



Coastal zone
management
in Louisiana

LOUISIANA COASTAL LAW

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INTERNATIONAL LAW AND LOUISIANA'S COASTAL INDUSTRIES

by H. Gary Knight*

Louisiana's fisheries, petroleum and transportation industries, and Louisiana scientists engaged in ocean research could all be affected by a 1973 United Nations Conference which may rewrite much of the "law of the sea." Legal rights in offshore areas for fishing and mineral production may be altered. "Sea lanes" may be established as a limitation on the traditional notion of "freedom of the high seas."

FISHERIES. Most states presently claim exclusive fishery zones in adjacent waters out to twelve miles. A few, notably some Latin American countries, claim much more (200 miles) for fishery purposes. (Most of the 200 mile claims are essentially "negotiating positions.") Beyond any such national claims, the rule is that whoever reduces the fish to possession is entitled to them.

A number of problems have arisen from this arrangement. Fishery resources are not inexhaustible, and unless they are carefully managed can be depleted, to everyone's loss. The U. S. has relied primarily on "private" agreements with other states to set limits on the catch of a stock, regulate the use of certain types of gear, create open and closed seasons, etc.. These are measures designed to prevent depletion of particular fish stocks. But the best efforts of one or a few states to conserve a species can be frustrated when the fish pass through the jurisdiction of another state which places no restrictions on catch or when states not party to such agreements enter the fishery.

Another problem is the conflict between well financed and equipped distant water fishing fleets and the interests of coastal states in their coastal fisheries. Most states simply are not in a position to compete with the Japanese, Soviet, and Norwegian "factory ships" operating twelve-plus miles off their coasts.

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Although there is little foreign fleet activity in the Gulf at present, we can expect increasing presence of these fleets in the future.

A United States proposal submitted at a preparatory conference for the 1973 law of the sea meeting would give coastal states a "preferential" right to all the fish they could catch in their adjacent waters, but without prejudice to the historically established fishing rights of distant water fleets. (The proposal also contains a provision for compulsory dispute settlement, and regional commissions to establish maximum sustained yields.) But the U. S. proposal does not deal with the real issue: how to allocate catch between coastal states and the distant water fleets.

Some advocate a 200 mile limit for all states, and this concept is gaining in popularity at the preparatory conferences. Such a zone would not be a "territorial sea" in which the state could control navigation, but only a "resource zone" where the state would have the exclusive right to all natural resources. Other proposals would give "preferential" rights to coastal states on the basis of investment in anadromous species (U. S. salmon, for instance), while still others advocate an international regulatory system of licensing the right to fish (even on the high seas) in order to prevent economic waste.

Copies of the U. S. fisheries proposal as well as other U. S. proposals can be obtained from the Assistant Legal Adviser for Ocean Affairs, Department of State, 2201 "C" Street, Washington, D. C. 20520.

OIL & GAS. At present, a coastal state has the exclusive right to exploit oil ~~and gas~~ deposits out to a depth of 200 meters (656 feet) or beyond, to the limit of technological capability (there is no agreement on what that means, however). United Nations action has resulted in a declaration that there is a limit to this "national" jurisdiction, and that the area beyond should be developed as the "common heritage of mankind." Where the line will be drawn and what the system for exploitation of oil and gas (as well as hard minerals, such as manganese nodules) will be for the area beyond are topics on the agenda of the preparatory committee for the proposed 1973 law of the sea meeting.

The U. S. has already submitted a proposal, as have several other states and private organizations. The U. S. concept would create an "intermediate" zone between areas of exclusive national and exclusive international control where the coastal state would have administrative authority. The proposal envisions the creation of an international organization to administer ocean resource exploitation which would be weighted in favor of technologically developed countries.

There are myriad problems in all such "seabed regimes." Some oil producing states like Kuwait want "production controls" on oil and gas exploited from the international seabed area so that their oil market will not be adversely affected by production of large quantities of seabed oil. Some mineral producing states feel similarly about the mining of manganese nodules.

Other states want to maximize the area of national control by establishing 200 mile resource zones extending to oil, gas and hard minerals as well as fisheries. Most landlocked states, of course, want an effective international regime, covering a wide area of the seabed, with provisions for revenue sharing by all states. Some developing countries, but surprisingly not a majority, hold the same view. They would rather have a cut of the international pie than rely on the hope that their small continental shelves may be oil rich. The U. S. petroleum industry strongly favors extending national jurisdiction as far seaward as possible. But the current U. S. Government policy is to create a relatively narrow band of national jurisdiction with a meaningful international regime beyond.

TRANSPORTATION. Crowding of activities in the sea has resulted in the necessity for "sea lanes" -- prescribed routes on the high seas. These would conflict with the traditional practice of free navigation anywhere outside territorial waters. The shipping industry will feel restrictions in the future as much as the fishery or petroleum industries.

Of key importance to the ocean transport industry is the treatment to be given international straits. The U. S. has said it will go along with a 12 mile territorial sea (we presently adhere to a 3 mile limit) if arrangements guaranteeing "free transit" through international straits can be made. Of course, this Nation's principal interest is in the military aspect of the straits question, but the maritime community also stands to benefit from the least possible restriction on navigation through international straits.

Many developing countries, particularly archipelago states like Indonesia and the Philippines, do not favor the U. S. idea of "free" transit -- they would prefer to stick with the present system where the coastal state can deny the right of passage in cases where it would be "prejudicial to the peace, good order or security" of the coastal state. The problem is to strike a fair balance between the need for a free flow of commerce on the seas and the protection of vital interests (pollution prevention, military security) of coastal states.

HOW IMPORTANT IS ALL THIS TO LOUISIANA COASTAL INDUSTRIES?

Our fishery interests, particularly in shrimp, could be greatly affected (adversely or beneficially) depending on whether a 200 mile resource zone, a preferential right system, or a preference for estuarine-dependent species system is adopted by the international community. Louisiana fishermen's right to fish off the coasts of Mexico and Central America could be ended, for example, if a 200 mile territorial sea or resource zone is adopted.

The oil industry may find itself operating anywhere from 12 to 150 miles off the Louisiana coast, subject to rules and regulations to be included in a new law of the sea treaty and administered by a new international organization

The transportation industry may find that it can no longer sail freely anywhere on the high seas, but, in areas of high density use, must navigate only in established "sea lanes." Further, restrictions may be placed on passage through key international straits if agreement on "free" transit is not secured.

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Of particular interest to the Louisiana shrimping industry is the agreement, signed on May 9, 1972, between the United States and Brazil establishing a shrimp conservation zone off the coast of Brazil in which shrimping will be regulated. In 1970 Brazil proclaimed a 200 mile territorial sea precluding foreign fishing vessels from undertaking activities there. The agreement provides that the United States will license shrimp boats fishing within Brazilian waters and specifies that not more than 325 vessels of United States registry shall be licensed and that no more than 160 of the vessels licensed shall be actively engaged in shrimping in the area at any one time. The United States will pay Brazil \$200,000 per year to enforce the accord, the money being derived from the license fees to be paid by shrimping vessels.

Brazil has undertaken the obligation to conserve shrimp resources, including the prohibition of shrimping in spawning and breeding areas and the prohibition of the use of chemical, toxic, or explosive substances in or near a fishing area. Brazilian naval authorities are granted the right to board and search American fishing vessels operating in the area. Also included are provisions on exchanging data on shrimp fisheries.

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The shrimp season for the area is limited to the period from March 1 to November 30 (except one designated portion where the season closes July 1). Licensed vessels are required to maintain fishing logs which will be utilized by Brazilian authorities to analyze the shrimp fishery.

The agreement specifies that nothing contained in it is to be interpreted "as prejudicing the position of either party regarding the matter of territorial seas or fisheries jurisdiction under international law."

LCL has also been informed that Brazil has entered into a similar agreement with Trinidad and Tobago which effectively permits all shrimping vessels which had historically fished Brazilian waters to continue to do so in spite of the 200 mile territorial sea proclamation. Thus, it is not anticipated that there will be any displacement of shrimping effort from Brazilian waters to areas offshore Louisiana. Further, the agreement may be a model for solution of the tuna fishing dispute between Chile-Ecuador-Peru and the United States. Finally, it evidences the emerging United States Government position on coastal states' rights in offshore fisheries. By word, and now by deed, the United States is clearly moving toward acquiescence in extended coastal state jurisdiction (perhaps 200 miles) for purposes of regulation of fishery activities.

For copies of the U.S.-Brazil shrimping agreement, protocols, and accompanying press release, request State Department Press Release No. 111 (May 9, 1972) from the Department of State, 2201 "C" Street, Washington, D. C. 20520.

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A N N O U N C E M E N T

A public hearing of the Louisiana Advisory Commission on Coastal and Marine Resources will be held on THURSDAY, OCTOBER 19, 1972, CHALMETTE, LOUISIANA at the main courtroom, St. Bernard Parish Courthouse, at 3 p.m.

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