatch of its defense forces is unconstitutional. For this reason, the armaments that constitute Japan's defense power are limited to those that can serve only defensive purposes, which means that Japan cannot possess ICBM's and long-distance bombers. Thus, as the following chart shows, Japan's defense expenditures is the lowest of any major world power.

Defense Expenditures of Major Countries (FY 1978)

Countries	Defense expenditures ($ million)	Per capita defense expenditures (dollar)	Ratio to budget (%)	Ratio to GNP (FY 1977) (%)
U.S.S.R.	133,000	508	—	11-13
U.S.A.	113,000	517	23.0	6.0
China	34,380	36	—	8.5
West Germany	21,355	337	22.9	3.4
France	17,518	325	20.3	3.6
Britain	13,579	239	11.2	5.0
Saudi Arabia	13,170	1,704	35.1	13.6
Iran	9,942	273	23.8	10.9
Japan	8,567	74	5.5	0.9
Italy	5,610	98	7.9	2.4

Sources: Military Balance, 1978-79; for Japan, initial budget for FY 1978.

Reprinted in KAWAMURA, *supra* note 202, at 31.

The following chart illustrates the degree of Japanese support for the United States-Japan security treaty.

in the world,[234] except its close neighbor, Canada. Regardless of the close relationship between the two countries the United States enacted the FCMA, and Congress is considering a fishing bill, the American Fisheries Promotion Act of 1980, that would seriously affect Japan.[235]

V. CONCLUSION

Unilateral claims to expanded offshore jurisdiction remain a part of the traditional development of the law of the sea. The history of the law of the sea is a process of continuous interaction; of

Do you think the Japan-U.S. security treaty is helpful to Japan's peace and security?

	Helpful	Somewhat helpful	Not very helpful	Not helpful	Don't know
Total	30%	36%	8%	4%	22%
Male	39	35	8	5	13
Female	21	37	8	3	31
Age group	(Male)	(Male)			
20-29	24 (34)	39 (36)	11	6	20
30-39	27 (35)	38 (36)	10	5	20
40-49	32 (38)	37 (37)	8	3	20
50-59	33 (42)	35 (34)	6	4	22
60 and over	33 (48)	29 (32)	4	2	32

Id. at 32.

While United States sentiment favors an expanded Japanese defense force, especially naval, Japan could not develop the naval capability to protect the vast distances and narrow straits her merchant fleet uses. For a general discussion on the significance of international straits to Japan *see* Kuribayashi, *The Basic Structure of the New Regime of Passage Through International Straits — An Emerging Trend in the Third UNCLOS and Japan's Situation*, 21 THE JAPANESE ANNUAL OF INT'L L. 29 (1977). For a discussion on defense policy in Japan *see* Mendel, *The Security Debate in Japan*, 56 INT'L AFF. 607 (1980).

234. Economic relations between Japan and the United States are strained over the high volume of Japanese auto imports. Japanese cars currently account for twenty-two percent of all new cars being sold in the United States. In the small-car area, Japanese cars account for forty percent of total United States sales. *The Christian Science Monitor*, July 10, 1980, at 1, col. 3. The following public opinion poll shows the Japanese support for strong United States-Japan ties.

Q: With which country should Japan maintain the closest relations?

U.S.A.	29%
China	20
All countries	14
Arab nations	2
U.S.S.R.	1
South Korea	1
Others	2
Can't give a simple answer	10
Don't know	19

Source: KAWAMURA, *supra* note 202, at 150.

235. *See* note 184 *supra*.

continuous demand and response. It is a developing system subject to change. Unilateral claims are advanced, the international community weighs them, and either accepts or rejects them.[236] In the balancing process nations accept or reject claims on the basis of their national interests.[237] The dialogue between Senator Clairborne Pell and Mr. John Norton Moore during Senate hearings on the FCMA illustrates that the development of the international law of the sea is a process of protecting national interests.

> Senator Pell: You are a professor of international law. Can you recall in our country's history any incident when our national interest ran counter to international law and we followed international law rather than our national interest?
>
> Mr. Moore: Rather than trying to respond to that, because I am not certain that I have any precise answer to it, I think this is not one of those cases. I think this is a case in which both our national interest and the international law strongly cut against unilateral action in this bill.
>
> Senator Pell: I regret that there is no good answer to that question and I would hope we are merging into a world where international law would prevail. But I wrote a book on "The Power and Policy" and in the research I did for it I could not find any strong evidence where a nation followed an obligation under a treaty at the expense of its national interest.[238]

An analysis of the movement toward partition of the world's oceans into national lakes leads to the conclusion that States now contemplating, or those who have already claimed unilateral extensions of fisheries jurisdiction, are not acting as custodians over ocean resources for the international community. Rather, these nations seek to preserve for themselves a greater share of a dwindling resource. The most effective means for accomplishing this purpose

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236. International law is also developed through the treaty-making process, either through general international agreement on a particular issue or through bilateral agreements reflecting a general legal trend. MAGNUSON REPORT, *supra* note 112, at 5-6. For a general discussion on the development of international law *see* Sohn, *John A. Sibley Lecture — The Shaping of International Law*, 8 GA. J. INT'L. & COMP. L. 1 (1978).

237. The remarks of Senator Warren Magnuson illustrate that the FCMA is a nationalistic piece of legislation. Senator Magnuson stated:

> [o]ff the shores of the State of Washington alone, there were 398 foreign fishing vessels in the last few years.
> If you went on a bluff, you can see them out there. What kind of business is that for our fisheries? Fishing is a lot like agriculture. I suppose if an American farmer found somebody using part of his pasture, he would do something about it, wouldn't he, and particularly if they were foreigners.

Senate Hearings, *supra* note 27, at 77 (statement of Senator Warren Magnuson).

238. *Id.* at 518 (statement of Hon. John Norton Moore).

is to join the legitimizing trend of carving out a greater portion of adjacent ocean space for an exclusive fishing zone.

This march of individual states in a type of "Oklahoma Land Rush"[239] over open ocean space has fragmented management of ocean resources. One author has observed: "The management of the world ocean is characterized by a haphazard quilt of global, regional, bilateral, and national arrangements differentiated by activity and ocean, but without effective mechanisms for achieving coordination across either oceans or activities."[240]

Japan, as a nation highly dependent upon the seas, is feeling the effects of this global oceanic "land rush." During the past few years, much of Japan's former open ocean fishing grounds have fallen to claims of extended national jurisdiction. Despite Japan's close ties to the United States, history indicates that the United States and other nations of the world will continue to act for their own self interest. President Johnson warned against maritime colonialism over ocean resources: "[U]nder no circumstances must we ever allow the prospects of rich harvest and mineral wealth to create a new form of colonial competition among the maritime nations. We must be careful to avoid a race to grab and to hold the lands under the high seas."[241] The race to return to the international law of the sixteenth centuries Papal Edict has begun. Perhaps, the Venetian claim, asserted in the thirteenth century, should be reinstated and respected.

239. Goldie, *supra* note 72, at 92.

240. Miles, *The Management of the Marine Regions: The North Pacific*, 6 OCEAN DEV. & INT'L. L. vii (1979).

241. President Lyndon B. Johnson, *Remarks of the President on the Commissioning of the New Research Ship*, THE OCEANOGRAPHER (July 13, 1966); Christy, *supra* note 42, at 425.

APPENDIX A: FOREIGN CATCH IN THE U.S. FISHERY CONSERVATION ZONE - ALASKAN WATERS

I. GULF OF ALASKA: FOREIGN CATCH, BY COUNTRY AND SPECIES, 1977-79
(Preliminary)

Country and species	1977	1978	1979
	- - - Metric tons, round weight - - -		
Canada:			
Flounders*	0.9	—	—
Halibut	2,171.8	2,533.3	1,085.9
Lingcod	.5	—	—
Rockfishes	1.8	—	—
Sablefish	1.8	—	—
Salmon	.6	—	—
Turbot	.9	—	—
Total	2,178.3	2,533.3	1,085.9
Japan:			
Atka, mackerel	—	1,135.7	544.5
Cod, Pacific	1,445.0	8,845.8	9,823.4
Flounders*	18,124.0	13,809.4	12,331.7
Ocean perch, Pacific	—	4,547.6	7,334.0
Pollock, Alaska	42,415.0	26,093.0	32,114.2
Rockfishes	21,566.0	1,277.2	1,068.5
Sablefish	13,886.0	6,458.3	5,866.0
Other finfish	3,400.0	3,919.1	2,265.8
Squid, unclassified	—	185.8	260.6
Total	100,836.0	66,271.9	71,608.7
Mexico:			
Atka mackerel	—	—	36.3
Cod, Pacific	—	—	939.3
Flounders*	—	—	113.1
Ocean perch, Pacific	—	—	457.0
Pollock, Alaska	—	—	8,676.9
Rockfishes	—	—	6.6
Sablefish	—	—	54.7
Other finfish	—	—	100.8
Squid, unclassified	—	—	12.6
Total	—	—	10,397.3

Poland:			
Atka mackerel	209.0	—	.4
Cod, Pacific	—	13.6	126.9
Flounders*	—	12.6	18.9
Ocean perch, Pacific	—	3.5	5.3
Pollock, Alaska	1,256.0	1,226.5	19,551.2
Rockfishes	—	8.8	18.7
Other finfish	—	—	14.0
Squid, unclassified	—	1.0	9.1
Total	1,465.0	1,266.0	19,744.5
Republic of Korea:			
Atka mackerel	—	63.0	74.6
Cod, Pacific	—	1,369.0	806.7
Flounders*	—	295.5	597.2
Ocean perch, Pacific	—	3,048.7	821.7
Pollock, Alaska	36,015.0	27,051.9	25,549.2
Rockfishes	601.0	608.7	183.5
Sablefish	1,598.0	664.8	758.4
Other finfish	100.0	1,686.6	754.7
Squid, unclassified	—	132.7	143.2
Total	38,314.0	34,920.9	29,689.2
USSR:			
Atka mackerel	19,220.0	18,386.5	10,262.0
Cod, Pacific	1,010.0	1,140.1	833.6
Flounders*	464.0	196.4	366.5
Ocean perch, Pacific	—	569.5	1,066.2
Pollock, Alaska	41,588.0	41,955.9	17,176.7
Rockfishes	1,829.0	1.2	121.7
Sablefish	4.0	4.0	150.4
Other finfish	1,070.0	381.1	938.6
Squid, unclassified	—	1.6	1.2
Total	65,185.0	62,636.3	30,916.9
Grand Total	207,978.3	167,628.4	163,442.0

* May include yellowfin sole.

Source: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, *Fisheries of the United States*, 1979.

II. BERING SEA AND ALEUTIAN ISLANDS: FOREIGN CATCH BY COUNTRY AND BY SPECIES, 1977-79 (Preliminary)

Country and Species	1977	1978	1979
	- - - Metric tons, round weight - - -		
Canada:			
Halibut	100.0	88.7	—
China, Taiwan:			
Atka mackerel	—	0.3	—
Cod, Pacific	—	70.4	39.4
Flounders:			
Yellowfin sole	—	1.4	3.0
Other	—	68.3	19.2
Ocean perch, Pacific	—	6.6	2.6
Pollock, Alaska	1,346.0	3,039.9	1,928.6
Sablefish	53.0	5.2	6.3
Other finfish	103.0	—	—
Squid, unclassified	—	35.0	14.2
Total	1,502.0	3,227.1	2,013.3
Japan:			
Atka mackerel	—	1,531.0	1,657.4
Cod, Pacific	36,188.0	45,015.0	35,480.3
Flounders:			
Yellowfin sole	58,702.0	59,737.3	53,482.9
Other	56,740.0	87,785.9	75.776.2
Herring, sea	5,592.0	2,315.3	1,707.8
Ocean perch, Pacific	7,250.0	6,776.0	6,875.1
Pollock, Alaska	782,419.0	821,306.5	779,003.6
Sablefish	4,491.0	1,805.2	1,691.0
Other finfish	39,926.0	58,040.7	52,672.7
Crabs, snow (tanner)	12,471.0	14,961.9	14,953.5
Snails (meats)	404.0	2,184.4	537.2
Squid, unclassified	8,316.0	9,138.3	5,739.2
Total	1,012,499.0	1,110,597.5	1,029,576.9

Poland:			
Atka, mackerel	—	—	1.3
Cod, Pacific	—	—	16.5
Flounders, other	—	—	1.5
Ocean perch, Pacific	—	—	1.9
Pollock, Alaska	—	—	18,229.9
Sablefish	—	—	1.8
Other finfish	—	—	5.8
Squid, unclassified	—	—	24.5
Total	—	—	18,283.2
Republic of Korea:			
Atka mackerel	—	71.9	1,329.0
Cod, Pacific	—	1,141.1	3,232.8
Flounders:			
Yellowfin sole	—	41.2	1,348.7
Other	—	264.7	1,960.6
Herring, sea	—	11.9	107.6
Ocean perch, Pacific	—	483.1	281.2
Pollock, Alaska	39,785.0	60,689.1	83,787.7
Sablefish	90.0	149.3	425.3
Other finfish	1,968.0	2,712.5	3,962.2
Squid, unclassified	—	210.5	1,232.7
Total	41,843.0	65,775.3	97,667.8
USSR:			
Atka mackerel	—	22,622.0	20,277.3
Cod, Pacific	278.0	560.4	2,615.7
Flounders:			
Yellowfin sole	284.0	50,532.2	41,258.7
Other	6,211.0	37,378.9	12,128.1
Herring, sea	13,144.0	6,106.4	5,529.5
Ocean perch, Pacific	876.0	242.3	21.6
Pollock, Alaska	65,002.0	92,713.8	58,715.1
Sablefish	—	0.2	49.2
Other finfish	26,246.0	10,806.1	8,054.4
Squid, unclassified	—	22.8	6.4
Total	112,041.0	220,985.1	148,656.0
Grand total	1,167,985.0	1,400,673.7	1,296,197.2

Source: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, *Fisheries of the United States*, 1979.