

## **Strategies for Dealing with Exclusive Economic Zone Jurisdiction**

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### **ABSTRACT**

The rights, jurisdiction and duties of Coastal States with respect to articles of the United Nations Convention on the Law of the Sea adopted by the third U.N. Conference on the Law of the Sea (1982) are reviewed as they pertain to highly migratory species, straddling stocks and scientific research. Some options and prospects for regional and sub-regional cooperation in management and development of western central Atlantic fisheries are examined.

### **INTRODUCTION**

Although the third United Nations Conference on the Law of the Sea (UNCLOS III) adopted articles for the "United Nations Convention on the Law of the Sea" in 1982, this Convention has still not yet entered into force because it awaits ratification by a total of sixty countries. However, many of the articles of the yet to be ratified "Law of the Sea" have been adopted either unilaterally or through negotiation between two or more countries in a process of customary international law creation. Even such countries as the United Kingdom and the United States of America, previously opposed to the notion of expansive national resource claims in the seas, proclaimed their own 200 mile exclusive fishery limits some nine years ago.

Another concept of the 1982 Convention provides for countries to declare a more comprehensive 200 mile "Exclusive Economic Zone" (EEZ). The EEZ concept includes not only free swimming fish, but extends in addition to sedentary sea-life and to the non-living resources of the zone, such as minerals and oil. Actually, it is only to the non-living and sedentary resources that the term "exclusive" applies because free swimming resources are able to leave an "exclusive" zone.

### **RIGHTS, JURISDICTION AND DUTIES OF THE COASTAL STATE**

The concept of the EEZ gives to the Coastal State the sovereign rights of exploring, exploiting, conserving and managing all the natural resources (living or dead) within the zone whether in the water superadjacent to the sea bed or in the sea bed itself. Additionally, the Coastal State has jurisdiction over scientific research and protection and preservation of the marine environment. It is the Coastal State that must determine the allowable catch of living resources in

its EEZ. Taking into account the best scientific evidence available to it, the Coastal State has a duty to ensure that the resources of its zone are not over-exploited and should cooperate with competent international organizations (sub-regional, regional or global) to this end.

#### HIGHLY MIGRATORY SPECIES

It has long been recognized that highly migratory species such as tunas deserve special consideration. As Shearer (1985) points out, 82% of the world tuna catch is taken by Japan and the United States using sophisticated vessels and gear that have the ability to follow schools of tuna on the high seas and into EEZ's of countries around the world.

Article 64 of the Convention dealing with highly migratory species is open to two possible interpretations.

It could be interpreted as meaning that highly migratory species of fish do not come under the general provisions of the Convention dealing with EEZ's but are subject to a special and exceptional regime yet to be established through "appropriate international organizations" or "directly" (bilateral or regional agreements). Pending establishment of such organizations or the reaching of such agreements, tuna in EEZ's are to be treated as though they were in the high seas. This has been the United States' position with regard to tunas but not, however, with regard to highly migratory billfish (marlin, spearfish, sailfish and swordfish).

On the other hand, it can be argued that the fact that Article 64 comes under the umbrella of the "rights and jurisdictions of Coastal States" and is preceded by Article 56, which details these rights and jurisdictions, tuna is as much a fish stock subject to the EEZ regime as any other species and thus should be treated in the same way subject only to any additional liberties or restrictions that may be reached through agreement. This has been the position of most of the world's Coastal States.

Following from this it must be argued that the Coastal State is given preferential rights to the harvest of highly migratory species within its zone and the right to levy license fees on vessels of other states wishing to harvest these resources. Since 1979, Bermuda has been licensing foreign flag vessels to fish in a portion of her EEZ. The portion available to foreign vessels extends from 50 to 200 nautical miles from the island's baselines of its territorial sea. All of the resources in this zone are highly migratory - tuna, billfish, dolphin and shark. Foreign flag vessels are required to conform with International Commission for Conservation of Atlantic Tuna (ICCAT) size limits for the various tuna species; they must submit statistics of catch and effort (Bermuda relays these to ICCAT); they must be willing to take an observer on board (at their expense) and they must pay an annual license fee. Revenue earned by Bermuda annually from licensing fees amounts to 40 to 50,000 dollars - a tidy sum, but not enough to be able to afford adequate surveillance and enforcement.

Bermuda is, of course, fortunate in that her 200 mile zone does not overlap with that of any other country. The same is obviously not true of any of the Caribbean countries. However, the Articles of the Law of the Sea Convention encourage neighboring Coastal States to cooperate over shared stocks.

In the western Pacific, 14 countries have formed the South Pacific Forum Fisheries Agency (FFA) (Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa) and a review of this agreement is given by Slatyer (1985) who points out that these neighboring States are required to "seek" agreement on measures necessary to coordinate and ensure conservation and development of highly migratory stocks such as tuna. There is no direct requirement to cooperate. Slatyer (1985) points out that these measures need only be taken where necessary. Therefore, if it is not necessary to coordinate or ensure the conservation and development of a shared stock, then the obligation to seek to agree does not arise. The FFA countries have, however, reached formal agreement amongst themselves through direct (one country to another), sub-regional and regional arrangements on how access to these stocks should be administered.

It would be interesting if a Caribbean Fisheries Forum Agency could be established to encompass the Gulf of Mexico, the Caribbean and the North Atlantic extending 200 miles from baselines of the States bordering the Central Western Atlantic Ocean. The possibilities for management and development of these resources on a regional basis are real as are the possibilities for regional, sub-regional and even direct cooperation for surveillance and enforcement. This latter can, of course, be coordinated with Customs and drug enforcement agencies already operating in regional cooperative efforts.

To allow fishing states to exploit highly migratory species within a 200 mile EEZ and not be subject to a license requirement is doing a disservice to the Coastal State. License arrangements can provide revenue, information on stock abundance, seasonality and catchability and can provide fish to the Coastal State at negotiated prices as well as employment for nationals where this is important.

#### SCIENTIFIC RESEARCH

In a similar way a Coastal State is figuratively and literally missing the boat if it does not license other countries to carry out scientific research in its EEZ. The license fee need not, or, indeed, should not be punitive. However, license requirements should make it mandatory for the State or Institution carrying out the research to share all the results.

#### STRADDLING STOCKS

Another area of regional and sub-regional concern are the "Straddling Stocks" or those stocks of associated species which occur within the EEZ's of two or more Coastal States. Article 63

of the Convention requires these Coastal States to "seek to agree" on measures necessary to coordinate and ensure the conservation and development of such stocks.

Spiny lobster stocks fall within the realm of straddling stocks on a regional basis extending from Bermuda in the north to Brazil in the south and the Caribbean, Gulf of Mexico and U.S. to the west. Whether or not there are sub-stocks or populations of spiny lobsters in the region is still open to conjecture. However, the protracted itinerant larval stage of the lobster clearly qualifies this resource to be managed on a regional basis. It is probable that many of the commercial reef fish species should also be treated as regional straddling stocks. There is no doubt that they are shared stocks on a sub-regional basis.

#### REGIONAL COOPERATION

Is regional or sub-regional cooperation in the western central Atlantic a reality or just a pipe dream? Being an eternal optimist, I feel it is indeed a reality. In fact it has already become a reality on a sub-regional basis within the activities of such bodies as the Organization of Eastern Caribbean States (OECS). Through the work of forums such as the Gulf and Caribbean Fisheries Institute and the working parties on statistics and resource assessment sponsored by WECAFC, the level of cooperation and exchange of information throughout the region has increased tremendously in recent years. In a sense, we are only "moments" away from regional management of some of the straddling stocks. What a triumph it would be for the present-day governments of the coastal-states of the region if they could agree, firstly, on a common biological basis for management of spiny lobster stocks. For example, this common basis might be a minimum size limit corresponding with the lobster's size at first maturity instead of such criteria currently being used by some countries as optimum market size or retention size in a 2.5 cm wire mesh fish pot.

The second item the Coastal States would have to agree on is to enforce these appropriate management measures in their own EEZ's. With this sort of action by all states sharing the Caribbean spiny lobster resource, the recruitment of lobsters in the central western Atlantic would be assured for all time. The provision of suitable habitat for lobster development would largely determine the eventual catch by each country in the region.

#### LITERATURE CITED

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