Ocean Law and Policy
THE SEA'S THE LIMIT
by Iris Shimokawa, Sacred Hearts Academy

ABSTRACT

The subject of this paper is the limit set on territorial waters and the high seas by maritime law. It explains boundary limitations, the nature and the extent of governmental regulations of territorial waters. Brief mention is made of control of the high seas, but the main purpose is to explain maritime law in territorial waters.
Introduction

Many of us living either on an island or on a continent do not realize that our property claim could extend 3 miles more or less outward to the sea, depending on the country's governmental status.

The following report should give you a general idea of the rules, regulations and limitations which boats and other countries are instructed to observe. It also gives a brief definition of the few most important things which the limitations set.

Territorial Waters

This is the area of ocean over which a nation or a state has complete control. These rights include fishing, navigation, and also shipping and the use of all of the ocean's natural resources.

A country's territorial waters include its internal water and also its territorial sea, lakes, rivers, and other waters within coastal areas such as bays and gulfs. The territorial sea of each nation lies beyond its coast. The nations have more authority over their internal waters than their territorial sea. Now you might not think there's a difference between the two, but there is. The main difference is that during the time of peace between nations, ships are allowed to enter into other nation's territorial seas.

Some nations claim fishing rights in the waters outside of their territorial seas on the high seas. This sometimes
This chart is taken from the Fisheries Conservation and Management Act. The boundary extends 200 miles from the shores of the islands.
causes some disagreements between the governments of different nations. Many times the United Nations has put together sessions to draw up an international treaty which would govern the use of the ocean. No matter how many times these sessions have taken place, they haven't reached an agreement which suits all of the nations involved.

Hawaii's territorial waters shall be those surrounding all of the islands put together with their reefs and territorial waters. This territory virtually stretches 1500 miles from the "Big Island" to the northernmost, Kure Island.

In these territorial waters the state and federal divisions provide the necessary personnel and boats needed to patrol these waters. From the federal division there are the Coast Guard ships and from the state there are the police boats. These two both follow the laws in the ways of the Maritime Law.

Maritime Law

This regulates trade and navigation on the high seas or in the territorial waters. This includes all vessels from small pleasure boats to the larger luxury liners and also covers such things as insurance, contracts, property damage, and personal injuries.

All incoming vessels are required to comply with certain rules in order to enter into the port. In Hawaii any foreign or U.S. vessel coming from a foreign country must clear with or notify the U.S. Customs prior to its arrival in the 3 mile
zone. Upon arrival at the dock, the ship must also get a clearance from the U.S. Immigration for the vessel's crew and passengers, for each must be properly "visaed" before any of the crew members or passengers may disembark. These formalities are called "pratique" clearances. The Coast Guard's responsibility is to insure that all vessels, domestic and foreign, comply with all of these regulations, unless a vessel has an emergency, i.e. a very sick crew member or passenger or a malfunction of the engines, etc.

Before entry into the 3 mile limit, the Coast Guard requires 24 hours' advance notice. If a foreign ship is scheduled to arrive on a specific day, the handling agent notifies the U.S. Customs of its arrival. U.S. ships from a domestic port do not require any clearance with the U.S. Customs.

A ship entering the 3 mile limit zone without clearance would be asked to leave the limit zone to 3.1 miles. If the warning is ignored, then the ship could be seized. But a vessel or ship may pass through the 3 mile limit zone, which is called "right of innocent passage." Trade within the 3 mile zone cannot take place. For example, a ship passing through the 3 mile limit cannot push over a container of its cargo and have another ship retrieve this cargo.

High Seas

The ocean waters outside of the 3 nautical miles of ocean which are governed by the adjoining land are known as the high seas. These waters, according to the international law,
are for all nations to have an equal share of rights on the high seas, and all nations are supposed to observe certain rules which have been set and agreed upon. These rules are observed at all times except in times of war, where little attention is paid to the international law of the high seas.

The international law states that if any vessel arouses any kind of suspicion the ship may be searched and this is within the controlled zone of water. Ships which are suspected of breaking any revenue rule may be searched within the 12 nautical miles from the shore of the governing land according to the United States Law.

Not all of the nations accept the 3 nautical mile zone as their territorial limit, as shown by the following chart.

Conclusion

In this report I have discussed maritime law and how it affects territorial waters and the high seas. I have also told a little about how a nation may regulate its territorial waters, touching briefly upon the subject of boundaries surrounding Hawaii. I have learned that rules which vessels must observe and obey are not as simple as I had thought and that not all nations agree to the boundary limitations set by international maritime law.
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References


LAW OF THE SEA
by Laura Young, St. Joseph High School

Introduction

The purpose of this paper is to discuss the Pacific fishing zones and the impact they have on the major fishing industries. Within the fishing zones are regulations to be observed. This paper will present the regulations of commercial fishing and the seasonal restrictions on it.

A closer look will be taken in the direction of the 200 mile limit between the United States and the Soviets. Strongly affected are the Japanese and the Koreans. They have a very large fishing industry and have a lot at stake with the U.S. and the Soviets setting guidelines.

The Marine Mammal Protection Act will also be discussed, along with new methods of lowering the mortality rate. The tuna catch could be improved or have high losses. If the tuna catch is lower than the porpoise mortality rate in weight, then we can conclude that there is a mismanagement of resources. The porpoise carcasses can be used in many different products. But should the time be wasted on storing these carcasses, weighing millions of pounds, and bringing in low prices.
A new 200 mile fishing limit has been set up by the United States and the Soviets. It was enacted in August 1975. The major result to come of this new boundary is the new bountiful harvest to be had by the United States. The Soviets have also taken a 200 mile limit. Their limit comes with a little more controversy. Their boundaries go into the Kurile Islands, which were taken away from the Japanese after World War II. The area is heavily fished by the Japanese.

Fish makes up 80% of Japan's protein. It also makes up $7.2 billion of Japan's economy. An estimated 5,500 fishing and canning ships are idle, bringing unemployment to thousands of fishermen. In order to save their fishing industry Japan has set up their own 200 mile zone. The Kurile Islands are in both zones and that raises the question of who owns the islands.

The Koreans are also hard hit by the new zoning. But the Koreans are looking at the problem from a different perspective. They are trying to buy American processing plants and get their ships to buy the loads from American ships still at sea. Americans are upset that foreign nations will be able to exceed their quotas.

Korean and Japanese protein come from the sea. Without it they will lose a main staple of their diet and a major industry in both their countries. "Japan's very life depends upon the sea, you cannot change a 2,000 year old diet in a day."

The 200 mile limit also present new problems for the United States. There will be new regulations concerning the area. Enforcing the regulation will be the most expensive problem
faced. The Coast Guard will patrol the area but 200 miles is a lot of area to cover. The passing of judgement and conferences on the new problems will be taken care of by the Canadian Government, the United States and the Coast Guard. Limitations will be set on entry to the different areas on licensing for various fishing expeditions and limitations on catches.

There cannot be strict regulations on the zoning since the area is shared with Canada. The United States and Canada will have a working relationship that is very flexible. Disputes can break out concerning the areas. First, is the dispute between Canada, the United States and a third party, second, is the dispute between the United States and Canada and third, is a dispute within the United States.

Solutions still must be found for very important issues that take an international stand. One is the use of the waters by military vessels. If we send our militia to a foreign destination, will the Canadian government allow us to go through their 200 mile limit? Merchant vessels might also use passageways which go through the 200 mile limit, causing conflicts. Will there be freedom to do this in all areas of the 200 mile limit or will there be boundaries within boundaries? Ocean floor mining is going to be developing into a bigger industry. There will be disputes between nations for the rights of the minerals and how much mining can be done.

These subjects deal mainly with foreign relations. A reasonable settlement has to be drawn up for all parties to agree upon or the new zoning will be more of a hindrance than an expansion.
One of the first clashes between nations was the Russian ship Shechenko, which was caught 130 miles off the coast of Nantucket in Massachusetts. Also in the area was another Russian ship named the Snechkus. Both were carrying large amounts of river herring. Most of the catch was already transferred to the mother-ship, which was outside the 200 mile limit. The ship captains were given their rights in Russian and the ships were brought in. Later, the Snechkus was released, but its load of 16 tons of frozen river herring was kept as evidence of an illegal catch. The captain of the Shevenko was arrested, served a year in prison and paid a $100,000 fine. Altogether, there were 53 previous warnings given to Soviet ships.

One of the biggest problems within the fishing industry is the tuna and dolphin battle. Beginning with the Marine Mammal Protection Act of 1972, tuna boats were given two years to begin to modify their equipment and procedures to begin to lower the mortality rate of dolphins. The dolphins are trapped with the tuna inside the nets of the fishing boats. Because they are tangled in the nets and cannot reach the surface to breathe, they drown.

The reason the dolphins travel with the tuna is unknown. The dolphin do not eat tuna. They just travel together. Because tuna is such a large industry, dolphin are caught in the large masses of tuna they travel with.

The total mortality rate of dolphins occuring in a year depends on the amount of fishing done. The average mortality rate before the Marine Mammal Protection Act was 309,000 animals.
After the passage of the Act, during the two year transition period, the number of animals killed was lowered to 137,000 animals. An estimated 340,000 dolphins were saved. From 1973 through 1977 the reduction in the mortality rate was 28%, 22%, 18% and 5%. In the two years of transition, more tuna were caught than before. Further progress was made during 1975 through 1977. The mortality rate in 1975 was 134,000 compared to 1977's 27,000 animals killed.

The incredible reduction of animals killed during the tuna harvest is due to the continuing experiments done by the National Marine Fisheries Service. During one of their experiments aboard the Bold Contender, they demonstrated all the new equipment and procedures which could be used to lower the mortality rate of dolphins.

The Bold Contender made 25 sets with a mortality rate of 1.44 animals per set. In 15 of the sets, no animals were killed. In 1975 the average amount of deaths per set was 12.80.

One person who contributed to the invention of the equipment being used for saving dolphins is Harold Medina. He is credited with inventing the porpoise safety panel and was also working on the Medina Bridle.

Medina was a tuna fisherman near New Zealand. He is a co-owner and captain of Zapata Discovery. He is from one of the families that founded the U. S. tuna industry early in this century.

One of the most common problems within the tuna industry is called a rollup, in which the nets get snarled in a steel cable
at the bottom of the net after it has been set in a large circle around the fish. So in the beginning, dolphins were not involved with the changes in the rollup of the nets. Rollup problems sometimes stopped work for hours on the ships and damage ran into the thousands of dollars.

Medina got the ideas for the improvements while watching the schools of fish being netted from a helicopter. The water is clearer near New Zealand and many tuna fishing companies are beginning to use helicopters to spot schools of fish.

Medina's idea of equipment first came in 1970, long before the mortality rate of dolphins was a concern.

Fishing for tuna there is somewhat different from tuna fishing in the more northern waters of the Pacific. Dolphins are not the problem there. Sharks are the problem. They become entangled in the nets and are more of a danger to man than dolphins are. Repairs on the nets and the boats are sometimes needed underwater, and the presence of sharks is dangerous to divers. A license to fish within the 200 mile limit costs $50,000 and fuel is a third higher than the U. S.

The fish near New Zealand are larger than other tuna, so it takes a shorter time to fill up the hold of the ship. Also there is hardly any competition, because there is no market for tuna in New Zealand. New Zealanders do not like tuna and the fish are shipped to the United States. Fishing is also more difficult because the water is so clear the tuna can see the ships and they usually escape the nets.

Medina is experimenting with a heavy chain on the bottom of
his net so it can be set down before the tuna can escape.

A group made an assessment of whales and dolphins. It seemed that the number of bottlenose dolphins was falling because of the fishing procedures. Another assessment said that there were plenty of dolphins to go around and that the carcasses of the dolphins should be saved and used. Porpoise meat is said to be quite tasty, but there isn't a market for it in the U.S. Other parts of its body can be used for different products like pet food or fertilizer.

A statement was made showing figures that dolphins eat as much as humans in the world. Does this mean we are competing with dolphins for a food source? The problem of saving the carcasses of the dead animals would be storage space. No ship owner would give up tuna storage space that would bring a higher price than dolphins.

With our 200 mile limit enacted we are able to monitor an area once unpatrolled by the Coast Guard. The illegal fishing by the Soviets within our waters can be cut down by heavy sentencing from our judicial system. They will be very careful about entering our waters with the intent of making illegal catches if they are heavily fined. The Japanese and Koreans equally need fishing some allotment could possibly made for these two nations whose economy depend heavily on the industry. The dolphin mortality situation is slowly bettering itself. Perhaps the same type of committee that put the Marine Mammal Protection Act together could help solve the problems of illegal Soviet fishing and the failing fishing economies of the Japanese and Koreans.
Bibliography

In 1972, legislation was passed by the Federal Government which encouraged the states to undertake Coastal Zone Management programs. After a period of planning by Hawaii's Department of Planning and Economic Development, the Hawaii State Legislature passed an act providing for a Coastal Zone Management Program.

The Federal requirements included a provision for the planning of the CZM program to be a joint effort of the administration and the public. The result was considerable discussion and dissent during the planning years, which eventually resulted in a strong CZM program.

Hawaii's CZM program is currently being tested, and it remains to be seen whether it will emerge as the useful and efficient program envisioned by the Federal Government.
In the past two decades, the need to conserve and protect our environment has become an ever-increasing concern. From this concern has stemmed a number of laws and acts.

In 1972, in an attempt to channel all of these laws into one effective and efficient law, a Federal Coastal Zone Management (CZM) Act was passed. This act was created in an effort to encourage each state to form a CZM program of its own. It provided for grant money to any state willing to attempt to draw up a CZM plan. Grant money would be given annually to the state during the planning years. After the state's CZM program was accepted on the Federal level, more grant money would be given for the actual environmental projects.

What is the "coastal zone"? The coastal zone area, as defined by the Federal CZM Act, is that area extending from the shore seaward to the limits of United States territory, (in Hawaii, three miles), and from the shore inland as far as is necessary to protect the shorelines. The actual distance the latter part covers is left to the discretion of the state.

In the Federal CZM Act, it is required that each state, through legislation, accomplish the following:

1. Define the Coastal Zone boundaries
2. Define permissable uses within the Coastal Zone
3. Establish an inventory of areas of particular concern
4. Establish legal framework to control land and water uses within the Coastal Zone
5. Set priorities on the types of uses allowed within the Coastal Zone
6. Establish an organizational framework to carry out
management of the Coastal Zone

7. Preserve estuarine sanctuaries of environmental significance.²

In 1973, the Hawaii State Legislature passed an act which required the Department of Planning and Economic Development (DPED) to create a Hawaii CZM program that would comply with the Federal standards and objectives.

The DPED received its initial grant money during the fiscal year of 1974-1975. During the first year of a three-year planning program, the DPED made a groundwork inventory of current coastal zone situations, and developed a number of tentative plans for a CZM program. Now they were ready to start creating the actual program.

The main purpose of the Federal CZM Act was to establish a program which would be the most effective way of protecting our coastal zones, and at the same time, be legally efficient, so that our environment would be protected to the fullest. To achieve this high goal, the government felt that the more viewpoints that went into the planning of the actual act, the more efficient it would be in the long run.

To ensure that the states followed through, certain clauses were put into the Federal CZM Act of 1972, e.g. "With respect to implementation of such a management program, it is the national policy to encourage cooperation among the various state and regional agencies . . ."³ This idea was also incorporated into the CZM Planning Act of 1973: " . . . assisting the states, in cooperation (emphasis added) with the federal and local governments and other vitally affected interests, to plan and develop management programs . . ."⁴

The Federal DPED Act stipulated that, before receiving program approval at the federal level, the CZM program had to have been planned with the help
of "... Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private ..." Also, the Federal Act stated that public hearings had to be held with respect to CZM program developments. Each meeting had to be announced at least one month ahead of time, and all documents and other pertinent information had to be made available to the public at announcement time, so that the public would have time to review background information.

The Federal Government demanded full cooperation between all organizations and agencies involved in the creation of the Hawaii CZM plan. The Government also required that the public be given an equal share of input. In this way, it was hoped, the product would be a well-rounded and useful CZM program with which to protect our coastal areas. This paper will discuss whether these two requirements of the Federal Act were carried out by the state CZM program designers, and whether the requirements helped to build a stronger program.

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In 1975, the Hawaii State Legislature passed Act 176. This act was called the Shoreline Protection Act. It established a temporary Special Management Area (SMA) which extended at least 100 yards inland from the shoreline, to form a sort of doughnut shape around the islands. Each county was responsible for administering permits and assuring the protection of the environment within this 100 yard area.

During the second year, the options for possible CZM programs were
going to be narrowed down into the one preferred. To advise the DPED, a number of different committees were formed.

The State/County CZM Policy Coordinating Committee (PCC) held its first meeting in March, 1975. The committee was composed of different State and County officials. In this way, all the conflicting views could be ironed out, and the finished product that the DPED would receive would be the compromised advice of people who were going to be involved in the legal aspects of the CZM act. When it came time for projects to be processed through legal channels, they would go through in such a way, it was hoped, as the majority of officials could agree upon.

The Statewide Citizens Forum (SCF) held its first meeting in August, 1975. The purpose of this committee was to gather the views of the different organizations in the state, thus preserving all the varieties of beliefs. The committee was composed of representatives from all the different corporations and groups, ranging from the big business interests to the environmentalists.

Other committees formed with these same objectives in mind were the County Citizens' Advisory Committees (CAC). There were seven such committees altogether: Honolulu, Maui, Lanai, Molokai, Kauai, East Hawaii, and West Hawaii. Each of these committees was made up of people from all over the islands. They represented the people. A person from each CAC was sent to the SCF for further representation.

So, the DPED was being advised by three different types of Committees, ranging from official to grassroots. It was hoped that the CZM program would reflect this variety of views, and would be much more useful as a result.

Was the public really being kept up to date, and being given a chance
to have its voice heard? Yes, the SCF meetings were open to the public. By looking through the SCF minutes one can see that the public did not remain silent, and that furthermore, their questions were answered.

The County Advisory Committees were all aiming toward a high level of public awareness. For the first months of their existence, they made themselves acquainted with the CZM Act, and with the goals set for the program. Then most of them set out to teach the public what they had learned. They held public hearings to discuss the CZM program and to get input from the public.

A newsletter called Coastal Zone News was started in May of 1976, and continues to be published monthly. In it are articles that keep readers up-to-date on CZM issues and progress. It also aims to increase public awareness of the environment. For instance, during the months of January, 1978 to May, 1979, in a sixteen-part series, Coastal Zone News explained what an ecosystem was, and then went on to give examples of all the different kinds of ecosystems. In this way, the public was being made aware of the delicate and intricate patterns that make up our environment. There was also a letter-to-the-editor column in which the many questions the public had to ask could be answered. All pertinent meetings being held were usually announced in the CZ News, and many names and addresses were given for "more information". This newsletter was free and available at the CZM office at the University of Hawaii, to anyone who simply provided his name and address.

In 1977, the Hawaii State CZM Act (Act 188) was passed. This act was to be the cornerstone on which all other Hawaii coastal zone legislation would rest. The particular areas it was primarily concerned with were:
1. Provision and protection of recreational opportunities
2. Protection and restoration of historic resources
3. Improvement of scenic and open-space areas
4. Protection of coastal ecosystems
5. Provision for coastal-dependent economic use
6. Reduction of coastal hazards
7. Improvement of the review process involving developmental activities, including permit coordination and opportunities for public participation.

Not only did the state law set forth these ideas, but it also revised other previous acts, updating them so that they would be more useful. The counties were given two years to revise their Special Management Areas according to CZM requirements. At the end of those two years, (previously set for June 8, 1979, later amended to December 31, 1979), the SMA were to be brought before the DPED for review, and if it was decided that the revisions followed CZM policy, they would become the final SMA.

In Act 188, the DPED and other state agencies were given jurisdiction over the three-mile zone from the seashore outward to the end of U.S. territory, and all the area inland from the County SMA (excluding Federally controlled land). So, in effect, the entire state was to be under CZM protection. The protection zone issue caused many arguments.

One main argument was that if the objective of CZM was to make legal channels less complicated, then by making two separate managing bodies, state and county, the opposite was achieved. Other people felt that in order to protect the shorelines, the entire state had to be included in the Special Management Areas.

Out of these conflicting views emerged two bills. The counties
introduced HB113 and the state introduced HB1642. Essentially, the counties
wanted the SMA to cover only the original 100 yards, with revisions, and
possibly including a few crucial areas inland, provided they were given more
revision time. The state believed that the double management system was
fine, with the exception that, since there was going to be such a large
extent of protection inland, the counties would have the option of making
the revisions. Both bills contained the opinion that the general coastal
zone management guidelines should not be referred to for interpretation.
The state believed that the DPED (a state agency) rules and regulations
should be used. The counties felt that the Hawaii State Plan and the County
General Plans should be used. The only item both sides agreed upon was that
public hearings should be either optional or not always necessary. It
appears that the two bodies were making a play for power.

The State Legislature compromised. They passed Act 200 in April, 1979.
The 100 yard SMA would remain, with the deadline for revisions on December
31, 1979. The SMA could be reduced in places, but only after review by the
DPED. The area inland and the three-mile waterzone were to be monitored
by the state. When interpretation was needed, the legislature would do so.
Public hearings were not necessarily required. Under Act 200, a person or
organization has the right to bring suit against anyone not complying with
the CZM objectives and policies.

It may seem wrong that there was this clash for power between the
state and counties, and that it is a bad reflection upon CZM that this
clash would ever occur. On the contrary, had there not been the stipula-
tion in the Federal CZM Act forcing the DPED to work with such a wide vari-
ety of committees and other local powers, then the clash would never have
occurred. The DPED would not have been forced to compromise; it would have had sole control. The citizens of Hawaii end up with a stronger and better CZM program.

On October 1, 1979, the first grant money for the actual environmental projects was received. Now, after the years of planning, the program could be applied. It was still being amended, but the basic framework had been built.

In 1974 a Japanese corporation bought 1,030 acres of land from the Ulupalakua Ranch. The purchasers wanted to re-zone the land from agricultural to urban. To do this, the State Land Use Commission had to grant permission. Many people protested; nevertheless, the Commission granted permission to re-zone 500 acres. The Japanese buyers were planning to build a large complex near Makena Beach, with houses, hotel units, and even a large shopping center. In 1975, the corporation drew up an Environmental Impact Statement, as required by law. Though the comments written by the public gave evidence of the danger of the project to the aesthetic and environmental sides of Makena Beach, the EIS draft was accepted. The corporation had the go-ahead.

The corporation began having financial troubles, causing a delay in construction. By the time they were ready to build, they were required to obtain a SMA permit. The public meeting was scheduled for May 8, 1979. At this meeting, a petition was presented with 200 signatures of people against the project. The meeting was very crowded, and a total of twenty-four people spoke. Four were for the proposal and twenty were against. Despite heavy public disapproval, the SMA permit was granted. Taking advantage of the rights given them through the CZM Act 188 and amending Act 200, the
People to Save Makena and the Sierra Club pressed charges against the Maui Planning Commission, on the grounds of disregarding CZM requirements.

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Were the two Federal requirements, cooperation of government agencies, and public participation, carried out? Did they help to make a strong Hawaii CZM program?

During the planning of the Hawaii CZM program, the governmental and public committees were forced to work together. When the pressure built up, the legislature stepped in to create a compromise, an action which strengthened the CZM program. Also during planning, the public was constantly being given information, and meetings were usually open. In these ways, the CZM program received the views of the people who were going to be the most affected.

However, when it was put to the test, a problem arose; the public which was so important during planning was now being ignored. The CZM standards, in fact, were essentially being discarded. Was the program that took so much hard work and diligent planning during development going to fail when put to the test?

This question cannot be answered until the Makena case goes through the courts. Yet, there are two reasons to be optimistic. First of all, the right of the public (the people) to press charges against violators of the CZM Act is built into the law. Secondly, because of the careful planning that went into the program, the legal guidelines are clear.

Hawaii's Coastal Zone Management program, through the Makena case, is now on trial. If the judges rule in favor of the plaintiffs, then we will know that Hawaii's CZM program is as strong and useful as it was meant to be.
NOTES


2 Hawaii Coastal Zone Management Program, (Regional Library Information file), Folder "D", Meeting Minutes, 1st meeting.

3 Public Law 92-583, 86 Statute 1280, p. 2.

4 Act 164, SLH73, p. 1.

5 PL 92-583, p. 4.


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