Ocean Law Memo

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A 50-mile fisheries zone for Oregon?

The Oregon Legislature not long ago passed an act that would have established a 50-mile exclusive fishing zone off the Oregon coast. The act was then vetoed by Governor McCall and failed to become law. It should be noted that this act, if it had become law, would supposedly have created a state fisheries zone, not a federal zone. Several state legislatures have considered similar laws, and a few (Massachusetts, for example) have fishing zones of up to 200 miles on their statute books.

Is such a zone "legal"? Even if it is, can it be enforced against foreign fishing? The short answer to these questions is almost certainly: no.

The complete answer involves a complicated tour through U.S. Constitutional law and international law, so a simplified explanation will instead be attempted. To begin with, our federal system of government divides governmental functions essentially between those functions granted to the federal government and those retained by the states. Regulation of fisheries is generally considered to be a governmental function and has traditionally been carried out by each ocean-bordering state within its boundaries (basically, to the 3-mile limit). Each state has recognized power, or "jurisdiction," to regulate anyone's activities occurring within its own boundaries, and this form of jurisdiction is called, naturally enough, territorial jurisdiction. Each state can also exercise personal

jurisdiction over its own citizens, no matter where these citizens happen to be. Accordingly, Oregon has the legal power to regulate the fishing activities of Oregonians on the high seas outside Oregon's boundaries. But, since personal jurisdiction stems from the fact of residence within the state, Oregon has no recognized power to control the activities of non-Oregonians--whether they be Californians, Hawaiians, or Russians--beyond the boundaries of the state. To sum up so far: a state can regulate the conduct of anyone within its boundaries and can regulate the conduct of its own citizens anywhere.

So far, the result of these legal principles seems to be this: Oregon can provide fisheries-management regulations and enforce them against Oregon fishermen in a 50-mile zone, but it can't enforce them against foreign fishermen within the zone outside the three-mile limit. But this conclusion is too pat. It leads to at least a couple of other questions: Why can't Oregon simply increase its boundaries and thereby extend its territorial jurisdiction? And if Oregon can't legally keep foreign fishermen farther away from its coast, who can?

First, Oregon can't increase its boundaries because (a) such an extension would, under the U.S. Constitution, need to be approved by Congress, and (b) such an extension would encroach on the high seas--that is, ocean waters beyond the territorial sea--which belong to all nations in the international community. It can be strongly argued that Oregon could no more annex a portion of the high seas than it could annex a part of California.

An Oregon extension of its seaward boundary (or a fishing-zone boundary) would, because it encroaches on "property" of the international community,

be an interference with international relations, and it is clear that the U.S. Constitution grants to the federal government the exclusive right to conduct international relations and handle foreign affairs. Therefore, such important foreign-relations decisions as whether the U.S. ought to attempt to expand its territorial sea boundary or to declare an extensive fisheries zone are almost certainly within the bounds of exclusive federal authority. These decisions may affect some of our nation's solemn treaty promises and our reputation as a generally law-abiding member of the international community.

Under current trends of international law, it may be legal for the federal government (as opposed to a state government) to extend the exclusive fisheries zone substantially beyond the current twelve-mile limit. However, that would also raise serious questions of enforcement. National priorities would have to be considerably revised if the money and vessels needed for enforcement were to be appropriated. Today, there is good evidence that the U.S. twelve-mile fisheries zone is not being effectively managed, and a 50- or a 200-mile limit would be practically impossible to regulate. Certainly Oregon would not have the money and resources necessary for the job of enforcing its regulations in any extensive fishing zone.

On the other hand, the Oregon Legislature's passage of the act, and similar action by other state legislatures, may be effective devices for attracting the federal government's attention to the seriousness of the problem. And this seems to be the intent of the proposers of the extended state fisheries zones.

In the long run, really effective management of the ocean's all-

too-limited living resources will have to depend on cooperation among fishing nations and not a division of the ocean into "national lakes." The U.N.-sponsored international conference on the Law of the Sea is now scheduled to begin in early 1974. The U.S. federal government has participated heavily in the preparations for this conference, out of which new international laws on fisheries are expected to emerge. The current U.S. position seems to favor preference for coastal fishermen in the allocation of coastal and anadromous fisheries, so the coastal fisherman's voice is not being ignored in Washington (though that sometimes seems to be the case).

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