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anon

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# SYMPOSIUM ON THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

## INTRODUCTION

The canneries themselves fought the war by getting the limit taken off fish and catching them all. It was done for patriotic reasons, but that didn't bring the fish back. As with the oysters in *Alice*, "They'd eaten every one."

John Steinbeck, *Sweet Thursday*

As the novelist Steinbeck illustrates, common property fisheries are potentially finite resources. Heeding the evidence of serious overfishing and the ever-increasing necessity for future-oriented utilization of this planet's natural wealth, the 94th Congress enacted the Fishery Conservation and Management Act of 1976. The Act couples an assertion of United States jurisdiction over a 197 mile "fishery conservation zone" with a recognition of the need for a national program of fishery management. The *Washington Law Review*, mindful of the fact that preparation for the future is as vital an endeavor in the law as elsewhere, hopes to offer in this Symposium a foundation for interpretation and discussion of this important and complex legislation.

Members of the legal profession cannot ignore nor be ignorant of the ideas and concerns of those of other fields, particularly when active communication between professions is necessary, as is the case with the fishery management. Thus, the *Review* is particularly pleased that it may offer the analyses of authorities from a variety of academic and professional disciplines on this new legislation.

The articles in the Symposium have been arranged topically. Senator Warren Magnuson, one of the principal sponsors of the Act, initiates the Symposium with a discussion of the historical, political and legal problems which Congress confronted while drafting the legislation. The Senator also describes the basic framework and important provisions of the Act.

Professor Jon Jacobson and Douglas Cameron then discuss this unilateral assertion of jurisdiction by the United States in its international setting. They compare the Act's provisions with those of the Revised Single Negotiating Text of the Third United Nations Law of

the Sea Conference, detail inconsistencies, and analyze the potential effect of a future treaty ratification. The foreign relations aspects of the Act extend beyond the Law of the Sea Conference, however. As Senator Magnuson states in his article: "This legislation presented a classic confrontation between the executive and legislative branches of our government in the area of foreign affairs." Congress' prescribed role in the execution of international fishery agreements is thus analyzed from a constitutional perspective in a student note.

The next article, by Eugene Fidell, provides detailed commentary on the problems of enforcement under the Act. Mr. Fidell compares the Fishery Conservation and Management Act with its predecessor, the Bartlett Act. He also describes the geographical scope of the asserted jurisdiction, the system of sanctions established, the scheme of enforcement, and the Act's enforcement organization. A student comment follows which discusses the process of judicial review of management regulations promulgated under the Act, focusing particularly on the scope of review and the possible effect of the Act's restrictions on review.

Professor Giulio Pontecorvo then deals with existing and foreseeable results of the structures of the Regional Fishery Management Councils—the cornerstones of the new legislative framework—from a perspective of concern for the "general welfare."

Three articles follow which discuss the critical issues of the Act's management mechanisms and their economic implications. In an article critical of those management objectives expressed in the Act, Dr. Francis T. Christy speaks to such questions as limits on entry to fisheries, the investment of public funds in the fishing industry, and the imposition of taxes or fees on participating fishermen. He concludes in part that the Act must be read to proscribe the collection of economic rents from domestic fishermen. This viewpoint is disputed in the subsequent article by Professor William T. Burke, who asserts that the Act does permit the recapture of economic rent. He analyzes both the Act's provisions on fees and other mechanisms available to recover the rent produced by limited entry systems. Finally the important questions of fees and access control are approached from an economic perspective by Professor James Wilson and Robert Anderson.

Concluding the Symposium, Dr. Dayton L. Alverson offers an overview of the Act from the viewpoint of a fishery scientist. Dr. Alverson concludes, as do most of the aforementioned authors, that