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**THE FISHERY CONSERVATION AND MANAGEMENT ACT  
OF 1976: IT'S EFFECT ON COASTAL FISHERIES**

In April, 1976, the United States enacted the Fishery Conservation and Management Act of 1976 into law. Act of April 13, 1976, Pub. L. No. 94-265, §2, 90 Stat. 331 (hereinafter Fishery Conservation Act). The Act unilaterally establishes a "fishery conservation zone" to extend 200 miles from the United States' coast. Pub. L. No. 94-265, §101. Within this zone, the United States is empowered to ". . . exercise exclusive fishery management and authority." Pub. L. No. 94-265, §102. Highly migratory species, such as tuna and salmon, are, however, expressly exempt from the provisions of the Act. Pub. L. No. 94-265, §103. The Fishery Conservation Act took effect on March 1, 1977.

The Act recognizes the great value of offshore fisheries to the United States, the fact that they are being severely overfished, in large part by foreign fishing fleets, and that international fishery agreements have not proven to be effective in controlling such overfishing. Pub. L. No. 94-265, §2(a). The Act does not foreclose the possibility of later international agreement. Rather, it expressly provides that if a comprehensive treaty resulting from the U.N. Law of the Sea Conference is ratified by the United States, the Act will be amended to conform to the provisions of such a treaty. Pub. L. No. 94-265, §401.

The reason that the United States did not wait for the conclusion of the Law of the Sea conference was that, at the time of passage of the Act, there was no prospect of an immediate international treaty. The Congress found that, even if such a treaty were to be forthcoming, there might be ". . . a substantial interim period between agreement and a final effective treaty." H.R. Rep. No. 445, 94th Cong., 1st Sess. at 28. Therefore, the Fishery Conservation Act was passed as an interim measure. Foreign states will still be permitted to fish within the 200-mile limit if they enter into an agreement with the United States conforming to the provisions of the Act. As to any fishery over which the United States has exclusive jurisdiction, foreign fishing will be permitted to ". . . that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States . . ." as long as the particular nation being granted fishing rights reciprocates by granting substantially identical fishing rights to vessels of the United States. Pub. L. No. 94-265, §§201(d), 201(f), 202(e).

Thus, while exclusive jurisdiction is being claimed, there is no attempt to restrict foreign fishing totally, but only that portion which is deleterious to United States fishermen and to the conservation of United States fisheries. This portion is considered anything above the "optimum yield" of the fishery, and pertains to the fishery yield "(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." Pub. L. No. 94-265, §3(18). It should be emphasized that traditional fishing by foreign nations in a fishery is not to be disregarded under the new 200-mile regime. Rather, the extent to which a foreign nation has traditionally fished in a particular fishery is a factor to be used in allocating the nation's share of the fishery's "optimum yield." Pub. L. No. 94-265, §201(e).

It is virtually certain that a 200-mile exclusive fishery conservation zone will become the accepted norm of international law for the future, replacing the concept of complete freedom of fishing on the high seas. The 200-mile trend has already begun to manifest itself in Latin America; in addition, the nations of the European Economic Community have similarly declared a 200-mile zone. Drozdiak, *EEC Move Poses Soviet Dilemma*, *The Washington Post* p. 28 (Nov. 25, 1976). The Soviet Union, on November 26, 1976, signed an agreement with the United States under the Fishery Conservation Act recognizing the 200 mile limit, and in early December of 1976, Japan, the last major fishing nation still to oppose the 200-mile concept, consented to the Fishery Conservation Act.

For several reasons, the 200-mile zone of the Fishery Conservation Act is more satisfactory to the coastal fishing industry of the eastern shore of the United States than was the previous 12-mile economic zone. As compared with the 12-mile zone, a 200-mile zone allows better conservation of most stocks which habitate domestic coastal waters. Present treaty obligations with foreign states would still remain intact until their dates of expiration, and foreign fishermen could still fish the excess over the domestic take up to the optimum yield of each of the over-

fish~~es~~ species.

The U.S. Department of State had advanced several arguments against the adoption of the 200-mile zone: that the Act was illegal due to its conflicts with the treaty obligations of the United States under the Convention of the High Seas; that the problems of surveillance and enforcement would be greater than under the 12-mile limit; that under a 200-mile zone, the United States would gain more usable territory than would any other nation under a similar zone; and that the United States would ultimately lose valuable sources of fisheries off the coasts of other states should they, too, decide to adopt a 200-mile zone in which the United States would not be permitted to fish. 510 Dep't. of State Bull. (Oct. 1, 1975)

Nevertheless, it is clear that overriding ecological considerations made the enactment of the Fisheries Conservation Act necessary to control the exploitation of certain overfished stocks. The Act appears to follow the current trend of international law, and most fears of its non-acceptance by the major fishing powers have been proved unfounded, particularly in light of the recent approval of this measure by the Soviet Union and Japan. Through the passage of the Act, the coastal fishing industry of the United States has been reassured that its economic interests will not be compromised due to uncontrolled overfishing by other nations.