EXTENSION OF OCEAN DUMPING LEGISLATION UNDER THE MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT TO A UNITED STATES EXCLUSIVE ECONOMIC ZONE

President Reagan's March 10, 1983 Proclamation declaring a 200-mile Exclusive Economic Zone for the United States brings in issue the application of national legislation to that zone. This comment examines the feasibility of extending domestic ocean dumping legislation under the Marine Protection, Research, and Sanctuaries Act to a United States Exclusive Economic Zone in the context of existing international agreements dealing with ocean dumping.

INTRODUCTION

On March 10, 1983, President Reagan issued a Presidential Proclamation declaring an Exclusive Economic Zone (EEZ) for the United States.[1] An EEZ is a zone contiguous to the territorial sea[2] which extends 200 nautical miles from the baseline.[3] Within the EEZ, the United States asserts sovereign rights over living and nonliving natural resources to the extent permitted by international law.[4] The EEZ Proclamation establishes United States sovereignty over the zone for the purpose of exploration, exploitation, conservation, and management of these resources;[5] and jurisdiction to protect and preserve the marine environment, and to maintain artificial is-

1. Proclamation No. 5030, 48 Fed. Reg. 10,605 (1983) *reprinted in* 16 U.S.C.A. § 1453 (West Supp. I 1983) [hereinafter cited as EEZ Proclamation].

2. The territorial sea of the United States is a zone extending three miles from the baseline. *See* United States v. Postal, 589 F.2d 862, 869 (5th Cir. 1979); Public Notice 358, 37 Fed. Reg. 11,906 (1972). The baseline is the low water line along the coast. Convention on the Territorial Sea and the Continguous Zone, Apr. 29, 1958, art. 3, 15 U.S.T. 1608, T.I.A.S. No. 5639, 516 U.N.T.S. 2058. The territorial sea is measured as provided for in the Convention on the Territorial Sea and the Contiguous Zone. *Id.* arts. 3-13. The contiguous Zone of the United States extends 12 miles. *Id.* art. 24. For a discussion of the maritime jurisdiction of the United States, see Feldman & Colson, *The Maritime Boundaries of the United States*, 75 AM. J. INT'L L. 729, 730-33 (1981).

3. EEZ Proclamation, *supra* note 1, at 10,605. *See also supra* note 2.

4. *Id.*

5. *Id.*

lands, installations, and structures.,6][5] Establishment of an EEZ enables the United States to take limited additional steps towards protecting the marine environment within that zone.[7]

The establishment of a United States EEZ requires analysis of the applicability of existing domestic legislation regulating marine pollution to the EEZ. This Comment will examine the extension of the ocean dumping provisions of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA)[8] to such a zone. Analyzing the application of MPRSA to an EEZ necessitates an examination of the proposed EEZ enabling legislation currently pending in Congress[9] and pre-existing international agreements, particularly the United Nations Convention on the Law of the Sea (1982 Convention)[10] and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention).[11]

BACKGROUND

Marine Pollution

Marine pollution is an international problem.[12] The oceans cover over seventy percent of the earth's surface and play a critical role in maintaining a balanced world environment.[13] They serve as habitat to fish and wildlife.[14] Oceans are economically valuable to man, providing food and mineral resources, transportation, recreation, and an

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6. *Id.*

7. Statement by the President, 19 WEEKLY COMP. PRES. DOC. 383 (March 10, 1983) [hereinafter cited as Presidential Statement].

8. 33 U.S.C. §§ 1401-1445 (1976 & Supp. V 1981).

9. S. 750, 98th Cong., 1st Sess., 122 CONG. REC. S2551-53 (1983); H.R. 2061, 98th Cong., 1st Sess. (1983). The Senate and House versions are virtually identical except the Senate version includes additional amendments to the Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801-1882 (1982), in section 103, subsection (11) of S. 750. All references to the enabling legislation will be made to the House version. (Both versions of the legislation give its short title as "Exclusive Economic Zone Implementation Act.") [hereinafter cited as EEZ Implementation Act].

10. U.N. Doc. A/CONF.62/122 (1982), *reprinted in* 21 INT'L LEGAL MATERIALS 1261-1354 (1982) [hereinafter cited as 1982 Convention]. On December 10, 1982, the date the 1982 Convention was opened for signature, 117 States and two other entities became signatories. *Id.* at 1261, 1477. The United States announced July 1, 1982, that it would not sign the Convention, citing portions of the Convention's deep seabed mining provisions which are contrary to United States' interest and policy. United States Delegation Report, Eleventh Session of the Third United Nations Conference on the Law of the Sea, app. I (New York, March 8-April 30, 1982) (statement by James Malone, special representative of the President for the Law of the Sea).

11. Dec. 29, 1972, 26 U.S.T. § 2403, T.I.A.S. No. 8165 entered into force for the United States August 30, 1975 [hereinafter cited as London Convention].

12. *See* 1 G. TIMAGENIS, INTERNATIONAL CONTROL OF MARINE POLLUTION 112 (1980).

13. COUNCIL ON ENVIRONMENTAL QUALITY, REPORT TO THE PRESIDENT, OCEAN DUMPING: A NATIONAL POLICY iii (1970) [hereinafter referred to as OCEAN DUMPING REPORT].

14. *Id.*

esthetically pleasing setting for a substantial portion of the nation's population.[15] However, society has traditionally used the oceans as a vast waste disposal site; sewage, chemicals, garbage and other wastes are carried to the sea by air, waterways and ocean vessels.[16] Ocean pollution causes deleterious effects to the marine ecosystem, hazards to human health, and a reduction in the socioeconomic and esthetic quality of the marine environment.[17]

Ocean dumping is the deliberate disposal of any material at sea through means other than runoff from land.[18] Waste materials dumped at sea include dredge spoils, industrial waste, sewage sludge, construction and demolition debris, solid waste, explosives, chemical munitions, radioactive wastes, and other materials.[19] In 1968, man dumped forty-eight million tons of wastes into the oceans.[20] Ocean dumping is an exceptionally harmful form of ocean pollution.[21]

Ocean dumping occurs primarily in international waters and is therefore an international concern.[22] Effective control of dumping must start on land.[23] Most ocean-dumped wastes are generated on land and dumped into the ocean by ships.[24] Anti-dumping controls primarily regulate the loading of wastes for the purpose of ocean dumping.[25] MPRSA, the 1982 Convention and the London Convention provide a regulatory framework to control the deliberate dump-

15. *Id.*
16. *Id.; see also* 1 G. TIMAGENIS, *supra* note 12, at 109.
17. INTERAGENCY COMM. ON OCEAN POLLUTION RESEARCH, DEVELOPMENT, AND MONITORING, FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY, REPORTS OF THE SUBCOMMITTEES WORKING PAPERS 2-5 FOR THE FEDERAL PLAN FOR OCEAN POLLUTION RESEARCH, DEVELOPMENT, AND MONITORING, FISCAL YEARS 1979-83 at 170 (1979).
18. 1 G. TIMAGENIS, *supra* note 12, at 109.
19. OCEAN DUMPING REPORT, *supra* note 13, at 1.
20. *Id.*
21. The amount of ocean-dumped wastes accounts for a relatively small proportion of total marine pollution. OCEAN DUMPING REPORT, *supra* note 13, at iii. Ocean dumping accounts for less than ten percent of all ocean pollution. 1 G. TIMAGENIS, *supra* note 12, at 111. Despite the beneficial effects of dumping certain non-toxic wastes in poor seas, *id.*, ocean-dumped wastes often contain heavy concentrations of materials toxic to both human and marine life which deplete the oxygen level necessary to maintain the marine ecosystem resulting in the reduction of marine life, resources and esthetics. *See* OCEAN DUMPING REPORT, *supra* note 13, at v. For a discussion of the problem of ocean dumping, see Lumsdaine, *Ocean Dumping Regulation: An Overview*, 5 ECOLOGY L.Q. 753, 754-60 (1976).
22. *See* 1 G. TIMAGENIS, *supra* note 12, at 117.
23. *Id.* at 118.
24. *Id.*
25. *Id.* at 117-18.

ing of materials at sea.[26]

Current Regulation

The Marine Protection, Research, and Sanctuaries Act of 1972 is the domestic legislation designed to control ocean dumping.[27] The purpose of MPRSA is to prevent or strictly limit the ocean dumping of any material which would endanger human health, welfare, amenities, and the marine environment, ecological systems and economic resources.[28] The Act establishes a permit system to regulate dumping which affects the territorial sea or contiguous zone of the United States.[29] The Environmental Protection Agency (EPA) is assigned to administer the Act.[30]

The Act prohibits the transportation[31] of any material from the United States, or from United States registered craft, for the purpose of dumping it into ocean waters,[32] except as authorized by permit and subject to regulations.[33] It similarly limits the dumping of any materials originating from a location outside the United States, into or affecting the territorial sea or contiguous zone of the United States.[34] The Act prohibits the transportation from the United States of any radiological, chemical, or biological warfare agents or high-level radioactive waste for the purpose of ocean dumping.[35]

Permits may only be issued subject to an EPA determination that dumping will not unreasonably degrade or endanger human health, welfare, or amenities of the marine environment, ecological systems, or economic potentialities.[36] To make such a determination, the Act

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26. Deliberate dumping of materials at sea is distinguishable from ship-generated, accidental, emergency and operational discharges. MPRSA, the 1982 Convention, and the London Convention limit their regulatory scheme to intentionally dumped materials although special provisions regulate emergency dumping. MPRSA, 33 U.S.C. § 1415(h) (1976), does not impose sanctions for emergency dumping. The 1982 Convention provisions on ocean dumping direct States to adopt their own laws and regulations and to develop international agreements to address ocean dumping. 1982 Convention, *supra* note 10, art. 210, paras. 1, 4. Although the London Convention does not specifically regulate emergency dumping, it does provide for special emergency permits which may be obtained according to a consultative procedure. London Convention, *supra* note 11, art. V, paras. 1, 2.

27. 33 U.S.C. § 1401(c) (1976).

28. *Id.* § 1401(b).

29. *Id.* § 1411.

30. *Id.* § 1402(a).

31. The Act defines "transport" or "transportation" as the "carriage and related handling of any material by a vessel, or by any other vehicle, including aircraft." *Id.* § 1402(k).

32. *Id.* § 1411 (a).

33. *Id.* § 1411(b). Ocean Dumping Regulations of the Environmental Protection Agency, promulgated pursuant to 33 U.S.C. §§ 1412, 1418 are found at 40 C.F.R. §§ 220-229.3 (1983) [hereinafter referred to as EPA Ocean Dumping Regulations].

34. 33 U.S.C. § 1411(b) (1976).

35. *Id.* § 1412(a).

36. *Id.*

directs the EPA to consider several specific criteria.[37]

The EPA, in reliance on the factors designated in the Act,[38] established criteria for the issuance of ocean dumping permits. Several categories of permits are issued.[39] These categories are established according to the above-mentioned criteria, the type of material, potential environmental impact, and volume of dumping. General permits are issued for materials which will produce a minimal adverse environmental impact.[40] Special permits, not to exceed three years, are issued for materials with more than minimal adverse environmental impact.[41] The EPA also issues emergency permits,[42] research permits,[43] and permits for incineration at sea.[44] The Act provides for acceptance of foreign state permits issued in accordance with the

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37. These criteria are:
(A) The need for the proposed dumping.
(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.
(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shorelines, and beaches.
(D) The effect of such dumping on marine ecosystems, particularly with respect to—
(i) the transfer, concentration, and dispersion of such material and its by-products through biological, physical, and chemical processes,
(ii) potential changes in marine ecosystem diversity, productivity, and stability, and
(iii) species and community population dynamics.
(E) The persistence and permanence of the effects of the dumping.
(F) The effect of dumping particular volumes and concentrations of such materials.
(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.
(H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and nonliving resource exploitation.
(I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.
Id.

38. *Id.*

39. *Id.* § 1412(b). Categories of permits are delineated in the EPA Ocean Dumping Regulations, *supra* note 33, § 220.3.

40. 33 U.S.C. § 1414(c) (1976); EPA Ocean Dumping Regulations, *supra* note 33, § 220.3(a).

41. 33 U.S.C. §§ 1412(b), 1413(a), (b), 1414(c); EPA Ocean Dumping Regulations, *supra* note 33, § 220.3(b).

42. EPA Ocean Dumping Regulations, *supra* note 33, § 220.3(c).

43. *Id.* § 220.3(e).

44. *Id.* § 220.3(f). Generally, the dumping of fish wastes is not regulated by the Act except when such dumping occurs in harbors or enclosed waters or endangers health, the environment, or ecological systems at that location, 33 U.S.C. § 1412(d), and consequently the EPA does not issue such permits. EPA Ocean Dumping Regulations, *supra* note 33, §§ 220.1(c)(1), (2).

Act and the London Convention.[45]

The Marine Protection, Research, and Sanctuaries Act of 1972 provides enforcement mechanisms to maintain its regulatory scheme.[46] The Act grants the EPA authority to revoke, modify, and limit permits[47] and to impose civil penalties for violations of permit conditions.[48] The Act also provides for a private civil cause of action to enjoin violations[49] and for criminal action against knowing violators.[50] Additionally, the Attorney General may seek injunctive relief.[51] The United States Coast Guard is responsible for surveillance and other appropriate enforcement activities to prevent unlawful dumping.[52]

The Marine Protection, Research, and Sanctuaries Act of 1972 was amended in 1974 in an attempt to make the Act consonant with the London Convention.[53]

London Convention

The London Convention is the major global agreement designed to control ocean dumping.[54] The Convention was opened for signature on December 29, 1972 and became effective on August 30, 1975.[55] The United States initiated the negotiations which led to the London Convention.[56] The Convention is an international treaty requiring

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45. 33 U.S.C. § 1412(e) (Supp. V 1981).
46. 33 U.S.C. § 1417 (1976).
47. *Id.* § 1415(f).
48. *Id.* § 1415(a).
49. *Id.* § 1415(d).
50. *Id.* § 1415(b).
51. *Id.* § 1415(g).
52. *Id.* § 1417(c). MPRSA contains additional provisions which regulate marine research programs, 33 U.S.C. §§ 1441-1445 (1976 & Supp. V 1981). This Comment will focus only on ocean dumping sections.
53. *See* S. REP. NO. 726, 93d Cong., 2d Sess. 1-21, *reprinted in* 1974 U.S. CODE CONG. & AD. NEWS 2792.
54. For an overview of international agreements on ocean dumping, see Kuersteiner & Herbach, *In Pursuit of Clean Oceans—A Review of the Marine Protection, Research and Sanctuaries Act*, 18 SANTA CLARA L. REV. 157, 159-63 (1978); and on marine pollution before the London Convention, see Lanctot, *Marine Pollution: A Critique of Present and Proposed International Agreements and Institutions—A Suggested Global Ocean's Environmental Regime*, 24 HASTINGS L.J. 67, 76-81 (1972).
55. *See* London Convention, *supra* note 11, 26 U.S.T. at 2403. For a list of signatories see *id.* at 2481-83.
56. *See* Letter of Submittal by W. Rogers, Department of State, Convention on the Prevention of Marine Pollution, Message from the President of the United States, February 28, 1973, 93d Cong., 1st Sess. at v; 1 G. TIMAGENIS, *supra* note 12, at 171-73. The 1970 Ocean Dumping Report recognized that international agreement was essential to the preservation of the marine environment. OCEAN DUMPING REPORT, *supra* note 13, at v. The 1970 Ocean Dumping Report eventually led to the enactment of MPRSA. *See* S. REP. NO. 451, 92d Cong., 1st Sess., *reprinted in* 1972 U.S. CODE CONG. & AD. NEWS 4235-40. President Nixon's February 8, 1971 Environmental Message to Congress recommended the United States develop and pursue international initiatives directed toward the regulation of ocean dumping. President's Message Outlining 1971 Environmen-

member States to establish national systems to control pollution of the seas by dumping.[57]

The London Convention requires each signatory State to establish its own national system for controlling the shipment of wastes and other matter for the purpose of ocean dumping.[58] Enforcement and implementation of the Convention is left to party States; each State must take appropriate steps to ensure that the terms of the Convention apply to its flagships and aircraft.[59] MPRSA was amended in 1974 to bring the Act into conformance with the Convention.[60]

The London Convention recognizes the marine environment is of vital importance to humanity and immediate international action is necessary to control pollution of the sea by dumping of waste and other matter which creates hazards to human health, living resources and marine life, endangers amenities and interferes with legitimate uses of the sea.[61]

The Convention prohibits the dumping of wastes, except as allowed pursuant to a national permit system.[62] Similar to MPRSA, the Convention categorizes waste substances and provides for special and general dumping permits.[63] Annex I of the Convention contains a "black list" of substances that cannot be dumped under normal circumstances;[64] Annex II contains a "grey list," indicating waste substances which require special permit;[65] all other wastes require general permits.[66] All permits must comply with the technical considerations found in Annex III.[67]

The London Convention includes an emergency exception to the permit requirement.[68] No permit is required when immediate dumping is necessary to secure the safety of human life. Additionally, no permit is required in cases of *force majeure*, where dumping appears the only method of averting the danger and the expected damage from such dumping would be less than otherwise would occur.[69]

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tal Program, 7 WEEKLY COMP. PRES. DOC. 187, 194-95 (Feb. 8, 1971).

57. London Convention, *supra* note 11, art. I.
58. *Id.*
59. *Id.* art. VII.
60. *See supra* note 53 and accompanying text.
61. London Convention, *supra* note 11, preamble.
62. *Id.* art. IV.
63. *Id.* art. IV, Annexes I and II.
64. *Id.* art. IV, para. 1(a).
65. *Id.* art. IV, para. 1(b).
66. *Id.* art. IV, para. 1(c).
67. *Id.* art. IV, para. 2.
68. *Id.* art. V.
69. *Id.* art. V, para. 1. Unlike MPRSA which prohibits emergency dumping of

The Convention contains provisions designed to facilitate interaction among signing States for the purpose of controlling dumping. Parties are encouraged to enter into regional agreements to prevent and regulate dumping,[70] and to collaborate in the development of scientific and technical research and facilities to monitor and control ocean dumping.[71]

The terms of the London Convention were expressly designed not to derogate the development of the 1982 Convention and the legal views of the States with regard to the law of the sea and the nature and extent of coastal and flag State jurisdiction.[72] Accordingly, the Convention is designed to be consonant with recognized principles of international law.

1982 United Nations Convention on the Law of the Sea

The 1982 United Nations Convention on the Law of the Sea establishes a legal order for the seas in a wide variety of areas[73] including conservation of living resources, and the study, protection, and preservation of the marine environment.[74] On December 10, 1982, the 1982 Convention was opened for signature. At that time 117 States and two other entities became signatories.[75] The United States voted against the treaty[76] and announced in July, 1982 that it would not sign the Convention, citing dissatisfaction with the Convention's deep seabed mining provisions as contrary to the United States' interest and policy.[77]

Although not a signatory to the 1982 Convention, the United States does recognize those provisions of the 1982 Convention which relate to economic zones and traditional uses of the oceans.[78] Accordingly, the United States will abide by the treaty provisions rec-

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banned substances, (EPA Ocean Dumping Regulations, *supra* note 33, § 220.3(c)), the London Convention allows emergency dumping of prohibited wastes, subject to a special permit procedure. London Convention, *supra* note 11, art. V, para. 2.

70. London Convention, *supra* note 11, art. VIII.

71. *Id.* art. IX. Additionally, the Convention provides for collaboration among party States to develop procedures for assessment of liability and settlement of disputes regarding dumping. *Id.* art. X. The Convention also provides for regular meetings to review implementation of the Convention and to consider any necessary additional action. *Id.* art. XIV.

72. *Id.* art. XIII.

73. The objective of the 1982 Convention is to facilitate international communication, promote peaceful use of the seas, and equitable and efficient utilization of ocean resources. 1982 Convention, *supra* note 10, preamble, 21 INT'L LEGAL MATERIALS at 1271.

74. *Id.*

75. 1982 Convention, *supra* note 10, 21 INT'L LEGAL MATERIALS at 1261.

76. United States Delegation Report, Eleventh Session of the Third United Nations Conference on the Law of the Sea, app. H (New York, March 8-April 30, 1982).

77. *Id.* at app. I (statement by James Malone, special representative of the President for the Law of the Sea); Presidential Statement, *supra* note 7.

78. Presidential Statement, *supra* note 7.

ognizing coastal State jurisdiction over dumping.

The 1982 United Nations Convention on the Law of the Sea establishes the obligation of States to protect and preserve the marine environment.[79] It requires States to take all measures necessary to ensure that activities under their jurisdiction or control are not causing pollution in other States.[80] Signatory States agree to establish global minimal standards regarding ocean dumping.[81] Specific provisions direct States to adopt measures to prevent, reduce, and control pollution of the marine environment by dumping.[82] Dumping is allowed only by permission of competent government authorities.[83]

The 1982 United Nations Convention on the Law of the Sea establishes an exclusive economic zone for each of its signatories (1982 Convention EEZ).[84] Both the United States EEZ and the 1982 Convention EEZ grant coastal States sovereignty and jurisdiction over living and nonliving resources within the zone.[85] This jurisdiction extends to the protection and preservation of the marine environment,[86] and accordingly to ocean dumping.[87] Dumping within a territorial sea, exclusive economic zone or onto the continental shelf may only be conducted with express prior approval of the coastal State.[88] Coastal States have the right to regulate and control such dumping.[89] The 1982 Convention grants specific enforcement power, consistent with the Convention and international rules and standards,[90] to: (1) coastal States with regard to dumping within their territorial

79. 1982 Convention, *supra* note 10, art. 192. The 1982 Convention directs States to take individual or joint measures to prevent, reduce, and control pollution of the marine environment. *Id.* art. 194, para. 1.

80. *Id.* art. 194, para. 2. The 1982 Convention seeks global and regional cooperation to formulate methods to monitor, research, regulate and control marine pollution. *Id.* arts. 197-201. It directs States to monitor the effects of pollution, publish reports, and assess the potential effects of activities which may cause substantial pollution. *Id.* arts. 204-206.

81. *Id.* art. 210, para. 4. National dumping legislation must meet or exceed minimal global standards. *Id.* art. 210, para. 6.

82. *Id.* art. 210, paras. 1, 2.

83. *Id.* art. 210, para. 3.

84. *Id.* arts. 55-57.

85. *Id.* art. 56. EEZ Proclamation, *supra* note 1, at 10,605.

86. 1982 Convention, *supra* note 10, art. 56, para. 1(b)(iii); EEZ Proclamation, *supra* note 1, at 10,605. The 1982 Convention directs coastal States to develop internal mechanisms to control marine pollution. *Id.* art. 56, *see also* arts. 210, 216, 218, 220.

87. *See* 1982 Convention, *supra* note 10, arts. 56, para. 1(b)(iii), 73, 210, para. 5, art. 216, para. 1(a).

88. *Id.* art. 210, para. 5.

89. *Id.*

90. *Id.* art. 216, para. 1.

sea or their exclusive economic zone or onto their continental shelf;[91] (2) flag States with regard to vessels flying their flag or vessels or aircraft of their registry;[92] and (3) to any State with regard to acts of loading of wastes or other matter occurring within their territory or at their offshore terminals.[93] Party States must recognize the rights and duties of coastal States and comply with laws and regulations adopted by coastal States in accordance with the 1982 Convention and compatible international law.[94] Coastal States are granted enforcement powers as necessary to ensure compliance with laws and regulations adopted in conformity with the 1982 Convention.[95]

Limitations of Current Regulation

Current legislation does not provide complete control of ocean dumping activities. Ocean dumping is an international concern, and domestic regulation of dumping cannot alone provide effective control of pollution by dumping.[96] Existing international agreements designed to control ocean dumping are recognized only by party States and others who acknowledge their authority. Nonmember States pose significant enforcement problems and limit comprehensive control of marine pollution. Individual State efforts to control ocean dumping will never be entirely effective in the absence of a universal commitment. MPRSA, the 1982 Convention and the London Convention all direct States to seek effective international action to protect the marine environment. States must jointly work towards the development of comprehensive international agreements designed to protect and preserve the marine environment.

Summary of Current Regulation

The Marine Protection, Research, and Sanctuaries Act, the London Convention, and the 1982 Convention manifest a commitment to protect and preserve the marine environment. Each establishes a regulatory framework designed to control ocean dumping. Both the London Convention and the 1982 Convention establish an international regime directing party States to develop internal legislation to control dumping through a permit system. The London Convention establishes minimum standards for the issuance of dumping permits. MPRSA is the current domestic legislation designed to regulate ocean dumping. Minimum dumping standards formulated in MPRSA are stricter than those found in the London

91. *Id.* art. 216, para. 1(a).
92. *Id.* art. 216, para. 1(b).
93. *Id.* art. 216, para. 1(c).
94. *Id.* art. 58, para. 3.
95. *Id.* art. 73, para. 1.
96. *See* 1 G. TIMAGENIS, *supra* note 12 at 112, 117-20.

Convention, and unlike the 1982 Convention provisions, MPRSA does not present a comprehensive system for dumping within a United States EEZ. Notably, each regulatory system is designed to be consistent with recognized principles of international law.

DISCUSSION

The United States EEZ and its Effect on Ocean Dumping

The United States EEZ declared by President Reagan extends United States sovereign rights and jurisdiction to a zone extending 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.[97] However, the Proclamation states sovereignty and jurisdiction within the EEZ will be exercised in accordance with international law.[98]

Discovery of mineral resources and interest in developing them probably provided the impetus for the EEZ Proclamation.[99] However, the Proclamation provides the United States with sovereign rights and jurisdiction over all living[100] and nonliving resources within the EEZ.[101] President Reagan has formally recognized that the United States enjoys sovereignty and jurisdiction within the EEZ to protect and preserve the marine environment.[102]

The Marine Protection, Research, and Sanctuaries Act regulates dumping of wastes by foreign source vessels which affects the territorial sea and contiguous zone but does not regulate dumping which affects the entire EEZ. Since 1976 the United States has exercised limited management and conservation authority over fisheries resources within 200 nautical miles of the coasts, under the Fishery

97. *See supra* note 1 and accompanying text. The United States has exercised management and conservation authority over fisheries resources, excluding highly migratory species, within a 200-mile zone since the Fishery Conservation and Management Act of 1976. 16 U.S.C. §§ 1801-1882 (1982).

98. EEZ Proclamation, *supra* note 1, at 10,605.

99. The EEZ Proclamation provides the United States with jurisdiction over mineral resources not on the Continental Shelf out to 200 miles. *Id.* Recently discovered deposits of polymetallic sulphides and cobalt/manganese crust could become a major future source of these important economic and strategic minerals. *Id.*; The White House, Office of the Press Secretary, Press Release, Fact Sheet, United States Ocean Policy (March 10, 1983) [hereinafter cited as Oceans Policy] (on file with SAN DIEGO LAW REVIEW).

100. Highly migratory species of tuna are not subject to United States jurisdiction. *See* EEZ Proclamation, *supra* note 1, at 10,605.

101. EEZ Proclamation, *supra* note 1, at 10,605.

102. *Id.* A United States EEZ will "enable the United States to take limited additional steps to protect the marine environment." Presidential Statement, *supra* note 7, at 383.

Conservation and Management Act of 1976.[103] With the advent of a United States EEZ, the United States has jurisdiction and sovereignty within the 200-mile zone to implement a conservation program over all resources within the zone.

Legislation to implement the President's executive action was introduced in the Senate the same day as the President's Proclamation,[104] and in the House the following day.[105] The Exclusive Economic Zone Implementation Act,[106] designed to implement an EEZ and assert national rights within the zone,[107] enumerates three Congressional purposes: (1) to implement an EEZ which will clarify the rights and jurisdiction of the United States and of other States within such a zone;[108] (2) to establish United States' policy regarding the development and use of ocean natural resources;[109] and (3) to bring previously enacted law into conformity with such rights, jurisdiction, and policy.[110] However, the most recent versions of the EEZ Implementation Act do not contain conforming amendments to MPRSA.[111] Instead, federal agencies responsible for implementing any law or program administered within or with respect to the EEZ must suggest conforming amendments.[112] MPRSA, which regulates all dumping by United States flag vessels and by both United States and non-United States flag ships loading on United States lands, will be administered within the EEZ.[113] Thus, if enacted, the EEZ Implementation Act would require the EPA, as administrator of

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103. 16 U.S.C. § 1811 (1982).

104. S. 750, 98th Cong., 1st Sess., 122 CONG. REC. S2551-53, was introduced March 10, 1983. *See supra* note 9.

105. H.R. 2061, 98th Cong., 1st Sess. was introduced March 11, 1983. *See supra* note 9.

106. EEZ Implementation Act, *supra* note 9, preamble.

107. *Id.*

108. *Id.* § 2(b)(1). The Act asserts that the United States maintains sovereign rights to explore, exploit, conserve, and manage both living and nonliving resources within the zone and to carry out other forms of economic exploration and exploitation. *Id.* § 102(1), (2). Sovereign rights and jurisdiction of the United States within the zone are to be exercised in accordance with international law. *Id.* § 103.

109. *Id.* § 2(b)(2). Jurisdiction is maintained with regard to marine environment protection and preservation and the establishment and use of artificial islands and other structures of economic utility. *Id.* § 102(3)(C), (A), (B).

110. *Id.* § 2(b)(3). The Act provides conforming amendments to the Fishery Conservation and Management Act of 1976, *supra* note 97, and various amendments to the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1301-1356 (1976 & Supp. V 1981), and the Deep Seabed Hard Mineral Resources Act, 30 U.S.C. §§ 1401-1473 (1976 & Supp. V 1981). Proposed amendments to the Outer Continental Shelf Lands Act change definitions within that Act. EEZ Implementation Act, *supra* note 9, § 201. Proposed amendments to the Deep Seabed Hard Mineral Resources Act change the title and wording of that Act and incorporate the United States policy of nondiscriminatory access to mineral resources of the deep seabed. *Id.* § 202.

111. *See* EEZ Implementation Act, *supra* note 9, § 2(b)(3).

112. *Id.* § 106(a).

113. 33 U.S.C. § 1411 (1976 & Supp. V 1981).

MPRSA,[114] to submit a report with suggested conforming amendments to the President.[115]

The Marine Protection, Research, and Sanctuaries Act should be amended to provide a comprehensive regulatory scheme for dumping within the EEZ.[116] When MPRSA was drafted,[117] the United States had not asserted jurisdiction and sovereignty beyond its territorial sea and contiguous zone. Consequently, the Act regulates the dumping of all wastes transported: (1) from the United States;[118] (2) by United States registered crafts from any location;[119] and (3) from any location outside the United States which are to be dumped in or which may affect the territorial sea or contiguous zone of the United States.[120] MPRSA does not regulate dumping of foreign source wastes by non-United States flag ships within, or as affects, the 200-mile EEZ. Regulation of such dumping requires new legislation or the amendment of MPRSA. To better effectuate United States policy to regulate all ocean dumping,[121] MPRSA should be amended to regulate the dumping of foreign source wastes by non-United States flag ships within or as affects the EEZ.

Jurisdiction and Conformity with International Law

Domestic legislation may be applied within the EEZ if (1) a jurisdictional basis exists; and (2) the legislation is consistent with international law. MPRSA satisfies these prerequisites.

Domestic legislation may be applied to the EEZ only to the extent the United States maintains sovereign rights and jurisdiction within the zone.[122] United States sovereignty and jurisdiction over its EEZ is limited to those certain powers recognized under international law.[123] Such recognized jurisdiction includes the conservation, management, exploration, and exploitation of living and nonliving re-

114. *Id.* § 1402(a).
115. EEZ Implementation Act, *supra* note 9, § 106(a).
116. MPRSA was enacted in recognition that ocean dumping poses an environmental hazard which must be regulated to control its detrimental effects. 33 U.S.C. § 1401(a), (b), (c) (1976).
117. The first draft of MPRSA, H.R. 9727, was submitted July 17, 1971. H.R. REP. No. 361, 92d Cong., 1st Sess. (1971). A compilation of the legislative history of MPRSA is found reprinted in 1972 U.S. CODE CONG. & AD. NEWS 4234-80.
118. 33 U.S.C. § 1411(a)(1) (1976 & Supp. 1981).
119. *Id.* § 1411(a)(2).
120. *Id.* § 1411(b).
121. *Id.*
122. *See* EEZ Proclamation, *supra* note 1, at 10,605; Oceans Policy, *supra* note 99.
123. Oceans Policy, *supra* note 99.

sources within the zone.[124] The 1982 Convention also recognizes coastal State jurisdiction for the protection and preservation of the marine environment within an EEZ.[125] MPRSA is designed to conserve the marine environment.[126] The United States, in declaring an EEZ, asserts jurisdiction over dumping.[127] Therefore, both domestic and international law recognize a jurisdictional basis for the application of MPRSA within the EEZ.

The second prerequisite MPRSA must satisfy to extend its application to the EEZ is consistency with international regulation.[128] International law must sanction the manner in which the activity is regulated. International law, as embodied by the 1982 Convention and the London Convention, provides for coastal State regulation of ocean dumping, and MPRSA's regulatory scheme is generally consistent with these agreements. The 1982 Convention requires that such laws, regulations and measures shall ensure that dumping within a territorial sea, EEZ, or continental shelf is done only with the express prior approval of competent authorities of the coastal State.[129]

The London Convention directs member States to establish national systems to control, at their ports, the shipment of wastes and other matter for the purpose of ocean dumping.[130] The Convention does not limit the right of member States to adopt other measures, consistent with international law, to prevent ocean dumping.[131] Accordingly, coastal State regulation of dumping within an EEZ is consistent with the Convention.

Although the MPRSA permit system is generally consistent with the 1982 Convention and the London Convention,[132] MPRSA provisions differ from corresponding international law in three respects: (1) the definition of dumping; (2) types of ocean dumping regulated; and (3) sanctions. Before MPRSA's application may be extended to

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124. EEZ Proclamation, *supra* note 1, at 10,605.

125. 1982 Convention, *supra* note 10, art. 56, para. 1(b)(iii); art. 210, para. 5. The 1982 Convention directs States to adopt measures to prevent, reduce, and control dumping pollution of the marine environment.

126. *See* 33 U.S.C. § 1401 (1976 & Supp. 1981).

127. *See* EEZ Proclamation, *supra* note 1.

128. *See id.*

129. 1982 Convention, *supra* note 10, art. 210, para. 3.

130. London Convention, *supra* note 11, arts. IV, VI, VIII.

131. *Id.* art. VII, para. 5.

132. As described, MPRSA, the 1982 Convention, and the London Convention regulate dumping through a permit system. The 1982 Convention directs States to enact legislation to regulate dumping through a permit system. 1982 Convention, *supra* note 10, art. 210, paras. 3, 5. The London Convention's regulatory scheme is also implemented through internal legislation of party States, but additionally sets forth minimum criteria for the issuance of permits. London Convention, *supra* note 11, arts. IV, VI, VII, para. 5, VIII. MPRSA establishes a similar, but stricter, regulatory framework. 33 U.S.C. § 1411 (1976).

the EEZ, these provisions, as applied within the EEZ, must be harmonized with existing international law.

The definition of dumping under MPRSA[133] is broader than that found in the corresponding provisions of the 1982 Convention[134] and the London Convention.[135] MPRSA defines dumping as a "disposition of material."[136] Both the London Convention and the 1982 Convention define dumping as "any deliberate disposal."[137] MPRSA includes both intentional and unintentional disposal of materials within its definition of dumping.[138] These differing definitions may present future problems of interpretation as marine pollution controls become more pervasive.

The Marine Protection, Research, and Sanctuaries Act provides a stricter regulatory framework to control dumping than is otherwise authorized under international law.[139] MPRSA also prohibits the disposal of radiological, chemical, and biological warfare agents and high-level radioactive waste.[140] The London Convention prohibits the

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133. The definition reads as follows:
"Dumping" means a disposition of material: *Provided*, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended under the provisions of section 407 of this title, or under the provisions of the Atomic Energy Act of 1954, as amended, nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: *Provided further*, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: *And Provided further*, That it does not include the deposit of oyster shells, or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.
33 U.S.C. § 1402(f) (1976) (citations omitted).

134. 1982 Convention, *supra* note 10, art. 1, para. 1(5).

135. London Convention, *supra* note 11, art. III, para. 1.

136. MPRSA, 33 U.S.C. § 1402(f) (1976). For the full definition of dumping under MPRSA, see *supra* note 133.

137. *See supra* notes 135-36 and accompanying text.

138. *See supra* note 133 and accompanying text. *See also* Lumsdaine, *Ocean Dumping Regulation: An Overview*, 5 ECOLOGY L.Q. 753, 761-62 (1976) (MPRSA covers nonpurposeful dumping).

139. The disposal of wastes related to deep seabed exploration and exploitation are regulated by MPRSA, 33 U.S.C. §§ 1402(g), 1411 (1976), but are not covered by the London Convention. London Convention, *supra* note 11, art. III, para. 1(c). However, the 1982 Convention directs coastal States to control pollution generated from seabed activities subject to their jurisdiction. 1982 Convention, *supra* note 10, art. 208.

140. MPRSA, 33 U.S.C. § 1412(a) (1976).

disposal of such wastes,[141] but provides special emergency permits for situations posing unacceptable risk relating to human health where no feasible alternative exists.[142] MPRSA does not authorize emergency permits for the disposal of such wastes.[143] Additionally, the criteria for issuing emergency permits for other substances which may be dumped by permit[144] arguably differs from international law.[145]

Sanctions for dumping in violation of MPRSA are harsher than those found in the 1982 Convention and the London Convention. MPRSA provides for the possibility of imprisonment for knowing violations of the Act.[146] The EEZ enforcement provisions of the 1982 Convention prohibit imprisonment unless the States concerned agree.[147] Though not specifically addressing criminal sanctions, the London Convention only recognizes States' enforcement powers to the extent they are consistent with international law[148] and the 1982 Convention.[149] Accordingly, the imposition of some criminal sanctions against violators of ocean dumping laws within an EEZ does not appear to be authorized under international law. To apply MPRSA to a United States EEZ, the imposition of criminal sanctions must be limited with regard to violations by non-United States flag ships transporting foreign source wastes.[150]

Both domestic and international law recognize the right of a coastal State to regulate dumping within an EEZ. A decision to amend MPRSA to apply to an EEZ requires an examination of those provisions within the Act which differ from international law to ensure consistency with international law. Separate standards for the issuance of dumping permits within an EEZ may be appropriate, and separate enforcement provisions for foreign source dumping

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141. London Convention, *supra* note 11, art. IV, para. 1(a).

142. *Id.* art. V, para. 2.

143. EPA Ocean Dumping Regulations, *supra* note 33, 40 C.F.R. §§ 220.3(c), 227.5 (1983).

144. *See id.* at § 220.3(c).

145. The EPA Ocean Dumping Regulations define "emergency" as a "[situation] requiring [actions] with a marked degree of urgency, but is not limited in its application to circumstances requiring immediate action." *Id.* at §220.3(c). The London Convention's definition of emergency does not specifically refer to the urgency of the situation. London Convention, *supra* note 11, art. V, para. 2. The 1982 Convention is silent with regard to prohibited substances and emergency exceptions.

146. MPRSA, 33 U.S.C. § 1415(b) (1976).

147. 1982 Convention, *supra* note 10, art. 73, para. 3 states: "Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment."

148. London Convention, *supra* note 11, art. VII, paras. 2, 5.

149. *See id.* art. XIII.

150. The United States has jurisdiction over activities of its own flag ships and over the loading of material within the United States for the purpose of dumping by any ship. 33 U.S.C. § 1411(a).

within the EEZ by non-United States flag ships may be necessary.

CONCLUSION

Ocean dumping is a serious threat to the vitality of waters off the United States' coasts. A fundamental United States oceans policy is to protect and preserve the marine environment. Existing domestic legislation designed to control ocean dumping fails to provide a comprehensive regulatory scheme for dumping within a United States EEZ.

Current domestic legislation and international agreements are designed to control ocean dumping through a permit system. International agreements recognize coastal State jurisdiction over dumping within an EEZ. As a result of the EEZ Proclamation, the United States also recognizes jurisdiction over dumping within the EEZ.

The Marine Protection, Research, and Sanctuaries Act, the domestic legislation designed to control ocean dumping, does not provide for the regulation of foreign source dumping by non-United States flag ships within or as affects a United States EEZ. Signatories to the 1982 Convention have the right to regulate these activities. The United States has both the right and the responsibility under domestic and international law to act accordingly. MPRSA must be amended to apply to foreign source dumping by non-United States flag ships within the United States EEZ.

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