San Diego Law Review

Volume 10
Issue 3 *Law of the Sea V*

Article 8

5-1-1973

Recent Developments in the Law of the Sea IV: A Synopsis

G. D. Greenblatt

J. R. Miller

A. J. Waldchen

Recent Developments in the Law of the Sea IV: A Synopsis

INTRODUCTION

We again present an annual synopis of important events pertaining to the law of the sea which occurred between February 1, 1972, and January 31, 1973. Our major sources of information included the *New York Times*, the *Environmental Reporter*, the *United States Code Congressional and Administrative News*, the *Congressional Record*, the *United Nations Chronicle*, and *International Legal Materials*. It is our hope that the search through a seemingly endless array of indices, newspapers, microfilms, and dusty shelves will prove to be of value. We regret that the synopisis must once again report more problems than solutions, but it is with great optimism that we look to the forthcoming United Nations Conference on the Law of the Sea. Perhaps the next synopsis will report some far-reaching accomplishments of that Conference. Finally, we express our sincerest appreciation to Professor H. Gary Knight. His faith in the value of the synopsis has been a great encouragement.

CONSERVATION

President Nixon's Special Message to Congress on the Environment:[1] On February 8, 1972, President Nixon submitted a special

1. 2 U.S. CODE CONG. & AD. NEWS 605 (1972).

message to Congress concerning the protection of the environment. After emphasizing that the primary responsibility for ecological protection must lie with state and local authorities, but that the federal government must provide leadership, Mr. Nixon discussed ocean problems. Specifically, he called for action on ocean dumping regulations,[2] expanded international cooperation on the environment through a United Nation fund,[3] and further measures to curtail marine pollution.[4] He recognized that the nation's coastal and estuarine wetlands are vital to the survival of a wide variety of fish and wildlife, and serve an important function in the control of floods and tidal forces. To halt the recent decline in wetland acreage he called for support of his National Land Use Policy Act which would direct state attention to these important areas by defining wetlands among the "environmentally critical areas" to be singled out for priority protection. To aid the states in this effort, the President proposed legislation to limit the applicability of certain federal tax benefits when development occurs in coastal wetlands.[5]

The President went on to cite three areas in which he hopes to demonstrate concrete results in 1973: (1) A convention to bar discharges at sea of oil and other harmful discharges to be presented to the 1973 Intergovernmental Maritime Consultative Organization (IMCO); (2) Measures to control the effects of developing underseas resources to be submitted to the Law of the Seas Conference in 1973; (3) Progress by IMCO toward an international agreement to regulate ocean dumping of shore-generated wastes.

Internationally Sanctioned Reduction in Whale Kill: The International Whaling Commission announced in June, 1972, a 15% reduction in the number of whales its members will be permitted to catch annually. At the conclusion of the 24th Annual Conference, the United States proposal to ban all whaling for 10 years was rejected, but the Commission did reduce the quotas in the face of strong opposition from the Soviets and Japanese. In the Pacific, the fin whale quota is to be reduced by 40%, and a total ban is to be placed on the hunting of blue, humpback, bowhead, right, and gray whales. Also agreed upon was the placement of observers at land stations and on factory ships. Although 14 nations involved in some whaling remain outside the Commission, the major whaling

2. *See* discussion of Pub. L. No. 92-532 *infra* at 573.
3. *See* discussion of the United Nations Environment Fund *infra* at 584.
4. *See* discussion of Pub. L. No. 92-340 *infra* at .
5. *See* discussion of the Environmental Protection Tax Act of 1972 *infra* at 564.

nations of Japan and the Soviet Union are bound by the agreement.[6]

Salmon Fishing in Canada Curbed: The Canadian government moved unilaterally in May and June of 1972, to completely ban commercial salmon fishing in the waters off New Brunswick and Quebec in an effort to stave off the depletion of the North Atlantic salmon stocks. These efforts leave open only minor spawning rivers in Nova Scotia and Newfoundland which are not large enough for commercial fishing. The program, to last for at least six years, is seen as a last ditch effort by the Canadians in response to their failure to win over support of the Commission for Northwest Fisheries for a general ban. That Commission, meeting in June, 1972, in Washington, D.C., called for a salmon quota system instead which would have gradually reduced the salmon catch for each nation from 800 tons in 1972 to zero tons in 1976. The Canadians, however, view any such plan as too little, too late, in the fight against salmon extinction. They expressed hope that their unilateral efforts would induce the United States and the Scandinavian nations to follow suit and completely halt the salmon catch in the North Atlantic.

United States Advocates Species Approach to Fisheries Problem: On March 29, 1972, the American representative to the United Nations Committee on the Peaceful Uses of the Seabed made a speech advocating the species approach to fisheries conservation. The aproach would regulate fishing resources by specie rather than by fisheries zones. A coastal state under this proposal would have regulatory authority over fish species native to their coastal area. This authority would include regulating the maximum catch and exacting use fees from fishery users and would include power to arrest and seize offending vessels. The coastal state would catch as much of the fish as it could use, and then allow foreign fishing on a nondiscriminatory basis up to the total catch limit. Excepted from the scheme were migratory fish with no definite coastal location.[7]

Amendment to the South Pacific Commission:[8] Adding to the

6. *See Recent Developments in the Law of the Seas III: A Synopsis*, 9 SAN DIEGO L. REV. 608, 616-18 (1972).
7. 11 INT'L LEGAL MATERIALS 662 (1972).
8. Pub. L. No. 92-490, 86 Stat. 808 (Oct. 13, 1972), 10 U.S. CODE CONG. & AD. NEWS 4816 (1972).

previous provisions that the United States will contribute no more than $250,000 annually to the South Pacific Commission,[9] the Congress established on October 13, 1972, that the American support for the Commission cannot exceed 20% of all expenses apportioned among the participating governments for any given fiscal year. The Convention was originally established in 1947 among the govments of Australia, France, the Netherlands, New Zealand, Great Britain and Northern Ireland, and the United States. Its overall objective is to promote the economic and social advancement of the South Pacific area. To this end research efforts involving the fisheries resources of the area have been undertaken with the aim of improving the nutrition of local inhabitants.

Marine Mammals Protection Act of 1972:[10] On October 21, 1972, the Act was established to prohibit the "harassing, catching, and killing" of marine mammals by citizens of the United States or within waters of the United States unless taken under permit issued by the executive branch. The legislation gives to the Secretaries of Interior and Commerce the authority and mandate to establish general limitations upon the taking of all mammals who spend part or all of their lives in the sea. Specifically enumerated in the law for protection are whales, porpoises, dolphins, walruses, sea otters, polar bears, seals ,and manatees. Within the limitations, takings of such mammals may be authorized by permit, but only after a showing by applicants that the taking of the animals will not work to the disadvantage of the species or stock involved. The same secretaries are given wide authority to restrict or prohibit the importation of marine mammals taken by "methods or in circumstances which would not be permitted to persons subject to U.S. jurisdiction."[11]

Realizing that far more knowledge must be developed on what is actually happening to these animals, the law also creates the Marine Mammal Commission to be composed of three members whose duty it will be to review proposed programs affecting marine mammals and offer well researched advice on ways these programs may be made more consistent with the purposes and policies of the Act.

Coastal Zone Management Act of 1972:[12] On October 27, 1972, Public Law No. 92-583 was enacted to establish a national policy

9. Feb. 6, 1947, 2 U.S.T. 1787, T.I.A.S. No. 2317.
10. Pub. L. No. 92-522, 86 Stat. 1027 (Oct. 21, 1972), 10 U.S. CODE CONG. & AD. NEWS 5076 (1972).
11. 10 U.S. CODE CONG. & AD. NEWS 5771 (1972).
12. Pub. L. No. 92-583, 86 Stat. 1280 (Oct. 27, 1972), 11 U.S. CODE CONG. & AD. NEWS 6110 (1972).

and program for the management, beneficial use, protection, and development of the land and water resources of the nation's coastal zone. The Act establishes a financial incentive program to encourage and assist coastal states in preparing and implementing management programs for the zones and to aid in the acquisition and operation of estuarine sanctuaries. The federal government has imposed no strict limits as to what the programs may consist of, but suggested topics include flood and flood damage prevention, erosion and land stability, ecology, recreation, open space, and commercial fishing. Also established is a 15 member Coastal Zone Management Advisory Commission to aid in the creation of the programs and to advise the President concerning the coastal zones. The federal government will provide up to 66 2/3% of the funds for the programs and up to 50% of the funds needed to acquire and develop the estuarine sanctuaries. The total cost to the federal treasury over the five year life of the law is estimated to be $335.5 million.

Fisheries Research and Development Act of 1964 Extended:[13] The 1964 law authorizing the Secretary of Commerce to cooperate with the States in fisheries conservation was extended to June 30, 1978, in order to co-ordinate state and federal efforts in research and development for the conservation of commercial fisheries by providing federal funds to state programs. The extension calls for an increase in expenditures to a $6.6 million annual level, an increase of $850,000 yearly over previous allotments.

Jellyfish Control Act:[14] The Congress has authorized $400,000 to be spent annually for the next four years for "control and elimination" of jellyfish and "other such pests" in coastal waters of the United States.

Delaware Legislation Barring Heavy Industry Along Coast Is Very Effective: One year after enactment of a strict antipollution law in Delaware,[15] the effectiveness of the measure has drawn widespread notice. The law, aimed at preserving the Delaware

13. Pub. L. No. 92-590, 86 Stat. 1303 (Oct. 27, 1972), 11 U.S. CODE CONG. & AD. NEWS 6138 (1972).
14. Pub. L. No. 92-604, 86 Stat. 1493 (Oct. 31, 1972), 12 U.S. CODE CONG. & AD. NEWS 7129 (1972).
15. *See Recent Developments in the Law of the Seas III: A Synopsis*, 9 SAN DIEGO L. REV. 608, 609 (1972).

coast, has received great acclaim from national and international groups. Inquiries from other coastal states have poured in. The plan has effectively banned major new projects in the coastal area such as oil refineries, steel and paper mills, and offshore bulk transfer terminals; it represents the only law in the nation imposing a flat ban on heavy industry.

As a consequence of its effectiveness, the legislation has drawn strong opposition from industrial concerns, most notably Shell Oil, which has been unable to build a planned refinery in the area. As the general election of November, 1972, approached, the man most responsible for the law, Governor Russel W. Peterson, faced heated resistance from the industries involved. The law became a major campaign issue. The result of the election, however, assured the continuation of the same or similar laws. Although Governor Peterson was defeated, his victorious opponent was elected on a platform calling for even sterner legislation to protect the coastal zone, not only from industrial polluters, but also from commercial and residential developers.

Treasury Department Bill:[16] The Treasury Department has drafted a new bill, called the "Environmental Protection Tax Act of 1972," which would add a new subsection (n) to Section 167 of the Internal Revenue Code of 1954. The bill will provide for a depreciation deduction for property which is constructed, reconstructed or erected on coastal wetlands, that may be computed only by use of the straight-line method of depreciation.

Section 1245 of the Code would be amended to provide that gain on the disposition of improvements located on coastal wetlands will be treated as ordinary income to the extent of all depreciation deductions claimed with respect to such improvements. The provision would apply to all property then on coastal wetlands after December 31, 1972.

A new section, 280, would provide no deduction for interest and taxes where attributable to land under development on coastal wetlands. The purpose behind all the revisions will be to discourage development and exploitation of the rapidly diminishing coastal wetlands.

Proposed Bill to Prohibit Heavy Industry Along New Jersey Coast: On April 22, 1972, New Jersey Assembly Speaker Thomas J. Kean proposed a bill which would prohibit heavy industrial development along the New Jersey coastline in the same manner as

16. 2 ENV. REP. 1327 (Mar. 3, 1972).

the present Delaware law so provides. The legislation would require state authorization and an ecological clearance for light industrial development. Further, the bill would require state and regional planning agencies to develop a comprehensive plan for the coastal area.

New Haven Harbor Dredging Enjoined: On October 31, 1972, Judge Jon O. Newman of the United States District Court for the District of Connecticut halted dredging of New Haven Harbor by the United States Army Corps of Engineers. In *Sierra Club v. Mason*,[17] the environmental group filed suit alleging that the Corps was required to prepare an environmental impact statement under the National Environmental Policy Act of 1969.[18] The Corps claimed that since the harbor was completed before the act became effective, and the dredging work was only ordinary maintenance, it was exempt from the provisions of the act requiring the statement.

Judge Newman held that such maintenance came within congressional contemplation of what the act should cover, and a careful consideration of alternatives, as mandated by the act was necessary before the dredging could be resumed. He therefore issued an injunction against further dredging of the harbor until a statement was prepared by the Army Corps of Engineers.

Rivers and Harbors Act of 1899 Suit: The Sierra Club filed suit on March 28, 1972, in the United States District Court for the Northern District of California under the Rivers and Harbors Act of 1899[19] against the Leslie Salt Company. The environmentalist group alleged that the company had erected dikes on Bair Island in San Francisco Bay in order to further the collection of salt deposits. In so doing, the company had turned former waterfowl and fish breeding areas in the bay into barren wasteland.[20] Under section 401 and 403 of the act, it is illegal for anyone to construct a dike in the navigable waters of the United States without prior approval from the Army Corps of Engineers, which Leslie Salt had not received.

17. — F. Supp. — (D. Conn. 1972).
18. 42 U.S.C. §§ 4321, 4331-35, 4341-47 (1970).
19. 33 U.S.C. § 403 (1970).
20. 2 ENV. REP. 1484 (Apr. 7, 1972).

In a decision handed down by the court on October 13, 1972,[21] the court held that the Sierra Club had standing to sue under the Act, even though the Act specifically gives the federal government the remedy and does not mention private parties. The court so held because some members of the club reside near San Francisco Bay, derive enjoyment from its scenic beauty, and use the bay for fishing and sailing and other activities. The court also held that sections 401 and 403 of the Act do not bar private plaintiffs from seeking remedies under the Act, and the federal government's power under the Act to maintain suit under those sections was not exclusive.

Cove Point, Maryland, Natural Gas Terminal Challenged: The Sierra Club filed suit on November 15, 1972, against various natural gas companies importing Algerian gas into the United States over their collective plans for construction of a $93.2 million natural gas terminal at Cove Point, Maryland, on the Chesapeake Bay.[22] The federal suit was settled on December 5, 1972, when the gas companies agreed to replace a proposed pier which would have extended 6,000 feet into the bay with an underwater tunnel. The companies also agreed to set aside 600 acres of the terminal site for open space and agreed to use no more than 323 acres of land for the terminal facilities. Approval by the Maryland Board of Public Works, the United States Army Corps of Engineers and the Federal Power Commission was expected.[23]

Navy Sued Over Construction of Ammunition Pier in Guam: The Sierra Club, Friends of the Earth, the Guam Science Association and 14 members of the Guam legislature filed suit in United States District Court for the Northern District of California in San Francisco to stop construction of a naval ammunition pier in Sella Bay, Guam. The suit claimed that the Navy had not prepared the required environmental impact statement under the National Environmental Policy Act of 1969.[24] The groups claimed that the bay contains the most important live coral reef in the Pacific Islands, and construction of the pier would significantly destroy its marine life.[25]

FISHING

Peru-Soviet Fishing Agreement: On September 4, 1971, the So-

21. Sierra Club v. Leslie Salt, —F. Supp. —, 4 ENV. REP. CASES 1663 (N.D. Cal. 1972).
22. 3 ENV. REP. 826 (Nov. 17, 1972).
23. 3 ENV. REP. 911 (Dec. 8, 1972).
24. 42 U.S.C. § 4321 (1970).
25. 3 ENV. REP. 859 (Nov. 24, 1972).

viet Union and Peru entered into an agreement for the development of Peru's fishing industry.[26] The Soviet Union agreed to assist in building a fishing complex in northern Peru and to furnish Soviet technical assistance in the construction of the facility. The parties agreed that Soviet credit obtained from the project would be repaid with Peruvian goods and by furnishing port services to Soviet fishing vessels. An exchange of scientific information related to the fishing industry and the training of Peruvian technicians were also agreed upon.

Chile-Soviet Fisheries Agreement: On September 7, 1971, the Soviet Union entered into an agreement with Chile concerning the development of Chilean fishing resources.[27] The Soviet Union agreed to aid Chile in the development of port facilities, to help train Chilean technicians, to provide technical assistance in the creation of a Chilean educational center, and to charter fishing vessels to Chile. Chile agreed to provide port services to Soviet fishing vessels, and to allow the fishing port loan payments to be made in the form of services to the Soviet fishing fleet.

The contracting parties agreed to an exchange of scientific information related to the fishing industry. The parties also agreed to the creation of a commission to facilitate the implementation of the agreement.

Denmark Agrees to Curtail Atlantic Salmon Sea Fishery: Denmark entered into an agreement with the United States in March of 1972 to end its ocean fishery of the Atlantic salmon. The fishing will be curtailed in gradual steps until a total phaseout in 1976. The Danes have thus indirectly acknowledged the United States and Canadian position that ocean fishing of certain anadromous species may be undesirable.

United States-Japan Fishing Agreement: The State Department announced on November 27, 1972, a new two-year North Pacific fishery agreement with Japan. The agreement will reduce by 70% Japanese crab fishing operations in the southeastern Bering Sea. Japan will be permitted, however, to continue its crab fishing operations north and west of the Pribil of Islands, an area not frequented by the United States fishing fleet. Japan also agreed to

26. 11 INT'L LEGAL MATERIALS 304 (1972).
27. 11 INT'L LEGAL MATERIALS 1 (1972).

refrain from fishing in certain areas of the high seas off the coast of Alaska during those periods of the year in which the United States fishing fleet is engaged in operations. Differences between the two fleets had arisen over the Japanese competition for the same catch with different, and presumably better, fishing equipment. In return, the United States agreed to continue allowing the Japanese fleet to fish in certain selected areas off the Aleutian Islands within the 9 mile fishery zone, which is contiguous to the 3 mile territorial limit.

Skipjack Tuna Stock Exploitation Legislation:[28] President Nixon signed into law on October 2, 1972, a bill authorizing the Secretary of Commerce to carry out, directly or by contract, a three year program for development of the skipjack tuna and other latent fisheries resources of the Pacific Ocean, in an area designated as bounded by latitude 30 degrees north to 30 degrees south, and by longtitude 120 degrees east to 130 degrees west.

The program stems from a study of latent fisheries resources conducted by the Pacific Islands Development Commission, consisting of the chief executives of Hawaii, Guam, American Samoa and the trust territory of the Pacific. The Commission concluded that organized exploitation of the skipjack and other latent fisheries resources could substantially contribute to the economies of the Pacific states and territories while simultaneously relieving the pressure on the Eastern Pacific yellowfin tuna stocks. Yellowfin tuna stock exploitation is presently regulated by the Inter-American Tropical Tuna Commission in a yearly quota system. Since the average weight of the yellowfin is between 40 and 50 pounds, it is much more economical for tuna seiners to fill their holds with yellowfin rather than skipjack, which average only 11 pounds apiece. In past years, much of the skipjack fishing has been done towards the end of the year, as seiners try to increase their yearly catch with skipjack after filling their yellowfin quota. Since the skipjack migrate off the South American coast during that time of the year, it has resulted in seizures by Ecuador and Peru for invasion of their claimed 200 mile territorial limit.

Under the new law, over $3 million will be spent on exploration and assessment of tuna and other latent fisheries, improvement of harvesting techniques, biological resource monitoring, gear development, economic evaluation of the tuna, and the potential for other fisheries in the area. It is to be a cooperative undertaking

28. Pub. L. No. 92-444, 86 Stat. 744 (Sept. 29, 1972), 9 U.S. CODE CONG. & AD. NEWS 2897 (1972).

involving the Secretary of the Interior, the State of Hawaii, the governments of Guam and American Samoa, educational institutions, and the commercial fishing industry.

Congress Amends North Pacific Fisheries Act of 1954:[29] In 1954 the North Pacific Fisheries Act[30] was enacted in order to implement the United States role in the International Convention for the High Seas Fisheries of the North Pacific Ocean created by protocol on May 9, 1952.[31] The purpose of the Convention, composed of the United States, Japan, and Canada, is to "promote and coordinate the scientific studies necessary to ascertain the conservation measures required to insure the maximum sustained productivity of the . . . fisheries resources of joint interest to the contracting parties."[32] The 1954 Act provided for United States representation on the international commission, established a United States Advisory Committee, granted the Coast Guard powers of enforcement, and designated offenses and penalties.

The 1972 amendments were needed because the North Pacific Fisheries Act contained certain provisions of the Northwest Atlantic Fisheries Act of 1950[33] by reference only. The amendments permit the North Pacific Fisheries Act to now stand alone by directly incorporating into the law that which had only been included by reference. This in turn permits the later amendment of each act to meet the specific requirements of the different fisheries areas without forcing unwarranted alterations upon the other area.

Alaskan Fishing Law Upheld: A three judge panel of the United States District Court for the District of Alaska upheld a controversial Alaskan fishing law on July 18, 1972, against a challenge of unconstitutionality by Washington State and Canadian fishing interests.[34] At issue was the use of a "power drum" to haul in fishing nets during the lucrative salmon fishing season off the Alaskan coast. This type of device, in widespread operation almost every-

29. Pub. L. No. 92-471, 86 Stat. 784 (Oct. 9, 1972), 10 U.S. CODE CONG. & AD. NEWS 4784 (1972).
30. 16 U.S.C. § 1021 (1954).
31. May 9, 1952, 4 U.S.T. 380, T.I.A.S. No. 2786.
32. 10 U.S. CODE CONG. & AD. NEWS 5146 (1972).
33. 16 U.S.C. § 981 (1950).
34. Glenovich v. Noerenberg, 346 F. Supp. 1286 (D. Alaska 1972).

where, is prohibited by Alaskan law, thus requiring fishermen to change over to the approved "power block" device whenever fishing within Alaskan territorial waters. The "power block" is a power operated pulley requiring a larger crew to operate and more time than the modern "power drum". Thereby the fishermen incur a greater expense and catch less fish. The court held that the burden on interstate commerce alleged by the plaintiffs was small in comparison to the compelling state interest in the preservation of the salmon population. This conservation of salmon was found by the court to be the dominant purpose behind the act and thus placed it within the validly exercised powers of the state.

SEABED RESOURCES

Development of North Sea Oilfields Continues:[35] On June 22, 1972, the British Petroleum Co. announced that it had "substantially" completed arrangements to raise $936 million to develop its North Sea oil field. The money will be provided by a consortium of European, North American, and other overseas banks. The British Petroleum field, entitled the Forties, is the largest yet discovered in the area with a reserve estimated to be 4.4 billion barrels.

On August 8, 1972, a Shell-Esso consortium announced discovery of a major new oilfield in waters 100 miles northeast of the Shetland Islands. The Brent field is the northern most yet discovered and is expected by the company to produce one billion barrels of oil at a rate of 300,000 barrels a day by 1976. The same consortium announced on August 31, 1972, another major discovery 25 miles west of the Brent field and 80 miles from the Shetland Islands. The Cormorant field was believed by company officials to be as large as the neighboring Brent field.

Two additional discoveries were made by a United States-European consortium consisting of Phillips Petroleum (37%), Petrofina of Belgium (30%), a French group (20%), and an Italian interest (13%). On August 18, 1972, the consortium announced discovery of Elkfisk field 12.5 miles south of the Ekofisk field. On September 6, 1972, the company further announced the discovery of oilfield Edda, located about 7.5 miles southwest of Ekofisk.

On the 24th of September, 1972, Mobil Oil North Seas Ltd., operator for a group that includes the British Gas Council and Amer-

35. *See Recent Developments in the Law of the Seas III: A Synopsis*, 9 SAN DIEGO L. REV. 608, 624, 625 (1972).

ada Hess Corporation, announced a discovery of low sulphur oil and gas in the British sector of the North Sea, 100 miles southeast of Shetland Island.

Oil Drilling Returns to Santa Barbara:[36] On June 21, 1972, Judge Francis C. Whelan of the United States District Court for the Central District of California directed Secretary of Interior Rogers Morton to vacate an order suspending oil drilling in the Santa Barbara Channel. He concurrently extended the oil drilling leases of four major oil companies, Gulf, Mobil, Texaco, and Union of California, for 32 months to allow a resumption of exploratory operations. Judge Whelan noted in his decision that the leases in question before the court had not been involved in the disastrous blowout on the ocean bed in 1969 which resulted in huge quantities of oil washing onto the beaches and shoreline. The decision held that the Secretary of Interior was not empowered under the Continental Shelf Act to suspend drilling unless it was necessitated in the interest of national defense, the protection of persons or property, or by request of the drillers. The finding was that Secretary Morton's suspension action on April 21, 1971, was not based on any of these guidelines, but was done to give Congress time in which to consider legislation to terminate the leases entirely.[37]

Environmental Groups Drop Opposition to Offshore Drilling: On August 2, 1972, three environmental groups, the Friends of the Earth, the Sierra Club, and the National Resources Defense Council, dropped their legal challenge to the government sale of oil leases in the Gulf of Mexico. This cleared the way for the Interior Department's anticipated opening for lease of 366,000 acres off Louisiana in September and an additional 619,000 acres in December.

Veto of Bill Banning Gas Drilling: On June 9, 1972, Governor Nelson Rockefeller of New York vetoed a bill which would have prohibited drilling for gas in Long Island Sound and the Atlantic Ocean off Long Island.

---

36. 3 ENV. REP. 267 (June 30, 1972).
37. For a better understanding of the Santa Barbara oil spill, *see* Nanda and Stiles, *Offshore Oil Spills: An Evaluation of Recent United States Responses*, 7 SAN DIEGO L. REV. 519, 526 (1970); Walmsley, *Oil Pollution Problems Arising out of Exploitation of the Continental Shelf: The Santa Barbara Disaster*, 9 SAN DIEGO L. REV. 514 (1972).

POLLUTION AND POLLUTION CONTROL

DOMESTIC—FEDERAL

Federal Water Pollution Control Act, Amendment of 1972:[38] On October 18, 1972, the House, by a vote of 247 to 23, overrode a presdential veto and enacted the 1972 version of the Federal Water Pollution Control Act. The goal of the legislation is to end discharges into the navigable waters of the nation by 1985. To this end, a major change in the enforcement mechanism of the Federal water pollution control program will be implemented by establishing effluent limits instead of water quality standards. "Under the Act, the basis of pollution prevention and elimination will be the application of effluent limitations. Water quality will be a measure of program effectiveness and performance, not a means of elimination and enforcement."[39] The program calls for a two stage progression. First, by 1976 all discharging facilities will be required to be using the "best practicable technology" to neutralize any harmful effects. By 1981 any continuing discharges must be subjected to the "best available technology" until the goal of no discharges is attained in 1985.

As concerns ocean dumping, discharges into the nation's territorial seas of any "hazardous substances," defined as a pollutant presenting an imminent and substantial danger to the public health or welfare, will be subject to the same regulations applicable to discharges into domestic navigable waters. Specifically, section 403 of the Act establishes ocean discharge criteria, applicable to outflows and vessels alike, which must be met in order to obtain a permit for dumping of pollutants into the territorial seas, contiguous zones, or the oceans. The general proposition under which permits will issue is that any "contamination of marine organisms or waters which prevent the harvesting of sea food that is safe to eat, the use of oceans for recreation, or its use as drinking water after desalination" is recognized as "detrimental to human health or welfare."[40]

The estimated cost of the law over nine years is $24.6 billion. Believing this amount to be excessive, President Nixon had vetoed the bill, despite over-whelming support in the Congress and the support of the head of the Environmental Protection Agency, William Ruckelshaus.

---

38. Pub. L. No. 92-500, 86 Stat. 816 (Oct. 18, 1972), 10 U.S. CODE CONG. & AD. NEWS 4825 (1972).
39. 10 U.S. CODE CONG. & AD. NEWS 5295 (1972).
40. *Id.* at 5361.

Marine Protection, Research, and Sanctuaries Act of 1972:[41] This act, signed into law on October 23, 1972, represents a concentrated effort to ban unregulated dumping of materials into the oceans, estuaries, and the Great Lakes. The law absolutely prohibits the transportation from the United States for the purpose of dumping into the oceans any radiological, chemical, or biological warfare agents and wastes. Thus, the dumping of nerve gas as occurred off Florida in 1970 would be banned. Additionally, the law prohibits dumping of such materials from non-United States sources into the territorial sea (or the contiguous zone to the territorial sea) of the United States. Such an assertion of jurisdiction over persons other than United States nationals raises the possibility of international disputes.

For other materials not designated for absolute prohibition to be dumped or transported for dumping in United States waters, a permit must first be obtained from the Environmental Protection Agency (EPA). Such permits will be issued only after a showing that the dumping will not jeopardize human health and welfare, including economic, esthetic, and recreational values, fisheries resources, plankton, fish, shellfish, wildlife, shorelines and beaches. Any dumping of dredged materials must meet criteria demonstrating that it will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities. Violations of these dumping regulations will subject the offender to a possible $50,000 fine and/or one year imprisonment per violation. The six year implementation costs to the EPA are estimated to be $22,300,000, with an additional cost of $7,300,000 to the Coast Guard for enforcement.

The act also authorizes a three year, $6,000,000 expenditure by the Secretary of Commerce, in conjunction with the EPA, to develop a comprehensive program of research as to effects of dumping materials into the oceans. The Secretary is further authorized to designate marine sanctuaries as far seaward as the outer edge of the Continental Shelf, and other coastal waters for the preservation or restoration of their conservation, recreation, ecological, or esthetic values. To this end he may establish all reasonable and

41. Pub. L. No. 92-532, 86 Stat. 1052 (Oct. 23, 1972), 11 U.S. CODE CONG. & AD. NEWS 5855 (1972).

necessary regulations for their protection with violations punishable by a maximum fine of $50,000.[42]

Bill Introduced to Implement Oil Pollution Conventions: On September 4, 1972, a bill was introduced in the House to implement the International Convention on Civil Liabilities for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution.[43] The bill was referred to the House Committee on Foreign Affairs. In August, the American Bar Association had urged passage of legislation to implement the agreements.

Fight in Congress Holds Up Coastal Dumping Bills: Legislation to control the dumping of spoil from dredging has been delayed because of congressional disagreement over the proper controlling agency. The House has produced bills which would give control to the Army Corps of Engineers, while the Senate would give control to the Environmental Protection Agency.

Coast Guard Issues Oil Transfer Regulations: On December 21, 1972, the United States Coast Guard issued regulations pertaining to oil transfer facilities.[44] The regulations include requirements as to pipe size, design of loading arms, and overflow prevention equipment. In addition, a continuous communication link between transfer facilities and the mainland is now required. The Coast Guard also promulgated regulations pertaining to vessel construction and operations. Requirements relating to building, tank construction and strength of moorings were included.

Admiralty Suit Over Oil Spill: The maritime and admiralty jurisdiction of the federal courts has rarely been invoked by a state in a suit for damages arising out of an oil spill by a ship moored at the dock. The State of Maryland did just that, and on October 27, 1972, the United States District Court for the District of Maryland awarded the state damages arising from an oil spill from the tanker *Amerada Hess* into Baltimore Harbor.[45] While she was unloading oil, the pipeline separated on the shore, and the oil subsequently accumulated in the harbor. The ship's owners claimed that the court lacked jurisdiction, as the complained of act occurred on the shore and not in the water. The court, in applying

42. *See Recent Developments in the Law of the Seas III: A Synopsis*, 9 SAN DIEGO L. REV. 608, 631-32 (1972).
43. H.R. 16669, 92d Cong., 2d Sess. (1972).
44. 37 Fed. Reg. 28250 (1972).
45. Maryland v. Amerada Hess, — F. Supp. — (D. Md. 1972), 4 ENV. REP. CASES 1625 (Oct. 25, 1972).

the traditional "locality test"[46] held that it was not where the negligent act occurred, but where the tort occurs that determines the locale of the act. Since the damage did not occur until the oil entered the harbor, the court had jurisdiction, because the wrongful act did not have its impact until the oil entered the water.

The defendant also challenged the State of Maryland's standing to sue for negligence, claiming that Maryland had no proprietary interest in the waters, but was merely a trustee for the citizens and not able to bring the action. The defendant also argued that since it was within the police powers of Maryland to enact pollution control laws to insure against spillages, the state is therefore precluded from alleging common law negligence and injury.

The court held that the state could bring the action because it has technical ownership of the waters and can sue to preserve the common good. Even if the state is a trustee, it is empowered to protect the trust for the beneficiaries—the public.

New Jersey Ocean Dumping Enjoined: Sixteen New Jersey shore communities were enjoined by a federal judge from dumping sewage into the Atlantic Ocean in February 1972.[47] The suit was brought under the Refuse Act of 1899. The court held that the alleged activities did not come under the streets and sewers exception to the act's prohibition of discharges into navigable waters because the discharges were solid.

Judge Barlow also held that the practice among the communities of storing the sewage during the summer months in holding tanks was objectionable. Even though the beaches are relatively unused during the winter months, he held that the discharges were a hazard to the health of year-round recreational users of the beautiful New Jersey beaches.

In the wake of the decision, New Jersey's Environmental Protection Commissioner, Richard J. Sullivan, told coastal community officials that the only practical way to dispose of sludge in the holding tanks was to carry it by barge to a dumping ground 12 miles off Sandy Hook.

46. *See* New England Mutual Marine Ins. Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1870).
47. United States v. City of Asbury Park, 340 F. Supp. 555 (D. N.J. 1972).

Jurisdiction Over Oil Spills: On April 17, 1972, the Supreme Court granted certiorari to Florida in a case concerning jurisdiction over coastal oil spills. The controversy arose after Congress passed the Federal Water Quality Improvement Act[48] in 1970, and Florida passed a stricter measure two months later. Under the federal law, ship owners must repay the government for the cost of cleaning beaches, with limits placed on each owner's liability. Owners can escape liability if the negligence was due to an act of war, negligence of the government or a third party, or an "act of God". Under the Florida law, ship owners, as well as refiners, drillers, and storage facilities, are absolutely liable for damage caused by oil spills.

Baltimore Harbor Litigation: The Environmental Protection Agency and the State of Maryland joined forces during the spring and summer of 1972 to rid Baltimore Harbor of industrial discharges which have virtually wiped out marine life in the harbor and its tributaries. On April 18, 1972, the State of Maryland sought an injunction against the American Smelting and Refining Company for discharging toxic wastes for three years into the Patapsco River and the harbor.[49] While awaiting the disposition of those charges, American Smelting found itself in trouble with the EPA which charged it with discharging wastes containing arsenic, iron and copper into the harbor. The charges were submitted to the United States Attorney,[50] resulting in a 50 count indictment for, among other things, using the city storm sewer systems to discharge harmful wastes.[51]

American Smelting managed to settle the Maryland suit in a consent decree on July 20, 1972. The company agreed to complete a multimillion dollar anti-pollution program by May 1973.[52] American Smelting was not so lucky, however, in the proceedings under the federal Refuse Act of 1899. The company pleaded guilty to 12 counts of the indictment and was fined $24,000. It also agreed to spend $250,000 on a study which will produce methods and systems rectifying the situation.[53]

Temporary Restraining Order on Discharges into Newport Bay: The Justice Department filed a civil action under the Refuse Act of 1899 against Park Lido Development Corp. of San Diego and the

48. 33 U.S.C. §§ 1152, 1155-56, 1158, 1160 et seq. (1970).
49. 2 ENV. REP. 1562 (Apr. 28, 1972).
50. 3 ENV. REP. 5 (May 5, 1972).
51. 3 ENV. REP. 341 (Jul. 21, 1972).
52. 3 ENV. REP. 405 (Aug. 4, 1972).
53. 3 ENV. REP. 571 (Sep. 22, 1972).

South Coast Construction Co. of Costa Mesa, California, for discharging water containing hydrogen sulfide into Newport Bay from an excavation site. The companies had added chlorine to the discharge to kill the odor; this further damaged marine life and boats docked in the West Lido Channel of the bay.[54]

Ship Leaking Oil is Seized: On June 11, 1972, the United States Coast Guard invoked its powers under the Water and Environment Quality Improvement Act of 1970[55] for the first time by seizing the Liberian tanker *Oriental Express.* The tanker, damaged by fire, was seized to prevent further oil leakage.

Shipper Fined: After a plea of guilty, the Prudential-Grace Lines, Inc., was fined $3,000 for dumping paper waste and powdered lead into Los Angeles Harbor. The decision of June 2, 1972, was handed down by Judge William M. Byrne, Jr., of the United States District Court for the Central District of California.

Suit Under Refuse Act of 1899 for Pollution of Boston Harbor: Injunctions were sought by the Justice Department against Texaco Inc. and its wholly owned subsidiary, White Fuel Corp., on July 6, 1972, in the United States District Court for the District of Massachusetts, for oil discharges of 100 to 500 gallons per day into the harbor since May 3, 1972. White Fuel Corp. was already under a Federal Grand Jury indictment for the same offense when the Refuse Act civil suit was filed.[56]

Pollution Suit Filed: The Justice Department has accused two West Coast shipping lines, General American Transportation Corp. and the Pacific Far East Lines, and two oil companies, Ashland Oil and Signal Oil, of polluting California's coastal waters. The charges were filed on July 20, 1972, in United States District Court for the Central District of California under the Federal Refuse Act of 1899.

Long Beach Harbor Oil Spill Suit: The Justice Department brought two criminal actions in the United States District Court for the Southern District of California in Los Angeles for oil spills into Long Beach Harbor on December 6, and December 18, 1972.[57]

54. 2 ENV. REP. 1516 (Apr. 14, 1972).
55. 33 U.S.C. § 1151 (1970).
56. 3 ENV. REP. 321 (Jul. 14, 1972).
57. 2 ENV. REP. 1561 (Apr. 28, 1972).

A two-count criminal information was brought against Hudson Waterways Corp. for an oil spill from the ship *Seatrain Maryland* on December 6 into the harbor in violation of the Refuse Act of 1899 and the Federal Water Pollution Control Act. A charge was also brought against the Prudential Grace Line Inc. for violating the Refuse Act by dumping garbage and lead concentrate from its ship *Santa Ana* on December 18, 1972.

Oil Spill Off Maine: On July 22, 1972, the Norwegian tanker *Tamano*, an 812 foot vessel carrying 500,000 barrels of oil under contract to Texaco, developed a twenty foot rupture from unknown causes which resulted in a spill of 40,000 gallons of heavy oil off the Maine Coast. By the 24th of the July the spill had fouled beaches and coastline along the islands in Casco Bay and Portland Harbor. The United States Attorney's office served an order on the tanker officials at that time to prevent the ship's departure until a bond of $5000 was posted. The spill remained uncontrolled and the damage to Casco Bay resulted in the closing of the clam flats and official discouragement of lobstering in the area. On July 28, 1972, a class action suit seeking reparations was filed in United States District Court for the District of Maine on behalf of the residents of Long Island in Casco Bay. More than a month later, on September 5, many residents of Casco Bay complained that the oil cleanup operations were proceeding at a snail's pace, and that indeed, the oil remained to foul the beaches and shoreline. A similar spill in the area occured on June 7, 1971.[58]

Federal Rules to Fight New Jersey Shore Pollution: In June of 1972, officials of the federal Environmental Protection Agency and the State of New Jersey held a conference to present a joint plan for ending pollution along the New Jersey coast by 1976. Contained in the plan were stringent antipollution regulations calling for the construction of 23 regional sewage plants along New Jersey's 120-mile coast, standards for industrial wastes, and pollution abatement deadlines for municipal and industrial polluters.

The guidelines would permit sludge to be dumped at sea temporarily if "adequately treated", with the eventual abandonment of all ocean dumping. Industrial polluters were directed to file detailed antipollution plans by December, 1972. Municipal polluters are to come directly under federal control.

The plan was attacked by the Jersey Central Power and Light Company, whose president predicted the plan would force the clos-

58. *See Recent Developments in the Law of the Seas III: A Synopsis*, 9 SAN DIEGO L. REV. 608, 641 (1972).

ing of the company's Lacey Township nuclear generating plant. The government replied that only modifications of the plant would be required.

Federal Government Relaxes Policy on Dumping Sewer Sludge: On March 10, 1972, Federal officials announced that the Environmental Protection Agency would not enforce the ban on ocean dumping of sludge where no alternative means of disposal was available. The announcement came after officials inspected the port and coastal sewage buildup in the New York metropolitan area. The policy announcement came as a partial retreat from President Nixon's announced plan to phase out ocean dumping because of potential long-term damage to the marine environment.

Boston Harbor Cleanup: On July 19, 1972, the Environmental Protection Agency and the State of Massachusetts signed an agreement for a comprehensive plan to improve the water quality in the Boston harbor area.[59] The plan was the result of extended negotiations between EPA and Massachusetts concerning EPA's refusal to certify sewer construction grants for the metropolitan Boston area's Department of Housing and Urban Development. The grants were held up by EPA since certain secondary sewage treatment facilities had not been agreed upon.

The new plan called for the total elimination of sludge discharges from the Metropolitan District Commission's sewage treatment plants at Deer and Nut Islands in the Harbor. Also, under the agreement, by 1980 Massachusetts will have new or expanded facilities providing secondary treatment for all wastes according to minimum standards.

Alaska Pipeline Impact Statement: Controversy over the proposed Alaskan oil pipeline route was somewhat quieted by Interior Secretary Rogers Morton's June 22, 1972, announcement that the Alaskan route was to be utilized rather than the trans-Canada route.[60] Mr. Morton defended his choice in testimony before the Joint Economic Committee. He said that the combined tanker-pipeline route is better and quicker to construct than the other proposed route. He assured that new ship designs, discharge pro-

59. 3 ENV. REP. 368 (Jul. 28, 1972).
60. 3 ENV. REP. 275 (Jun. 30, 1972).

hibitions, and operational traffic systems will militate against tanker accidents and oil spillages in the sea-leg of the route.

Whether those assurances will allay the fears of environmentalists who have fought the Alaskan route all the way remains to be seen. The United States Coast Guard has estimated that 392 barrels of oil per day will spill into Port Valdez in Alaska. The estimate was based on the prediction that the port will handle two million barrels of oil per day when operational, as a part of the proposed route.[61]

Although the final impact statement on the two proposed routes did not show any preference, according to Undersecretary of the Interior William T. Pecora,[62] the potential hazards of oil spills due to unintentional oil loss from pipelines and loading tankers was considerable. The statement estimated the unintentional discharge of oil into Port Valdez, Valdez Arm, and Prince William Sound at 2.4 to 26 barrels of oil per day. It also indicated that the salmon and fishery resources in Prince William Sound were particularly vulnerable to oil spills and persistent low-level discharges from the balast treatment facility and tank cleaning operations at sea. These discharges, it was felt, could have a greater long-term adverse effect on the marine ecosystem than the short-lived larger oil spills predicted from normal tanker loading operations.

Domestic State

California Pacific Ocean Clean-Up Plan: On July 6, 1972, the California Water Resources Control Board adopted a massive clean-up plan which will upgrade the quality of waste discharges from most of the 55 municipal and 34 industrial waste dischargers along the Pacific coast.[63] Almost a billion gallons per day of wastes is discharged into the Pacific Ocean by the various communities and industries along the California coastline. The board set limits on some discharges and prohibited altogether certain extremely harmful types of wastes such as radioactive materials and raw sewage. The comprehensive plan will cost over $670 million in capital expenditures at the outset and another $87 million annually for maintenance and operation costs.

San Francisco Bay Litigation: On June 27, 1972, the Bay Area Regional Water Quality Board issued a cease and desist order to

61. 2 Env. Rep. 1371 (Mar. 10, 1972).
62. 2 Env. Rep. 1421 (Mar. 17, 1972).
63. 3 Env. Rep. 331 (Jul. 14, 1972).

the San Francisco Port Commission's fill project in the bay.[64] The Board ordered port officials to stop dumping garbage into fill areas immediately and to halt the seepage from the buried wastes by July 15, 1972. The orders were given because of the port's poor track record in complying with water quality standards issued for the project on March 28, 1972. The Port Commission intends to construct a large shipping terminal at the India Basin Fill Project. The Port Commission was also the defendant in a $2 million suit filed by the California State Water Quality Control Board in the Superior Court for the same infractions.[65]

Pollution Suit Filed: The California Regional Water Quality Control Board filed suit September 18, 1972, against the United States Navy asserting it was intentionally dumping approximately 380,000 gallons of industrial wastes into San Francisco Bay each day. The Board issued an order to the Navy on July 22, 1972, to cease the dumping of industrial wastes from steam cleaning, degreasing, paint stripping, and photographic processing. This suit alleges that the Navy failed to comply with the order and now seeks an injunction and damages of $6,000 a day.

San Onofre Nuclear Power Plant Safety Questioned: The People's Lobby filed in the California Supreme Court on November 6, 1972, a suit asking the high court to force the California Public Utilities Commission to hold hearings on the San Onofre Nuclear Power Plant.[66] The plant, which is operated jointly by San Diego Gas and Electric Co. and Southern California Edison Co., has been under constant attack by environmentalist groups since it was opened in 1967. The People's Lobby contended that tests conducted by the Atomic Energy Commission in 1971 indicated that the plant's emergency core cooling system was defective.

California Proposition 20 Challenged: Suit was filed in Los Angeles Superior Court on November 13, 1972,[67] challenging the recently passed Proposition 20 which establishes a commission to formulate a plan to control development on the California coast and wetlands. The proposition freezes present development for 1000 feet

64. 3 ENV. REP. 328 (Jul. 14, 1972).
65. 3 ENV. REP. 301 (Jul. 7, 1972).
66. 3 ENV. REP. 827 (Nov. 17, 1972).
67. 3 ENV. REP. 859 (Nov. 24, 1972).

inland from mean high tide. The theory of the case was that the passing of the measure was a confiscation of property for public use without compensation. The suit alleged that the cost of the proposition was in excess of $1,509.1 billion to owners of coastline property.

New York Legislature Urged to Authorize Citizen Environmental Suits: At a May 6, 1972, press conference, spokesmen for environmental groups urged passage of a bill which would allow citizens to sue on environmental issues in state courts. Speakers also urged passage of bills providing for the preservation of wetlands and for creation of shoreline sanctuaries up to the 3-mile limit against oil exploration and strict accountability for oil spills.

New York's Con Ed Storm King Plant Controversy: On March 14, 1972, State Supreme Court Justice De Forest C. Pitt held that a Water Quality Certificate required under the Federal Water Pollution Control Act that was issued to Consolidated Edison of New York was illegal.[68] He found that the certificate was issued without a showing of "reasonable assurance" that the project would not violate water quality standards. In the past, such certificates have not been frequently reviewed as to their substantive contents by the courts and have usually been upheld without question. Environmentalists who lauded the decision had argued that the plant would contaminate fresh water supplies and would cause thermal pollution and kill fish.

Punitive Damages Asked in Alaskan Oil Spill Suit: The State of Alaska filed suit on July 20, 1972, in state court against the Alaska Packers Association for dumping three million tin cans into Larsen Bay and Uyak Bay at Kodiak Island in July, 1971.[69] The state asked $40,000 in compensatory damages and $80,000 in punitive damages. Alaska Attorney General John Havelock said it was the first time a case involving solid wastes was ever filed under Alaska's year-old environmental protection law.

International

Twelve Nation Discharge Pact: On February 15, 1972, twelve nations, meeting as the Oslo Convention, signed a pact regulating and prohibiting the discharge of wastes into the high seas and territorial waters of the northeast Atlantic region.[70] The agreement was signed by Great Britain, Norway, Belgium, France, Denmark,

68. 2 Env. Rep. 1423 (Mar. 17, 1972).
69. 3 Env. Rep. 430 (Aug. 11, 1972).
70. 2 Env. Rep. 1342 (Mar. 3, 1972).

West Germany, Finland, Iceland, The Netherlands, Portugal, Spain, and Sweden. Ratification of the pact is required by the parliaments of at least seven of the participating nations.

The pact prohibits the dumping of durable plastics and dangerous substances such as mercury, cadmium, carcinogenics, persistent synthetic materials that do not float, and halogen or silicon compounds that do not rapidly convert to harmless substances. Special permits will be required for the dumping of less harmful substances such as arsenic, lead, pesticides, scrap metal, tar, copper, zinc, cyanides, flourides, and containers. The area included in the northeast Atlantic region is the North Sea and that part of the Atlantic Ocean extending westward from Greenland and southward to the Strait of Gibraltar, excluding the Baltic Sea.

The convention left the question of enforcement of the pact unresolved and postponed any effective international regulation until each member nation has legislated its own enforcement techniques. After this has been done, an international commission will be formed to coordinate the various individual efforts into one comprehensive scheme.

United Nations Conference on the Human Environment Meets: On June 4, 1972, 1,200 representatives from 112 countries convened in Stockholm, Sweden, with the stated goal to build a framework for integrated action to arrest the deterioration of the environment. Their prime concerns included the oceans and atmosphere, the two global entities that are commonly owned. Notably absent from the conference were the Soviets who elected to boycott the meetings.

A major accomplishment of the conference was approval of a program entitled "Earthwatch" to keep watch over the habitability of the planet. As an integral part of Earthwatch, a Global Ocean station system will be instigated to provide data on the oceans comparable to that collected daily in the atmosphere to aid weather forecasters. It will eventually involve an internationally coordinated system using data from ships, buoys, aircraft, satellites, and island and coastal stations. The other major oceanic project will be the Long Term and Expanded Program of Ocean Exploration and Research which will involve a global investigation of pollution in the marine environment and a United States sponsored program

to determine the chemical structure of the seas. Under this latter project beginning in the summer of 1973, research ships will survey north-south slices of the Atlantic, Indian, Pacific, and Antartic Oceans by taking samples at 50 different depths to determine levels of dissolved oxygen suspended particles, trace elements, and radioactive substances. Additionally, two registries will be established. The International Registry of Data on Chemicals in the environment will compile figures for the potentially most harmful chemicals. The other registry will record releases to the environment and the oceans of significant quantities of radioactive materials. With the implementation of these research and information gathering programs it is hoped that sufficient basic information will be collected in order to allow later recognition of ominous trends in the conditions of the oceans.

The conference also approved plans for a fund of a least $100 million to be used by the United Nations over the next five years to stimulate environmental preservation efforts. The fund is to cover only the United Nations share of the cost, with the great bulk of the cost to be born by individual nations. At present $64 million has been pledged by various nations,including the United States which has offered $40 million. Initial plans for expenditure of the funds include programs for control of air, water, and land pollution, as well as research ships and ocean monitoring satellites. Resolutions supporting an international ten year moratorium on commercial whaling and a United States proposal for an international convention on ocean dumping were also passed.[71]

Ocean Dumping Convention: A convention of 80 nations, which met in London from October 30, to November 13, 1972, adopted a plan whereby all dumping of wastes at sea will in some cases be prohibited entirely and in others controlled.[72] The convention's draft will become effective by mid-1973 when 15 of the nations ratify it. The convention, formally called the Convention on the Prevention of Marine Pollution by dumping of Wastes and Other Matter, classified pollutants into three categories.

DDT, most mercury compounds, persistent oils and plastics, some radioactive wastes, biological-chemical warfare materials and other such extremely dangerous substances are strictly prohibited on the high seas and within territorial waters.

Permits will be required in advance for certain materials requiring special care, such as bulky items that could harm navigation,

71. 3 ENV. REP. 249 (Jun. 23, 1972).
72. 3 ENV. REP. 857 (Nov. 24, 1972).

cyanide, and flouride wastes, and lead and chromium wastes. Other types of wastes will be subject to a general prior permit system.

Enforcement of the agreement was left up to the individual nations to police their own waters without any type of inspection by any international body.

Convention Establishes Liability for Carriage of Nuclear Materials: On December 17, 1972, the Intergovernmental Maritime Consultative Organization adopted a convention relating to civil liability for maritime carriage of nuclear materials.[73] The convention would make the operator of a ship carrying nuclear materials exclusively liable for incidents related to the carriage of such materials. The convention excluded liability for damage caused by a ship's nuclear fuel or waste products. The convention was deposited in London for signatures until December 31, 1972.

Oil Pollution Amendment Proposed: On October 15, 1971, the Intergovernmental Maritime Consultative Organization proposed an amendment to the International Convention for the Prevention of Pollution of the Sea by Oil.[74] The proposed amendment would regulate the size and location of storage tanks in oil tankers. The requirements would affect ships delivered after January 1, 1977, or alternatively, to ships where the contract is placed after January 1, 1972, or the keel is laid after June 30, 1972. Ships constructed to meet the tank requirements will carry a certificate of compliance issued by the responsible government.

United States and Soviet Union to Exchange Environmental Data: On May 23, 1972, the United States and the Soviet Union agreed to exchange data relating to environmental protection and to hold scientific symposia and conferences. Topics covered in the agreement included marine pollution and arctic-subarctic ecological systems.[75]

Oil Spill in Washington Fouls Canadian Beaches: A 12,000 gallon crude oil leak from a Liberian tanker docked at an Arco refinery in Cherry Point, Washington, washed across into Canada in June

73. 11 INT'L LEGAL MATERIALS 277 (1972).
74. 11 INT'L LEGAL MATERIALS 267 (1972).
75. 11 INT'L LEGAL MATERIALS 761 (1972).

of 1972, damaging marine life and polluting beaches along the British Columbia coastline. The spill provoked angry editorials in Canadian newspapers and forced an emergency debate in Parliament. On June 9, 1972, Canada notified the United States that she expects "full and prompt" compensation for the damage. An editorial in the *New York Times* saw the harsh reaction to the relatively minor oil spill as reflective of the growing Canadian fear of heavy oil spills if the United States builds the Alaskan oil pipeline with a terminal in Valdez. The United States admits that estimates of annual oil spillage of 140,000 barrels by tankers carrying the oil from Valdez are accurate.

SHIPPING

United States and Soviet Union Sign Agreement to Prevent High Seas Incidents: On May 25, 1972, the United States and the Soviet Union agreed to attempt reduction of high seas incidents between ships and aircraft of the parties.[76] They agreed to stay well clear of the other party's warships, and to signal intentions when operating in close proximity to one another Regulation of aircraft overflights of naval vessels and surveillance were also included in the agreement. The parties also agreed to exchange data regarding incidents and collisions on the high seas.

Legislation Affecting Merchant Marine Cruise Ships:[77] On June 30, 1972, Congress passed legislation to amend the cruise ship provision of the Merchant Marine Act of 1936, as amended.[78] That prior legislation provided that the Secretary of Commerce could permit passenger ships to cruise off their trade routes for up to two-thirds of the year. This represented the first realization by Congress that passenger vessels in most trades have definite seasonal peaks. The 1972 amendments, aimed at the last four ships in the United State-flag passenger fleet which all operate from the West Coast, were enacted to allow these few remaining vessels the greatest flexibility to operate economically and efficiently. The ships will no longer be required to sail their established trade routes for a minimum portion of the year. It is hoped that this effort by Congress will keep the West Coast fleet from going the way of its counterpart in the East which presently has no passenger ships in operation.

---

76. 11 INT'L LEGAL MATERIALS 778 (1972).
77. Pub. L. No. 92-323, 86 Stat. 389 (Jun. 30, 1972), 7 U.S. CODE CONG. & AD. NEWS 2672 (1972).
78. 46 U.S.C. § 1183 (1970).

Ports and Waterways Safety Act of 1972:[79] On July 10, 1972, President Nixon signed into law legislation which will give the government greater authority to regulate the construction and operation of ships which use ports, waterfront areas, and navigable waters of the United States. The legislation, first urged by President Nixon on May 20, 1970, in his message to Congress on oil pollution, establishes tough preventive measures to meet the growing safety hazards of maritime transportation and the threat of increasingly dangerous oil spills which are often the result of maritime accidents. The Act will provide for unprecedented traffic control patterns in the major seaports of the United States, similar to traffic control for airports, to be established and enforced by the Coast Guard. To carry out the program, new communications systems will be required at harbors and on ships to designate proper sea lane positions and specifying times of movement within the harbors. The Coast Guard is designated as having the authority to establish minimum standards for maritime equipment using the harbors and the power to examine such equipment to assure compliance. Additionally, the government will have the power to pass on the qualifications of officers and crewmen on the ships and to regulate the handling of dangerous materials on waterfront facilities. The ports to be initially affected will be New York, San Francisco, Los Angeles, and New Orleans.

Nixon Administration Supports Superports: In July the administration began efforts to mobilize public and congressional support for the construction of offshore deepwater floating superports to be built off the coasts of Delaware and Louisiana. The efforts began on July 31, 1972, with the publication of a 48 page summary of a 4 volume Maritime Administration study of the feasibility of such ports. The initial estimate of the cost of the port off Delaware was $1.3 billion at 1972 prices and the summary called for the Federal government to assume 20% of the cost with the oil industry to finance the rest. The reasons stated for the ports were the necessity for the deepwater facilities to handle the larger tankers which will be needed to meet the energy demands of the nation in the last quarter of the century. The facilities were also recom-

79. Pub. L. No. 92-340, 86 Stat. 424 (Jul. 10, 1972), 7 U.S. CODE CONG. & AD. NEWS 2716 (1972).

mended as protective of the environment, because by being out in deep water the causes of many oil spills (collisions in busy ports and running aground) would be eliminated.

In November 1972, the Maritime Administration released further studies recommending that two superports be constructed in order to meet the future demands of the nation. Two sites, one nine miles east of Rehobeth Beach, Delaware, and the other 4 miles west of Louisiana's southwest passage, were specifically recommended as economical and practical. Further studies by the Army Corps of Engineers and the Council on Environmental Quality are forthcoming.

Legislation seeking to implement the administration's goals was introduced by Senator Bensten (D.-Texas). On September 26, 1972, the Senator introduced a bill to amend the Outer Continental Shelf Act by providing authority for the issuance of permits to construct, operate and maintain port and terminal facilities.[80] The bill was referred to the Committee on Interior and Insular Affairs.

On January 26, 1973, Senator John Tower of Texas introduced legislation designed to facilitate the construction of offshore oil ports to handle the expected increase in foreign oil imports.[81] The bill would authorize the Secretary of the Interior to contract for construction of the facilities, at least one port of which would be built off the coast of Texas.

SOVEREIGNTY

Extension of United States Fishing Zone Fails in Congress: In response to the desires of the American fishing industry to extend the fishing zone, a total of nine bills were introduced in the House to establish the United States contiguous fishing zone (200 mile-limit) beyond the territorial sea.[82] All the bills failed to emerge from the Committee on Merchant Marine and Fisheries by the time of this writing.

France Extends Territorial Waters to 12 Miles: On December 24, 1971, France enacted a law extending its territorial sea to 12 miles.[83] The new 12-mile limit is subject to exceptions for navigation or where France's baselines are equal to or less than 24 miles from the baselines of a foreign state. The law is also subject to foreign fishing agreements.

---

80. S. 4032, 92d Cong., 2d Sess. (1972).
81. S. 568, 93d Cong., 1st Sess. (1973).
82. H.R. 13729, 13930, 14019, 14383, 14422, 14523, 14937, 14952, 15209, 92d Cong., 2d Sess. (1972).
83. 11 INT'L LEGAL MATERIALS 153 (1972).

Tonga Fights for Minerva: On January 19, 1972, an American citizen and representative of Caribbean-Pacific Enterprises, a company formed for the sole purpose of establishing a new nation somewhere on earth, declared the sovereignty of the Republic of Minerva, to consist of two sea-swept coral reefs 450 miles south of Suva, Fiji. The company, with an investment of $250,000 contributed by seven stockholders, plans to create a livable habitat after landfill operations, and thereafter oversee a ship registry business to provide the shipping industry with an inexpensive flag country to rival Liberia.

The founders of the new nation face opposition from the Kingdom of Tonga whose King Tauf'ahau Tupou has also declared sovereignty over the reefs. To back up such a claim for the reefs which clearly do not lie within Tonga's territorial waters, but do lie within its fishing waters, the king personally commanded a 100 man force which occupied the reefs on June 26, 1972. The Republic of Minerva countered by threatening to take the dispute to the International Court of Justice at The Hauge if no compromise could be reached.

Indonesia and Malaysia Renew Territorial Claim Over Malacca Strait: In response to claims by the Soviet Union, Japan, Great Britain and the United States that the Malacca Strait is an international passage, Indonesia and Malaysia on March 7, 1972, reiterated their contention that the strait is a territorial sea. The claim is based upon a 1971 agreement between the two countries declaring respective ownership of the strait up to the mid-point between the two countries. Japan has offered to pay for navigation facilities and dredging in the strait, if it is recognized as an international passage.

People's Republic of China Supports Latins in 200-Mile Fishery Claim: In March 1972 China became the only major power to recognize the 200-mile fishery limit advanced by most Latin American countries. American officials see the Chinese stand as an effort to become the spokesman for the emerging countries. In addition, it is believed that China hopes to stake out a claim to natural resources in the East China Sea.

Reaction to China's stand came in an April 23, 1972, letter to the *New York Times*, by the author of the Draft Treaties on the Ex-

ploitation of the Seabed criticizing China's support for the 200-mile limit. The author, Aaron L. Danzig, stated that universal acceptance of the proposed limit would work to the disadvantage of developing countries. He pointed to the United States as an example. If America claimed a 200-mile territorial sea, he felt, huge productive areas of the ocean and seabed would be closed to the other countries of the world. The net effect of a universal 200-mile limit would be to cut off a common pool of resources which should be used for the benefit of all mankind. Thus, China's stand, while ostensibly anti-imperialist, would inhibit the sharing of the world's wealth with poorer nations.

President of Mexico Supports 200-Mile Limit: On April 19, 1972, Mexican President Luis Echeverria told the United Nations Conference On Trade and Development that his country supports the proposed 200-mile territorial sea, and that he hoped that it would become a world standard. Echeverria also said that rich nations must offer preferential treatment and special programs to help poor countries catch up, because no world balance could be reached while a majority of the world's inhabitants were discontent.

Santo Domingo Declares Adjacent Sea Rights: On June 9, 1972, Santo Domingo made a declaration at the Specialized Conference of the Carribean Countries Concerning Problems of the Sea. The declaration stated that the territorial sea of a country should be established by international agreement; until then, the territorial sea could extend to 12 miles. In addition, the declaration recognized a patrimonial sea extending up to 200 miles from the coastal state. The state has a sovereign right to the renewable and non-renewable resources within this area. Ship navigation and aircraft overflights should not be restricted within this area, the declaration said.[84]

Canadian Sovereignty: Canada asserted its sovereignty over the Northwest Passage in an anti-pollution law on August 2, 1972. The law provides that all ships passing through the Arctic Archipelago and within 100 nautical miles of its islands are liable for costs of up to $135 a ton for cargo it carries in case of disasters which harm the environment.[85]

Great Britain Agrees on Delimination of Continental Shelf: On November 25, 1971, Great Britain made separate agreements with Denmark[86] and West Germany[87] on a division of the continental

84. 11 INT'L LEGAL MATERIALS 892 (1972).
85. 3 ENV. REP. 423 (Aug. 4, 1972).
86. 11 INT'L LEGAL MATERIALS 723 (1972).
87. 11 INT'L LEGAL MATERIALS 731 (1972).

shelf between Great Britain and the two countries. Both agreements provided that the boundary line was to be essentially equidistant from the territorial sea baselines of the respective countries. The parties further agreed that if any natural deposits extended across the line, they would attempt to reach an agreement concerning the exploitation of the deposits. Where failure of agreement would lead to incomplete exploitation or unnecessarily competitive drilling, the parties agreed to submit the matter to arbitration.

United States and Mexico Reach Fishing Agreement: On January 5, 1973, following three months of intensive and sometimes heated negotiations, the United States and Mexico reached an agreement concerning the implementation of a new fishing law passed by the Mexican Congress on June 15, 1972. The principle points of controversy in the June law with the January resolutions were: 1) A requirement that all foreign fishing vessels operating within Mexico's claimed 12 mile territorial waters must have a crew consisting of 50% Mexican nationals. A compromise was reached on this point by applying the 50% requirement to the complete labor pool of the West Coast fishing fleet, with boats having three or less crew members not to be counted in the pool. 2) A second requirement that would have limited the time boats between 40 and 150 net tons could operate within the Mexican waters by instituting a new permit system. Under the compromise settlement, a limitation remains, but the length of operation time was extended to ten days. 3) Finally, a system for licensing of boats which would have provided that permits be issued only to the boat itself and thereafter be nontransferable in the case of the loss or retirement of that vessel. United States' fishermen claimed that the practical effect of this would be to eventually phase out all foreign boats fishing in Mexican waters. Under the new agreement, a new boat can inherit the license of a vessel it replaces, if the old boat was lost and the new boat is similar in tonnage, equipment, and catch-capacity. Satisfaction with the new agreement was expressed by William Terry of the United States Department of Commerce who also indicated that representatives of the United States fishing industry who had attended the negotiation sessions were satisfied with the new arrangements.

United States and Brazil Sign Shrimp Fisheries Agreement: On

May 9, 1972, the United States and Brazil signed an interim agreement which regulates American shrimp fishing operations in Brazil's coastal waters.[88] Brazil noted that it regards its territorial sea as extending 200 nautical miles from the coastline. The United States noted that it recognizes a three mile territorial limit with an additional 9 mile contiguous fishing zone.

While neither party waived its position regarding the limits of the territorial sea, the purpose of the interim agreement was to regulate conduct of the parties pending an international solution to the perplexing problem of the extent of the territorial sea. Secretary of State William Rogers praised the terms of the agreement as providing a temporary solution without compromising either country's legal claims.

The agreement provides that no more than 325 boats will fish off the Brazilian coast, and seasonal catch limits will be instituted. Brazil was authorized to enforce the agreement by inspecting United States trawlers and seizing those that violate the terms of the agreement. Once fines are paid by the trawlers, Brazil is obligated to return the vessels to the nearest United States port but is allowed to confiscate the illegal catch and fishing gear. The United States agreed to reimburse Brazil for any unusual expenses incurred in the seizure of American trawlers, with a payment of $200,000 as initial financing to cover the cost of policing American operations in the area.

Soviet Union, United States, and Great Britain Ratify Seabed Treaty: On May 18, 1972, the Soviet Union, the United States, and Great Britain ratified a treaty which bans the placing of nuclear and other weapons of mass destruction on the seabed. The treaty, opened for signatures in February 1971, has been signed by 87 countries and ratified by 28. It applies to the seabed outside a territorial zone of 12 miles.

Soviet Fishing Trawlers Seized by Sweden: On February 10, 1972, the Stockholm district attorney ordered the seizure of six tons of fish and fishing equipment from two Soviet trawlers intercepted while fishing inside Swedish waters. In additon, the Soviets paid $1,200 in fines.

Soviet Fishermen Fined $250,000: On February 16, 1972, three Soviet fishermen were fined a record $250,000 for fishing activities within the United States territorial seas.[89] The three were fined

88. 11 INT'L LEGAL MATERIALS 453 (1972).
89. For background materials relating to the incident *see*, 9 SAN DIEGO L. REV. 608, 659 (1972).

$80,000 on criminal charges and $170,000 on civil charges arising out of an incident that occurred on January 17, 1972, when a United States Coast Guard cutter stopped and seized two Russian ships, the *Lamut* and the *Nikoli*, for operating within the 12 mile fishery jurisdiction off the Aleutian Islands. The sentence was delivered after the men, who were held under $160,000 bail, changed their plea from not guilty to nolo contendre.

On February 18, 1972, the two Soviet trawlers which had been seized in January departed Adak Island just 30 minutes before a United States Marshal arrived to take one of the boats back into custody. The departure stranded the three Russian fishermen who had been convicted and fined.

Mexico Shrimp Boat Seized by the United States: On July 4, 1972, the United States Coast Guard seized one Mexican shrimp boat within the United States territorial waters off Texas charging the crewmen with violations of a 1967 fishing rights treaty with Mexico. The boat was seized within the 9 mile contiguous territorial limit. The shrimper was released ten days later after paying a fine of $6,493.67.

United States Detains Japanese Fishing Boats: The United States Coast Guard detained four Japanese salmon fishing boats on July 15, 1972, and charged them with fishing inside prohibited North Pacific waters, in violation of the International Convention for the High Seas Fisheries of the North Pacific Ocean[90] to which Japan is a signatory. United States officials termed this the "most flagrant violation yet" of the Convention. The procedure called for detention rather than seizure until a Japanese enforcement vessel was dispatched to escort the violators back to Japan for trial.

Act to Prohibit Certain Small Vessels in United States Fisheries:[91] On October 27, 1972, the United States responded with Public Law No. 92-601 to recent fisheries management programs by Canada. Those programs established a system of limited entry into salmon fisheries in British Columbia by purchasing boats designated to be surplus and then reselling them with stipulations that they could not be used in the Canadian fishing grounds. To keep

90. May 9, 1952, 4 U.S.T. 380, T.I.A.S. No. 2786.
91. Pub. L. No. 92-601, 86 Stat. 1327 (Oct. 27, 1972), 11 U.S. CODE CONG. & AD. NEWS 6167 (1972).

out this Canadian created surplus of small boats, the Act, aimed at boats of less than five net tons, makes it unlawful for a period of five years for any person on board any prohibited vessel to transfer at sea any prohibited fish or to load or cause to be loaded any prohibited fish in any port of the United States. The prohibited vessels are those constructed in a foreign country, used in a foreign fishery, and then subsequently prohibited by that foreign country from using its fisheries any longer. Violation is to carry a $1,000 civil fine.

General Assembly Resolutions on Peaceful Use of the Sea: On December 16, 1971, the United Nations General Assembly passed a resolution declaring the Indian Ocean as a zone of peace.[92] The resolution called for the end of major power military rivalry in the Indian Ocean, including the presence of military bases, nuclear weapons, and military alliances between Indian Ocean countries and the major powers.

On December 21, 1971, the United Nations General Assembly passed a resolution noting the progress of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction.[93] The resolution commended the committee for its efforts in organizing a comprehensive conference on the law of the sea.

California Congressman Renews Attack on Ecuadorian Aid: Representative Lionel Van Deerlin has charged that the State Department has openly defied express congressional intent to withdraw aid from Ecuador. Van Deerlin referred to a compromise House-Senate bill passed last December which would cut off $4.5 million in technical assistance to Ecuador unless the President deemed the continuance of aid to be in the national interest.[94] Van Deerlin charged that the State Department had made no pretense that such a situation existed in this case.

American Tuna Boats Seized Off the Coast of South America: Tuna boat seizures during 1972 declined remarkably from the 52 that occurred during 1971.[95] The tuna catch off Ecuador has been comparatively low, allowing the seiners to fish other waters. While at least 28 boats were apprehended during the year, only 25 were

92. 11 INT'L LEGAL MATERIALS 217 (1972).
93. 11 INT'L LEGAL MATERIALS 430 (1972).
94. Pub. L. No. 92-242, 86 Stat. 48 (Mar. 8, 1972), 2 U.S. CODE CONG. & AD. NEWS 556 (1972).
95. *See Recent Developments in the Law of the Seas III: A Synopsis*, 9 SAN DIEGO L. REV. 608, 661-664 (1972).

seized; fines totaled $1,686,404. Fines were levied against boats which refused to purchase licenses to fish within Ecuador's claimed 200-mile fishing zone. Although the State Department discourages the purchase of the licenses, about half of the American tuna seiners fishing off the coast of Equador have pruchased licenses this year. The reasons are largely economic; Equador is now counting seizures from prior years in the formula for assessing fines. This has resulted in a greater per boat average fine. During a two-week period in the middle of November, 1971, $1,240,164 in fines were levied against 18 boats captured while fishing within the 200-mile limit. In previous years, Ecuador has wiped the slate clean at the start of each new season. Although the State Department feels that purchasing the license amounts to recognizing Ecusador's claim to the 200-mile area, and therefore reimburses the seiners for any fines paid, many tuna boat operators are finding it too risky economically to refuse purchase of the Ecuadorian licenses.

Tunaboat seizures by Peru added a new wrinkle to the perennial South American controversy; for example, during a two-day period in January of 1973, 16 boats were captured for violating Peru's claimed 200-mile territorial limit. American fishermen claimed that 8 men were held hostage by Peruvian gunboat crews for the first time in the history of the territorial sea controversy. That allegation was later denied by the Peruvian government at the United States Embassy in Lima, Peru. According to the Peruvian government, the captains of the eight tuna boats were each permitted to send a crew member ahead into Talara (to where the seized boats were being ordered) on faster Peruvian gunboats. The 16 boats seized by Peru in January, 1973, paid a total of $525,860 in fines.

Action by the United States government in response came in the form of a Congressional review of military sales to Peru under the new Vessels-Reimbursement-Illegal Seizure Act.[96] The Act amended the Fishermen's Protective Act of 1967[97] in order to expedite the reimbursement of United States vessel owners for

96. Pub. L. No. 92-569, 86 Stat. 1162 (Oct. 26, 1972), 11 U.S. CODE CONG. & AD. NEWS 5997 (1972).
97. 22 U.S.C. §§ 1971-76 (1970).

charges paid by them for release of vessels and crews illegally seized by foreign countries. The Act will require the Secretary of State to "immediately" ascertain the amount paid by a vessel owner and to certify such amount to the Secretary of the Treasury for reimbursement from the Fishermen Protection Fund. The Secretary of State will then attempt to collect the funds in dispute from the seizing country. If there is no reimbursement from that country within 120 days, the Secretary will have the authority to deduct the specified amounts from any funds programmed to that nation under the Foreign Assistance Act and transfer them to the revolving Fishermen Fund. The government will provide that fund with $3,000,000 in initial capital. It is hoped that the new legislation will facilitate the lengthy reimbursement process, which has drawn much criticism from the American Tunaboat Association. Most tuna boats that are seized are released within 24 hours after getting into port, but lose several days of fishing before they reach the fishing grounds.

Iceland Cod Wars: On February 15, 1972, the Icelandic Parliament passed a resolution extending its fishery jurisdiction to 50 miles. Iceland had served notice of this impending action to the United Nations Committee on the Peaceful Uses of the Seabed in Geneva on August 6, 1971. The resolution repudiated Iceland's prior agreement with Great Britain in 1961 to hold a 12 mile fishery jurisdiction.[98] Great Britain immediately took the dispute to the International Court of Justice in the Hague; Switzerland requested an interim agreement for the period between September 1, 1972 (when the regulations were to become effective) and whenever a final resolution of the conflict could be reached. The Court authorized Great Britain to ignore the extension of territorial limits by Iceland but limited the British catch for the year to 170,000 tons. Iceland did not accept that ruling and on July 14, 1972, published the regulations extending the limit effective and enforceable on September 1, 1972.

The area in controversy has been fished by British trawlers for generations, and Great Britain vowed to violate the extension. There followed from the month of September to December numerous incidents involving Iceland gunboats cutting the nets of British fishing trawlers. Talks between Iceland and Great Britain which had begun prior to the confrontations were broken off. During these talks, Iceland made the offer to establish a "box system" under which British trawlers would be allowed to fish in

98. 11 INT'L LEGAL MATERIALS 643 (1972).

six designated areas (boxes) within the 50-mile limit. Iceland agreed to keep three boxes open at a time; however, Great Britain would not accept any arrangement which provided for less than four boxes open at once. At this writing, no agreement has been reached by the parties.

The controversy has had both internal and international consequences. Iceland's move in extending its territorial waters comes from its tremendous dependence on the fishing industry, which accounts for almost 80% of its economy. Britain protests that the new limit will mean economic disaster for its trawler industry. While American fishing interests (pressing for their own increase in fishing limits) applauded the extension, the United States Department of State expressed dismay on the prospects of a continued controversy since the United States maintains a strategically important air base at Keflaviak, Iceland, for observing Soviet submarines and warships. The whole embroglio may represent a significant threat to the North Atlantic Treaty Organization of which all three countries are members.

1973 International Law of the Seas Conference: The Political Committee of the United Nations General Assembly agreed on December 8, 1972, on the time and location of the long-awaited 1973 Law of the Seas Conference. Preparatory meetings will be held in New York in the spring of 1973, and in Geneva during the summer of 1973, to establish the scope and format of the Conference. The Conference will formally begin in New York in November of 1973 for a two-week session. The Conference will then continue in Santiago, Chile for eight weeks during which time the bulk of the important issues will be discussed.[99] The schedule continues to be subject to change, however.

The fundamental question of territorial limits will be the most controversial issue to hopefully be resolved. Most Latin American countries favor a 200-mile limit, while the United States and Europe favor a 12-mile territorial jurisdiction. Without a doubt, if any lasting resolutions are to be achieved, compromises will be necessary. Paul M. Fye, Director and President of the Woods Hole Oceanographic Institute, in Woods Hole, Massachusetts, told a September 11 to 14, 1972 meeting of the Maine Technological So-

99. 3 ENV. REP. 947 (Dec. 15, 1972).

ciety what he expects the 1973 Law of the Sea Conference to achieve. Mr. Fye indicated that territorial seas should be expanded to 12 miles, and intermediate zones of up to 200 miles should be established for coastal states regulating resource exploitation, fisheries and pollution control.[100]

The position the United States will take on some of the issues was indicated by Bernard H. Oxman of the State Department Legal Advisor's Office at a September 13, 1972, meeting of the Federal Bar Association in Washington, D.C. The discussion centered around the topic of which law will govern the exploitation of natural resources against the backdrop of the forthcoming 1973 Law of the Sea Conference. All concerned agreed that most nations favor extending the territorial limit to 12 miles. At present the United States exerts its sovereignty over a 3-mile territorial limit and a further 9-mile contiguous fishery jurisdiction. Most foreign nations maintain that coastal states should retain economic jurisdiction over the seabed and fishery up to and beyond the 12-mile limit. Mr. Oxman said that the United States is opposed to exclusive jurisdiction over fishing resources within the 12-mile limit and would like that zone to be regulated by an international commission. Jurisdiction over the extraction of minerals from the deep sea, in the view of most nations, should be vested in an international body.[101]

GERSHON D. GREENBLATT
JAMES ROBERT MILLER
ALFRED J. WALDCHEN

100. 3 ENV. REP. 548 (Sep. 15, 1972).
101. 3 ENV. REP. 547 (Sep. 15, 1972).