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SET AND DRIFT

The U.S. Coast Guard, National Security, and Fisheries Law Enforcement

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THE MISSIONS AND TASKS OF THE United States Coast Guard include maritime environmental protection, coastal defense, port safety and security, search and rescue, and boating safety.¹ In addition, among U.S. military agencies, it has the primary mandate for the enforcement of maritime laws and treaties.² This mission has made the Coast Guard a highly visible U.S. presence in the world; it can be argued, in fact, that the service is an extension of the U.S. diplomatic corps.

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This is nowhere more the case than with respect to fisheries, an area that combines law enforcement and national security matters at the highest level. Presidential Decision Directive NSC-36 asserts “our country’s important environmental, national security, and economic interests in sustainable management of ocean resources. . . . The United States will show domestic and international leadership on sustainable management of the world’s fisheries. Fish are increasingly important as a food source. . . . Yet many fisheries are already exploited at or beyond sustainable levels. . . . Coastal states [like the United States] have the most responsibility for fisheries and coastal zone management, as 90 percent of the world’s fish catch takes place within the 200-mile exclusive economic zones (EEZs).”³ President William J. Clinton has stated that the Fisheries Act of 1995 “demonstrates the extent to which the United States is involved, and must remain involved, in international initiatives with global impact.”⁴ The U.S. Coast Guard is at the forefront of this involvement; for example, in most circumstances it consults the Department of State when it seeks to board a foreign-flag vessel.⁵

This essay will explore the U.S. Coast Guard’s activities in this combined realm of fisheries protection and national security, through the enforcement of laws, regulations, and treaties. First, however, some background is necessary, under both rubrics.

Fish Facts—and National Security Redefined

“The United States ranked fifth in the world for fisheries landings as reported by the Food and Agriculture Organization (FAO) of the United Nations in 1993, its latest survey year. The U.S. catch was 5.9% of the world’s total catch of marine and freshwater fisheries products. The FAO survey also ranked the United States second in value for imports as well as exports of these products.”⁶ In 1994, the U.S. landed 4.7 million metric tons, valued at \$3.8 billion; this represents an increase in value of 11 percent since 1993, even though volume was down from six million metric tons in that year. In 1993, the United States imported 5.6 billion pounds of edible and industrial commercial fishery products; in 1994, imports totalled 5.8 billion pounds; and in 1995, imports made up 45.8 percent of the total 19.3 billion pounds landed. There are some 94,800 commercial fishing vessels in the United States.⁷ Commercial fisheries contribute approximately \$50 billion annually to the nation’s economy, providing employment for fishermen, suppliers, and processors, and lending identity to hundreds of coastal communities.⁸

As is clear from these statistics and those of Table 1 and Figure 1, the U.S. commercial fishing industry is important to the U.S. economy and the American people. Today, however, as noted above, that industry is threatened: 40 percent of U.S. stocks are overfished, and, according to the FAO, about 70 percent of the

Table 1
Fishery Products Exports, 1992 and 1993

	1992		1993	
	(thousand pounds)	(thousand dollars)	(thousand pounds)	(thousand dollars)
Fresh and frozen	1,793,762	2,696,076	1,752,970	2,400,081
Canned	178,390	306,944	127,470	236,121
Cured	16,268	39,627	8,418	23,025
Caviar and roe	84,222	411,499	82,725	405,820
Prepared meals, etc.	14,964	11,521	14,431	11,766
Nonedible products		3,653,965		3,848,468
Grand Total		7,119,632		6,925,281

Source: Fisheries Law Enforcement Conference, Anchorage, Alaska, April–May 1996 (see endnote 7), after U.S. Dept. of Commerce, Bureau of the Census.

world's fish stocks are either fully or heavily exploited, overexploited, depleted, or only slowly recovering.⁹

This threat is an urgent one for the post–Cold War era, in which national security is being to some extent redefined in economic terms.¹⁰ The problem of dwindling fish populations in the world's oceans has produced numerous disputes—among nations as well as among fishermen.¹¹ In the words of a mid-grade U.S. naval officer, “The depletion of maritime resources is a direct threat to coastal nations’ economic security. To counter the threat they have begun to extend control beyond the EEZ. It is this expansion of state control which has brought about the rise in the number of fishing disputes and these disputes have the potential to escalate into major incidents because coastal nations are operating outside their EEZ contrary to [the 1982 UN Convention on the Law of the Sea].”¹²

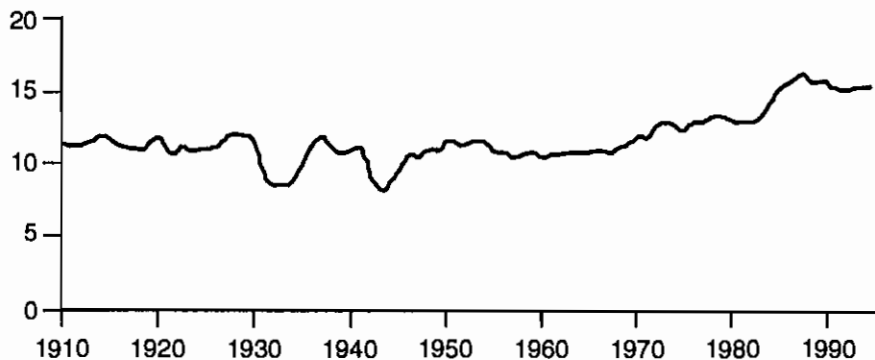
However present fishing disputes are resolved, it is inevitable that such enforcement activities will move farther out onto the high seas. That prospect will bring additional responsibilities for coast guards, which are able to protect a nation’s jurisdiction in the fisheries without necessarily invoking security measures. To meet this growing task, coast guards in general are likely to be increased in size, particularly in numbers of large, seaworthy vessels.

U.S. and International Law and Agreements

The U.S. Coast Guard is responsible for, or involved in the enforcement of, or in other ways associated with, a wide variety of statutes and agreements—

Figure 1

**U.S. Annual Per Capita Consumption of
Commercial Fish and Shellfish, 1910-1994**
(Pounds)



Source: Fisheries Law Enforcement Conference, Anchorage, Alaska, April - May 1996

national, international, bilateral, and regional. Specifically, it is empowered to make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas, as well as waters over which the United States has jurisdiction, to prevent, detect, or suppress violations of American law.¹³ Boarding officers check reports of harvesting for accuracy, inspect the fish holds to make sure that their contents match the vessel's logs and that any required catch reports properly reflect the vessel's operations.

Of U.S. laws in this area, the Magnuson Act of 1976, as amended in 1990, is the most important. It establishes the framework for fisheries conservation and management for the United States. Its subchapter entitled "Foreign Fishing and International Fishery Agreements" states in part, and with certain specified exceptions, that "After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, or for anadromous species [i.e., those that ascend rivers to breed] or Continental Shelf fishery resources beyond the exclusive economic zone."¹⁴ The Act assigns enforcement responsibilities to the Secretary of Commerce, the Secretary of Transportation, and the Coast Guard, who may for this purpose "by agreement . . . utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense."¹⁵

Table 2**Agreements to Which the U.S. Is a Party and That Are Subject to Enforcement by the U.S. Coast Guard**

Atlantic Salmon Convention
U.S.-Canada Reciprocal Enforcement Agreement
U.S.-Canada Policy of Mutual Restraint
North Atlantic Fisheries Convention
International Convention for the Conservation of Atlantic Tunas
UN Moratorium Prohibiting the Use of High Seas Driftnets
U.S.-Mexico Maritime Boundary Agreement
U.S.-Colombia Vasquez-Saccio Treaty
Bering Sea "Doughnut Hole" Resolution
U.S.-Russia Maritime Boundary Agreement
U.S.-Russia Mutual Fisheries Agreement
North Pacific Anadromous Species Convention
U.S.-Canada Pacific Salmon Treaty
U.S.-Canada Pacific Albacore Tuna Treaty
U.S.-Japan Consultative Committee on Fisheries
International Pacific Halibut Convention
South Pacific Tuna Treaty

The Magnuson Act was originally conceived to create a U.S. commercial fishing industry to harvest the resources off the nation's shores. Most fishing in U.S. coastal waters had been done by fleets of foreign factory trawlers. The Act codifies the American two-hundred-mile EEZ, which, because of the length of the U.S. coastline, is the largest in the world. Since the Magnuson Act became law, the U.S. Coast Guard has patrolled the EEZ with ships and aircraft, seizing foreign vessels fishing illegally in the zone, with its larger cutters maintaining a continuous presence to prevent incursions.

As for fisheries-related agreements subject to direct enforcement by the U.S. Coast Guard, even a partial summary (see Table 2) lends considerable credence to the assertion that the service is in the forefront of diplomatic relations in this important area. In addition, it enforces a number of Governing International Fishery Agreements, known as GIFAs, by which, under the Magnuson Act, certain foreign nations may legally fish within the American EEZ (Table 3).

Some of the most important such agreements, with which the Coast Guard is heavily involved, concern "straddling stocks," fish that exist in both an EEZ and

Table 3

**Governing International Fisheries Agreements
Effective as of 31 January 1996**

Estonia
Republic of Korea
Latvia
Lithuania
People's Republic of China
Poland
Portugal (through the European Union)
Russia (through U.S.-USSR Agreement on Mutual Fisheries Relations)
Spain (through the European Union)

the adjoining high seas, and also "transboundary stocks," fish that exist in more than one adjacent EEZ. The problem is, of course, that fish do not observe the two-hundred-mile limits. Some of the most contentious disputes between nations, including the United States, are over straddling stocks.¹⁶ Expressing a wide consensus, one scholar writes that the "lack of effective high seas enforcement may be the major outstanding problem of decision making in the international law of fisheries."¹⁷ On 4 August 1995 the "Agreement for the Implementation of Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks" was adopted in New York by a UN conference convened on the issue. The United States, a party to the conference, signed on 4 December; on 21 August 1996 it deposited its instrument of ratification of the agreement. Three nations, of which the United States is one, have deposited such instruments; thirty are needed to bring the agreement into force. Forty-two governments have signed it. The United States will, nevertheless, press regional organizations and other structures dealing with straddling fish stocks to implement the key provisions of this agreement.

The Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, which entered into force in 1993, established a North Pacific Anadromous Fish Commission. The Convention gives the U.S. Coast Guard the right to board and inspect fishing vessels (belonging to states that are party to the Convention) that are fishing for anadromous stock or that boarding officers believe may have incidental catches of anadromous stocks on board. The Coast Guard may seize such vessels and arrest their crews (though only the flag state may prosecute them).

In 1993 the United States concluded an agreement with the People's Republic of China on the effective implementation of UN General Assembly Resolution

56-215 regarding driftnet fishing. This agreement provides for reciprocal authority to board vessels suspected of conducting, or of being equipped to conduct, large-scale driftnet fishing on the high seas of the North Pacific Ocean. Under it, the U.S. Coast Guard has embarked Chinese enforcement officers on each of its cutters assigned to the mission. In fiscal year 1995 the Coast Guard devoted 129 cutter-days and 295 aircraft-hours to a very successful effort to deter high seas driftnet activity.¹⁸

The Convention on the Conservation of Pollock Resources in the Central Bering Sea, commonly referred to as the "Doughnut Hole" treaty, establishes twenty-four-hour notification of all transshipments of fish in the Convention area so that enforcement officials have an opportunity to observe the vessels offload.¹⁹

A recent example of Coast Guard involvement in the diplomacy of fisheries enforcement was the eighth meeting of the U.S.-Russian Intergovernmental Consultative Committee, in Washington, D.C., during February 1996. At this meeting the United States (with two Coast Guard officers in the delegation) and Russia initialed an agreement on the conservation of straddling stocks in the so-called "peanut hole" of the central Sea of Okhotsk. Once in force, this agreement may give U.S. fishermen preferential access to the area should stocks there recover sufficiently to allow a resumption of fishing.

The Coast Guard has an even broader role in, effectively, international relations than in the area of fisheries. "In the Cold War days," recalls Vice Admiral Arthur Henn, the Vice Commandant of the U.S. Coast Guard, "when smaller countries aligned themselves with either the United States or the Soviet Union, they built up their navies. Today these countries are more domestically focused. They want to use their navies to do coast guard-like missions, and they are looking to the U.S. Coast Guard for advice and training. [Recently] the United States wanted to have nuclear proliferation talks with Kazakhstan, but they weren't interested. However," the Vice Commandant added, "they did want to talk with the U.S. Coast Guard."²⁰ The Coast Guard has prepared a "Model Maritime Service Code" that it uses for training in foreign countries, with sample regulations for those wishing to "stand up" their own coast guards.

Fisheries enforcement continues to be a vital mission. Healthy and abundant living marine resources are a priority for the United States as well as for the rest of the world. The Coast Guard's participation in that area, working closely with the State Department, diminishes the possibility of misunderstanding and dispute. Participating at every level to ensure that international and domestic fisheries management laws and regulations are enforced, the Coast Guard is uniquely suited for this responsibility because of its rapid responsiveness and operational flexibility. Its international reputation, high visibility in humanitar-

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ian efforts, and the low profile of its military aspects make the service an increasingly important instrument of diplomacy.

Notes

1. The Coast Guard has four missions: enforcement of maritime law and treaties, marine environmental protection, coastal defense, and boating safety. At-sea search and rescue is subsumed under boating safety, port safety and security under coastal defense, and migrant and drug interdiction under law enforcement.

2. *U.S. Code*, Title 14, sec. 89; *Magnuson Fishery Conservation and Management Act of 1976*, *U.S. Code*, Title 16 [hereafter Magnuson Act], sec. 1801 et seq. Paragraph 3.11.4.3 of the Department of the Navy's *The Commander's Handbook on the Law of Naval Operations*, Naval Warfare Publication 1-14M (Washington, D.C.: October 1995), states:

U.S. Coast Guard Responsibilities in Counterdrug Operations. The Coast Guard is the primary maritime law enforcement agency of the United States. It is also the lead agency for maritime drug interdiction and shares the lead agency role for air interdiction with the U.S. Customs Service. The Coast Guard may make inquiries, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection and suppression of violations of the laws of the United States, including maritime drug trafficking. Coast Guard commissioned, warrant and petty officers may board any vessel subject to the jurisdiction of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect and search the vessel and use all necessary force to compel compliance. When it appears that a violation of U.S. law has been committed, the violator may be arrested and taken into custody. If it appears that the violation rendered the vessel or its cargo liable to fine or forfeiture, the vessel or offending cargo may be seized.

Coast Guard commissioned, warrant and petty officers are also designated customs officers, providing them additional law enforcement authority.

3. U.S. President, *U.S. Policy on Protecting the Ocean Environment*, Presidential Decision Directive NSC-36 (Washington, D.C.: 5 April 1995).

4. William J. Clinton, Statement on Signing the Fisheries Act of 1995, 3 November 1995, *Weekly Compilation of Presidential Documents*, vol. 31, issue 45.

5. Under a procedure established by Presidential Directive 27, of 19 January 1978, the Coast Guard has twenty-four-hour access to a State Department official who must approve the boarding of a foreign vessel. The boarding officer must also obtain a Statement of No Objection from Coast Guard Headquarters in Washington, D.C., before proceeding.

6. U.S. Dept. of Commerce, *Our Living Oceans: Report on the Status of U.S. Living Marine Resources* (Washington, D.C.: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1995), p. 3.

7. Fisheries Law Enforcement Conference (co-sponsored by the National Oceanic and Atmospheric Administration, the Dept. of Justice, the U.S. Attorney's Office District of Alaska, and the U.S. Coast Guard), Anchorage, Alaska, 30 April to 2 May 1996.

8. Briefing to the Secretary of Transportation, U.S. Coast Guard, January 1996.

9. For U.S. stocks, *ibid.* For world stocks, The White House, press release regarding the Fish Stocks Agreement, Office of the Press Secretary (Washington, D.C.: 20 February 1996), p. 6; and Satya N. Nandan, "The Law of the Sea Convention: Conserving and Managing Straddling Fish Stocks and Highly Migratory Fish Stocks," in Myron H. Nordquist, ed., *Proceedings: Center for Oceans Law and Policy Nineteenth Annual Seminar, "Toward Senate Consideration of the 1982 Law of the Sea Convention: A Tribute to the Honorable John R. Stevenson," June 29-30, 1995, Washington DC* [hereafter *COLP Proceedings 1995*] (Charlottesville, Va.: Univ. of Virginia School of Law, 1996) p. 56.

10. Sir James Eberle, "Law and Order at Sea: Military and Economic Security in the Atlantic," *COLP Proceedings 1995*, p. 40.

11. See, for example, Michael Parfit, "Diminishing Returns: Exploiting the Ocean's Bounty," *National Geographic Magazine*, November 1995.

12. William A. Ford (Lt. Cdr., USN), *Too Few Fish: A Study of Fishing Disputes*, Strategic Research Department Research Report 4-95 (Newport, R.I.: U.S. Naval War College, Center for Naval Warfare Studies, 9 May 1995).

13. *U.S. Code*, Title 14, sec. 89.

14. Magnuson Act, sec. 1801(b).

15. *Ibid.*, subchap. III, sec. 1821(a).

16. Thomas A. Clingan, Jr., "Dispute Settlement under the Law of the Sea Treaty, with Particular Reference to Fisheries Disputes" (paper presented to the Law of the Sea Conference, University of Washington School of Law, Seattle, Wash., 11-12 July 1995).

17. William T. Burke, *The New International Law of Fisheries: UNCLOS 1982 and Beyond*, Oxford Monographs in International Law (Oxford, U.K.: Clarendon Press, 1994), p. 345.

18. Vince O'Shea (Capt., USCG), "Enforcement of Living Marine Resources Management Measures and the Law of the Sea," *COLP Proceedings* 1995, p. 283.

19. For background on the "doughnut hole" and the pollock issue, see John H. McNeill, "America's Maritime Boundary with the Soviet Union," *Naval War College Review*, Summer 1991, esp. pp. 47-50.

20. Robert Wyman (Petty Officer 1st Class, USCG), "Senior Advisory Group Tackles Key Issues," *U.S. Coast Guard Commandant's Bulletin*, April 1966, p. 11.

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