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Article — Digitized Version

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Intereconomics

*Suggested Citation:* Wijkman, Magnus (1974) : Redistribution of fishing rights, Intereconomics, ISSN 0020-5346, Verlag Weltarchiv, Hamburg, Vol. 09, Iss. 11, pp. 349-352, <https://doi.org/10.1007/BF02929383>

This Version is available at:

<https://hdl.handle.net/10419/139107>

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# Redistribution of Fishing Rights

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**Congestion on fishing grounds and overfishing have convinced fishermen, economists, and most governments of the necessity to control access to fishing grounds. The living resources of the sea, however, present particularities which may make the task of redefining international fishing rights more difficult than that of distributing claims to mineral resources.**

Who owns the riches of the high seas? What countries should mine the mineral resources of the ocean and harvest its living resources? To decide on these questions, the United Nations convened in Caracas, Venezuela, June 20 — August 29, the Third Conference on the Law of the Sea. From the outset it was clear that the allotted time was too short to agree upon a new international law and the Conference will continue in Geneva in March 1975. The answers that it ultimately gives will allocate vast resources to international institutions or to certain national states and redistribute income between consumers and producers.

## Alternative Distributions of Fishing Rights

This article discusses some efficiency and equity aspects of redefining international fishing rights. The value of the sea's living resources is insignificant compared to its mineral resources. The living resources, however, present two particularities which may make the task of distributing fishing rights more difficult than that of distributing claims to mineral resources. Firstly, the living resources are geographically mobile and part of the sensitive ecosystem of the oceans whereas mineral resources are stationary. Secondly, the living resources have been exploited for many centuries, while the mineral resources have just started to be mined. A system of common law has developed during these centuries and forms the basis of the existing location of the world fishing industry. Thus, redefining ownership rights to the living resources of the seas will effect fishermen and fishing villages around the world. They will face a major adjustment process aggravated by a demand for fishery products that grows more slowly than the demand for mineral products.

Fishing rights on the high seas can be distributed in different ways:

□ One way is to distribute ownership rights to the seas among national states. Such claims have traditionally been distributed in proportion to the coastal length of each nation. Other criteria

are, of course, conceivable. Nation states could claim sovereignty over the oceans in proportion to their land mass, to their population, or to their population density, etc. Within the area claimed, the government of the nation state has exercised complete sovereignty and has allocated fishing rights to fishermen. Customarily it has favored its own nationals and excluded foreign fishermen from its territorial waters.

□ An alternative way is to endow an international authority with property rights over international waters. This authority could then i.a. distribute fishing rights to fishermen without discriminating between countries.

For two centuries most states have accepted the principle of the freedom of the high seas. However, an international authority has never been endowed with the property rights not claimed by them. Practical reasons explain this. Thus, no state was able to patrol and effectively control waters beyond the range of its fire-arms. Furthermore, the apparently inexhaustible riches of the seas made fishing rights a free good and rendered property rights over them valueless. The high seas therefore became free to all. In each century the claims of nation states reflected the firing range of their cannons and the degree of competition on the fishing grounds.

Today, the international community faces a radically different situation. The development of technology has made it both possible and profitable for a nation to claim property rights over wider expanses of the high seas. The development of weapon technology allows a country to police ever larger areas. Technological developments in fishing fleets and equipment are adopted by more and more countries and increase competition.

## Extension of Territorial Limits

Congestion on fishing grounds and overfishing have convinced fishermen, economists and most governments of the necessity to control access to

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fishing grounds. Freedom of the seas in the sense of free access to fishery grounds belongs to the past. But control over a scarce resource possesses economic value. He who exercises this control in effect pockets a revenue from selling "admission tickets" to high sea fisheries. The basic question of the Third Conference is whom should be given control over access to the fishing grounds and how should it be exercised.

Substantial economic amounts are involved. Most territorial limits now extend 6 nautical miles offshore. Exceptions are Eastern European countries and some countries traditionally dependent on fishing which have claimed 12 nautical miles. In 1972 Iceland extended its territorial limit from 12 to 50 nautical miles while Peru and Argentina already claim 200. At Caracas wide support soon emerged for 12 mile territorial limits and 188 mile economic zones giving the coastal states control over fishing rights 200 nautical miles out from base lines. At present this appears to be a likely outcome of the Third Conference. Traditional fishing nations will vote for it in order to protect their coastal fishermen. Some less developed countries (LDCs) will vote for it to protect their infant fishing industry from foreign competition. Most of the major long distance fishing nations (USA, USSR, Japan) which are worst hit will accept it in exchange for unchanged sailing rights for their navies in the 100 international straights that thereby become territorial waters.

This is neither an efficient nor an equitable distribution of fishing rights. Towards the end of the Conference realization grew that such a solution did not sufficiently protect the interests of "geographically disadvantaged countries", i.e. countries with no or little coast bordering on rich fishing grounds, and that assistance to LDCs and the conservation of fishing stock could be better achieved in other ways. Below I shall argue that an appropriate international authority could protect fishing stocks more efficiently than national governments. I shall also suggest that such an authority need not change the distribution of income between fishing nations as drastically as would the extension of fishing limits to 200 nautical miles.

### **The Conservationist Argument**

Extension of fishing limits is often presented by coastal states as necessary to prevent overfishing. When access to fishing grounds is open to all, an individual fisherman certainly lacks sufficient incentive to leave fish for replenishment of the stock. What he leaves one day may be caught by others the next, and he will not sow if he cannot harvest the fruits of his work. Consequently, too many fishermen, competing with each other to

exploit the common pool of living resources in the sea, threaten to deplete it. Private property rights are necessary to conserve fishing stocks but cannot be exercised over the fish themselves. Fish are more difficult to mark than reindeer! Instead it is said the national governments must exercise property rights to the fishing grounds. According to this line of reasoning, appropriate conservation measures require that national governments have exclusive fishing rights.

Extended territorial limits or economic zones are, however, not a necessary — or even a sufficient — condition for conservation of fishing stocks. They are not necessary because access to fishing grounds can be controlled by international institutions as well as by national governments. They are not sufficient if fishing stocks do not stay within the domain of one national government throughout their whole life cycle. Thus international control is an alternative way to conserve fishing stocks and a better way if they migrate.

Most living resources of the seas migrate. Tuna fish, eels, salmon, herring, whales, to name a few, cover vast distances in their migrations in the Atlantic and Pacific Oceans. Over half of the world's annual fish catch consists of migratory species (herring, salmon, whales, and the less migratory cod). With the exception of certain unit stocks of cod, many species will cross fishing limits of up to 200 nautical miles.

### **Control of Ecosystems**

An additional argument which favors international rather than national control of fishing access is the dependence of the species on the ecosystem of the oceans. Sea creatures are part of a long feed chain. Seals eat salmon and salmon eat herring and herring eat plankton. The Icelandic cod which sticks to one country's domain is dependent on herring which migrates. Even control of stationary fishing stocks is therefore not completely possible without control of whole ecosystems. Since ecosystems transcend the domains of national states, so must the jurisdiction of the control institutions.

This ecosystem is being increasingly damaged by industrial waste. Atomic energy plants raise the temperature of coastal waters and change the migratory paths of fish. Oil discharges destroy the life in the oceans as do estuaries spewing pollutants into them. Jacques-Yves Cousteau has said: "A toxic product thrown into the sea anywhere on earth spreads throughout the oceans in a few years." Damages to the ecosystem are the concern of all countries when the repercussions spread through the whole system.

There is consequently increasing need for an international authority to

☐ monitor damages to the ecosystem and monitor migratory fishing stocks;

☐ assist a country claim compensation for damages inflicted by others on its maritime environment and to claim compensation for damages inflicted on the high seas in accordance with § 21 and § 22 of the Declaration of Principles of the United Nations Conference on the Human Environment;

☐ police against environmental damages and overfishing of international waters.

These tasks require that national scientific and legal talent be pooled in an independent international authority.

### Fishery Protectionism

The most important effect of extended fishing limits may well be to protect local fishermen rather than local fishing stocks. This is because it is a reasonable assessment that coastal states will in the future favor their own fishermen when distributing fishing rights within their fishing limits — just as they have in the past. The coastal states will probably sell "fishing licences" to their own fishermen at a lower price than to foreigners. In the extreme — and most likely — case they will give free fishing licences to their own fishermen while denying foreign fishermen access to their fishing grounds. The higher — perhaps infinitely high — price which foreign fishermen must pay for fishing rights may exclude them from the new economic zones even though they are more efficient than fishermen of the coastal state. Inefficient fishermen are thereby preferred to efficient ones, and the extended fishing limits lead to inefficient use of the world's labor and capital. While no good economist would deny the validity of this statement, some might argue that the allocative inefficiency of extended discriminatory fishing limits is small. A major investigation would be necessary to estimate the magnitude, but it is a reasonable presumption that the inefficiency will be greater the more fishing limits are extended.

But even if allocative losses are small one wonders why fishermen should be protected from increased competition caused by high international factor mobility. It is not self-evident that fishermen should be protected when other workers and small entrepreneurs are being increasingly exposed to such foreign competition. Certain regional or national economies are so dependent on fishery that protection through extended fishing limits may be necessary to guarantee their future existence. Iceland, Northern Norway, the Faeroe islands show such dependence and special protection if necessary would then be legitimate. But these are exceptional cases and there is no reason to provide the same protection to other countries whose national and cultural survival is not based on their fishing industry.

To ensure that fishing limits are extended in order to protect *fishing stocks* rather than *fishermen*, extension, if agreed upon, should be coupled with an obligation for the national government to regulate access to its fishing grounds on a non-discriminatory basis. The coastal state must charge similar ships from different countries the same rent in order to allow free competition for the use of its scarce resource. Extension of national fishing limits will then not unduly protect national fishing industries. A country's fishing fleet may not be able to compete on its fishing grounds with fishermen from other countries. Yet the citizens of the country as a whole will be enjoying rents by selling fishing licences to the most efficient (foreign) fishermen. This leads us to ask how the proposed extended fishing limits will affect the global distribution of income.

### Income Distribution

When a coastal state can sell fishing rights, it is evident that the sea is a natural resource with a scarcity value for its owner. This "ocean rent" accruing to the owner-country can be distributed among its citizens in various ways. It is distributed to the fishermen if they are allowed to fish free while foreign fishermen must pay. It is distributed to the citizens in the form of lower taxes or increased public goods depending on how licence fees are used.

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We must therefore pose the following question. What countries should enjoy the rents from those parts of the high seas that traditionally have been considered not the property of a single nation, but a global commons open and free to all, which the General Assembly of the United Nations in a resolution in 1970 called "a common heritage of mankind"? The answer to this basic distributional question depends on one's value judgements. Here I shall suggest some consequences for income distribution of alternative apportioning of fishing rights.

A general extension of national fishing limits redistributes income to countries in proportion to the length of their coasts adjacent to rich fishing grounds. Since most grounds are on the continental shelf, a fishing limit of 200 nautical miles means a *de facto* "nationalization" of a major part of the present world fishing catch. Countries most dependent on long-distance fishing in current international waters will suffer most. Today these happen to be the USSR and Japan. Tomorrow they might be expanding fishing nations such as Peru, China, or India.

This arbitrary way of redistributing income to coastal states might be accepted if one thinks it is reasonable that landlocked countries are to have no part in the commonwealth of the seas. Yet it is possible that rich fishing grounds are so unevenly distributed that extended national fishing limits systematically redistribute income from poor to rich countries. The Dutch representative at the Caracas conference pointed out that the richest fishing grounds — like the richest countries — are located in the temperate zones. Consequently, while both developed and less developed landlocked countries will lose, developed coastal countries will tend to gain relatively more than less developed coastal countries.

#### **Preferential Fishing Rights**

While extension of fishing limits early achieved wide support at the Caracas conference, a more sober attitude developed as it drew to an end and delegates realized the arbitrary nature of distributing income implied by extending fishing limits. Understanding grew for the "geographically disadvantaged countries" and for less developed countries as these groups demanded preferential fishing rights within the proposed fishing limits of others. Consequently, a complex system of preferential fishing rights may develop. Unfortunately this will be determined by the bargaining strength of the parties rather than by the needs of the recipient or the capacity of the donor.

An additional problem is caused by those countries which have historically fished in international

waters and now find these nationalized by another state. Should these countries give away their part in a common heritage only to be refused fishing rights there tomorrow — or at best have to buy fishing rights back?

British fishermen have traditional fishing rights outside of Iceland and the Faeroe Islands. The UK and USSR have traditionally fished off Northern Norway. Japan claims a historic right to fish the waters off Korea and in the Okhotsk Sea. Swedish and German fishermen have traditionally fished in the North Atlantic which may be nationalized by Norway, etc. After the Conference, Iceland, the Faeroe Islands, the UK and Norway announced their intention to introduce a 200 mile limit. These countries are engaged in major conflicts of historic rights and their actions will lead to a major restructuring of fishing patterns in the North Atlantic. An expensive adjustment process in the fishing industry could be avoided if an international authority were established to sell fishing rights on a non-discriminatory basis to countries. Negotiations could then be limited to how to distribute the authority's revenue among member countries.

It may be objected that national rather than international ownership of natural resources has historically been the rule. This is a correct observation. Far from being an objection to an international authority, however, it is appropriate that a former "commons" should be owned by the international community rather than divided between the adjacent national states.

#### **More Work Remains**

The delegates to the Third Conference discovered that redefining property rights to the natural resources of the oceans was more complex than most had expected. A simple extension of national fishing limits has unexpected distributional effects and is perhaps not the most efficient method to conserve fishing stocks. Furthermore, it leads to significant adjustment costs as the world's fishing industry must adapt to new fishing patterns. The delegates have now gone home to order studies on distributional effects, efficiency, and adjustment costs of alternative extensions of fishing limits. Before reconvening in Geneva, they should also consider what functions an international authority should be endowed with in order to be an efficient alternative to extension of national fishing limits. There are many indications that such an authority would not be politically feasible today. The delegates of the small countries should perhaps reflect on the aspects of the international system that render efficient and equitable solutions politically unacceptable.