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Problems of fisheries management on the Patagonian shelf: A Decade After the 1982 Falklands (Malvinas) Conflict

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**Problems of fisheries management on the Patagonian
shelf: A decade after the 1982 Falklands (Malvinas)
conflict**

by

Gustavo A. Bisbal

**A Major Paper submitted in partial fulfillment of the
requirements for the degree of**

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A handwritten signature in black ink, appearing to read "Lawrence Juda", written over a horizontal line.

Professor Lawrence Juda

UNIVERSITY OF RHODE ISLAND

1992

Summary

The armed conflict between Argentina and Britain over the Falkland Islands (Islas Malvinas) early in 1982, resulted in a confusing partition of the maritime area around these islands. The military strategies and policies developed by both countries during and after the war created an unclear situation regarding limits and jurisdictions, thus delaying managerial actions and regulation enforcement over the fishing resources of the area. Several foreign fishing fleets operating in the region at the time, took advantage of the lack of protective legislation and recognized authority, resulting in overfishing of species such as squid and hake. No significant control was implemented until 1986, when Argentina signed fishing treaties with the former USSR and Bulgaria in an effort to regulate fishing activities in Argentina's claimed jurisdictional waters. This move was immediately followed by the British announcement that fishing licenses would be issued to interested foreign fishing vessels. The emerging management efforts, their political and economic significance, and their consequences for the fisheries on the Patagonian shelf are examined in this study.

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Finally, special thanks go to my family and friends for their constant stimulus, love, and vote of confidence in each one of my efforts.

Juan López y John Ward

Les tocó en suerte una época extraña.

El planeta había sido parcelado en diversos países, cada uno provisto de lealtades, de queridas memorias, de un pasado sin duda heroico, de derechos, de agravios, de una mitología peculiar, de próceres de bronce, de aniversarios, de demagogos y de símbolos. Esa división, cara a los cartógrafos, auspiciaba las guerras.

López había nacido en la ciudad junto al río inmóvil; Ward, en las afueras de la ciudad por las que caminó Father Brown. Había estudiado castellano para leer el Quijote.

El otro profesaba el amor de Conrad, que le había sido revelado en un aula de la calle Viamonte.

Hubieran sido amigos, pero se vieron una sola vez cara a cara, en unas islas demasiado famosas, y cada uno de los dos fue Caín, y cada uno, Abel.

Los enterraron juntos. La nieve y la corrupción los conocen.

El hecho que refiero pasó en un tiempo que no podemos entender.

Jorge Luis Borges

Los Conjurados, Madrid, 1985

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Introduction

After World War II, the commercial fishing of the world's oceans entered a stage of rapid development. The total world harvest of some 20 million tons in 1950 increased by five times -to a total of 100 million tons- in 1990.¹ This intense level of activity determined that, in several cases, the initially abundant captures would soon be replaced by unequivocal symptoms of overfishing. The shortage resulting from the stocks' biological constraints to cope with intense extraction became more severe as the increasing adoption of zones of economic authority by coastal states reduced the proportion of resources available for foreign harvest.² In a few years, the awareness of a limited scope of expansion in some of the world's traditional fishing grounds prompted the need to search for additional resources in new commercial regions.³ Late in the 1970's one such region was identified in the Southwest Atlantic. Several deep-water fleets then turned their attention in that direction to harvest the virtually unexploited fish resources located on the shelf expanding from the Argentine coast to the Falkland Islands (Islas Malvinas).⁴

¹Loayza, E.A. and L.M. Sprague. 1992. A strategy for fisheries development. *World Bank Discussion Papers, Fisheries Series*, 135: 88p.

²Juda, L.1991. World marine fish catch in the age of exclusive economic zones and exclusive fishery zones. *Ocean Development and International Law*, 22: 1-32.

³The FAO compiles fish catch statistics into fifteen major fishing areas. For a description of each area see Gulland, J.A. 1971. *The Fish Resources of the Ocean*. Fishing News (Books), Surrey, England: 255p. An estimate of the state of exploitation of each area is presented by Loayza and Sprague, *supra* footnote 1. For a specific treatment of the exploitation on selected stocks of the North Sea, the east and west coasts of North America, and other areas, see, for example, Cushing, D.H. 1975. *Marine Ecology and Fisheries*. Cambridge University Press, Cambridge, England: 278p.

⁴Reference to the Falkland Islands (Fig. 1), called Islas Malvinas by the Spanish community, (or Falklands or the Islands, hereinafter) implies the main land masses (East and West Falkland) and does not include Dependencies such as South Georgia, South Sandwich, Shag Rocks and Clerke Rocks.

The aftermath of the 1982 hostilities between Argentina and Britain over the Falklands perhaps represented the single most critical event during the fishing history of this region.⁵ The magnitude of this relatively short armed episode has had significant long lasting consequences for the fisheries of the area since its effects still ensue.

This study reviews the legal, economic, and administrative issues existing in the fisheries off Patagonia and the Falklands prior to and following the military confrontation.⁶ It also delineates the different levels of complexity arising from the global, regional, national, and zonal components of this issue with the final goal of suggesting needed elements for a system of rational management of these fishing grounds.

Definition of the Patagonian offshore area

The contact between Argentina and the Atlantic Ocean stretches for some 4,989 km of shoreline.⁷ Underwater, the land mass extends as a gently sloped platform, which represents the largest continental shelf of the Southern hemisphere. On this shelf, the Falkland Islands rise about 300 nautical miles east of the entrance to the Strait of Magellan, between 50° 53' and 52° 58' South and 53° 37' and 61° 27' West (Fig. 1). This archipelago is composed of about 200 islands which comprise a land area of

⁵On the hostilities themselves see, for example, Hastings, M. and S. Jenkins. 1983. *The battle for the Falklands*. W.W. Norton & Co., New York, 384p.; Middlebrook, M. 1985. *Operation Corporate: the Falklands War, 1982*. Viking, 430p.; Freedman, L. and V. Gamba-Stonehouse. 1991. *Signals of War. The Falklands Conflict of 1982*. Princeton University Press, New Jersey, 476p.

⁶For the purpose of this study, the term Patagonia refers to the territory between the Andes and the Atlantic Ocean south of the Colorado River. Although most of the region belongs to Argentina, a small portion of the extreme south lies within Chile.

⁷Ocean Yearbook 3, (E.M. Borgese and N. Ginsburg, eds.) The University of Chicago Press, Chicago, pp. 563-568, Appendix G.

approximately 4,700 square miles. The areal scope of a 200-nautical-mile zone around the Islands reaches 149,000 square miles, whereas the submarine area surrounded by the 200 meter isobath approximates 64,200 square miles. Correspondingly, a 200 nautical mile limit off Argentina closes an area of 339,500 square miles as the 200 meter isobath circumscribes 232,200 square miles of the continental shelf (Fig. 2(a)).⁸

The historic record is unclear as to who discovered the Falklands.⁹ Most of the evidence, however, seems to indicate that the discovery occurred in the 16th century by either the Spanish or the British. In 1690, the British made the first recorded landing on the Islands. Sovereignty over the Islands was contested by Britain and Spain from the 1760's to 1811, and by Britain and Argentina ever since. At present, the Islands are administered as a British crown colony by an appointed governor who heads a population of about 2,000 people. Falkland Islanders call themselves *kelpers* and are almost entirely descendants of early British settlers, largely Scottish. The kelpers, in exercising the right of self-determination, have repeatedly expressed both their wish to remain British citizens and their resistance to any association with Argentina.

The whole area of the Islands is devoted to sheep farming.¹⁰ Several tons of wool are produced annually which are sold to Britain as the Islands' almost single resource. While these exports are valued at about US\$ 5 million making the colony almost self-supporting, occasional help

⁸International Boundary Study. 1972. Bureau of Intelligence and Research. Theoretical Areal Allocation of Seabed to Coastal States Based on Certain U.N. Seabeds Committee Proposals, *Limits in the Seas*, Series A, No. 46: 35p.

⁹See, for example, Gravelle, J.F. 1985. The Falkland (Malvinas) Islands: An international law analysis of the dispute between Argentina and Great Britain. *Military Law Review*, 107: 5-69.

¹⁰Strange, I.J. 1972. *The Falkland Islands*. David & Charles, Newton, Abbot, 256p.

from Britain has been received.¹¹ It is obvious that the choice to continue occupation of the Islands cannot be explained simply by reference to the economic value of their land resources. Instead, the desire to maintain the colonial situation has to be explained by a combination of other factors beginning with the Islands' potential strategic and economic importance. The geographic advantages of the Falklands are manifest when considering the struggle for Antarctica¹² and the interoceanic route and military-strategic importance of the South Atlantic. The economic significance revolves around two main resources: mineral deposits and fisheries.

The wide basin stretching between Patagonia and the Falklands has long been considered an area of important hydrocarbons potential, with reserves possibly as large as the North Sea. Evaluations of oil potential of this continental shelf have varied between 40 and 200 billion tons of recoverable oil. Although the waters surrounding the Islands contain sedimentary rocks with reasonable oil prospects, it is now considered that claims of huge hydrocarbon reserves were too overtly optimistic.¹³

The fishery issue is further developed in other sections of this study. At this point, it is worth noting that commercial fishing had never been developed in the Falklands prior to the 1970 decade.

¹¹Maechling, Jr., C. 1991. Confidence building and the future. *In: Toward Resolution? The Falklands/Malvinas Dispute* (W.S. Smith, ed.), Lynne Rienner Publishers (London), pp. 109-119.

¹²See, for example, Morris, M.A. 1986. EEZ policy in South America's Southern cone. *In: Ocean Yearbook 6*, (E.M. Borgese and N. Ginsburg, eds.) The University of Chicago Press, Chicago, pp. 563-568; Morris, M.A. 1988. South America Antarctic policies. *In: Ocean Yearbook 7*, (E.M. Borgese and N. Ginsburg, eds.) The University of Chicago Press, Chicago, pp. 356-371.

¹³*International Petroleum Encyclopedia*, 1977. Vol. 10: 118-120; Doubts over oil potential of the Falkland Islands, *Petroleum Economist*, 49 (5): 167 and 179 [1982]; McEwen, A. 1990. Falkland Islands hope for a boom in minerals. *The Times*, 1 February, 1990: 7.

The Argentina/Britain conflict: Initial stages

The Falklands dispute received relative indifference from the international community before 1982.¹⁴ A historical review of the arguments and claims to territory over the Islands presented by Argentina and Britain falls beyond the scope of this paper and is detailed elsewhere.¹⁵ Multiple resolutions and diplomatic negotiations were unable to settle the territorial dispute that these two countries had had for more than a century. That stagnant situation was dramatically altered on 2 April, 1982, when Argentina deployed a military force to take control over the Islands. The following day, both countries broke off diplomatic relations with each other, as the UN Security Council passed Resolution 502 calling on both governments to use diplomatic channels to settle their dispute.¹⁶ Despite attempts by the United Nations and the United States to negotiate a settlement, British diplomats preconditioned negotiations with a demand that Argentine troops pull out, whereas their Argentine counterparts demanded the British recognition of Argentina's sovereignty over the Islands.¹⁷ Obviously, peaceful discussions were hindered by the combination of two factors: first, a passionate nationalism was being increasingly fueled and manipulated by the

¹⁴See, for example, Beck, P.J. 1985. The future of the Falkland Islands: a solution made in Hong Kong? *International Affairs*, 61 (4): 643-660; Beck, P.J. 1988. *The Falkland Islands as an International Problem*. Routledge, New York, 211p.

¹⁵See, for example, Gravelle, J.F., *supra* footnote 8; Rubin, A. P. 1985. Historical and Legal Background of the Falklands/Malvinas Dispute. *In: The Falklands War: lessons for Strategy, Diplomacy, and International Law* (A.R. Coll and A.C. Arend, eds.), Chapter 2, pp. 9-21, Allen & Unwin, Massachusetts; Gamba, V. 1987. *The Falklands/Malvinas War: model for North-south Crisis Prevention*. Allen & Unwin, Massachusetts, 212p.

¹⁶Barston, R.P. and P.W. Birnie. 1983. The Falkland Islands/Islands Malvinas conflict. A question of zones. *Marine Policy*, 7 (1): 14-24.

¹⁷Apple, Jr., R.W. 1982. Britain imposing a war zone around Falkland Islands; Haig plans mediation trips. *The New York Times*, 8 April, 1982: A1, A12.

Argentine military government so as to divert the public's attention from the then existing catastrophic socioeconomic situation. Second, the sense of humiliation of Great Britain, one of the world's top military powers, which was facing the progressive decline of colonialist regimes.¹⁸

Maritime zonation: A separating factor

The Argentine use of force on 2 April, 1982 caught the international community by surprise. The reaction was fairly rapid by most states of the European Community (EC) who showed their discontent with the military invasion.¹⁹ The British government, forced to implement hasty decisions, quickly reacted by approving the departure of a strong naval task force heading to the Islands. This immediate reaction also shocked the world's nations and created concern even in British governmental and parliamentary spheres.²⁰

On 7 April, 1982, Britain announced the establishment of a Maritime Exclusion Zone (MEZ, Fig. 2(b)), a circular area with a 200-nautical mile radius around the coordinates 51°40' S and 59°39' W.²¹ According to the announcement, any Argentine vessel navigating those waters after 11 April was liable to a British attack. Argentina's response to this threat was to

¹⁸*Supra* footnote 13.

¹⁹Edwards, G. 1984. Europe and the Falkland Islands crisis. *Journal of Common Market Studies*, 22 (4): 295-313.

²⁰*Supra* footnote 8; Little, W. 1991. Political opinion in Britain. *In: Toward Resolution? The Falklands/Malvinas Dispute* (W.S. Smith, ed.), Lynne Rienner Publishers (London), pp. 63-80.

²¹*Supra* footnote 15.

declare a Maritime Defense Zone (MDZ, Fig. 2(b)), which covered the same area as the MEZ, the very same day of the MEZ's announcement.²²

The MEZ was relabeled as a Total Exclusion Zone (TEZ, Fig. 2(b)) on 28 April, 1982.²³ This implied more stringent limitations and a serious warning not only for Argentine planes or vessels but also to any other state flying or navigating in the area in support of the Argentine forces. One day later, the Argentine government announced that all British naval and air forces within 200 miles from Argentina or the Falklands would be considered hostile and referred to this area as the Exclusionary Zone (EZ, Fig. 2(c)).²⁴ The threat of air raids over the British fleet led to a further extension of the TEZ to prevent such attacks. On 8 May, 1982, the limits of the British declared TEZ were pushed out to 12 nautical miles from the Argentine coast (Fig. 2(c)). The nature of the extended TEZ was different from the original, since in the former only Argentine battleships and military planes were proscribed.²⁵

On 23 July, 1982, forty days after the Argentine forces surrendered, the TEZ was lifted by Britain with the understanding that Argentina's warships and military aircrafts were not to enter a 150 nautical miles zone around the Islands referred to as Falkland Islands Protection Zone (FIPZ, Fig. 2(d)).²⁶ As for territorial waters, Britain maintained a 3-nautical mile

²²Schumacher, E. 1982. Argentina forms new zone in response to British move. *The New York Times*, 8 April, 1982: A12.

²³*Supra*, footnote 15.

²⁴Diehl, J. 1982. Ships, planes called "hostile". *The Washington Post*, 30 April, 1982: A1, A22.

²⁵*Supra* footnote 15.

²⁶Churchill, R.R. 1988. The Falklands fishing zone. Legal aspects. *Marine Policy*, 12 (4): 343-360.

band around the Islands, whereas Argentina claimed a controversial 200-nautical mile territorial sea.²⁷ This overwhelming succession of zones and jurisdictions added to the general confusion triggered by the armed conflict and favored an uncontrolled foreign fishing pressure on the local stocks.

Argentina's maritime claims and legislation

Argentina's maritime claims in terms of resource exploitation and jurisdiction extent have been confusing and unclear since the 1940's. A review of Argentina's maritime legislation will show that these norms have a marked imprecision in their terminology, probably due to language modalities or to different values associated with these issues. However, its revealed behavior indicates that efforts have been made towards adjusting its claims within a worldwide, or at least regional, international agreement. Moreover, as it will be explained below, this pattern is observable not only in Argentina's legislation but also in the demands of several other Latin American states which, at times, proceeded as a consolidated unit and introduced true innovations since the early development of an international law of the sea.

After World War II, an increasing number of coastal states, notably from the Latin American bloc, made extensive claims over their adjacent maritime areas (see below). Different shades of these demands were seminal at the origin of concepts such as the patrimonial sea and the exclusive economic zone, which reflected, essentially, economic needs and interests. Although the formulation of the different claims vary in their terminology and reach, the underlying motives and philosophies behind

²⁷ *Supra* footnote 15.

these declarations have similar scopes of objectives. This section specifically reviews the evolution of pertinent legal instruments included in Argentina's legislation in effect during the Falklands' crisis, and addresses the connection between these claims and those formulated by other Latin American states, in particular, and the world community, in general.

A. Towards an era of ocean control.

Throughout the sixteenth century, the debate between those states favoring the freedom of the seas (*mare liberum*)²⁸ and those advocating their right to claim extensive areas (*mare clausum*)²⁹ grew stronger. The undisputed naval supremacy achieved by England during the eighteenth century, relaxed the arguments in favor of a closed sea, and the doctrine of *mare clausum* gradually faded from practice. Instead, the concept of a narrower belt of waters along the coast, which could be defended by shore based forces and over which a state had complete sovereignty, became more appealing. However, the extension of these belts became an open discussion (claims ranged from 3, 4, or 6 nautical miles, to even larger zones or no claims at all) and no single distance was accepted as universal international law.³⁰

The announcement of the two Truman Proclamations on 8 September, 1945 significantly altered the Grotian principle of freedom of the seas and initiated new concepts in maritime jurisdiction by triggering the

²⁸Grotius, H. 1608. *Mare Liberum* (English translation by R.V.D. Magoffin, 1916).

²⁹Selden, J. *Mare Clausum sive De Dominio Maris*. In: Lapidoth, R. 1975, Freedom of navigation- its legal history and its normative basis. *Journal of Maritime Law and Commerce*, 6: 259.

³⁰See, for example, Von Glahn, G. 1986. *Law Among Nations: An Introduction to Public International Law*. MacMillan, New York, 763p.

proliferation of national maritime claims beyond traditional territorial limits. In the first proclamation, the United States asserted, among other things, its jurisdiction and control over the natural resources of the subsoil and sea bed of the continental shelf contiguous to the United States coast.³¹ In the second proclamation, the United States "regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale..."³² By doing so, the United States not only called the world's attention to the notion of valuable resources in the sea but also indicated the point of departure for the implementation of unilateral conservation measures outside a state's territorial waters without claiming rights to exclusive fishing.

B. The Latin American response.

The actions of the United States were immediately emulated and exceeded by several Latin American states concerned about the modern US fishing vessels operating off their coasts. Resenting this foreign presence in their waters and the potential destructive nature of uncontrolled international fish extraction, these states wished to extend their exclusive fishing boundaries to eliminate outside competition. Only a month after the Truman Proclamations, Mexico claimed similar rights in a presidential

³¹ Proclamation No. 2667, "Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf", September 28, 1945. *American Journal of International Law*, 40: 45 [1946].

³² Proclamation No. 2668, "Policy of the United States With Respect to Coastal Fisheries in Certain Areas of the High Seas", September 28, 1945. *American Journal of International Law*, 40: 46 [1946].

proclamation.³³ A year later, Argentina not only claimed sovereignty over her extraordinarily broad continental shelf but also over the water column above the shelf.³⁴ Within a few years, maritime claims multiplied and escalated. Between 1946 and 1957, Panama³⁵, Chile³⁶, Peru³⁷, Costa Rica³⁸, Nicaragua³⁹, and El Salvador⁴⁰ had each unilaterally claimed sovereignty over their continental shelves and the superjacent waters and declared 200-mile limits for exclusive fishing rights.

On 19 August 1952, Chile, Ecuador, and Peru proclaimed in the Santiago Declaration⁴¹ their "...sole sovereignty and jurisdiction" seaward for 200 nautical miles, while preserving "innocent and inoffensive passage" in the zones. A brief interlude concerning the extension of maritime claims

³³Presidential Declaration, 29 October, 1945. *Laws and Regulations of the Regime of the High Seas*, 1: 13.

³⁴ See below and footnote 59. Decree No. 14708 concerning National Sovereignty over Epicontinental Sea and the Argentine Continental Shelf, 11 October 1946, *In: United Nations, Laws and Regulations on the High Seas*, pp. 4-5. Also *Boletín Oficial*, December 5, 1946.

³⁵Decree 449, 17 December, 1946. *Gaceta Oficial*, 24 December, 1946.

³⁶Presidential Declaration, 23 June, 1947. Amador, F.V., 1972. Latin America and the Law of the Sea. *Law of the Sea Institute, University of Rhode Island, Occasional Paper No. 14: 52 pp.* See, also, footnote 52.

³⁷ Supreme Decree 781, 1 August, 1947. *Diario Oficial*, 11 August, 1947.

³⁸ Decree-Law 803, 2 November, 1949. *La Gaceta*, 5 November, 1949.

³⁹ Nicaragua Constitution of 1950, Art. 5.

⁴⁰ El Salvador Constitution of 1950, Art. 7.

⁴¹First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific. Declaration on the Maritime Zone. Santiago, Chile, August 11-19, 1952. *In: Amador, F.V., 1972. Latin America and the Law of the Sea. Law of the Sea Institute, University of Rhode Island, Occasional Paper No. 14: 52 pp.*

was followed by additional Proclamations along these lines. Argentina⁴², Nicaragua⁴³, and Panama⁴⁴ in the 1960's, and Brazil⁴⁵ in 1970, each independently used domestic legislation to affirm 200-mile extensions of their territorial waters.

New economic and political conditions after 1960 gave rise to changes in the concepts of national sovereignty and economic rights, and the increasing demand for a revision of the existing ocean regime.⁴⁶ During the 1970's, two significant concepts in the law of the seas emerged: the **patrimonial sea** and the **exclusive economic zone (EEZ)**.

The notion of the patrimonial sea, first proposed in 1971 by a delegate from Venezuela,⁴⁷ would have granted coastal states sovereign rights over all resources, as well as jurisdiction over scientific research and marine pollution, in a belt extending seaward for 200 miles. The concept of the patrimonial sea was formally endorsed and embodied in the Santo Domingo Declaration of June 1972,⁴⁸ which was proclaimed at the Specialized Conference of the Caribbean States on the Problems of the Sea. The declaration described the patrimonial sea in pertinent part:

⁴²See below and footnote 61. Law 17094, 29 December, 1966. *In: New directions in the Law of the Sea. Documents- Volume I, 1973*, (S. H. Lay, R. Churchill, and M. Nordquist, eds.) Oceana Publications, N.Y.:13-14. *Boletín Oficial*, 10 January, 1967.

⁴³Decree No. II of 5 April, 1965.

⁴⁴Act No. 31, 2 February, 1967.

⁴⁵Decree Law No. 1098, 25 March, 1970.

⁴⁶Juda, L. 1979. UNCLOS III and the New International Economic Order. *Ocean Development and International Law Journal*, 7 (3-4): 221-255.

⁴⁷Nelson, L.D.M. 1973. The patrimonial sea. *International and Comparative Law Quarterly*, 22: 668-686.

⁴⁸Declaration of Santo Domingo, 7 June, 1972. *American Journal of International Law*, 66: 918.

1. The coastal State has **sovereign rights** [emphasis added] over the renewable and non-renewable natural resources, which are found in the waters, in the seabed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.
2. The coastal State has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea, as well as the right to adopt the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area.
3. The breadth of this zone should be the subject of an international agreement, preferably of a worldwide scope. The whole of the area of both the territorial sea and the patrimonial sea, taking into account geographic circumstances, should not exceed a maximum of 200 nautical miles.
4. The delimitation of this zone between two or more States should be carried out in accordance with the peaceful procedures stipulated in the charter of the United Nations.
5. In this zone ships and aircraft of all states, whether coastal or not, should enjoy the right of freedom of navigation and overflight with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area. Subject only to those limitations, there will also be freedom for the laying of submarine cables and pipelines.

This is the first 200-mile claim which is not a territorial sea in the strict sense, since the right of "innocent passage", traditionally recognized in the territorial sea, is expanded to free maritime and air navigation, a traditional freedom of the high seas. It is clear in this definition of the patrimonial sea, that claims are made over natural resources. In this way, the coastal state's economic interests are protected, without any territorial claim.⁴⁹

In January 1971, a delegate from Kenya first advanced the notion of the EEZ at the Colombo session of the Asian-African Legal Consultative

⁴⁹Aguilar, A.M. 1974. The patrimonial sea or economic zone concept. *San Diego Law Review*, 2 (3): 579-602.

Committee⁵⁰. The Kenyan delegation then redrafted the concept in a working paper for the Committee's Lagos session the next year. When Kenya submitted its "Draft Articles on the Exclusive Economic Zone Concept" to the Geneva session of the U.N. Sea-Bed Committee in late 1972, the EEZ officially became part of the law of the sea negotiations.⁵¹ Article 56 in Part V of the 1982 United Nations Convention on the Law of the Sea enumerates coastal state rights, jurisdiction, and duties of the coastal state in the EEZ:

1. In the exclusive economic zone, the coastal state has:
 - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, current and winds;
 - (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
 - (c) other rights and duties provided for in this Convention.
2. In exercising its rights and performing its duties under this convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI [The continental Shelf].

⁵⁰Nawaz, R. 1976. The emergence of exclusive economic zone: Implications for a new Law of the Sea. *Indian Journal of International Law*, 16: 471.

⁵¹Joyner, C.C. 1981. The exclusive economic zone and Antarctica. *Virginia Journal of International Law*, 21 (4): 691-725.

Since the 1940's several Latin American states assumed a vigorous position in defending their rights over their maritime space, although with different modalities and denominations. The claim by Chile in 1947 has real importance as an indicator of change from the traditional concept.⁵² In this instance, Chile established an extension of 200 miles of '...national sovereignty over the seas adjacent to its coasts... to preserve, protect, conserve, and exploit the natural resources...'. It was made clear that this disposition did not affect free navigation of the sea.

In 1970, Latin American states gathered in Montevideo⁵³ and Lima⁵⁴, adopting two declarations. Both of these declarations recognize the right of coastal states over the natural resources of their adjacent seas, without affecting the freedom of navigation and overflight for ships and planes of any flag State. Although the right to establish limits to their "... maritime sovereignty **and** jurisdictions [emphasis added]..." was claimed by states subscribing to the Declaration of Montevideo, it was also declared that "... sovereignty **or** exclusive rights [emphasis added]... over maritime zones adjacent to their coasts, over the seabeds and subsoil..." have been extended to a distance of 200 nautical miles from the baseline of the territorial sea. In Lima, the rights of coastal states to establish their limits of "... sovereignty **or** jurisdiction over the sea...[emphasis added]" according to reasonable criteria, were also recognized. The terms sovereignty **and**

⁵²*Supra* footnote 36.

⁵³Montevideo Declaration on the Law of the Sea, Montevideo, Uruguay, May 4-8, 1970. In: Amador, F.V., 1972. Latin America and the Law of the Sea. *Law of the Sea Institute, University of Rhode Island, Occasional Paper No. 14*: 52 pp.

⁵⁴Declaration of Latin American States on the Law of the Sea, Lima, Peru, August 4-8, 1970. In: Amador, F.V., 1972. Latin America and the Law of the Sea. *Law of the Sea Institute, University of Rhode Island, Occasional Paper No. 14*: 52 pp.

jurisdiction, and sovereignty *or* jurisdiction illustrate the wide range of views with which powers on a territorial sea or a patrimonial sea were debated.⁵⁵

In general, the analysis of Latin American laws pertaining to the establishment of their maritime areas, indicates that these states have claimed rights of either sovereignty, exclusive rights, sovereign rights, jurisdiction, national dominion, protection and control, property, or any other form of authority.⁵⁶

The EEZ concept soon replaced the notion of the patrimonial sea and, within two years, it was recognized as a "common aim" by the so-called Group of 77. In spite of U.S. opposition to extensive offshore coastal state jurisdiction, there has been a growing acceptance of the EEZ as an essential component of the emerging law of the sea since the early 1970's. The first EEZ claim which did not receive challenges from the international community -an indicator of the increasing acceptance of this concept as becoming embodied in customary practice- was the one by Costa Rica in 1972.⁵⁷

C. Argentina's maritime claims.

The 1853 Argentine Constitution as amended in 1957, has no provisions on the extension and claims over maritime and submarine areas. The first claim in this regard appeared in Decree 1386 of 24 January, 1944⁵⁸

⁵⁵Garcia-Amador, F.V. 1974. The Latin American contribution to the development of the Law of the Sea. *The American Journal of International Law*, 68: 33-50

⁵⁶Szekely, A. 1986. A study of the contribution of the Latin American states to the development of the International Law of the Sea since 1945. *In: Latin America and the Development of the Law of the Sea. Part 1.* Oceana Publications, New York, 361p. Also see footnote 48.

⁵⁷*Supra* footnote 2.

⁵⁸*Boletín Oficial*, March 17, 1944.

which established that "...the epicontinental sea of Argentina, shall be deemed to be temporary zones of mineral reserves". On 11 October, 1946, Article 1 of Decree 14708⁵⁹ declared that "...the Argentine epicontinental sea and continental shelf are subject to the sovereign power of the nation". Article 2 of the same document affirmed that " For the purposes of free navigation, the character of the waters situated in the Argentine epicontinental sea and above Argentine continental shelf, remains unaffected by the present Declaration".

Early in 1966, the massive Soviet fishing effort offshore Argentine coasts raised concern on the future of fish resources. The Soviet catch for that year totaled 73,000 mt, nearly one-third of Argentina's entire catch of about 250,000 tons.⁶⁰ Two events led to demands for actions to be taken by Argentine officials: first, the realization that most of the Soviet catch was hake, the primary species utilized by Argentine fishermen. Second, incoming reports revealed Soviet plans to undertake a massive expansion of the fishery in 1967. After the dimensions of the Soviet effort had become apparent, Law 17094 of 29 December 1966⁶¹ was passed. This declaration redefined earlier Argentine claims but, at the same time, caused some uncertainty reading as follows:

Article 1. "The *sovereignty* [emphasis added] of the Argentine nation shall extend over the sea adjacent to its territory for a distance of 200 nautical miles measured from the line of the lowest tide..."

⁵⁹ *Supra*. footnote 34.

⁶⁰ Jacobson, D. and D. Weidner. 1989. Argentine-Soviet Fishery Relations Reviewed, 1966-88. *Marine Fisheries Review*, 51 (2): 55-68. See, also, footnote 73.

⁶¹ *Supra* footnote 42.

Article 2. "The sovereignty of the Argentine nation shall also extend over the seabed and the subsoil of the submarine zones adjacent to its territory up to a depth of 200 meters or, beyond this limit, up to that depth of the overlying waters which allows exploitation of the natural resources of those zones".

Article 3. "The provisions of this law shall not affect freedom of navigation or of air traffic".

Article 4. "Within ninety days from the date of promulgation of this law, the National Executive Power shall issue regulations establishing the terms under which foreign ships may conduct operations designed to explore and exploit the natural resources of the sea within the 200-nautical-mile zone referred to in this law".⁶²

Decree 5106 of 29 December, 1966⁶³ implies the claim of a territorial sea beyond 12 nautical miles. Article 1 of this instrument indicates that "...the Naval Operations Command shall be authorized to issue foreign fishing vessels which request them permits to carry out fishing operations in the Argentine *territorial sea* [emphasis added] at a distance of no less than twelve miles from the coast." Shortly after, the first Argentine Fishing Law (Law 17500 of 25 October, 1967)⁶⁴ was issued. The Fishing Law established that:

Article 1. The resources of the Argentine *territorial sea* [emphasis added] are the property of the national State, which shall authorize their exploitation in accordance with the provisions of this Act and the rules governing its application.

⁶²According to some writers Law 17094 was never intended to be of international application (See, for example, Travieso, J.A. 1983. Hacia un horizonte de 200 millas. Notas sobre la zona económica exclusiva en los espacios marítimos. *Revista del Colegio de Abogados de Buenos Aires*, 43: 56 p). It is also in open contradiction with the Argentine position during the subsequent negotiations at UNCLOS III.

⁶³Compilación Legislación Pesquera. 1981. Secretaría de Estado de Intereses Marítimos, Subsecretaría de Pesca (Buenos Aires), No. 2: 120p.

⁶⁴*Supra* footnote 63. See, also, footnote 71.

Article 2. Resources up to a distance of twelve nautical miles from the coast may be exploited only by vessels flying the national flag. In addition, the Executive Power shall each year select, within the Argentine territorial sea, a specific zone whose exploitation shall be reserved for vessels flying the national flag.

The enormous potential of the fish resources off Argentina quickly attracted domestic and foreign interests. At the national level, Law 18502 - passed on 24 December, 1969-⁶⁵ limited the offshore jurisdiction of Argentina's coastal provinces to 3 nautical miles from the low-water mark, leaving the area between that limit and 200 nautical miles under the sole jurisdiction of the federal government. This restriction on the exploitation rights over the natural resources has been repeatedly contested by the provincial governments which pushed for an extension of full jurisdictional rights out to 12 miles and even to their adjacent 200-mile zone.⁶⁶ Regarding foreign fleets, Decree 8802 of 22 November, 1967⁶⁷ contained "Provisional Regulations Governing the Issue to Foreign Vessels of Permits for the Exploitation of the Living Resources of the Argentine Territorial Sea". In the first article it is mandated that "[f]oreign vessels may engage in activities involving the exploitation of the living resources of the Argentine *territorial sea beyond a distance of twelve nautical miles from the coast* [emphasis added] only if they have in their possession, before the commencement of their activities, a local registration document (matricula) and a permit..."

⁶⁵*Supra* footnote 63.

⁶⁶Brandani, A. 1987. The coastal zone of Argentina: environments and institutions. *Coastal Management*, 15: 43-59.

⁶⁷*Supra* footnote 63.

D. Resume.

The Truman Proclamations of 1945 initiated a new era in the development of a universal law of the sea. Shortly after, a number of states expressed their demands regarding the exploration, exploitation, and conservation of natural resources. However, most of these unilateral early Latin American claims have been gradually modified or abandoned in favor of a universally accepted claim to an EEZ extending to a limit of 200 nautical miles from the territorial sea baselines.

It is interesting to note that at the time the Falklands issue ripened into a crisis, leading to a concert of changing zones and delimitations, the Third UN Conference on the Law of the Sea (UNCLOS III) was approaching its conclusion. In this forum, limits for territorial seas were being established together with the definition of the EEZ to preserve the marine economic resources of coastal states. It is important to point out that although the 1982 UN Convention on the Law of the Sea - which Argentina signed in 1984- has not entered into force yet, most of its provisions (except perhaps for those regarding the deep-seabed) are presently accepted as international customary law.⁶⁸ Therefore, the applicability of these provisions are binding and independent of the ratification of the 1982 Convention on the Law of the Sea. Consequently, sovereignty over the territorial sea cannot be extended beyond 12 nautical miles. In the EEZ, there is no sovereignty, but rather sovereign rights of the coastal State over natural resources, without affecting the other traditional freedoms of the high seas.

⁶⁸See, for example, Miles, E.L. 1988. Preparations for UNCLOS IV? *Ocean Development and International Law*, 19: 421-430.

More recently, on 14 August, 1991, the Argentine Congress sanctioned Law 23968, by which the baselines of Argentina are clearly defined, together with the definition of internal waters, territorial sea (of 12 nautical miles), contiguous zone (out to 24 nautical miles), exclusive economic zone (to a limit of 200 nautical miles), and continental shelf (either to 200 nautical miles or to the border of the continental margin).⁶⁹ For the first time, all these zones have been detailed in a single instrument and are in complete conformity with the terminology as interpreted in the framework of UNCLOS III.

The Patagonian fishery

A. Fishing off Argentina.

Commercial fishing operations in Argentina started early in this century. An artisanal fishery, composed of horse-hauled nets and small vessels, supplied local markets with fresh seafood products and raw materials for salted and canned products which constituted the most important fishery items until the 1950's. Prior to the 1960 decade, the Argentine fishing fleet remained limited to small coastal purse-seiners and no more than 15 deep-water vessels. Since 1963, the offshore catch exceeded the coastal production and frozen products became the industry's major commodity.⁷⁰

The expansion of the Argentine fishing industry during the 1960's was a result of encouraging legislation and increasing national and foreign

⁶⁹*Boletín Oficial*, No. 27278, 5 December, 1991, Art. 1-11, Annexes I and II.

⁷⁰Bertolotti, M.I., G.V. Piergentili, and D.A. Cabut. 1985. El sector pesquero Argentino. *Realidad Económica (Buenos Aires)*, (65): 70-96.

investments. At the domestic level, Law 17500⁷¹ established tax exemptions for fuel expenses during fishing operations and for imported fishing vessels. Export figures clearly illustrate the boost in the activity following large investments in the sector (*i.e.* marketing, fleet, gear, etc.). For example, the total volume of exported fishery products rose from 8,700 tons in 1969 to 64,900 tons in 1974, which translates in an increase in revenues from US\$ 2.8 million to US\$ 33.6 million.⁷²

Foreign exploitation of fish stocks on the Argentine shelf became dramatically evident by 1967. The Soviet distant-water fleet, composed of motherships and factory trawlers, represented the most significant presence in the area. In 1966 and 1967 alone, the intense Soviet fish extraction totalled some 751,000 metric tons.⁷³ Although most of the catch was hake (*Merluccius hubbsi*) the effects of overfishing were reflected in the collapse of the hawkfish (*Cheilodactylus bergi*) stock. The threat posed to a number of coastal demersal species prompted the Argentine government to issue urgent fishing regulations. In less than a year, Laws 17094 and 17500, and Decrees 5106 and 8802 (see above) were passed as a measure to protect the fishery resources from uncontrolled foreign fishing and to generate revenues from fishing licence fees.

From the 1970's onwards, the Argentine fishing industry showed a considerable expansion. During the 1970-1979 decade, total landings

⁷¹See footnotes 63 and 64.

⁷²Pereira Fernandez, F. 1985. Argentine fishery activity in light of the main events which have recently affected it. *In: Adjustments to changes in fisheries law and economics* (Cleveland, B.C., ed.) *FAO Fish. Tech. Pap.*, (269): 115p.

⁷³Other countries, namely Japan, West Germany, Cuba, and Spain had fishing vessels operating in the area at that time, with comparatively lower capture volumes. Also see footnote 60.

reached over 3 million metric tons (an increase of 210% over the total catch of the previous 10 years) of which one third was exported at a value of about 604 million dollars.⁷⁴ Several factors contributed to this marked growth: 1) A progressive exhaustion of traditional fishing grounds in other areas of the globe; 2) The rapid increase of sovereignty claims by riparian states over 200-mile offshore zones, which limited access to foreign fleets; 3) Advanced technologies incorporated by leading fishing nations to their distant-water fleets in order to tap even more remote stocks; 4) A favorable international commercial climate for the marketing of Argentine fish; and 5) Relatively low prices for the purchase of new vessels and upgrading of the national fleet.⁷⁵ The auspicious prospects envisioned under those circumstances, led the Argentine government to promulgate Law 20136 of 5 February, 1973,⁷⁶ which extended the claims of exclusive exploitation by Argentine vessels of the fish resources from 12 nautical miles (Law 17500, see above) to 200 nautical miles from the coast, and established a sanction schedule for violators.

B. Fishing off the Falklands.

The end of the armed hostilities between Argentina and Britain over the Falklands indicated the beginning of a fishing management vacuum. After July, 1982, neither Argentina nor Britain were regulating fishing activities of foreign fleets in the South West Atlantic. On the one hand,

⁷⁴The main importers of Argentine fishery products were the United States, Spain, Brazil, and Japan. *Supra* footnote 72.

⁷⁵*Supra* footnote 72.

⁷⁶*Supra* footnote 63.

Argentina, back in the reality of its complicated internal affairs, was trying to heal the wounds of its broken honor. It was a time in which patrolling jurisdictional waters and enforcing legal foreign fishing were certainly not national priorities. On the other hand, Britain was too busy learning how to manage its responsibilities on a territory located 8,000 miles away.⁷⁷ Surveillance of waters adjacent to the Islands was oriented to preventing a new potential attack by Argentina, and not on other foreign vessels fishing in the area.

Several nations, aware of the economic benefits of fishing around the Falklands, relocated their fleets in this area dominated by British indifference and away from Argentine regulations and control. Notably, Poland, the former USSR, Spain, Taiwan, Japan, and East Germany had the capabilities to exploit that fishery estimated to yield, as of 1979, a potential US\$ 200 million/year.⁷⁸ Prior to 1982, three commercially important finfish species were exploited from the offshore South West Atlantic: common hake (*Merluccius hubbsi*), Patagonian hake (*M. polylepis*), southern blue whiting (*Micromesistius australis*), and Antarctic cod (*Notothenia rossii*). In the five years from 1977 to 1981, the combined extraction of these species totalized slightly over 2,000,000 metric tons.⁷⁹ Of these resources, common hake, together with Patagonian hake,⁸⁰ are the most important finfish stocks of the Southwest Atlantic. Common hake represents the main target and exported

⁷⁷ *Supra* footnote 9.

⁷⁸ Spafford, R.N. 1984. The Falkland Islands. *World Fishing*, 33 (10): 10-12.

⁷⁹ Csirke, J. 1987. The Patagonian fishery resources and the offshore fisheries in the South-West Atlantic. *FAO Fish. Tech. Pap.*, (286): 75 p.

⁸⁰ The differentiation of these two species is not immediate from a simple external inspection and, thus, are usually pooled together in most commercial statistics.

item of Argentina's fisheries. Until the 1970's, hake fishing was concentrated in the River Plate basin and in the northern Patagonian shelf area. Uruguay also developed a hake fishery off the River Plate Basin but of comparatively smaller magnitude. Both countries have been jointly managing the shared hake stock through the Joint Argentinian-Uruguayan Technical Commission for the Maritime Front.⁸¹ In 1979, Argentina incorporated larger vessels into its fleet which expanded the range of hake extraction to the Falklands sector, from which 5 to 10 thousand tons of hake per year were captured until 1982.⁸²

However, the dangerous events of 1982 forced the fishing fleets operating in the area to limit their traditional ventures and seek for alternative sources. Under these circumstances, the fishing efforts shifted to two additional species: shortfin squid (*Illex argentinus*) and common squid (*Loligo spp.*). Throughout most of the 1970 decade, squid catches in the region were limited to a small scale fishery off the River Plate basin exploited by Argentina and Uruguay. By 1978, the intensification of Argentine fishing effort on the Patagonian shelf and slope, in addition to the initial harvests around the Falklands by Polish, Japanese, and Soviet vessels, resulted in a substantial increase in squid capture. During the period 1978-1981 the combined total catch for these two species reached over 280,000 metric tons.⁸³

⁸¹The River Plate and Maritime Front Treaty between Argentina and Uruguay was signed on 19 November, 1973, and entered into force on 12 February, 1974. For full text, see Continental Shelf Boundary: Argentina-Uruguay. *U.S. Department of State, Bureau of Intelligence and Research, Limits in the Seas, No. 64: 16p* [1975].

⁸²*Supra* footnote 79.

⁸³*Supra* footnote 79.

The *Illex* fishery takes place north of the Islands with peak catches in April and May. The main fishing countries are Poland, Japan, Taiwan, and Korea, which operate mainly jiggers. *Loligo* squid are targeted by Polish, Spanish, British, and other EC countries' trawlers operating during two fishing seasons. The main catch takes place south of East Falkland from February to June. From August to October, the fishing area is localized east-northeast of the Islands. The life cycle of both species is very short since they reach sexual maturity within a year and usually die after spawning. Their pattern of aggregation is very variable throughout the year: while *Illex* undergoes extensive horizontal migrations, *Loligo* appears to migrate mainly following the vertical axis. The implication of these biological traits are fundamental for any managerial action. Given the short life span, it is critical to determine the level of adult escapement that will breed the next generation. To attain this level, the overall fishing pressure on the stocks while moving through different fishing sectors needs to be known and observed. The noxious combination of logistic difficulties to monitor and enforce control on a migratory resource, and the uncertainties associated with the estimation of a "safe" escapement target can result in a drastic fishery collapse.

The large size of squid stocks, combined with a good selling price and numerous Asiatic and European markets developed serious interests in their exploitation. Projections on the squid potential catch around the Falklands estimated more than 250,000 tons per year, valued at approximately £ 100 million.⁸⁴ This potential revenue interested British fishing companies, which proposed that a fishing policy be enforced to

⁸⁴*Supra* footnote 78.

establish a formal industry and to preserve the stocks from being abused. Such action required the declaration of a 200-mile fishing zone around the Islands, and a system of fishing licences to be applied to interested foreign fleets.⁸⁵ However, the British government delayed a decision on this proposal concerned about a relapse with Argentina.

Significant increases in squid catch volumes began to attract new foreign interests and to alarm some British, Falkland, and Argentine sectors. An average of 237,000 tons of squid per year was exploited between 1982 and 1985. The total fishing effort by trawlers of any origin operating in the area increased from 9,919 hours in 1982 to 36,412 hours in 1985.⁸⁶ Signs of saturation of squid markets and unbalances with regard to some finfish products were starting to become evident.⁸⁷

Management attempts on the Patagonian fishery

The increasing trend of the annual harvests called for immediate actions to be taken. On November, 1985, the FAO Fisheries Department decided to compile the available information on the South Western Atlantic fisheries and to advise on their future regulation.⁸⁸ The report, which was finished one year later, had a limited circulation among the major involved countries. A final version was finally published in 1987⁸⁹ indicating that the

⁸⁵*Supra* footnote 78.

⁸⁶*Supra* footnote 79.

⁸⁷See, for example, Action needed on squid. *World Fishing*, 35 (3): 43 [1986]; EEC squid import control. *World Fishing*, 35 (8): 33 [1986].

⁸⁸The Falklands - Action at last? *World Fishing*, 35 (3): 3 [1986].

⁸⁹*Supra* footnote 77.

squid stocks were being maximally exploited and probably overfished. The geographical proximity of the high seas, remote (*i.e.* unprotected) Argentine waters, and the British imposed 150-mile zone around the Islands (unregulated in terms of fishing operations), provided a convenient location for intense fishing. In fact, movements of fishing vessels from one area to each one of the others were difficult to monitor and restrict. Several incidents, ranging from catch and gear seizure to fire-fighting encounters, between foreign fishing vessels and Argentine Coast Guard patrollers were registered since 1986.⁹⁰ These events displayed the maintenance of Argentine claims of sovereign rights and jurisdiction over resources within 200 nautical miles from its coast and the enforcement of national fishing regulations.⁹¹

An important step to achieve managerial control and attract international recognition was taken on July 1986 after the signature of fishing agreements between Argentina and both the former USSR and Bulgaria.⁹² Under these treaties, Soviet and Bulgarian trawlers were granted fishing access to Argentine waters (and use of land located bases), to participate in joint ventures, and to extract surplus resources as determined by Argentine authorities. Argentina, in turn, was to collect 3 to 5% of the catch revenue, and to offer employment to its nationals either as inspectors on board or crew members. However, these arrangements led to a strong

⁹⁰See, for example, Hu, N.-T.A. 1987. The Sino-Argentine "Squid war" of 1986. *Marine Policy*, 11 (2): 133-142; Prefectura Naval Argentina. *Ambito Financiero (Buenos Aires), Suplemento especial*, 30 October, 1990: 1-4.

⁹¹*Supra* footnote 60; Tiempo de negociación en el Atlántico Sur. *Redes de la Industria Pesquera Nacional*, (46): 6-13 [1989].

⁹²See, for example, Falklands delay. *World Fishing*, 35 (8): 33 [1986]; The Falklands - Action at last. *World Fishing*, 35 (11): 3 [1986].

reaction, mainly among Argentine research and fishing sectors, who feared an uncontrolled exploitation.⁹³

The British reaction to Argentina's fishing negotiations was the creation of a new zone. On 29 October, 1986, the British government declared the Falkland Islands Interim Conservation and Management Zone (FICZ, Fig. 2(e)).⁹⁴ The breadth and seaward limits of the FICZ were identical to those of the FIPZ, with the exception of a truncation of the circular limit in its southwest sector,⁹⁵ with the added components of a fishing zone. Embodied in this announcement was the reserved right to eventually extend the outer boundary of the FICZ from 150 to 200 nautical miles. Full details on the rules to be observed within this fishing zone were provided on 12 November, 1986 through the Fisheries Ordinance issued by the Falkland Islands Legislative Council.⁹⁶ According to this legislation, fishing licenses should be issued by the Falklands Director of Fisheries on an individual basis (*i.e.* regardless of flag state).⁹⁷

Despite repeated Argentine protests to the establishment of the FICZ the new limitation became effective on 1 February, 1987.⁹⁸ A total of 326

⁹³ The Falklands - Action at last. *supra* footnote 92.

⁹⁴ See, for example, Churchill, R.R. 1988, *supra* footnote 26; Falkland Islands Interim Conservation & Management Zone. Fisheries Report '87/88. Falkland Islands Government (Stanley): 45p [1989].

⁹⁵ To avoid a jurisdictional overlap, Britain decided to enforce the median boundary line as the operational limit where the distance between the Falklands and Argentina is less than 400 miles. See, for example, Common sense, *World Fishing*, 35 (12): 3 [1986].

⁹⁶ FICZ Fisheries Report '87/88, *supra* footnote 94.

⁹⁷ License fees for Falkland fisheries. *World Fishing*, 35 (12): 23 [1986].

⁹⁸ See, for example, Carta de fecha 30 de octubre de 1986 al Secretario General por el Representante Permanente de la Argentina ante las Naciones Unidas. *United Nations, General Assembly, A/41/784, s/18438, 31 October, 1986.*

vessels were licensed during that first year, which represented a gross income of US\$ 24 million collected by the Falkland Island government.⁹⁹ Surveillance control was intensified and violators arrested and/or fined.¹⁰⁰

It soon became obvious that the straddling movements of the stocks being fished required special attention.¹⁰¹ Specifically, the life cycle of *Illex sp.* involves extensive movements between the FICZ, Argentine waters, and the high seas. Falkland fishing officials claimed for an extension of the FICZ to 200 nautical miles to ensure more effective conservation measurements.¹⁰² Once again, a potential recrudescence of the differences with Argentina pressed Britain in a more moderate direction and the 150-mile limit was maintained. Alternative approaches proposed to alleviate the fishing pressure over squid stocks included the shortening of the fishing season, a reduction in the fishing effort (*i.e.* limit the number of licenses), or negotiations for self regulation while fishing in international waters.¹⁰³

In 1988, 407 licenses were issued, resulting in a fee revenue of US\$ 31 million. The total catch from the FICZ (317,000 tons) was marketed at 234 million dollars.¹⁰⁴ During 1989, only 302 licenses were distributed and a

⁹⁹Churchill, R.R., *supra* footnote 26.

¹⁰⁰Falkland arrests. *World Fishing*, 37 (6): 56 [1988].

¹⁰¹Gulland, J.A. 1987. Falklands fishing. *Marine Policy*, 11 (3): 240.

¹⁰²Falkland Islands needs extended fishing zone. *World Fishing*, 37 (12): 38 [1988].

¹⁰³Southwest Atlantic *Illex* squid. Fishing effort cannot be sustained. *Fishing News International*, 29 (6): 14-15 [1990]; FICZ Fisheries Report '87/88, *supra* footnote 94.

¹⁰⁴Spain maintains strong presence in the Falklands. *World Fishing*, 38 (4): 26-28 [1989].

reduction of two weeks in the duration of the fishing season was determined to allow for a build up in squid spawning stocks.¹⁰⁵

Just when alarming figures were forecasting an imminent collapse in the local squid stocks due to overfishing, relieving news regarding a strengthening of the relationships between Argentina and Britain started to circulate. Delegations from both countries sketched an agenda of common interests on 18-19 August, 1989.¹⁰⁶ Those topics were fully discussed at a joint meeting held in Madrid on 17-19 October, 1989. Salient points of the resulting statement indicated the avoidance of military aggression and the common interest to restore trade and communication relations. A working group on fisheries met in Paris on 18-19 December, 1989. That body determined that mutual exchange on information regarding stock status and statistics and fishing fleet operations was necessary for bilateral cooperation and conservation.¹⁰⁷

Resumption of consular relations between London and Buenos Aires reinforced the potential for intense dialogue.¹⁰⁸ British and Argentine diplomats gathered together on 14-15 February, 1990, to discuss air and maritime safety, operation of armed units, and other pertinent topics. An emergent concession at this stage of relations was the complete elimination

¹⁰⁵See, for example, *Tiempo de negociación en el Atlántico Sur*, *supra* footnote 91; Southwest Atlantic Illex squid. Fishing effort cannot be sustained, *supra* footnote 103.

¹⁰⁶ Argentina-United Kingdom: Joint statement of relations and a formula on sovereignty with regard to the Falkland Islands, South Georgia and South Sandwich Islands. *International Legal Materials*, 29 (5): 1291-1295 [1990].

¹⁰⁷ Argentina-United Kingdom: Joint statement on confidence-building measures, including an information and consultation system and safety measures for air and maritime navigation. *International Legal Materials*, 29 (5): 1296-1304 [1990].

¹⁰⁸Giles, T. 1989. Argentina and UK fly their flags. *The Times*, 22 December, 1989: 8.

by Britain of the FIPZ rather than the anticipated reduction in its size.¹⁰⁹ Argentine ships and planes enjoyed, therefore, a substantial increase in their freedom of navigation. Merchant ships were able to sail through the former protection zone without prior British permission, while Argentine fisheries patrol launches and aircrafts were free to operate within the FICZ for the purpose of monitoring foreign fishing vessel operations.¹¹⁰

Notwithstanding that the 150-mile FICZ and the system of licences remained in force, the future of the squid stocks was not very promising.¹¹¹ Demands for an extension of the FICZ to 200 nautical miles from the Islands were still urged by Falkland Islanders worried by the reduction in license revenues caused by overfishing. The increasingly favorable environment for negotiations between Argentina and Britain resulted in a joint declaration for the purpose of stock conservation and management. On 28 November, 1990, both countries agreed to declare joint control and supervision and to impose a complete temporary ban to fishing by vessels of any flag. This jointly agreed zone, the Falklands Outer Conservation Zone (FOCZ, Fig. 2(f)), extending over 200,000 square kilometers in a semicircle north, east and south of the FICZ, was enforced by British surveillance crafts beginning on 26 December, 1990, and still in force at the time of writing.¹¹² Provisions

¹⁰⁹McEwen, A. 1990. Britain agrees to scrap Falklands protection zone. *The Times*, 16 February, 1990: 8.; and also see footnote 93.

¹¹⁰Falklands concession. *The Times*, 19 February, 1990: 9. In practice, restrictions of 15 and 70 nautical miles still apply for Argentine military vessels and planes, respectively, approaching the Islands.

¹¹¹Falklands sounds stocks warning. *Fishing News International*, 29 (5): 3 [1990]; Falklands squid crisis meeting *Fishing News International*, 29 (8): 2 [1990].

¹¹²Declaración Conjunta sobre Conservación de Recursos Pesqueros entre el Gobierno de la República Argentina y el Gobierno del Reino Unido de Gran Bretaña e Irlanda del Norte, Buenos Aires and London, 28 November, 1990, Art. 1-6 and Annex.

for Argentine patrolling of the FOCZ still need to be arranged. Another salient point of this declaration is the establishment of the South Atlantic Fisheries Commission, composed of officials from both states, for the purpose of exchanging information, monitoring the implementation of the fishing prohibition, and making recommendations to both governments on conservation measures for fish stocks in the area.

Conclusion: The future of fisheries management in the region

The first decade after the Falklands War has witnessed four basic arrangements, in terms of fishing operations, surveillance/enforcement, access, and management measures, in the Patagonian shelf: 1) Exclusively Argentine waters, 2) The British FICZ, 3) The Joint Argentine/British FOCZ, and 4) The adjacent high seas areas. The continuing conflict among these areas imposes severe constraints on possible agreement over conservation and management policies. Alternatively, the wide distribution of stocks and fleets determines that action applied in any of these areas will ultimately echo in all of the others.

In 1989, Argentina ranked 33th in world fish catch.¹¹³ However, the Argentine fishing effort in territorial waters is considered to be below optimum levels. For instance, the percentage of vessel utilization in the small-scale fleet in 1987 reached just over 40%, about 60% of the trawler fleet has a high average age, and the refrigeration plants in the fishing ports usually operate at 50% of installed capacity.¹¹⁴ According to some

¹¹³World catch. *Fishing News International*, 31 (1): 10-11 [1992].

¹¹⁴Parin, M.A., S.N. Musmeci, and A. Zugarramurdi. 1990. The pelagic fishery of Argentina. *Infish International*, (6): 24-25; Bertolotti *et al.*, *supra* footnote 70.

estimates, the captures of coastal and offshore demersal species -aside from hake, shrimp, croaker and pescadilla- could be doubled.¹¹⁵ This situation originates from internal economic and administrative instabilities, international price crises, saturation of certain markets, protectionist policies by importing countries and disadvantageous competition. To top it all, Argentina's legislation with regard to jurisdictional claims and fisheries has been multiple, unclear, and even contradictory.

At present, several legal instruments are being developed, and obsolete legislation being revised and updated. For instance, the recent Law 23968¹¹⁶ eliminates the confusion regarding Argentina's claims over its maritime spaces and their boundaries by adopting the more familiar norms embodied in the 1982 UN Convention on the Law of the Sea. As for fishing legislation, Decree 2236 of 24 October, 1991,¹¹⁷ regulates the granting of domestic fishing permits and establishes basic principles for the exploitation of the resources. In the meantime, several bills are being debated in the Argentine Congress for the sanction of a, very much awaited, national fishing law.¹¹⁸ The greater political and economic stability emerging in Argentina has opened new hopes for a revitalization of the fishing sector.¹¹⁹

Fishing within the FICZ's boundaries is entirely regulated through licenses issued by the Falkland Islands government. One of the objectives envisioned by that administration upon creation of the FICZ, was "...to enable

¹¹⁵*Supra* footnote 70.

¹¹⁶See footnote 69.

¹¹⁷*Boletín Oficial*, October 30, 1991.

¹¹⁸Argentina needs new fishing law. *Fishing News International*, 29 (8): 35 [1990].

¹¹⁹Argentina: start of a new era. *Fishing News International*, 31 (3): 30-33 [1991].

the Falklands to enjoy greater benefits from the resource". This program has been receiving an annual US\$ 30 million in fee revenues for the Islands' economy; a little over one third of this amount is spent on research and enforcement every year.¹²⁰ Without doubt, the license scheme reduced the total fishing pressure applied to the fishery. This licensing approach, however, shows two major weaknesses. The first one is concerned with the license granting mechanism. Eligibility to a license application to operate within the FICZ stipulates that interested vessels need to agree on voluntary restraints to protect squid stocks. By entering this understanding, licensed vessels "promise" not to fish on those stocks while outside the FICZ in an attempt to reduce the total fishing effort and to achieve higher catch rates per vessel.¹²¹

In general, cooperation and compliance to the rules between the fleets and the government have been high. However, the perception of the relative advantages resulting from such accord is linked to the different values weighed by individual boats. Hence, the terms of these agreements have not always been accepted which, translated in uncontrolled fishing outside the area, jeopardizes the entire structure of the management plan.¹²²

The second limitation of the licensing program is that the generated revenues are only a small fraction of the potential value of the resource being managed. From the point of view of the Falkland Islands government,

¹²⁰FICZ Fisheries Report '87/88, *supra* footnote 94.

¹²¹*Fishing News International*, 29 (8): 2 [1990], *supra* footnote 111.

¹²²See, for example, Falklands ban on Taiwan. *Fishing News International*, 29 (12): 10 [1990].

it appears that a more productive utilization of the fishery, in the longer term, would be possible through the implementation of alternative managerial strategies such as a foreign subsidies program or joint ventures.¹²³ Perhaps, the term *interim* in the zone's label, incorporates a time factor, reflecting either a dynamic evolution in the operating regulatory measures or the temporary nature of the existence of the zone itself.

The concert of voices ignited by the creation of the FICZ raised diametrically opposite positions. On one extreme, Falkland Islanders were disturbed by the fact that the area's breadth of 150 miles, instead of the possible 200 miles, was ineffective in providing for stock conservation and that substantial unlicensed foreign fishing was taking place right outside the FICZ. On the other end of the spectrum, several Argentine sectors were disputing the legitimacy over any of these claims and assuring that unilateral decisions taken inside the FICZ were seriously affecting the Argentine fishing industry. Fortunately, more moderate minds in both parties found room for negotiations between these two extremes, with the understanding that some cooperation was better than none at all.

The joint creation of the FOCZ is a good example of the improved political relations between both countries. Although it is too early to evaluate the impact of this moratorium on the strengthening of the fishery, the expectations are optimistic according to the South Atlantic Fisheries Commission which recommended the extension of the fishing ban in this area until 26 December, 1992.¹²⁴ But two questions, certainly need an

¹²³See, for example, Tomlinson, J.W.C. and I. Vertinsky. 1975. International Joint ventures in fishing and 200-mile economic zones. *Journal of the Fisheries Research Board of Canada*, 32 (12): 2569-2579; Doulman, D.J. 1990. Fisheries joint ventures revisited: are they the answer? *Infish International*, (3): 12-16.

¹²⁴British/Argentine joint press statement on fisheries. London, December 5, 1991.

answer in the near future: (1) What will happen when the stocks rebuild and the moratorium is lifted?; and (2) Will the Anglo-Argentine relations be sufficiently strong, at that time, to allow for an agreement on a joint exploitation of the area? So far, the recent establishment of the FOCZ is an indicator of confidence build up and opens a whole new dimension to develop a variety of management strategies. The success or failure of this joint declaration will depend on the diplomatic abilities and priorities of both parties.

The proximity of high seas to either one of the previous three areas remains the source of more complicated difficulties. Two problems, usually linked together, are of immediate concern: the first one is represented by the presence of foreign fleets outside 200 miles, actively poaching landward of this limit. The second point of concern is that of an international fishing fleet continuing to harvest straddling stocks during their residence in the high seas. Far from being a relief, it should be mentioned that the Falklands case is not unique in dealing with these two issues. Other locations around the world have been facing the same circumstances without significant solutions yet evident.¹²⁵ The multiplicity of interests operating in the high seas has exposed limitations of the 1982 Convention on the Law of the Sea on straddling stocks¹²⁶ as it specifies no distribution of competence, does not define the extent of actions that a coastal state can take, and provides no enforcement measures. This highest forum of international negotiation has

¹²⁵Miles, E.L. and W.T. Burke. 1989. Pressures on the United Nations Convention on the Law of the Sea of 1982 arising from new fisheries conflicts: The problem of straddling stocks. *Ocean Development and International Law*, 20: 343-357; Oda, S. 1983. Fisheries under the United Nations Convention on the Law of the Sea. *The American Journal of International Law*, 77: 739-755.

¹²⁶1982 UN Convention on the Law of the Sea, Art. 63, Art. 116. *International Legal Materials*, 21: 1261-1354.

failed, so far, to resolve this recurrent controversy: the resistance of distant water foreign fleets to accept regulations and control and, the anger and frustration of coastal states witnessing a severe depletion of their offshore stocks.

In a chronological sense, the conclusion of UNCLOS III and the end of the Falklands war are events of almost the same age. Since then, the management of the issue on foreign fishing offshore Patagonia and the Falklands progressed more rapidly due to the individual or combined action of Argentina and Britain, than from the simple application of pertinent provisions included in the Law of the Sea. The complexity of technical factors resulting from the nature of the resources, the way they are exploited and the diversity of national interests, severely curtails the development of an acceptable -and compulsory- multinational solution to the presence of foreign fleets fishing on common stocks outside the 200 mile limit.¹²⁷ While a global solution to this aspect of foreign fishing seems to be, at best, several years away, the immediate future of the fisheries offshore Patagonia appears to be strongly dependent on the mutual understanding and allied cooperation of Argentina and Britain. If the fishing policies in Argentina's EEZ, the British FICZ, and the Joint Argentine/British FOCZ are consistent with one another, at least with respect to the issue of distant water fleets, the impact of foreign activities as affecting the Patagonian fisheries will be significantly reduced. More importantly, however, is that successful collaboration between both nations in the fisheries realm might breed a favorable attitude to consolidate further joint agreements. Areas of mutual agreement might include the exploitation of potential mineral deposits and,

¹²⁷Kasahara, I. 1970. International fishery disputes. *In*: World Fisheries Policy (B.J. Rothschild), ed.) The University of Washington Press, Chapter 2, pp. 14-34.

perhaps, the solution to the even more delicate, and still pending, question of sovereignty over the Islands. If lessons from the past are kept in mind, new directions in the management of these fisheries seem possible.

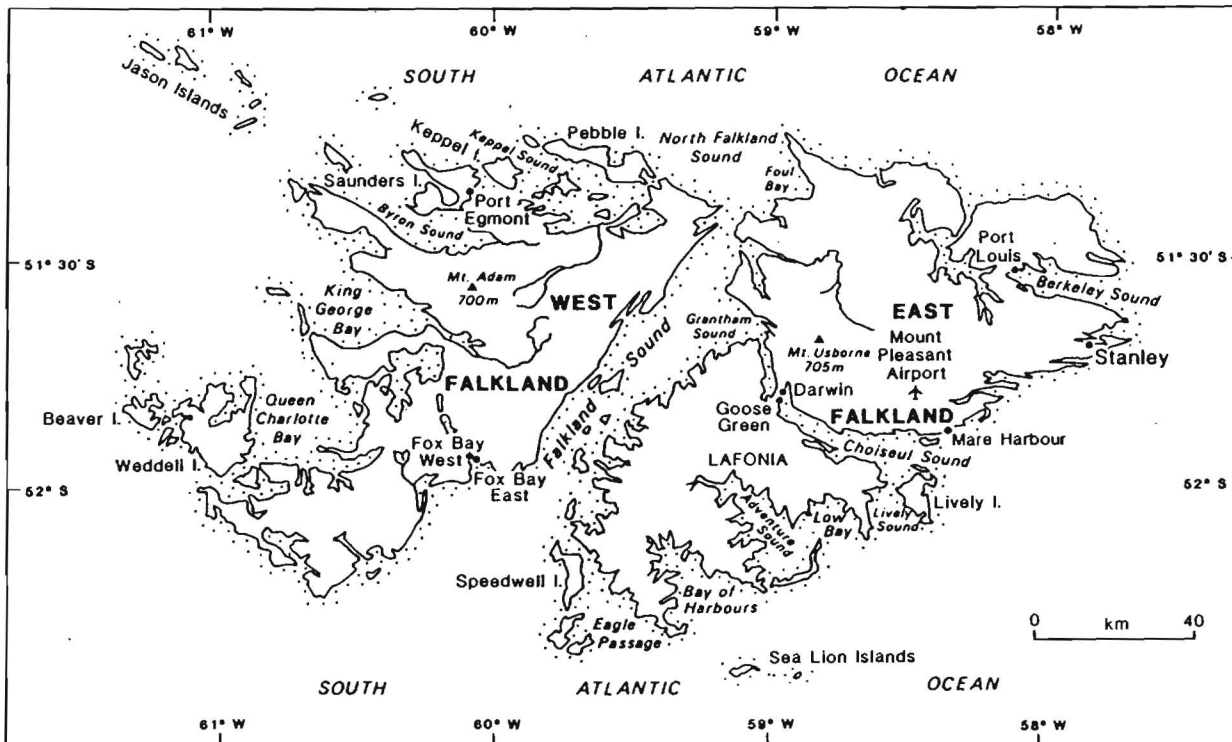


Figure 1. The Falkland Islands.

Figure 2 . Succession of Argentine and British delimitation of the Patagonian shelf region.

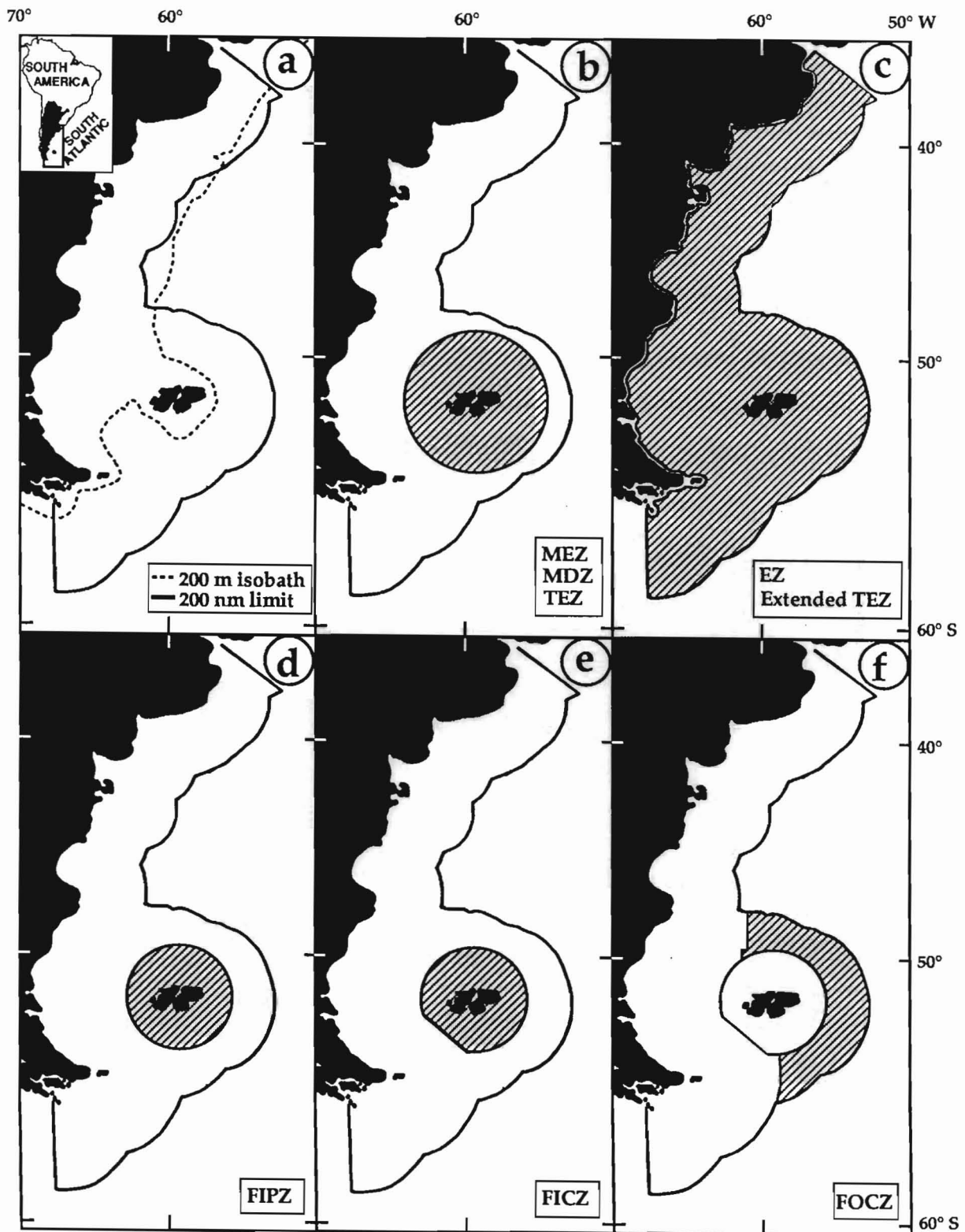


Figure legends

Fig. 1. The Falkland Islands Archipelago. *From:* Beck, P.J. 1988.

Fig. 2. A. The Patagonian shelf region: Argentine coastline, Falkland Island and politico-economic sectors.

B. MEZ: Maritime Exclusion Zone (Britain), 7 April, 1982.

MDZ: Maritime Defense Zone (Argentina), 7 April, 1982.

TEZ: Total Exclusion Zone (Britain), 28 April, 1982.

C. EZ: Exclusionary Zone (Argentina), 29 April, 1982.

Extended Zone (Britain), 8 May, 1982.

D. FIPZ: Falkland Islands Protection Zone (Britain), 23 July, 1982.

E. FICZ: Falkland Islands Interim Conservation and Management Zone (Britain), 29 October, 1986.

F. FOCZ: Falklands Outer Conservation Zone (Argentina/Britain), 28 November, 1990.

This figure has been entirely designed by Gustavo Bisbal based on the information presented in the text.

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