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Coastal State Responsibility and Rights in Regard to Fisheries Resources in EEZ

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Abstract

Decreasing number of fishery resources impacted by unsustainable fisheries management, climate issues, and the sovereignty system at sea have made fishery conflicts a growing security concern, such as the conflict between Indonesia and Vietnam over the Natura Sea. This dispute is exacerbated by China's militarization efforts, as the fishing industry recognizes its ability to influence the maritime sphere around it. Other Southeast Asian coastal states, such as the Malacca Strait and the Natuna Sea, border Indonesia's EEZ, making it vulnerable to disputes. And if there is a violation of laws and regulations in the territorial sea, the coastal state can apply its criminal law to the violators if the violation has a negative impact on the coastal state or interferes with security. This EEZ regime was established to regulate long-standing disputes over maritime territory and unilateral claims, such as the dispute between Indonesia and Malaysia over the Malacca Strait Sea, which was successfully resolved. As a result, the coastal state has jurisdictional rights to make arrests, as specified in Article 73 concerning the enforcement of the coastal state's laws and regulations.

Keywords: Maritime Security, Fisheries Law, EEZ, Law of the Sea, International Law

1. Introduction

The sea is the most valuable natural resource on Earth, accounting for roughly 71% of the planet's surface. The sea provides protein and omega-3 fatty acids, which are essential for human health. Each year, 200 billion pounds of fish and shellfish are caught for human consumption. Aside from food, the sea serves as a means of transportation and recreation for ships. Mining resources found in the sea include sand, salt, copper, nickel, iron, cobalt, and oil (Marine Bio, 2022). The sea has now become a major focus in environmental studies and conservation. Its role in regulating the Earth's climate is critical; after all, the sea is a source of oxygen and an absorber of blue carbon for the planet (Reef Resilience, n.d.). Because of this, the sea is vital to the continued existence of both humanity and the planet.

Fish is a marine resource that has been used for thousands of years. Fish is an important part of the global economy and human welfare; fisheries currently supply up to 20% of the world's total protein. As a result, fish resources are critical to both human food supply and the aquatic ecosystem itself. The fisheries sector, as the most traded food commodity, generates long-term employment and income opportunities. Particularly in two countries where fish is the primary source of protein, namely Japan and Iceland (FAO, n.d.). Over this, the sustainable management of marine resources has become an issue of serious concern.

Many countries are interested in managing the sea because of the wealth of resources it contains. As a result, the sea has a special place in policies, national and international laws governing its management. The purpose of this is to either prevent or resolve any conflicts that may arise. For instance, situations like illegal fishing, illegal transshipment, and even claims to ownership of specific waters are frequently encountered in the management of fisheries resources. If there are no clear rules for its management, the abundance of fishery resources can lead to conflict and even become a security risk.

Furthermore, the decreasing number of fishery resources impacted by unsustainable fisheries management, climate issues, and the sovereignty system at sea have made fishery conflicts a growing security concern, such as the conflict between Indonesia and Vietnam over the Natuna Sea. The two fishing communities and their respective governments frequently argue over who has jurisdiction over the Natuna Sea's EEZ. In the period 2014-2019, 294 Vietnamese vessels illegally entered Indonesian jurisdiction, including an incident in which a Vietnamese Coast Guard ship collided with an Indonesian Navy ship to protect Vietnamese fishermen who had illegally entered Indonesian sea areas. The overlapping exclusive economic zones in the North Natuna Sea are a frequent source of conflict in the region (Aziz et al., 2020).

The importance of the coastal state in becoming a strategic fishery commodity exacerbates existing maritime disputes. One more illustration of this would be the conflict in the South China Sea. There are frequent disagreements between China, Vietnam, Malaysia, the Philippines, Malaysia, and Taiwan over fishing resources in the South China Sea. These countries have not yet resolved their claims to territorial divisions in the sea, so fishermen are frequently caught in the middle of these disagreements. This dispute is exacerbated by China's militarization efforts, as the fishing industry recognizes its ability to influence the maritime sphere around it. Especially with environmental issues such as climate change, countries that rely on fish protein for nutritional security face a threat. The decline in catches and stocks of fishery resources due to climate change can affect changes in fisheries systems, which has a negative impact on global fisheries management and is feared to trigger conflicts over fisheries resources (Spijkers, 2020).

The wealth of resources owned by the sea provides the countries that have a coast (coastal state) with their own power, also known as "sea power." The existence of sea power became more significant because of two events: (1) the collapse of the colonial empire after 1945, which resulted in the formation of many sovereign states. Because many of the new sovereign states are coastal states, their marine areas are managed and protected by the navy; and (2) the establishment of the 1982 UN Convention on the Law of the Sea (UNCLOS).

As a result of the establishment of the International Law of the Sea regime, which is responsible for determining the maritime territorial boundaries of countries or the Exclusive Economic Zone (EEZ), the coastal state now has the sovereign rights and jurisdictional rights, as outlined in UNCLOS III, necessary to manage, explore, and exploit the marine resources that are located within its territory (Borresen J, n.d.). Then, how does UNCLOS III control the management of fishery resources both within a country's Exclusive Economic Zone and even outside of that country's EEZ?

2. Method

The method that used in this study is normative research. This research conducted by examining the situation based on the statutory approach that related to the existing phenomenon. The data collection conducted through a literature review and existing legal material that correspondent to the topic such as United Nation Convention of

Law of the Sea. While the analytical technique conducted by constructing legal argument by argumentative technique.

3. Discussion

3.1 Exclusive Economic Zone

The Exclusive Economic Zone, also known as the EEZ, is a convention on the international level that controls a zone that stretches from the baseline of a coastal state out to a distance of 200 nautical miles. According to the United Nations Convention on the Law of the Sea from 1982, all nations that have oceans with territorial waters, exclusive economic zones, and contiguous continental shelf are referred to as "coastal states." On the other hand, a coastal state can also be defined as a small or medium-sized nation that is located on the coast of the sea and has jurisdiction over the sea that is immediately adjacent to it (Borresen J, n.d.).

Within the boundaries of the regulated zone, each nation enjoys the privilege of unrestricted access to both biological and non-biological resources. Within the EEZ, the rights of the coastal state extend to all layers of the sea and those that are within it. The EEZ is a concept that aims to protect coastal states' rights to their marine resources, the seabed, and all of its layers and contents, including mineral richness (Borresen J, n.d.). The EEZ and the Continental Shelf Doctrine are conceptually comparable in many ways.

The word "Exclusive Economic Zone" (EEZ) refers to a zone that possesses economic value, and the coastal state possesses exclusive rights to anything that possesses economic value within its particular zone. This is in keeping with the name of the term "EEZ." This indicates that coastal states have the ability to extract and create energy resources within a radius of two hundred miles of the baseline. Strictly speaking, the EEZ states that the coastal state has two things: (1) exclusive jurisdiction over man-made structures, marine scientific research, and the protection and preservation of the marine environment; and (2) sovereign rights for the purpose of exploring and exploiting, conserving, and managing (all) the natural resources of the waters above the seabed and the seabed and subsoil. The exercise of the rights outlined above must, of course, take into account the rights held by people in other countries.

However, when the last sentence of article 56 eliminates the strata that the seabed and subsoil are part of the EEZ, the preceding statement becomes unclear. According to the article's final sentence, "rights relating to the seabed and its subsoil" must be exercised in accordance with Part VI of the continental shelf conventions. The continental shelf, according to Section IV, "does not include the deep seabed with its oceanic ridge or subsoil." The area is a significant portion of the EEZ in many coastal states, causing issues.

From a historical standpoint, the concept of establishing a "fishing zone," such as this EEZ, has been used since the twentieth century. Spain, for example, expanded its territorial sea to include the continental shelf in 1916 because the majority of edible fish species are found in the continental shelf zone. Similarly, on September 28, 1845, America issued two declarations. According to the first declaration, America has the right to explore natural resources on the adjacent continental shelf from its land territory. The second declaration calls for conservation zones and the protection of high-seas fishery resources (adjacent to the coast).

Aside from the two examples given above. More specifically, the EEZ concept was inspired by the 1945 Truman Declaration, which established the right to regulate fishing activities in waters outside the territorial sea of the coastal state. As a result, there has been an increase in unilateral declarations claiming sovereignty over the expanded sea area. Following the Truman Declaration, Latin American countries claimed 200 nautical miles of jurisdiction over fishing activities, foreshadowing the EEZ regime. Kenya then introduced the EEZ concept to the Asian-African Legal Constitutive Committee in 1971, and to the UN Seabed Committee in 1972. Latin American countries are constructing the Patrimonial Sea concept in other parts of the world. The EEZ concept was introduced at the conference in 1974 to replace the freedom to fish outside the territory and open access to high seas fisheries up to 200 AD (Bernard, n.d.).

France, the United States of America, Australia, Russia, the United Kingdom, and Indonesia have the largest and widest EEZ areas. France has the largest and widest EEZ, with an area of 11,691,000 square kilometers, and Indonesia has an EEZ of up to 6,159,031 square kilometers (Bagoes, n.d.). Other Southeast Asian coastal states, such as the Malacca Strait and the Natuna Sea, border Indonesia's EEZ, making it vulnerable to disputes. The EEZ is essentially an effort to strengthen sovereign rights in order to protect marine resources. Aside from all existing disputes, the UNCLOS EEZ concept seeks to protect coastal state marine resources from theft by foreign ships, such as fishing. Many coastal states, including Indonesia, have ratified the EEZ. Indonesia has ratified international law into domestic law through the passage of Law No. 5 of 1983 governing the Indonesian Exclusive Economic Zone (Winarwati, n.d.).

With the granting of jurisdictional rights and exclusive rights as stated in Article 2 of UNCLOS 1982 concerning the legal status of the territorial sea, the airspace above the territorial sea, and the seabed and subsoil as follows:

1. A coastal State's sovereignty includes, in addition to its land area and internal waters, and in the case of an archipelagic State, its archipelagic waters, a sea lane bordering it known as the territorial sea.
2. This sovereignty extends to the airspace above the sea, as well as the seabed and subsoil.
3. Sovereignty over territory is exercised in accordance with this Convention and other international legal principles.

As a result, if there is a violation of laws and regulations in the territorial sea, the coastal state can apply its criminal law to the violators if the violation has a negative impact on the coastal state or interferes with security. Criminal jurisdiction on board foreign ships is governed by UNCLOS Article 27 paragraph 1: The coastal State's criminal jurisdiction cannot be exercised on board foreign ships crossing the territorial sea to arrest anyone or conduct investigations into any crime committed in the territorial sea, except in the following cases: on board during such passage (United Nations, 1982):

1. If the crime's consequences are felt in the coastal state;
2. If the crime disturbs the peace of the state or involves the territorial sea;
3. If the captain of the ship has requested assistance from local authorities through the diplomatic representative or consular official of the flag State; or
4. If such action is required to combat illicit narcotics or psychotropic substance trafficking.

3.2 International Law about Fisheries in EEZ

Article 73 UNCLOS discusses the enforcement of the coastal State's laws and regulations regarding the exploration and exploitation of fishery resources, so that if a foreign ship violates the laws and regulations concerning the conservation of fishery resources, the coastal state can capture the foreign ship. However, by meeting the requirements of Article 73, which states:

1. In exercising its sovereign right to explore, exploit, conserve, and manage living resources in the exclusive economic zone, the coastal State may take such measures as necessary, including boarding, inspecting, arresting, and conducting judicial proceedings, to ensure compliance with applicable laws and regulations.
2. Arrested ships and crews must be released immediately after an appropriate deposit or other form of security is provided.
3. In the absence of an otherwise agreed-upon agreement between the States concerned, penalties imposed by the coastal State for violations of fisheries laws and regulations in the exclusive economic zone may not include confinement or any other form of corporal punishment.
4. If a foreign vessel is arrested or detained, the coastal State must promptly notify the flag State, via appropriate channels, of the action taken and any penalties imposed.

According to the explanation above, the captured ship and crew must be released immediately with a reasonable bond given to the coastal state, and the punishment does not take the form of imprisonment, because the coastal state in the EEZ concept only has "sovereign rights," not sovereignty.

In particular, international law of the sea discusses the management of fisheries resources in section 5 of UNCLOS III, which contains 15 articles. Furthermore, UNCLOS III regulates the granting of access to foreign parties in the coastal state's EEZ, as stated in article 62 (Kurnia, n.d.):

1. Without prejudice to the provisions of Article 61, the coastal State must promote the goal of optimal utilization of living resources in the exclusive economic zone.
2. The coastal state must assess its ability to exploit the exclusive economic zone's biological resources. If the coastal State is unable to utilize the entire allowable catch, the coastal State, through treaties or other arrangements and in accordance with the provisions, requirements, laws, and regulations in paragraph 4, allows other States to exploit the catch that can be exploited. is permitted by paying particular attention to the provisions of articles 69 and 70, particularly those relating to developing countries mentioned therein.
3. In giving other countries the opportunity to enter their exclusive economic zone under this Article, the coastal State must consider all relevant factors, including, inter alia, the importance of the living resources in its area for the coastal State's economy and other national interests, the provisions of Articles 69 and 70, the need for developing countries in the sub-region to take advantage of a portion of the surplus, and the need to protect the coastal State's interests.

UNCLOS III regulates not only resource management within the Exclusive Economic Zone, but also the Additional Zone and the high seas, as discussed in article 24 paragraph 1. The Additional Zone is a sea area that extends beyond the baseline (12 miles) but does not exceed 24 miles. Unlike the EEZ, the state's power in the Additional Zone is limited to preventing customs, tax, and immigration violations in its territorial sea. According to Article 24 paragraph 1, the high seas zone connected to the territorial sea of the coastal state has the authority to carry out the following supervision:

1. Preventing violations of customs, taxation, immigration, and health-care laws and regulations;
2. The authority to punish violations or regulations relating to the aforementioned legislation.

Three United Nations conferences were held to discuss the development of the International Law of the Sea (UNCLOS).

According to UNCLOS III, coastal states should have exclusive jurisdiction over fisheries in extended economic zones. The grant of fisheries management rights to coastal states is motivated by three factors: (1) It is possible to establish a functional fisheries management regime by enforcing coastal state jurisdictions. The 200-mile distance was established because most fisheries are within 200 miles of shore. (2) Fisheries will be easier to control, resulting in less overfishing and overcapitalization of fishing fleets; and (3) Coastal states will be able to enforce EEZ rules for everything. As a result, the fisheries management theory applicable in the EEZ is deemed sufficient to regulate fisheries under the established jurisdiction's control (Christie, 2006).

3.3 Fisheries Resources Conflict in EEZ

The Exclusive Economic Zone is a feature for managing and conserving marine resources. This regime will control unilateral water claims by establishing a 200 nautical mile zone that extends from the baseline. Furthermore, by granting the coastal state exclusive rights in the form of sovereign rights and jurisdictional rights to manage, explore, exploit, and conserve various types of marine resources, both above, within, and on the seabed of their territory (JMOL, n.d.).

Several disputes have been successfully resolved under the EEZ regime over unilateral claims made by the coastal state, such as the dispute between Indonesia and Malaysia over the Malacca Strait Sea border. The dispute arose as a result of a lack of clarity in international law governing the territorial boundaries of coastal states; problems like this became the impetus for the establishment of UNCLOS III in 1982. Because both countries had ratified the 1982 United Nations Convention on the Law of the Sea, the dispute between the two countries was settled using the EEZ concept. Indonesia ratified UNCLOS III through Law Number 17 of 1985, and Malaysia ratified it in 1996.

The Malacca Strait Sea area is less than 400 miles wide, and the two countries are facing each other, which is at the heart of the dispute. Indonesia feels disadvantaged in terms of defense, security, politics, and the economy in this situation. Because both countries have ratified the International Law of the Sea, UNCLOS III is the reference for resolving this dispute.

Because not all regions have the same area and the determination of each country's Exclusive Economic Zone cannot be the same, UNCLOS has arranged this one-of-a-kind case. This is stated in Article 15 concerning the determination of territorial sea boundaries between coastal states facing each other, namely: "In the event that the coasts of two States are opposite or adjacent to each other, neither of them has the right, unless there is an agreement to the contrary between them, to determine its territorial sea limits exceed the median line, the points of which are equidistant from the nearest points on the baselines from which they are equidistant from the median line, the points of which are.

The above provisions, however, do not apply if there are reasons for historical rights or other special circumstances that necessitate determining the territorial sea boundaries between the two countries in a manner other than the above provisions. Finally, the dispute between the two countries can be settled through litigation or non-litigation, as specified in article 280 regarding dispute resolution by a peaceful means chosen by the parties. Both countries have fulfilled their obligations as ratifying countries under the UN Convention on the Law of the Sea, specifically Article 279 regarding the obligation to settle disputes peacefully in accordance with Article 2 paragraph 3 of the United Nations Charter and Article 33 paragraph 1 (Yuseini et al., n.d.).

Article 187 specifically mentions the dispute resolution referred to in Article 279 above, namely the selection of producers. Each country that ratifies the UN Convention on the Law of the Sea is free to choose how to resolve disputes, including (JMOL, n.d.):

1. International Criminal Court;
2. The International Court of Justice for the Law of the Sea;
3. The special arbitral tribunal established under Annex VIII;
4. The special arbitration tribunal is established in accordance with Annex VIII for one type of dispute.

The dispute between Indonesia and Malaysia has been referred to the International Court of Law of the Sea for resolution (Christie, 2006). In accordance with Article 56 concerning the rights, jurisdiction, and obligations of the coastal State in the Exclusive Economic Zone, both countries have the same rights over the EEZ area in the Malacca Strait Sea. The coastal state has sovereign rights to explore, exploit, conserve, and manage natural resources (biological and non-biological) in the economic zone, according to paragraph 1 of the article. Then, in paragraph 2, it is explained that in exercising the aforementioned rights, the coastal state must consider the rights and obligations of other states.

This EEZ regime was established to regulate long-standing disputes over maritime territory and unilateral claims, such as the dispute between Indonesia and Malaysia over the Malacca Strait Sea, which was successfully resolved. However, several disputes remain unresolved, such as maritime territorial disputes in the South China Sea. Disputes in the South China Sea over maritime territorial claims can be divided into two categories: history and law.

China claims that traditional fishermen have been exploring the Spratly and Paracel Islands since 200 BC. The territorial waters of Indonesia, Malaysia, the Philippines, and Vietnam surround the two islands. As a result, resolving this dispute becomes more difficult. The following is a table of demands for the nine dasher-lined lines established by China in 1947 during Chiang Kai-Sek's National Government : (Junef, n.d.).

1. On the basis of historical records dating back to the Han Dynasty, China filed a claim in the South China Sea in 1887.
2. Vietnam sued the Spratly Islands in 1802 based on Emperor Gea Ling's history.
3. The Philippines claimed in 1946 at the United Nations General Assembly that Japan had ceded the Spratly Islands to the Philippines.
4. Malaysia published a map of the Malaysian Continental Shelf in 1979, indicating that a portion of the

Spratly Islands belonged to Malaysia.

5. Brunei protested the Malaysian Continental Shelf map in 1979 and filed a claim for ownership of Louisa Reef, which is located within the Brunei Exclusive Economic Zone.

However, UNCLOS does not recognize historical claims to marine areas in this case. One principle is known as "*uti possidetis juris*," which states that the territory or state boundary follows the territory of the colonizer or his predecessor. Because previous rulers had clearly defined state boundaries in an agreement, new countries only continued what they had inherited, this concept is thought to be more capable of creating border stability. However, in this case, China, the Philippines, and Vietnam all claim the Spratly Islands on historical grounds.

Legally, the coastal countries directly adjacent to the South China Sea issued legislation claiming and regulating the area but ignored their rights and obligations under the International Law of the Sea Convention (UNCLOS III), despite the fact that the disputing countries ratified the convention. For example, the Philippines claimed the Spratly Islands through a Presidential Regulation issued in 1978, and China through PRC Rule Number 55 of 1992 (Junef, n.d.).

More countries, particularly ASEAN members such as Indonesia, now have an indirect interest in determining the area of the South China Sea. This complicates the resolution of the dispute. According to Annex V, section 2, disputes concerning the delimitation of seas, historical bays, or historical rights are resolved through conciliation, according to UNCLOS III, article 289.

3.4 Coastal States' Rights in EEZ

In general, each coastal state is granted two equal rights in its exclusive economic zone. In article 56 of UNCLOS III, which explains the rights, jurisdiction, and obligations of coastal states in the exclusive economic zone, the rights obtained by the coastal state are clearly defined. First, the coastal state has sovereign rights over all layers of the sea for the purposes of exploration, exploitation, conservation, and management of natural resources (biological and non-biological). With these rights, the coastal state can take advantage of its territory's abundance of marine resources, such as energy production from water, currents, and wind. Second, in addition to exploration and exploitation rights, the coastal state has jurisdictional rights, such as the creation and use of artificial islands, installations, and buildings; marine scientific research; and the protection and preservation of the marine environment.

The two rights have actually explained that the management of various resources in the EEZ area, including fishery resources, is a matter of the coastal state. UNCLOS regulates fisheries resource management within the EEZ, which is more closely related to the conservation and management of fishery resources on the high seas. The high seas are sea areas with no sovereignty, which means that no one owns the territory, and anyone can use it.

UNCLOS III, in particular, has regulated coastal states' rights in managing fishery resources in Section 2 concerning Conservation and Management of Biological Resources on the High Seas. Article 116, which discusses the right to fish on the high seas, states that all countries have the right to allow their citizens to fish on the high seas, subject to international treaty obligations; coastal states' rights and obligations are defined in articles 63 to 67.

Furthermore, Article 117 explains the state's obligation to take action in relation to its citizens for the conservation of living resources on the high seas. UNCLOS has mandated that all countries take action or collaborate with other countries to conserve living resources on the high seas. Article 118 describes country cooperation in the conservation and management of biological resources. The article encourages the state to work with other countries to conserve and manage living resources on the high seas.

The conservation of biological resources is specifically mentioned in Article 119 paragraph 1 in determining the number of allowable catches and matters concerning the conservation of liver resources on the high seas. States

should take planned actions based on the best scientific evidence to maintain and restore populations of caught fish species. States should also produce scientific information, catch statistics, and data on fishing effort.

UNCLOS III specifically regulates fishing on the open seas because the rules governing fisheries management in the Exclusive Economic Zone are clearly regulated in the coastal State's sovereign rights and jurisdiction. The open seas are sea areas where the state's sovereignty, sovereign rights, and jurisdiction do not apply. The open seas are the seas that are free and open to all countries, such as:

1. Freedom of sailing;
2. Freedom of flight;
3. Freedom to lay submarine cables and pipelines, subject to Chapter VI;
4. Freedom to build artificial islands and other installations permitted under international law, subject to Chapter VI;
5. Freedom to fish, subject to the conditions set out in section 2;
6. Freedom of scientific research, subject to Chapters VI and XIII.

Various freedoms granted to all countries on the high seas must continue to pay attention to the rights stipulated in UNCLOS III (Pinem, n.d.).

Essentially, all countries that ratify the International Law of the Sea UNCLOS III implement all policies or regulations contained in the conventions that have been agreed upon, signed, and ratified. Indonesia, for example, in the Law of the Republic of Indonesia No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 Concerning Fisheries. The first section of the law states that the waters under Indonesian sovereignty and the Indonesian Exclusive Economic Zone, as well as the high seas containing potential fish resources and as fish farming land, are mandated to be used as much as possible by Indonesia, taking into account existing carrying capacity and sustainability. for the sake of the Indonesian people's well-being and prosperity.

3.5 Conclusion

According to history, regulations concerning marine waters are closely related to the management of "fishing zones," such as when Spain expanded its territorial sea in 1916, because the majority of the species of fish eaten are found in the continental shelf zone. Fisheries are a valuable economic resource, and many countries are fighting for the right to manage, explore, and exploit their fishery resources. As a result, clear rules for regulating the use of fishery resources are required to avoid conflict and the decline of fish populations, as regulated in UNCLOS III Part 2 concerning Conservation and Management of Biological Resources on the High Seas.

The Exclusive Economic Zone is essentially a concept that seeks to secure marine resources in all of their layers, both in the sea and on the seabed, by strengthening the coastal state's sovereign rights to protect its waters, such as the practice of illegal fishing by ships. foreign. As a result, the coastal state has jurisdictional rights to make arrests, as specified in Article 73 concerning the enforcement of the coastal state's laws and regulations.

Because most fisheries are within 200 miles of the coast, it is hoped that the establishment of the EEZ regime will result in the establishment of a functional fisheries management regime. The fisheries sector will be easier to manage, resulting in less overfishing and overcapitalization of fishing fleets. Thus, the fisheries management applicable in the EEZ is deemed sufficient to regulate fisheries under the control of the coastal state's sovereignty and jurisdictional rights, as stated in UNCLOS III articles 2; 27; 62; and 73.

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