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July 21, 1993

To: David Donager
NSC Environment Office

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Fm: Larry Snead
United Nations - New York

Follows for your information is our mark-up of the Canadian
Draft Convention on the Conservation and Management of
Straddling Fish Stocks and Highly Migratory Fish Stocks.

*Filed
for*

re: EEZ
still the
problem?



General Assembly

Distr.
LIMITED

A/CONF.164/L.11
14 July 1993

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993

DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING
FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

(Submitted by the delegations of Argentina, Canada,
Chile, Iceland and New Zealand)

General comments:

1. - Would take many years to negotiate a binding Convention - A Statement of principles is a more realistic goal
2. ^{Must} ~~Should~~ apply in EEZs as well as on high seas
3. Draft raises basic jurisdictional disputes that probably can't be resolved in this forum.

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The Parties to this Convention

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Convention:

inconsistent with Flagging Agreement

(a) "international conservation and management measures" means measures to conserve or manage one or more straddling fish stocks or highly migratory fish stocks on the high seas that are adopted and applied in accordance with the principles of international law as reflected in the United Nations Convention on the Law of the Sea and, in particular, such measures adopted or approved by regional or subregional fisheries conservation organizations or under regional fisheries conservation arrangements;

(b) "exclusive economic zone" means the exclusive economic zone as defined in article 55 of the United Nations Convention on the Law of the Sea and includes ~~200-nautical-mile~~ fishing zone *of up to 200 n.m.*

(c) "fishing vessel" includes any ship or boat or any other description of vessel used in or equipped for:

(i) fishing or processing or transporting fish from fishing grounds; or

(ii) provisioning, servicing repairing or maintaining any vessels of a fishing fleet while at sea;

(d) "flag State" means the State whose flag a vessel is entitled to fly;

(e) "highly migratory fish stocks" means stocks of fish species listed in Annex I to the United Nations Convention on the Law of the Sea;

(f) "Parties" means parties to this Convention;

(g) "port State" means a State in whose port or offshore terminal a vessel entitled to fly the flag of another State is present;

too vague
(h) "regional or subregional fisheries conservation arrangement" means a regional or subregional arrangement or agreement involving two or more States, including the relevant coastal State or States, for the purpose of conserving and managing straddling fish stocks or highly migratory fish stocks on the high seas;

could exclude fishing nations - inconsistent with Art. 64 of UNCLOS
(1) "regional or subregional fisheries conservation organization" means a regional or subregional organization involving two or more States, including the relevant coastal State or States, which adopts conservation and management

Add "ecologically related species"

how? why?

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measures with respect to straddling fish stocks or highly migratory fish stocks on the high seas;

(j) "regulatory area" means an area of the high seas in respect of which a regional or subregional fisheries conservation organization adopts conservation and management measures or to which a regional or subregional fisheries conservation arrangement applies;

(k) "State" includes any regional economic integration organization to which its member States have transferred competence over matters covered by this Convention; *Ab - REVO's are not 'States' - need different formulation*

(l) "straddling fish stocks" means stocks occurring both within the exclusive economic zone of a coastal State and in an area beyond and adjacent to that zone and includes stocks of associated species.

Article 2

Application

This Convention shall apply to straddling fish stocks and highly migratory fish stocks on the high seas.

Article 3

Objective

The objective of this Convention is to establish, in accordance with the principle of sustainable development, an effective regime for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, consistent with the United Nations Convention on the Law of the Sea.

PART II

CONSERVATION AND MANAGEMENT

Article 4

Conservation and management measures

Parties shall implement conservation and management measures

(a) Which shall:

(i) Be designed, on the best scientific evidence available, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence

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of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

- (ii) Take into consideration the effects on ^{ecologically related} species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened;
- (iii) Recognize and give effect to the special interest of coastal States in straddling fish stocks and highly migratory fish stocks on the high seas; *U.S. does not recognize any special interest of coastal States as to HMs on high seas*
- (iv) Be designed so as not to have an adverse impact on straddling fish stocks and highly migratory fish stocks within the jurisdiction of coastal States; *U.S. would not accept this version of the "consistency principle" as to HMs*
- (v) Be consistent with the conservation and management measures applied by the relevant coastal State or States within their exclusive economic zones; *Same as (iv)*
- (b) And shall include:
- (i) Continuous scientific review and assessment of the state of stocks;
- (ii) The establishment of total allowable catches and quotas, as appropriate;
- (iii) Provisions to ensure that fishing effort (number of vessels and fishing days) is commensurate with total allowable catches and quotas, as appropriate;
- (iv) Establishment of minimum mesh size *if appropriate; or other relevant gear requirements*
- (v) Promotion of the development and use of selective fishing gear and practices that minimize waste *and bycatch*
- (vi) Provisions to ensure that fishing activities on the high seas minimize incidental catch; *and other relevant data*
- (vii) Full, detailed, accurate and timely reporting of catches and effort;
- (viii) Provisions to ensure effective surveillance and control of fishing activities.

Article 5

Precautionary measures

Parties shall, in order to achieve the objective of this Convention, apply appropriate precautionary measures. *(Where there are threats of serious or irreversible damage to straddling fish stocks or highly migratory fish stocks,*

too limiting

1...

Should be stronger

the lack of full scientific certainty shall not be used as a reason to postpone such measures.

Article 6

Provision of information

Parties shall ensure that fishing vessels entitled to fly their flag provide them with such information on their operations as may be necessary to enable them to fulfil their obligations under this Convention and, in particular, shall cooperate with other Parties to:

- (a) Promote enhanced collection on the high seas of data necessary for the conservation and management of straddling fish stocks and highly migratory fish stocks;
- (b) Develop and share analytical and predictive tools such as stock assessment and bio-economic models;
- (c) Exchange on a regular basis up-to-date data and information necessary for stock assessment;
- (d) Establish or expand appropriate monitoring and assessment programmes.

PART III

SURVEILLANCE AND CONTROL

Article 7

Surveillance and control measures

In order to ensure effective conservation and management, Parties shall take measures to ensure effective surveillance and control which, with due regard to the particular circumstances in individual regions, shall include:

- (a) A uniform and internationally recognizable vessel marking system, such as the Food and Agriculture Organization of the United Nations (FAO) Standard Specifications for the Marking and Identification of Fishing Vessels;
- (b) Regular inspections at sea;
- (c) Aerial surveillance;
- (d) Locational transponders on each fishing vessel or monitoring of vessel operations by satellite;
- (e) On-board observers;
- (f) Regular hailing of catches, either by radio or using computer technology;

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(g) Catch verification and validation through dockside monitoring of landed catches and market statistics;

(h) Arrangements with the relevant coastal State or States for the use or sharing of their resources for aerial surveillance, inspection platforms and observers, with a view to minimizing costs for both the regional fisheries conservation organization or arrangement and the coastal State or States concerned;

Could present implementation problems
(i) Provision for appropriate resources to monitor vessel location and catches, and to detect infractions of international conservation and management measures, including those in respect of quotas;

(j) Authorization of fishing effort commensurate with quota or catch shares;

(k) Licensing of vessels for specific quotas; *per-vessel quotas?*

(l) Rules for the provision of accurate and timely catch and effort data.

PART IV

ENFORCEMENT

Article 8

Flag State authorization

With respect to fishing vessels entitled to fly their flag, Parties shall:

(a) Establish and operate a licensing system to authorize such vessels to fish on the high seas and require them to carry licences when fishing on the high seas;

(b) Provide for information to be contained in such fishing licences sufficient to enable them to exercise effectively their responsibilities under this Convention in respect of such vessel;

(c) Prohibit in national legislation fishing on the high seas by such vessels without licences;

(d) Take measures to ensure that fishing vessels entitled to fly their flag operating in an area of the high seas adjacent to the exclusive economic zone of a coastal State do not fish in that exclusive economic zone in contravention of the laws and regulations of the coastal State.

Duplicator + could jeopardize Flagging Agreement

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Article 9

Offences by vessels or nationals

*practical + legal
problem*

Parties shall take such measures as may be necessary to ensure that fishing vessels entitled to fly their flag or ~~(their nationals)~~ do not engage in any activity which undermines the effectiveness of international conservation and management measures, including:

(a) The enactment of national legislation, making it an offence to engage, in any regulatory area, in any activity which undermines the effectiveness of international conservation and management measures;

(b) The investigation of suspected offences;

(c) The initiation of compliance action (e.g., warnings, orders, directions, injunctions, prosecutions) consistent with the nature and gravity of the offence;

(d) The establishment of penalties which shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Convention and to deprive offenders of the benefits accruing from their illegal activities, including refusal, suspension or withdrawal of licences as well as fines related to the value of the fishing vessel, seizure or forfeiture of the catch, fishing equipment or vessel;

(e) The expeditious prosecution of the owners, operators or masters of fishing vessels entitled to fly their flag or of their nationals where there is sufficient evidence that they have undermined the effectiveness of international conservation and management measures and, upon conviction of an offender, the imposition of penalties proportionate to the nature and gravity of the offence.

Article 10

Flagging

*OK - but would be difficult
to negotiate in light of
Flagging Agreement*

Parties shall take such measures as may be necessary to prevent the flagging or reflagging of fishing vessels for the purpose of avoiding compliance with international conservation and management measures and shall, to that end, cooperate, inter alia, through the appropriate international organizations.

Article 11

Port State enforcement

Each Party shall, to the extent practicable, exercise its right under international law to inspect the documents of fishing vessels, other than vessels entitled to fly its flag in its ports or offshore terminals. Such inspection shall also be carried out at the request of any other Party. If, as a result of such inspection or other evidence, that port State has reasonable grounds to believe that the fishing vessel has undermined the effectiveness of

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later page

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international conservation and management measures or has fished on the high seas without a licence, it shall so inform the flag State and the requesting Party, if any, [and may detain the fishing vessel until such time as it agrees with the flag State on the action to be taken.]

Inconsistent with UNCLOS - many would not accept (including U.S.)

Article 12

International cooperation

In addition to other measures provided for in this Convention, Parties shall enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of this Convention. They shall, in particular:

(a) Assist each other in the determination of the registry of fishing vessels reported to have engaged in activities undermining the effectiveness of international conservation and management measures, based on information to which they have access;

(b) Establish and maintain effective arrangements for obtaining, preserving and transmitting evidence to prosecuting authorities;

(c) Upon request of Party which is a port State, provide information to which they have access and all other reasonable assistance.

Article 13

Boarding, inspection and arrest on the high seas

The appropriate authorities of any Party may board and inspect a fishing vessel entitled to fly the flag of another Party sighted in a regulatory area, and when they have sufficient evidence that the vessel has undermined the effectiveness of international conservation and management measures, [may arrest it.] The arresting Party shall notify the flag State of the action taken and shall detain the vessel pending appropriate action by the flag State or, with the latter's consent, by the arresting Party.

Same as Art. 11

Article 14

States?

Enforcement against unregistered vessels

When a fishing vessel not entitled to fly the flag of any State is sighted fishing in a regulatory area, the appropriate authorities of any Party may take such action as is necessary to arrest the vessel and provide for prosecution. The arresting Party shall detain the crew only for the time necessary to bring the arrested vessel to the nearest port of that Party and to complete its investigations. It shall expeditiously carry out all relevant investigations and judicial proceedings. It shall as soon as practicable inform the State or States of which the crew are nationals of the action taken.

14 + 15 - Could be useful

1...

Article 15

Enforcement against vessels that conceal their identification

When a fishing vessel is sighted fishing in a regulatory area by the appropriate authorities of a Party which conclude that the vessel is concealing its identification or indicating a registry to which it does not belong, that Party may take such action as is necessary to board the vessel, inspect and, if appropriate, arrest it, and to detain the vessel until such time as it is identified and the registry to which it belongs is determined. If the vessel is found to be entitled to fly the flag of a Party, it may be further detained pending appropriate action by the flag State or, with the latter's consent, by the arresting Party. If the vessel is found to be unregistered, the provisions of article 14 shall apply.

PART V

REGIONAL FISHERIES ORGANIZATIONS AND ARRANGEMENTS

Article 16

Regional circumstances

The provisions of this Part shall be applied with due regard to the particular circumstances in individual regions.

Article 17

Minimum standards

Parties which participate in regional fisheries conservation organizations or arrangements shall take action to have such organizations or arrangements:

- (a) Adopt conservation and management measures as set out in Part II;
- (b) Adopt surveillance and control measures as set out in Parts III and IV;
- (c) Provide for compulsory and binding third-party settlement of disputes where overfishing or other harmful fishing practices are at issue, considering, as appropriate, the adoption of the procedure outlined in article 25 for that purpose or its use as a model. Parties which do not participate in the relevant organization or arrangement shall be entitled to invoke or to submit voluntarily to any settlement procedure so established, in which case they shall be bound by the resulting decision.

would be very difficult to negotiate

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Article 18

*States that don't join
shouldn't fish.*

New participants

Parties which participate in a regional fisheries conservation organization or arrangement shall, where appropriate, encourage States with an interest in a high seas fishery which it regulates to participate in such organization or arrangement. Such Parties may:

(a) As part of a new participant's contribution to the conservation measures of such organization or arrangement:

(i) Make allocations of any stock they regulate to new participants subject to a waiting period;

(ii) In cases where stocks are depressed, make allocations of any stock they regulate to new participants only when the total allowable catch exceeds a threshold level determined for that purpose by the organization or under the arrangement;

(iii) In cases where stocks are at appropriate levels and fully allocated, make allocations of any stock they regulate to new participants subject to quotas being relinquished by existing participants;

(b) In cases where quotas are relinquished by existing participants, decide to reallocate those quotas to new participants, provided that special consideration shall be given to a coastal State with regard to straddling fish stocks or highly migratory fish stocks occurring within both its exclusive economic zone and the regulatory area and, secondarily, to developing States.

U.S. could not accept

Article 19

Enclosed and semi-enclosed seas

In establishing a regional fisheries conservation organization or arrangement in respect of an enclosed or semi-enclosed sea comprising, inter alia, an exclusive economic zone or zones extending up to a limit of 200 nautical miles, Parties shall provide for the consent of the coastal State or States concerned in the establishment of all conservation and management measures.

*World advance U.S. interests in that don't hole -
but raise D.O.B. concerns*

Article 20

Unregulated areas of the high seas

In areas of the high seas not subject to international conservation and management measures, Parties which are coastal States and other Parties which harvest straddling fish stocks or highly migratory fish stocks in those areas shall, as appropriate, cooperate to establish or participate in a fisheries conservation organization or arrangement on a bilateral or multilateral basis.

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Article 21

International assessment

Parties shall cooperate to allow the international community to monitor and assess the activities of regional fisheries conservation organizations and arrangements. For this purpose they shall take action to have such organizations and arrangements submit annual reports to the Committee on Fisheries of FAO. They shall also request FAO to prepare an annual compendium of these reports, which would in addition identify the issues outstanding and formulate recommendations as appropriate. OK

PART VI

DEVELOPING COUNTRIES

Article 22

Enhancement of the ability of developing countries to fulfil
their obligations

Parties shall cooperate to enhance the ability of developing countries to fulfil the obligations provided for in this convention by improving their capabilities, including the financial, scientific and technological means at their disposal.

Treasury objection ?

Article 23

Technical assistance to developing countries

Parties shall cooperate, at a global, regional, subregional or bilateral level, and, as appropriate, with the support of FAO and other international or regional organizations, to provide assistance, including technical assistance, to Parties which are developing countries. Such assistance should be provided, inter alia, in respect of conservation and management, surveillance and control and enforcement, thereby enhancing the ability of Parties which are developing countries to obtain the full social and economic benefits from sustainable utilization of marine living resources subject to their jurisdiction. OK

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PART VII

NON-PARTIES

Article 24

Non-parties

1. Parties shall encourage States not parties to this Convention to adhere to it and shall encourage non-parties to adopt laws and regulations consistent with its provisions.
2. Parties shall cooperate in a manner consistent with this Convention and international law to the end that fishing vessels entitled to fly the flags of non-parties do not engage in activities that undermine the effectiveness of international conservation and management measures.
3. Parties shall exchange information amongst themselves with respect to activities of fishing vessels flying the flags of non-parties that undermine the effectiveness of international conservation and management measures.

PART VIII

SETTLEMENT OF DISPUTES

*Delete - should occur
on regional level*

Article 25

Settlement of disputes

1. In the event of a dispute concerning the interpretation or application of this Convention, the Parties concerned shall seek a settlement through negotiation, enquiry, mediation, conciliation or other peaceful means of their own choice.
2. If, thirty days following receipt of notification by one Party to one or more other Parties that a dispute exists between or among them, the Parties concerned have not been able to settle their dispute through the means referred to in paragraph 1:
 - (a) Where the United Nations Convention on the Law of the Sea has entered into force for all Parties concerned, Part XV of that Convention shall apply;
 - (b) Where the United Nations Convention on the Law of the Sea has not entered into force for all Parties concerned, if they do not agree to settle the dispute in accordance with Part XV of that Convention the dispute shall be submitted, at the request of any concerned Party, to arbitration in accordance with the provisions of the Annex to this Convention.

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Annex

ARBITRATION

1. A request for arbitration shall be made to the Secretary-General of the United Nations. The other Party or Parties involved in the dispute shall be notified of this request. Following such a request, an arbitral tribunal shall be constituted by the Secretary-General to decide on the dispute.
2. The tribunal shall be composed of three members. Parties concerned shall, within ten days of the date on which the request is transmitted pursuant to paragraph 1, each appoint one member of the tribunal. In the event that more than two Parties are involved in the dispute, the Parties sharing similar views on the questions to be considered shall seek to agree on the appointment of a common member of the tribunal.
3. If the members of the tribunal are not appointed pursuant to paragraph 2 within the ten-day period it specifies, the Secretary-General shall, within ten days, appoint them.
4. The two members thus appointed shall then select a third member, who shall be the Chair. In the event the two members are unable within ten days of the appointment of the second member to appoint the third, the Secretary-General shall, within ten days of the end of the latter period, appoint the third member of the tribunal, who shall not be a national of any of the Parties involved in the dispute.
5. Within ten days of the formation of the tribunal, the Parties concerned shall file with the tribunal a memorandum, copies of which shall be transmitted to all Parties concerned.
6. An oral hearing shall be convened at a place and on a date to be determined by the tribunal, within thirty days following the formation of the tribunal.
7. Decisions of the tribunal shall be final and binding. They shall be taken by a majority of the members of the tribunal.
8. The tribunal shall communicate its decision to all Parties concerned within thirty days of the end of the oral hearing. Reasons in writing shall be communicated to the Parties concerned within sixty days of the decision.
9. Once a dispute has been duly submitted to the tribunal, the tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the Parties concerned or to prevent damage to the stocks in question, pending a final decision.
10. The tribunal shall adopt such rules of procedure as it deems necessary.

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EXPLANATORY NOTE

This draft Convention draws on various sources, including the United Nations Convention on the Law of the Sea, other international agreements, Agenda 21, the draft FAO Flagging Agreement and EC Regulations, as indicated below:

<u>Article</u>	<u>Source</u>
1 (a)	Cf. definition of "international conservation and management measures" in the Draft Agreement on the Flagging of Vessels Fishing on the High Seas to Promote Compliance With Internationally Agreed Conservation and Management Measures, FAO document CL 103/LIM/6, June 1993 (the Draft FAO Flagging Agreement)
1 (g)	Cf. article 218 of the United Nations Convention on the Law of the Sea (UNCLOS)
1 (l)	Cf. article 63 (2) of UNCLOS
4 (a) (i)	Cf. article 119 (1) (a) of UNCLOS
4 (a) (ii)	Cf. article 119 (1) (b) of UNCLOS
4 (b) (i)	Cf. UNCLOS article 119 (2); EC regulation 3760, article 16; article VI, paras. (1) (b) and (3) of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries
4 (b) (iii)	Cf. EC regulation 3927, articles 4 (1) and 5 (2); Northwest Atlantic Fisheries Organisation (NAFO) Measures, Part II, B, schedules IV and V
4 (b) (iv)	Cf. EC regulation 3927, article 4 (2); Agenda 21, para. 17.46 (c); cf. NAFO Measures, Part II, A, C and Schedule VI
4 (b) (v)	Cf. EC regulation 3927, article 4 (3); Agenda 21, paras. 17.46 (c) and 17.50; cf. NAFO Measures, Part I 4 (a)
4 (b) (vii)	Cf. EC regulation 3760, article 12 (1); and NAFO measures, Part IV 1 (i)
5	Inspired by: <u>Bergen Ministerial Declaration</u> (article 7): Bergen Ministerial Declaration on Sustainable Development in the ECE Region, adopted at the Regional Conference on Action for a Common Future organized by the Government of Norway in cooperation with the United Nations Economic Commission for Europe (ECE) held at Bergen, Norway, from 14 to 16 May 1990. Ministers from 34 countries in the ECE region and the Commissioner for the

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Environment of the European Community attended the Bergen Conference;

Rio Declaration on Environment and Development (principle 15) adopted at the United Nations Conference on Environment and Development held at Rio de Janeiro, on 14 June 1992;

United Nations Framework Convention on Climate Change (article 3, para. 3) adopted at the United Nations Conference on Environment and Development held at Rio de Janeiro, on 14 June 1992;

Convention on Biological Diversity (preamble), adopted at the United Nations Conference on Environment and Development, held at Rio de Janeiro, on 14 June 1992;

Treaty on European Union (article 103r, para. 2) signed at Maastricht, Netherlands, on 7 February 1992.

- 6 Cf. draft FAO Flagging Agreement, article III (8)
- 6 (c) Cf. Agenda 21, para. 17.56 (b)
- 6 (d) Cf. Agenda 21, para. 17.56 (d)
- 7 (a) Cf. draft FAO Flagging Agreement, article III (7); NAFO Measures, Part III A also refer
- 7 (e) Cf. EC regulation 3928/92 and NAFO Measures, Part VI
- 7 (j) Cf. EC regulation 3760/92, article 4 (2) (d) and (e)
- 8 Cf. EC regulation 3760/92, article 5, and draft FAO Flagging Agreement, article III, paras. (2) and (4)
- 9 (d) Cf. draft FAO Flagging Agreement, article III (9)
- 10 Cf. Report of the 103rd Session of the FAO Council, Rome, 14-25 June 1993, paras. 63-72
- 11 Cf. Memorandum of Understanding on Port State Control, Paris, 20 January 1982, section 3.1; for port State enforcement in the context on pollution, article 218 of UNCLOS refers
- 12 Cf. draft FAO Flagging Agreement, article VI (3)
- 13 Cf. article V of the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, in force 16 February 1993. Parties are Canada, Japan, Russian Federation and the United States
- 14 Cf. article 92 of UNCLOS
- 20 Paragraph 17.59 of Agenda 21 and article 118 of UNCLOS refer

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- 22 Paragraph 17.48 of Agenda 21
- 23 Cf. draft FAO Flagging Agreement, article VIII
- 24 Cf. draft FAO Flagging Agreement, article IX
- 25 Cf. Part XV of UNCLOS; article 33 of the Statute of the
International Court of Justice refers

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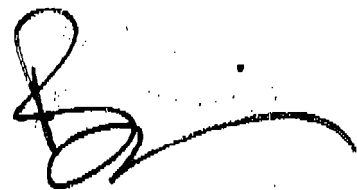
TO: DAVID DONAGER
 DES/OFA (ALSO FOR COLSON)
 ROBIN TUTTLE
 DEN COLES
 DAVE BURNETT

FM: BILL DILDAY

FOLLOWS ARE ITEMS WHICH MAY BE OF
 INTEREST TO YOU, INCLUDING DOCUMENTS
 RELEASED BY THE SECRETARIAT TODAY:

NEW YORK TIMES ARTICLE OF YESTERDAY
 CHAIRMAN'S DISCUSSION DRAFT ON COMPLIANCE
 AND ENFORCEMENT

- 12 - CHAIRMAN'S STATEMENT AT END OF
 GENERAL DEBATE/ OPENING STATEMENTS
- L.22 - SWEDISH STATEMENT ON PRECAUTIONARY
 MANAGEMENT
- L.23 - AUSCHER/NZ STATEMENT ON CONS + MGT
 OF ECO-RELATED SPECIES
- L.21 - RUSSIAN DOCUMENT ON SEA OF OKHOTSK



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The New York Times

NEW YORK, SUNDAY, JULY 25, 1993

U.N. TALKS COMBAT THREAT TO FISHERY

Seek to Control Overfishing
That Is Said to Be Wiping
Out Several Species

By DAVID E. PITT

Special to The New York Times

UNITED NATIONS, July 23 — In a basement conference room a world away from the klieg-lighted talks upstairs on Bosnia, Iraq and Haiti, more than 150 diplomats here have been grappling with what most agree is a grave but less photogenic crisis: the threat to the earth's fisheries.

Alarmed by evidence that cod, tuna, mackerel, pollack and scores of other valuable species are being wiped out by overfishing, the United Nations opened a three-week conference on July 12 to try to lay the groundwork for a global system to manage and re-propagate the fish that are still left.

"Fish are a common property resource," Ross Reid, Canada's newly installed Minister of Fishing and Oceans, said at the conference last week. "There is a natural tendency for each fishing vessel, and each fishing country, to try to take as much as it can from the common resource. The result is as predictable as it is disastrous."

The conference, one of the several follow-ups to the Earth Summit in Brazil last year, represents the first organized effort to regulate high-seas fishing since the United Nations Convention on the Law of the Sea was opened for signature in 1982. The talks are an attempt to build on the fisheries provisions of the agreement, which remains 3 short of the 60 countries needed to ratify it before it can enter into force.

Fleets Growing Too Fast

The United Nations Food and Agriculture Organization says its surveys show that virtually every commercial species has been "depleted," "fully exploited" or "overexploited," while the size of the world's fishing fleets, heavily subsidized by governments, has increased at twice the rate of the size of the total catch.

Greenpeace International, one of more than 50 private groups taking part in the conference, says the economic absurdity of the situation is dramatized by Food and Agricultural Organization figures showing that the cost of operating the world's three million fishing vessels in 1989 was \$92 billion, while the catch was worth only \$72 billion.

Progress at the talks has been slow. But participants say that without a rational system to regulate who may fish where, and with what equipment, fish populations will continue to plummet, sharpening competition for a dwindling resource. This will not only ravage the economies of increasing numbers of coastal fishing communities, experts say, but could also reignite open-water clashes like the so-called cod wars of the 1970's.

Bernard Martin, a 39-year-old cod fisherman from Petty Harbour, Newfoundland, one of more than 30,000 Canadians idled by a Government moratorium on catches of cod, said he hoped that the conference would do something to halt the use of factory-ship equipment like drag nets.

"Dragging is a technology that is the equivalent of clear-cutting or strip-mining," said Mr. Martin, who came to New York for the first time last week as a representative of a group called Fishers Organized for Revitalization of Communities and Ecosystems.

The talks are focusing on two categories of fish: species like pollack in the Bering Sea and cod off Canada's eastern coast, whose meanderings cause them to straddle territorial and international waters, and fish like tuna, swordfish and billfish, whose seasonal migrations cover thousands of miles.

Two Sets of Countries

Central to the diplomats' task is resolving tensions between coastal fishing countries — led by Canada, Chile, Peru, Argentina, Iceland and New Zealand — that control the right to fish within 200 miles of their shores, and a handful of so-called distant-water countries, including China, Japan, Poland, Spain, Russia and, to a certain extent, the United States. The long-range fleets catch most of the world's fish.

The coastal nations argue that huge factory ships fishing in international waters are destroying the stocks in their territorial waters. But as many nongovernmental experts say and a handful of governments have acknowledged, the crisis stems as much from coastal countries' mismanagement as from the depredations of the major fleets.

Whatever the case, Canada and the other coastal countries have proposed binding rules to regulate catches in international waters. The distant-water countries have held fast to the position that any rules should be in the form of nonbinding guidelines drawn up regionally.

Some officials have hinted that if negotiations fail, they will take matters into their own hands, unilaterally seizing vessels in international waters. The conference chairman, Satya N. Nandan, a Fijian diplomat who played a pivotal role in the contentious Law of the Sea negotiations, has told colleagues that he fears that such a development could imperil the agreement to the point where it might have to be renegotiated.

CHAIRMAN'S
Working Draft

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23 July 1993

COMPLIANCE AND ENFORCEMENT

1. Compliance with conservation and management measures

1.1 Conservation and management measures for straddling fish stocks and highly migratory fish stocks must be effectively applied. To this end flag States whose vessels fish on the high seas shall take the necessary measures to ensure that their vessels comply with subregional or regional conservation and management measures. Measures to be taken by the flag State should include:

- (a) cooperation in effective monitoring, control and surveillance of fishing vessels, fishing activities and related activities;
- (b) control of vessels flying its flag **[on the high seas]** by means of fishing licences, authorisations, permits and other administrative means of the flag State in accordance procedures agreed on a subregional, regional or global level, including:
 - (i) national legislation to prohibit fishing, on the high seas and in areas of national jurisdiction, of other States by vessels that are not duly licensed or authorised to fish;
 - (ii) requirements that vessels fishing on the high seas must carry the licence, authorisation or permit on board the vessel at all times and must produce the same on demand for inspection by an authorised observer or inspector;
 - (iii) requirements that information contained in a licence, authorisation or permit is sufficient to fulfil any subregional, regional or global obligations of the flag State;
- (c) implementation of quotas and other control measures adopted in accordance with subregional or regional arrangements;
- (d) compliance with the requirements of national, regional or global registers of vessels fishing or authorised to fish on the high seas;
- (e) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems such as the FAO Standard Specifications for the Marking of Fishing Vessels;
- (f) requirements for catch validation through agreed observer programmes, unloading reports, supervision

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of transshipment, dockside monitoring and monitoring of landed catches and market statistics;

- (g) implementation of national and regionally agreed observation and inspection schemes including requirements for vessels flying its flag to permit access by observers and/or inspectors from other States in the region or sub-region. Detailed requirements for observer and inspection schemes must include requirements for vessel operators to allow any authorised person(s) to board vessels and carry out their duties under the scheme;
- (h) installation and use of satellite transmitter equipment (vessel monitoring systems) in accordance with national and regionally integrated systems;
- (i) the regulation of transshipment on the high seas to ensure that regionally agreed monitoring, control and surveillance measures are not undermined;
- (j) measures to implement, for vessels flying its flag, subregional, regional or global standards for collection of catch, effort and other relevant fisheries data in the agreed format and time frame;
- (k) requiring compliance with international minimum standards for responsible fishing practices;
- (l) cooperating with other States in dealing with fishing vessels not entitled to fly the flag of any State and vessels that conceal their identity.

1.2 The above responsibilities of flag States should be supplemented by regionally agreed systems of monitoring, control and surveillance, including vessel monitoring systems (VMS). Where there is a regionally agreed system of monitoring, control and surveillance in effect, flag States should ensure that the measures they impose are compatible with that system.

2. Enforcement of High Seas Fisheries Conservation and Management Measures

2.1 States shall ensure compliance by vessels flying their flag with applicable subregionally, regionally or globally agreed management measures, rules and standards. To this end, flag States should:

- (a) adopt legislation and administrative measures to ensure that vessels flying its flag comply with agreed conservation and management measures;
- (b) provide for the effective enforcement of such measures, rules and standards irrespective of whether a violation occurs;

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- (c) ensure that vessels flying their flags are prohibited from fishing on the high seas where they have committed a serious breach of agreed conservation and management measures, or other international rules and standards;
 - (d) prevent the flagging or re-flagging of fishing vessels for the purpose of undermining international conservation and management measures;
 - (e) investigate immediately any alleged violation of agreed management measures, including the physical inspection of the vessel(s) concerned;
 - (f) make every effort to investigate fully and properly the alleged violation and should report promptly to the aggrieved State and relevant subregional, regional or international organisation on progress and outcomes of the investigation. Such information should be available to all interested States;
 - (g) require any vessel(s) flying its flag to give information regarding catches, activities and fishing operations in the area of an alleged violation, where there are grounds for believing that the vessel(s) has committed such a violation;
- 2.2 A flag State conducting an investigation of an alleged violation may request the assistance of any other State whose co-operation may assist in clarifying the circumstances of the case. All States should endeavour to meet reasonable requests of the flag State in connection with such interventions.
- 2.3 If a flag State is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, the flag State should, without delay, institute such proceedings in accordance with its laws and, where appropriate, detain the vessel(s).
- 2.4 Penalties applicable in respect of such violations must be of sufficient gravity as to be effective in securing compliance and to act as a deterrent, and should deprive offenders of the benefits accruing from their illegal activities.
- 2.5 A flag State should cooperate in the development of regionally agreed procedures for the conduct of fisheries surveillance and law enforcement. Where appropriate, fisheries surveillance and law enforcement should be conducted in accordance with such regionally agreed procedures. Within regions or sub-regions, States should cooperate in the enforcement of their

fisheries laws and regulations including specific agreements on forms of assistance for that purpose.

- 2.6 Within regions or sub-regions, where registers of fishing vessels have been established, States may take cooperative action to prevent vessels which have violated agreed management measures, rules or standards, from fishing in the region until such time as corrective action is taken by the flag State.

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ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993

COMMENTS ON PRECAUTIONARY MANAGEMENT OF FISHERIES

(Submitted by the delegation of Sweden)

1. The precautionary approach to the protection of the environment has been formalized in principle 15 of the Rio Declaration of the United Nations Conference on Environment and Development. The text can also be used as a general guideline in fisheries. However, in fisheries, specific risk assessments need to be considered further.
2. Fisheries have to be managed in a cautious manner. There has been a misconception about such management and there is an impression that it would immediately mean the imposition of drastic measures. This is certainly not the case. A moratorium, for example, is necessary only in extreme cases.
3. Precautionary management is basically very different from the application of the precautionary principle in pollution issues, e.g., when toxic substances are added to the water. It was in order to deal with such non-natural additions that the precautionary principle was created and it has subsequently been used, for example, in Environmental Impact Assessments (EIAs).
4. In fisheries the meaning of precautionary management has to be defined, in order that it does not remain a tool which no one knows how to use. As you may know, there is already a precautionary approach in the form of a code of practice established by the European Inland Fisheries Advisory Commission and the International Council for the Exploration of the Sea. The code relates to the introduction of alien species into coastal waters and fresh waters (for reference see the Food and Agriculture Organization of the United Nations paper entitled "International Code of Conduct for Responsible Fishing").
5. There is obviously a need to identify appropriate methods to deal with uncertainties in the assessment and management of fish stocks, in order

- (a) To maintain a healthy state of fish stocks;

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- (b) To maintain the biodiversity of the waters.

The practical implications of any application of the precautionary approach to fisheries have to be carefully examined.

6. What kind of precautionary management measures are presently used? One could say that they are a combination of biological and socio-economic measures, such as:

- (a) Step wise development of fisheries;
- (b) Financial or international brakes to avoid explosive development of fisheries;
- (c) Total allowable catches (TACs) based on experience in similar cases;
- (d) Multi-species management on a trial basis;
- (e) Targets below maximum sustainable yield (MSY) or related concepts;
- (f) "Safe biological build" concept;
- (g) Minimum spawning mass;
- (h) Total ecosystem management on a trial basis;

and a number of other concepts.

7. Conservation and management of the living resources of the high seas must be based on scientific work, as elaborated in article 119 of the United Nations Convention on the Law of the Sea. Science involves a continuous revision of knowledge and therefore approaches to the precautionary management of fisheries will have to be continuously revised. Frequent revisions, including adequate risk assessment, will add to the creditability of the approach.

8. In this context, all efforts have to be made to use adequate basic scientific data. Since important economic interests are involved, any unfortunate tendency that may be found to the withholding or distortion of data must be vigorously counteracted.

9. Sweden attaches great importance to the precautionary management of fisheries and will closely follow further developments in this field. We also think, along with others, that the application of the precautionary approach to fisheries will become more important as more fish stocks are exploited and as research funds for traditional stock assessment become limited. How the precautionary approach could best be implemented in fisheries needs to be further discussed by scientists in this field and a recommendation on this subject from this Conference would help in finding the means necessary for such an exercise.

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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
12-30 July 1993CONSERVATION AND MANAGEMENT OF ECOLOGICALLY RELATED
SPECIES IN FISHERIES FOR STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS(Submitted by the delegations of Australia
and New Zealand)

1. Australia and New Zealand recognize that most fisheries accidentally catch non-targeted fish and non-fish species in the normal course of fishing operations. Article 119 (1) (a) of the 1982 United Nations Convention on the Law of the Sea notes the "interdependence of stocks" and the obligation to qualify the allowable catch "by relevant environmental and economic factors". Fishing operations may cause appreciable mortality of non-target species which, for some species, may be unsustainable. In these cases fishing operations should exercise particular care in order to minimize the impact of fishing on non-target species.
2. Australia and New Zealand consider that fishing States have special responsibilities associated with the right to fish on the high seas. One responsibility, conferred upon all States, is the duty "to take, or to cooperate with other States in taking, such measures for their nationals as may be necessary for the conservation of the living resources of the high seas" called for in article 117 of the Convention. Clearly, this duty embraces target, associated and dependent species (both fish and non-fish).
3. Australia and New Zealand believe that the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks should reaffirm the obligation on States, specified in article 119 (1) (b) of the Convention, to consider "the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened" when determining the allowable catch on the high seas.

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4. Australia and New Zealand wish to call attention to the fact that some high-seas fisheries may incur an incidental catch of non-fish species which may significantly reduce their breeding populations and increase the risk of irreversible damage to their populations. For example, there is an increasing body of evidence which indicates that some albatross species are currently at risk from long-line fishing. In many cases, however, little information is available from commercial fishing operations with which to assess the magnitude of catches of non-fish species, e.g., sea birds, marine mammals and sea turtles.

5. We believe that all members of the international community, particularly those catching straddling fish stocks or highly migratory fish stocks need to strengthen their cooperation in the conservation of living marine resources. We further believe that, in discharging this responsibility, attention needs to be focused on minimizing the impact of fishing on non-target species, in particular non-fish species.

6. Australia and New Zealand recommend that the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks agree that, in accordance with their capabilities, all members of the international community, particularly those with fishing interests in straddling fish stocks or highly migratory fish stocks, should:

(a) Implement or enhance data collection and reporting on catches of non-target species, including non-fish species, and on the impact of fishing on non-target species;

(b) Cooperate with scientists, whether from coastal States, distant-water fishing nations, subregional or regional organizations, in sharing data and conducting analyses of the impact on non-target species, including non-fish species, as a component of target fisheries assessments;

(c) Cooperate with other States, subregional, and regional organizations to develop or improve devices, including the modification of fishing practices and gear, to minimize catches of non-target species, including sea birds, marine mammals and sea turtles, with special emphasis on minimizing non-target catches where the reproduction of the species is seriously threatened;

(d) Require their flagged vessels to adopt all reasonable measures, including the use of equipment and techniques shown to be effective in minimizing catches of non-target species and to limit the catch of target species, if necessary, to maintain dependent species above levels at which their reproduction may become seriously threatened.

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**UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993**

**STATEMENT MADE BY THE CHAIRMAN OF THE CONFERENCE AT THE
CONCLUSION OF THE GENERAL DEBATE ON 15 JULY 1993**

We have had a very useful general debate on the issues before the Conference. While the debate provided an opportunity for general policy statements, it also provided an opportunity to highlight many specific issues relating to fisheries conservation and management and, in particular, those issues facing straddling fish stocks and highly migratory fish stocks.

In the course of this debate, we have heard of the many problems encountered by Member States, including examples of particular situations prevailing in different parts of the world where fisheries management has been unregulated or ineffective. As a consequence, stock depletion, or worse still, stock devastation, has already occurred. We have been warned that the potential for this exists in other fisheries.

The debate clearly established that no region of the world is immune to the impact of uncontrolled fishing and its inevitable results. In addition, it is recognized that the uncertainty caused by natural phenomena affects stock abundance and therefore requires that we be more vigilant than ever before in the management of resources in order that early and decisive action can be taken to ensure sustainability.

It can be concluded from the general statements made, the position papers submitted to the Conference and the technical papers before us that the Conference has identified the problems associated with straddling fish stocks and highly migratory fish stocks and has assessed the impact of these problems based on available information. To this extent, we have satisfied the first substantive item in the mandate of this Conference, as contained in paragraph 2 (a) of United Nations General Assembly resolution 47/192, which requires the Conference to "identify and assess existing problems related to conservation and management of such fish stocks". Thus, we have already made considerable progress.

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The debate has also established that there is a remarkable degree of convergence on many substantive issues and this will certainly facilitate our task of examining the issues before us in order that the Conference can make appropriate recommendations. I am personally very encouraged by the extent of this agreement. It attests to the importance that participants in the Conference attach to the problems facing us, and to their high level of commitment to seeking long-term and practical solutions.

In this connection, I find that there is a general agreement on the following key issues:

- (a) There is a clearly recognized need for effective conservation and management of straddling fish stocks and highly migratory fish stocks, and agreement that any management regime established should be consistent over the range and distribution of those stocks;
- (b) There is agreement that effective fisheries management of high-seas resources can be achieved only through cooperation among States, and that such cooperation is a duty already imposed on States by international law;
- (c) The debate has confirmed that the 1982 United Nations Convention on the Law of the Sea must be the legal framework within which conservation and management for the two types of stocks must be developed;
- (d) The need for an international code of conduct for responsible fishing, including measures to deter and prevent the use of flags of convenience in order to avoid conservation and management regimes, has been accepted;
- (e) It is recognized that effective flag-State enforcement must be exercised on the high seas with respect to the two types of stocks;
- (f) There is also recognition that data and scientific information are essential for the development of proper conservation and management measures for the two types of stocks and that, in the absence of such data and information, where appropriate, the precautionary approach to management should be invoked;
- (g) It is acknowledged that conservation and management arrangements should take into account specific regional differences and situations and that regional conservation and management measures should be based on globally agreed principles in order to ensure uniformity and consistency in the application of the basic framework for fisheries management established by the 1982 Convention on the Law of the Sea;
- (h) It is accepted that the principle of resource sustainability is an essential component of conservation and management;
- (i) It is recognized that proper monitoring, control and surveillance is necessary for effective conservation and management of the two types of stocks. This requires a clear agreement on responsibility and measures for compliance and enforcement in general and the responsibilities of flag States in particular;

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(j) It is established that effective conservation and management of the two types of stocks must be underpinned by proper dispute settlement mechanisms, taking into account the specific nature of fisheries disputes and the need to ensure the speedy resolution of such disputes;

(k) It is accepted that measures must be taken to ensure that conservation and management of the two types of stocks are not undermined by the activities of States not parties to regional management arrangements and that, where appropriate, new entrants to fisheries targeting these stocks should be accommodated to the extent possible;

(l) It is acknowledged that technical cooperation should be provided to developing countries in order to enhance their capabilities in fisheries conservation and management.

These areas of broad agreement provide us with a sound basis for the next phase of our work, which is to examine, in greater detail, the issues concerning the conservation and management of straddling fish stocks and highly migratory fish stocks.

As stated earlier, we have satisfied the first component of our mandate, namely, to identify and assess existing problems relating to the two types of fish stocks. Our remaining task is to deal with the second and third components of the mandate as set forth in paragraph 2 of General Assembly resolution 47/192:

"(b) Consider means of improving fisheries cooperation among States;

"(c) Formulate appropriate recommendations;".

In this regard, it is my sense from the statements made during the general debate that you wish to proceed to an examination of the issues elaborated in document A/CONF.164/10, "A guide to the issues before the Conference prepared by the Chairman". The issues to be addressed are contained in part two of the document.

In preparing this document, I have been guided principally by the provisions of the 1982 United Nations Convention on the Law of the Sea and the formal and informal discussions we had at the organizational session of the Conference; the position papers provided by States; as well as such opportunities as I have had for informal inter-sessional discussions.

Let me express my sincere gratitude to all those who responded to my request for suggestions and whose contributions assisted me immensely in the preparation of the document. I recognize that there may be issues not listed in the document that might need to be addressed. Since the document is merely a guide to the issues, we shall use it flexibly and accommodate other issues that need to be considered.

The document is set out in, what I believe, is a logical sequence of issues arising from the provisions of the Convention. First it addresses the nature of conservation and management measures that are to be established through cooperation (item I). Then it deals with how the mechanisms for cooperation

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should be established and the nature of the responsibilities flowing from such cooperative arrangements (items II and III).

The next two issues focus on monitoring, control and surveillance in support of conservation and management measures. These issues are treated under two headings: compliance with such measures (item IV) and enforcement of those measures (item V). This is followed by the issue of how to deal with States not parties to conservation and management arrangements (item VI). We then come to the settlement of disputes relating to fisheries matters (item VII) and, finally, since the two types of stocks with which this Conference is concerned are found in areas under national jurisdiction and on the high seas, effective management of these stocks require us to address the issue of harmonizing conservation and management measures for the two areas (item VIII).

As we begin to consider the issues in detail I would like to suggest that we proceed in the following manner. We will commence with item I in part two of the document. We will then take items II and III together since they relate to regional arrangements. Items IV and V should also be considered jointly because they are both components of the issues relating to monitoring, control and surveillance. We will then consider items VI, VII and VIII in sequence.

Following consideration and discussion of these issues and taking into account the general statements made in the first part of the Conference and the position papers and other documents submitted, the Chairman will endeavour to put together a basic text on all of the issues discussed for the consideration of the Conference. As I proceed to prepare the Chairman's text, I shall consult as widely as possible to ensure that every effort is made to reconcile divergent views.

I hope that the procedures I have outlined are acceptable to you and that we can proceed immediately to the next phase of our work, which is to address the specific issues in greater detail.

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ENGLISH
ORIGINAL: RUSSIANUNITED NATIONS CONFERENCE ON STRADDLING
FISH STOCKS AND HIGHLY MIGRATORY
FISH STOCKS
New York, 12-30 July 1993CONSEQUENCES OF UNSCIENTIFIC FISHING FOR ALASKA POLLACK
IN THE ENCLAVE OF THE SEA OF OKHOTSK(Submitted by the delegation of the Russian Federation)

Since the early 1960s, Russia has been fishing for Alaska pollack in the Sea of Okhotsk. Its fishing activities have been conducted on the basis of scientific data, ensuring compliance with stock conservation and management measures and optimal utilization of the stocks concerned.

Annual scientific expeditions to study the reproductive capacity of Alaska pollack, to count young fish and to conduct trawl-mounted acoustic surveys to assess commercial stocks have made it possible to determine the total allowable catch and to develop measures for the conservation of stocks both of Alaska pollack, in accordance with its biological status, and of the commercial species associated with Alaska pollack: herring, halibut and certain mammals.

The system for the conservation of the Sea of Okhotsk Alaska pollack stocks is based on the precautionary approach and provides for the following principal measures to regulate their exploitation:

1. The total allowable catch for Alaska pollack is established for the Sea as a whole and divided up among the various fishing areas. As in the past, this includes the allocation of catch quotas within the 200-mile zone of the Russian Federation to a number of other countries, on the basis of bilateral agreements and the principle of the maintenance of traditions.
2. Specific fishing grounds are identified for each type of vessel, taking into consideration the incidental catch of species associated with Alaska pollack.
3. The fishing season is limited.

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4. Fishing is suspended during the intensive spawning period.
5. There are restrictions on fishing gear and methods.
6. Conservation zones are established in areas where Alaska pollack are most densely concentrated and the movement of transport vessels and other shipping operations are prohibited in those areas.
7. There is a total prohibition on the fishing of Alaska pollack in the central part (enclave) of the Sea of Okhotsk.

The central part of the Sea (the enclave) is of particular importance for regulating the fishing of Alaska pollack in the Sea of Okhotsk since it is there that the subpopulations of Alaska pollack which reproduce in the north-west, east and north of the Sea intermingle. It is because the mixing of the different subpopulations takes place in this area that a permanent ban on fishing was imposed here. This ban is observed both by the fishing fleet of the Russian Federation and by countries which have traditionally fished in the Sea of Okhotsk.

Since 1991, however, vessels of a number of States have been carrying out unscientific fishing of Alaska pollack in the central region of the Sea, without consulting the coastal State about measures essential for conservation. The Alaska pollack in question reproduce in spawning grounds lying within the exclusive economic zone of the Russian Federation. These fishing practices have destroyed the entire system of measures for the conservation and management of Alaska pollack stocks.

Thus, through unregulated fishing, the total Alaska pollack catch in 1992 alone exceeded by one and a half times the total allowable catch recommended by scientists. The enclave is also being used by these vessels for illegal fishing in waters of the Russian 200-mile zone adjacent to the enclave.

Because of over-fishing, scientists were obliged to reduce the total allowable catch in the Russian zone in 1992 and 1993 in order to prevent spawning stocks from being totally eliminated over the next few years, as is already happening in the Bering Sea. This reduction in the total allowable catch aroused protests from Russian fishermen.

The continued unscientific fishing for Alaska pollack in the central part of the Sea, conducted without regard for essential stock conservation measures, will inevitably lead to the loss of the reproductive capacity of Alaska pollack in their primary spawning grounds in the Sea of Okhotsk, and to a long-term decline in fishing stocks, with severe social consequences for the indigenous peoples and fishermen of the Russian Far East.

Since the concentrations of Alaska pollack migrating to the central part of the Sea of Okhotsk form only part of the single stock of the Sea of Okhotsk, essential measures for the conservation of Alaska pollack and regulations for optimal utilisation must be worked out by the coastal State on the basis of comprehensive scientific data.

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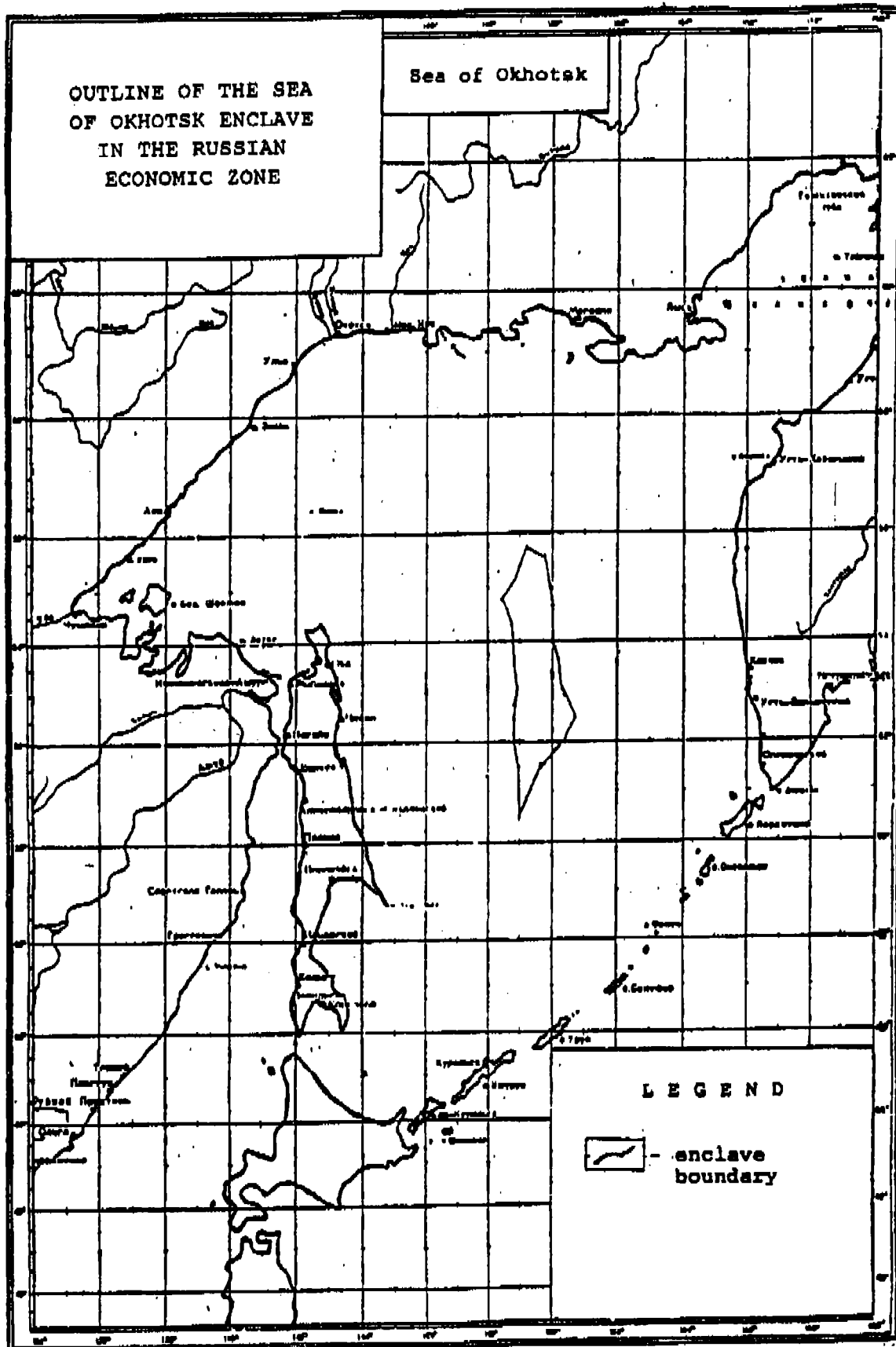
In addition, unscientific fishing for Alaska pollack in the central part of the Sea, conducted without regard for essential stock conservation measures, could also be detrimental to stocks of other commercial species which spend certain periods of their life cycle in this area, namely, herring, halibut, salmon, seals, fur seals and sea lions. These species may get caught in the nets during trawling for Alaska pollack. For example, according to observations made by Russian scientists between December 1992 and February 1993, groups of as many as 40 and 50 fur seals are constantly encountered in the area of this fishing operation. They have been known to get caught in the trawls. The decline in recent years in stocks of mammals is also noteworthy and could be attributable to changes in the ecology of their high seas habitat where previously there had been no fishing.

Consequently, unscientific fishing for Alaska pollack in the central part of the Sea, conducted without regard for stock conservation measures, not only destroys the stocks of the most important commercial species for the Russian fishing industry, but also endangers the stocks of many species associated with Alaska pollack through their multi-species trophic links, and is therefore damaging to the entire ecosystem of the Sea of Okhotsk.

If unscientific fishing continues in the enclave, conducted without regard for the stock conservation measures elaborated by the coastal State, it could lead to the destruction of the entire ecosystem of the most productive sea in the world's oceans.

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TO: DAVID DONAGHE
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F/IAI
DAVE PRENTON

FM: RICH DINDY

FOLLOWS FOR YOUR INFO IS AN
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THE CANADIAN DRAFT CONVENTION
ON CONS. + MGT OF STRADDLING STOCKS
+ FISH.



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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
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New York, 12-30 July 1993

ON THE HIGH SEAS

DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING
FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

(Submitted by the delegations of Argentina, Canada,
Chile, Iceland and New Zealand)

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The Parties to this Convention

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Convention:

(a) "international conservation and management measures" means measures to conserve or manage one or more straddling fish stocks or highly migratory fish stocks on the high seas that are adopted and applied in accordance with the principles of international law as reflected in the United Nations Convention on the Law of the Sea and, in particular, such measures adopted or approved by regional or ~~subregional~~ fisheries conservation organizations or under regional fisheries conservation arrangements;

(b) "exclusive economic zone" means the exclusive economic zone as defined in article 55 of the United Nations Convention on the Law of the Sea and includes 200-nautical-mile fishing zones;

(c) "fishing vessel" includes any ship or boat or any other description of vessel used in or equipped for:

(i) fishing or processing or transporting fish from fishing grounds; or

(ii) provisioning, servicing, repairing or maintaining any vessel of a fishing fleet while at sea;

(d) "flag State" means the State whose flag a vessel is entitled to fly;

(e) "highly migratory fish stocks" means stocks of fish species listed in Annex I to the ~~United Nations Convention on the Law of the Sea~~ ^{is};

(f) "Parties" means parties to this Convention;

(g) "port State" means a State in whose port or offshore terminal a vessel entitled to fly the flag of another State is present;

(h) "regional or ~~subregional~~ fisheries conservation arrangement" means a regional or subregional arrangement or agreement involving two or more States, including the relevant coastal State or States, for the purpose of conserving and managing straddling fish stocks or highly migratory fish stocks on the high seas;

(i) "regional or ~~subregional~~ fisheries conservation organization" means a regional or subregional organization involving two or more States, including the relevant coastal State or States, which adopts conservation and management

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measures with respect to straddling fish stocks or highly migratory fish stocks on the high seas;

(j) "regulatory area" means an area of the high seas in respect of which a regional ~~or subregional~~ fisheries conservation organization adopts conservation and management measures or to which a regional ~~or subregional~~ fisheries conservation arrangement applies;

(k) "State" includes any regional economic integration organization to which its member States have transferred competence over matters covered by this Convention;

(l) "straddling fish stocks" means stocks occurring both within the exclusive economic zone of a coastal State and in an area beyond and adjacent to that zone and includes stocks of associated species.

Article 2

Application

This Convention shall apply to straddling fish stocks and highly migratory fish stocks on the high seas

Article 3

Objective

The objective of this Convention is to establish, in accordance with the principle of sustainable development, an effective regime for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, consistent with the United Nations Convention on the Law of the Sea.

PART II

CONSERVATION AND MANAGEMENT

Article 4

Conservation and management measures

Parties shall implement conservation and management measures

(a) Which shall:

(i) Be designed, on the best scientific evidence available, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence

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occurring both in their exclusive economic zones and on the high seas

of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

- (ii) Take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened;
- (iii) Recognize and give effect to the special interest of coastal States in straddling fish stocks and highly migratory fish stocks ~~on the high seas~~ *including the special needs of coastal communities traditionally dependent on fisheries; their*
- (iv) Be designed so as not to have an adverse impact on straddling fish stocks and highly migratory fish stocks within the jurisdiction of coastal States;
- (v) Be consistent with the conservation and management measures applied by the relevant coastal State or States within their exclusive economic zones;

(b) And shall include:

- (i) Continuous scientific review and assessment of the state of stocks;
- (ii) The establishment of total allowable catches and quotas, as appropriate; *for example,*
- (iii) Provisions to ensure that fishing effort (number of vessels, and *fishing capacity* fishing days) is commensurate with total allowable catches and quotas, as appropriate;
- (iv) Establishment of minimum mesh sizes;
- (v) Promotion of the development and use of selective fishing gear and of practices that minimize waste; *requirement of the*
- (vi) ~~Provisions to ensure that fishing activities on the high seas minimize incidental catch;~~ *by the discarding of fish*
- (vii) Full, detailed, accurate and timely reporting of catches and effort; *directed fisheries*
- (viii) Provisions to ensure effective surveillance and control of fishing activities.

Promotion of the development and requirement of the use of fishing techniques which

Article 5

Precautionary measures

Parties shall, in order to achieve the objective of this Convention, apply appropriate precautionary measures, *Where there are threats of serious or irreversible damage to straddling fish stocks or highly migratory fish stocks,*

such as those contained in Annex II to this Convention

Article 6

Provision of information

1. Parties shall ensure that fishing vessels entitled to fly their flag provide them in a timely manner with such information on their operations as may be necessary to enable them to fulfil their obligations under this Convention and shall take such measures as may be necessary to ensure the accuracy of such information. They shall, in addition, cooperate with other Parties to:

- (a) Ensure enhanced collection on the high seas of data necessary for the conservation and management of straddling fish stocks and highly migratory fish stocks;
- (b) Ensure enhanced collection on the high seas of data on incidental catches in order to be able to take into consideration the effects of fisheries on the species caught incidentally;
- (c) Develop and share analytical and predictive tools such as stock assessment models;
- (d) Exchange on a regular basis up-to-date data and information necessary for stock assessment;
- (e) Establish or expand appropriate monitoring and assessment programmes.

2. Parties shall cooperate to develop detailed requirements for the implementation of paragraph 1.

5

PART III

SURVEILLANCE AND CONTROL

Article 7

Surveillance and control measures

1. Parties shall take measures in respect of fishing vessels entitled to fly their flag to monitor vessel location and catches, and to detect activities which undermine the effectiveness of international conservation and management measures, including quotas. Such measures, with due regard to the particular circumstances in individual regions, shall include an effective combination drawn from the following:

- (a) A uniform and internationally recognizable vessel marking system, such as the Food and Agriculture Organization Standard Specifications for the Marking and Identification of Fishing Vessels;
- (b) Locational transponders on each fishing vessel;
- (c) Hailing upon entry into and exit from fishing areas;
- (d) Regular hailing of catches, either by radio or using computer technology;
- (e) Authorization of fishing effort commensurate with quota or catch shares;
- (f) Rules for the provision of accurate and timely catch and effort data;
- (g) Regulation of transshipment at sea;
- (h) Aerial surveillance;
- (i) Regular inspections at sea;
- (j) On-board observers;
- (k) Catch verification and validation through dockside monitoring of landed catches and market statistics.

2. With respect to the measures contained in subparagraphs 1(h) to (k), Parties that are flag States shall enter into arrangements with the relevant coastal State or States for the use or sharing of their resources, with a view to minimizing costs for the flag State, the coastal State or States concerned and the relevant regional fisheries conservation organization or arrangement, if any. Funding shall be provided for this purpose to Parties which are both coastal States and developing countries.

3. With respect to subparagraph 1(j), when a Party decides not to have one of its own observers on board a fishing vessel entitled to fly its flag, the Party which is an adjacent coastal State may place an observer on board such a vessel for the period during which it is fishing for a straddling fish stock or a highly migratory fish stock, at the expense of the flag State.

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- (b) Ensure enhanced collection on the high seas of data on incidental catches in order to be able to take into consideration the effects of fisheries on the species caught incidentally.

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the lack of full scientific certainty shall not be used as a reason to postpone such measures.

in a timely manner

(see revised)
Article 6

Provision of information

and shall take such measures as may be necessary to ensure the accuracy of such information

1. Parties shall ensure that fishing vessels entitled to fly their flag enable them with such information on their operations as may be necessary to enable them to fulfil their obligations under this Convention, in addition, shall cooperate with other Parties to:

(a) Ensure enhanced collection on the high seas of data necessary for the conservation and management of straddling fish stocks and highly migratory fish stocks;

(b) Develop and share analytical and predictive tools such as stock assessment and bio-economic models;

(c) Exchange on a regular basis up-to-date data and information necessary for stock assessment;

(d) Establish or expand appropriate monitoring and assessment programmes.

in respect of fishing vessels entitled to fly their flag

PART III

SURVEILLANCE AND CONTROL

Article 7

Surveillance and control measures

1. In order to ensure effective conservation and management, Parties shall take measures to ensure effective surveillance and control which, with due regard to the particular circumstances in individual regions, shall include an effective combination drawn from the following:

(a) A uniform and internationally recognizable vessel marking system, such as the Food and Agriculture Organization of the United Nations (FAO) Standard Specifications for the Marking and Identification of Fishing Vessels;

(b) Regular inspections at sea;

(c) Aerial surveillance;

(d) Locational transponders on each fishing vessel or monitoring of vessel operations by satellite;

(e) On-board observers;

(f) Regular hailing of catches, either by radio or using computer technology;

(g) Hailing upon entry into and exit from fishing areas;

(h) Regulation of transshipment at sea;

INSERT TEXT FROM
OLD SUB-PARA (i)

Such measures

2. Parties shall cooperate to develop detailed requirements for the implementation of paragraph 1.

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Article § 7

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New paragraph

3. With respect to subparagraph (1), when a Party decides not to have one of its own observers on board a fishing vessel entitled to fly its flag, the Party which is the relevant ~~on~~ *adjacent* coastal State may place an observer on board such vessel for the period during which it is fishing for straddling fish stocks ~~or highly migratory fish stocks~~ *in the area* ~~adjacent to that State's exclusive economic zone~~, at the expense of the flag State.

and the vessel themselves parties have reasonable grounds to suspect that such vessels have undermined the effectiveness of international conservation and management measures

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Article 9

Offences by vessels or nationals

Parties shall take such measures as may be necessary to ensure that fishing vessels entitled to fly their flag or their nationals do not engage in any activity which undermines the effectiveness of international conservation and management measures, including:

(a) The enactment of national legislation, making it an offence to engage, in any regulatory area, in any activity which undermines the effectiveness of international conservation and management measures;

(b) The investigation of suspected offences;

(c) The initiation of compliance action (e.g., warnings, orders, directions, injunctions, prosecutions) consistent with the nature and gravity of the offence;

(d) The establishment of penalties which shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Convention and to deprive offenders of the benefits accruing from their illegal activities, including refusal, suspension or withdrawal of licences as well as fines related to the value of the fishing vessel, seizure or forfeiture of the catch, fishing equipment or vessel;

(e) The expeditious prosecution of the owners, operators or masters of fishing vessels entitled to fly their flag or of their nationals where there is sufficient evidence that they have undermined the effectiveness of international conservation and management measures and, upon conviction of an offender, the imposition of penalties proportionate to the nature and gravity of the offence.

Article 10

Flagging

Parties shall take such measures as may be necessary to prevent the flagging or reflagging of fishing vessels for the purpose of avoiding compliance with international conservation and management measures and shall, to that end, cooperate, inter alia, through the appropriate international organizations.

Article 11

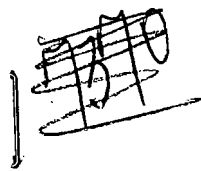
Port State enforcement

Each Party shall, to the extent practicable, exercise ^{their} right under international law to inspect the documents of fishing vessels, other than vessels entitled to fly ^{their} flag, in the ports or offshore terminals. Such inspection shall also be carried out at the request of any other Party. If, as a result of such inspection or other evidence, that port State has reasonable grounds to believe that the fishing vessel has undermined the effectiveness of

Without prejudice to the rights of States under international law with respect to their ports,

(X)

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of fax. |

The appropriate authorities of any Party may board and inspect

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English:

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Article 13

when they have reasonable grounds to suspect that it

Enforcement against vessels that conceal their identification

1. When a fishing vessel is sighted fishing in a regulatory area by the appropriate authorities of a Party which conclude that the vessel is concealing its identification or indicating a registry to which it does not belong, that Party may take such action as is necessary to board the vessel, inspect and, if appropriate, arrest and detain the vessel until such time as it is identified and the registry to which it belongs is determined. 2. If the vessel is found to be entitled to fly the flag of a Party, it may be further detained pending appropriate action by the flag State or, with the latter's consent, by the arresting Party. If the vessel is found to be unregistered, the provisions of article 14 shall apply.

4, paragraph 2, Article 16 →

SEE ATTACHED ARTICLE

PART V

REGIONAL FISHERIES ORGANIZATIONS AND ARRANGEMENTS

Article 17

Regional circumstances

The provisions of this Part shall be applied with due regard to the particular circumstances in individual regions.

Article 18

Minimum standards

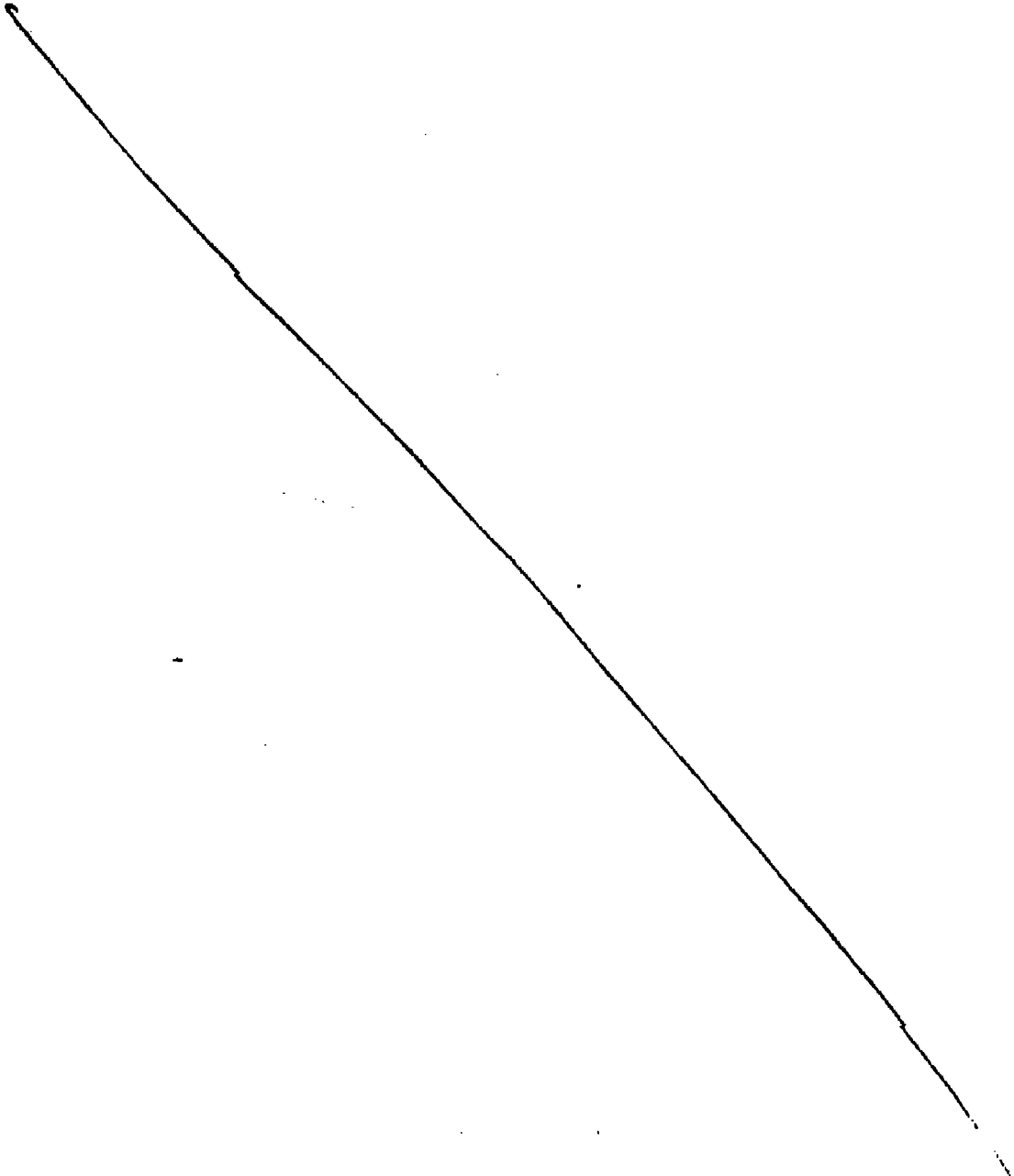
Parties which participate in regional fisheries conservation organizations or arrangements shall take action to have such organizations or arrangements:

- (a) Adopt conservation and management measures as set out in Part II; and enforcement
- (b) Adopt surveillance and control measures as set out in Parts III and IV;

(c) Provide for compulsory and binding third-party settlement of disputes where overfishing or other harmful fishing practices are at issue, considering, as appropriate, the adoption of the procedure outlined in article 25 for that purpose or its use as a model. Parties which do not participate in the relevant organization or arrangement shall be entitled to invoke or to submit voluntarily to any settlement procedure so established, in which case they shall be bound by the resulting decision. Parties that participate in regional fisheries conservation organizations or arrangements shall take action to have such organizations or arrangements establish funds to enable participants which are developing countries to defray the costs of dispute settlement pursuant to this article.

*-9 kis-*PHOTOCOPY
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Where, pursuant to ^aArticles 13 or 15, the arresting Party has delivered the arrested fishing vessel to the Party which is the flag State, the latter Party shall inform the former, within ~~12~~ twelve months of such delivery and every six months thereafter, of the action taken in respect of that vessel until final disposition of the matter.



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Article 19

New participants

Parties which participate in a regional fisheries conservation organization or arrangement shall, where appropriate, encourage States with an interest in a high seas fishery which it regulates to participate in such organization or arrangement. Such Parties may:

(a) As part of a new participant's contribution to the conservation measures of such organization or arrangement:

- (i) Make allocations of any stock they regulate to new participants subject to a waiting period;
- (ii) In cases where stocks are depressed, make allocations of any stock they regulate to new participants only when the total allowable catch exceeds a threshold level determined for that purpose by the organization or under the arrangement;
- (iii) In cases where stocks are at appropriate levels and fully allocated, make allocations of any stock they regulate to new participants subject to quotas being relinquished by existing participants;

(b) In cases where quotas are relinquished by existing participants, decide to reallocate those quotas to new participants, provided that special consideration shall be given to a coastal State with regard to straddling fish stocks or highly migratory fish stocks occurring within both its exclusive economic zone and the regulatory area and, secondarily, to developing States.

countries

Article 20

Enclosed and semi-enclosed seas

In establishing a regional fisheries conservation organization or arrangement in respect of an enclosed or semi-enclosed sea comprising, inter alia, an exclusive economic zone or zones extending up to a limit of 200 nautical miles, Parties shall provide for the consent of the coastal State or States concerned in the establishment of all conservation and management measures.

Article 21

Unregulated areas of the high seas

In areas of the high seas ~~not subject to international conservation and management measures~~, Parties which are coastal States and other Parties which harvest straddling fish stocks or highly migratory fish stocks in those areas shall, as appropriate, cooperate to establish ~~or participate in~~ a fisheries conservation organization or arrangement on a bilateral or multilateral basis:

in respect of which no fisheries conservation organization or arrangement has been established

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PART VII

NON-PARTIES

Article 245

Non-parties

1. Parties shall encourage States not parties to this Convention to adhere to it and shall encourage non-parties to adopt laws and regulations consistent with its provisions.
2. Parties shall cooperate in a manner consistent with this Convention and international law to the end that fishing vessels entitled to fly the flags of non-parties do not engage in activities that undermine the effectiveness of international conservation and management measures.
3. Parties shall exchange information amongst themselves with respect to activities of fishing vessels flying the flags of non-parties that undermine the effectiveness of international conservation and management measures.

PART VIII

SETTLEMENT OF DISPUTES

Article 246

Settlement of disputes

1. In the event of a dispute concerning the interpretation or application of this Convention, the Parties concerned shall seek a settlement through negotiation, enquiry, mediation, conciliation or other-peaceful means of their own choice.

2. If, thirty days following receipt of notification by one Party to one or more other Parties that a dispute exists between or among them, the Parties concerned have not been able to settle their dispute through the means referred to in paragraph 1:

(a) Where the United Nations Convention on the Law of the Sea has entered into force for all Parties concerned, Part XV of that Convention shall apply;

(b) Where the United Nations Convention on the Law of the Sea has not entered into force for all Parties concerned, if they do not agree to settle the dispute in accordance with Part XV of that Convention the dispute shall be submitted, at the request of any concerned Party, to arbitration in accordance with the provisions of ^{III}Annex to this Convention.

3. SEE ATTACHED PARAGRAPH

- 12 bis -

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Article 26

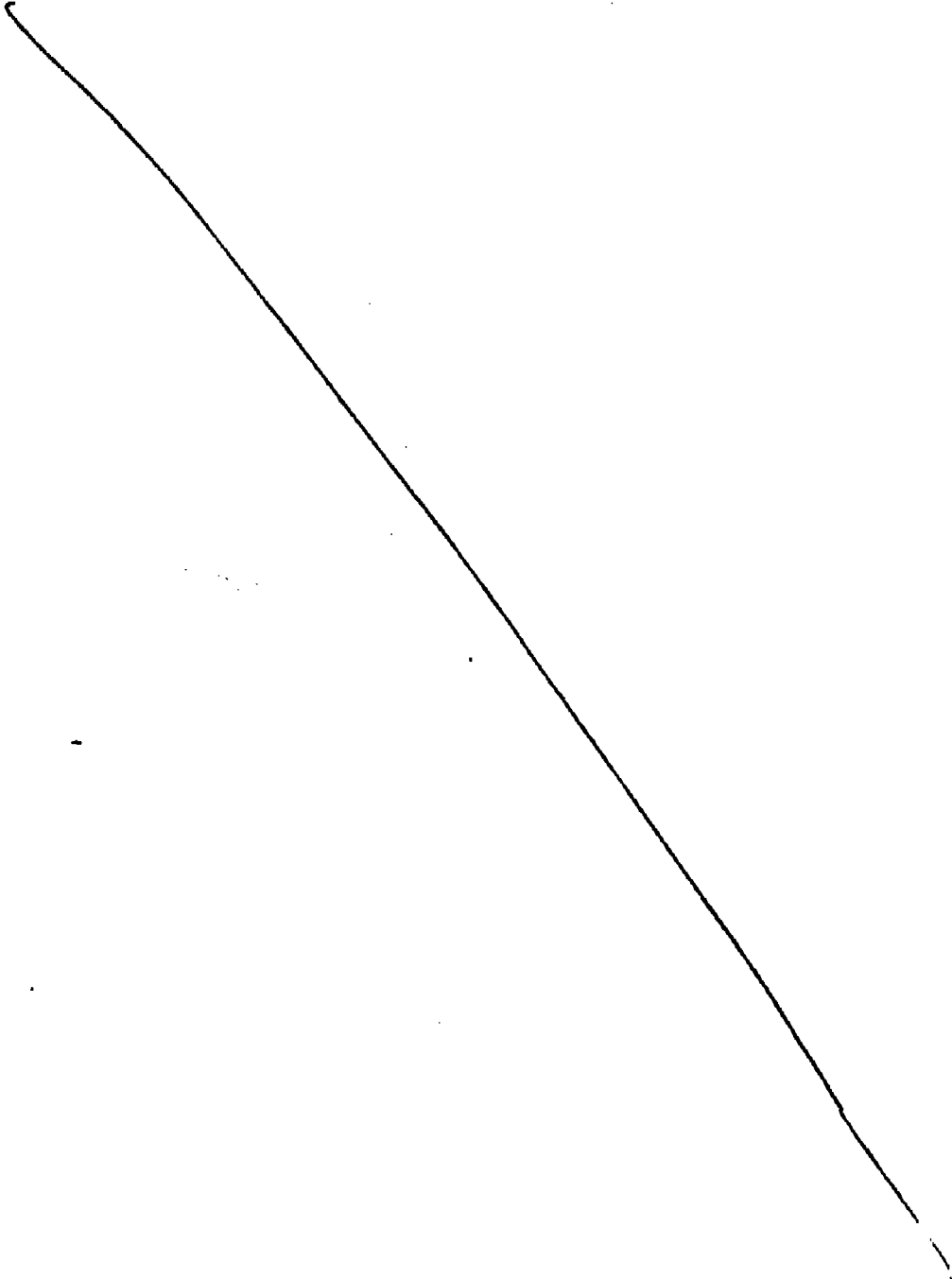
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New paragraph

New

3. Parties shall cooperate to establish a voluntary fund to enable Parties which are developing countries to defray the costs of dispute settlement pursuant to this Article.

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ANNEX I HIGHLY MIGRATORY SPECIES FISH STOCKS

1. Albacore tuna: *Thunnus alalunga*.
2. Bluefin tuna: *Thunnus thynnus*.
3. Bigeye tuna: *Thunnus obesus*.
4. Skipjack tuna: *Katsuwonus pelamis*.
5. Yellowfin tuna: *Thunnus albacares*.
6. Blackfin tuna: *Thunnus atlanticus*.
7. Little tuna: *Euthynnus alletteratus*; *Euthynnus affinis*.
8. Southern bluefin tuna: *Thunnus maccoyii*.
9. Frigate mackerel: *Auxis thazard*; *Auxis rochei*.
10. Pomfrets: Family *Bramidae*.
11. Marlins: *Tetrapturus angustirostris*; *Tetrapturus belone*; *Tetrapturus pfluegeri*; *Tetrapturus albidus*; *Tetrapturus audax*; *Tetrapturus georgel*; *Makaira mazara*; *Makaira indica*; *Makaira nigricans*.
12. Sail-fishes: *Istiophorus platypterus*; *Istiophorus albicans*.
13. Swordfish: *Xiphias gladius*.
14. Sauries: *Scomberesox saurus*; *Cololabis saira*; *Cololabis adocenus*; *Scomberesox saurus scombroideus*.
- 15 ~~16~~ ~~Delphinidae: *Coryphaena hippurus*; *Coryphaena equisetis*~~ STET
- 16 ~~17~~ ~~Oceanic sharks: *Hexanchus griseus*; *Cetorhinus maximus*; Family Alopiidae; *Rhincodon typus*; Family Carcharhinidae; Family Sphyrnidae; Family Isuridae.~~
- 17 ~~18~~ ~~Cetaceans: Family Physeteridae; Family Balaenopteridae; Family Balenidae; Family Roraidae; Family Monodonotidae; Family Ziphiidae; Family Delphinidae.~~

Modified version of Annex I (UNCLOS)

ANNEX II

SELECTED PRECAUTIONARY MEASURES ON THE HIGH SEAS

Newly Discovered Stocks

1. a) At the outset of the development of a fishery directed at a newly discovered stock, to provide for effective scientific review and assessment, and to avoid delays in establishing effective control, the coastal States in whose exclusive economic zones the stock occurs may assume management authority for an initial interim period. These coastal States shall, immediately following the assumption of this authority, convene a meeting of all interested States that have fished in the region without undermining the effectiveness of international conservation and management measures, to consult on the interim catch and effort levels for the fishery to be conducted during the interim period, and to consult on the States that will participate in the fishery under the authority of these coastal States, appropriate interim management and conservation measures, and the fisheries research to be undertaken.

b) When the initial interim period has terminated, the management of the fishery will become subject to the authority of the relevant regional fisheries conservation organization or arrangement or, where no appropriate organization or arrangement exists, shall be the subject of consultation between the above-mentioned coastal States and other States interested in participating in the fishery.

2. Early large scale fisheries on newly discovered stocks shall be prohibited.

3. Effort limitations shall be applied immediately to the new fishery.

4. Limitations shall be established on government assistance and licencing to avoid sudden large scale development of the fishery.

5. Following the initial interim period of the fishery:

(a) Measures shall be established to provide for gradual development of the new fishery;

(b) Precautionary total allowable catches (TACs) and quotas shall be established as scientific information is developed; the TACs shall be established below the levels estimated to be the maximum sustainable yield (MSY) or in accordance with management procedures which lead toward biomass levels which can produce the maximum sustainable yield;

- (c) Precautionary management thresholds shall be established, at which previously determined management action will be taken automatically to avoid delays in decision-making;
- (d) Bycatch limits shall be established to prevent the overfishing of limits set for stocks subject to TACs and to maintain or restore stocks of associated or dependent species above levels at which their reproduction may become seriously threatened.

Existing Fisheries

1. In fisheries for which scientific information is available for the setting of TACs, the TACs shall be established below the level of MSY or, if the population is below that required for traditional levels which can produce the MSY, the TACs shall be established at a level that allows the stock to rebuild.
2. Effort limitations shall be established to restrain catches within TAC and quota limits or, in the absence of such limits, as independent management measures.
3. Precautionary management thresholds shall be established at which previously determined management action will be taken automatically to avoid delays in decision making.
4. Threshold TACs shall be established below which moratoria shall be automatically applied.
5. In cases where catch levels, catch rates or fish sizes decline over time, TACs and effort shall be reduced to levels aimed at arresting the decline, and any subsidies for fishing operations shall be stopped.
6. Bycatch limits shall be established to prevent the overfishing of limits set for stocks subject to TACs and to maintain or restore stocks of associated or dependent species above levels at which their reproduction may become seriously threatened.
7. In fisheries where catches are not limited by either TAC or effort limitations, controls shall be established on government assistance and licencing to avoid sudden large scale development of the fishery.
8. For straddling stocks, in cases where the coastal State determines that an emergency exists, the emergency measures prescribed by the coastal State shall apply for a reasonable period, during which the coastal State and the other interested States shall consult, directly or through the relevant international organizations or arrangements, on the measures to be applied following the prescribed period.

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9. For highly migratory stocks, in cases where a majority of the coastal States through whose waters the stocks migrate determine that an emergency exists, the emergency measures prescribed by the majority of the coastal States shall apply for a reasonable period during which the coastal States and other interested States shall consult, directly or through the relevant international organizations or arrangements, on the measures to be applied following the prescribed period.

Selected

ANNEX II

~~Applications of the Precautionary Principle outside the area~~

CAPITAL
LETTERS

Newly Discovered Stocks

1. ~~Highly Migratory Stocks~~

~~(Proposal to be developed)~~

in whose exclusive economic
zones the stock occurs

~~Straddling Stocks (to be adapted for Highly Migratory Fish Stocks)~~

a) At the outset of the development of a fishery directed at a newly discovered stock, to provide for effective scientific review and assessment, and to avoid delays in establishing effective control, the coastal State may assume management authority for the ~~initial 12 months~~ of the fishery. The coastal State shall, immediately following the assumption of this authority, convene a meeting of all interested States that have fished in the region without undermining the effectiveness of international conservation and management measures, to consult on the interim catch and effort levels for the fishery to be conducted during the ~~ensuing 12 months~~, and to consult on the States that will participate in the fishery under the authority of the coastal State, appropriate interim management and conservation measures, and the fisheries research to be undertaken.

an initial interim period.

interim period

b) When the ~~initial 12 month~~ interim period has terminated, the management of the fishery will become ~~the~~ subject of authority of the relevant regional or sub-regional fisheries conservation organization or arrangement or, where no appropriate organization or arrangement exists, shall be the subject of consultation between the coastal State and other States interested in participating in the fishery.

to the

abovementioned

2. Early large scale fisheries on newly discovered stocks shall be prohibited.

3. Effort limitations shall be applied immediately to the new fishery.

4. Limitations shall be established on government assistance and licencing to avoid sudden large scale development of the fishery.

5. Following the initial ~~12 months~~ interim period of the fishery:

a) Measures shall be established to provide for gradual development of the new fishery;

b) Precautionary total allowable catches (TACs) and quotas shall be established as scientific information is developed; the TACs shall be established below the levels estimated to be the maximum sustainable yield (MSY)

c) Precautionary management thresholds shall be established, at which previously determined management action will be taken automatically to avoid delays in decision making;

or in accordance with management procedures which lead toward biomass levels which can produce the maximum sustainable yield;

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page 12

d)

Bycatch limits shall be established to prevent the overfishing of limits set for stocks subject to TACs and to maintain or restore stocks of associated or dependant ~~X~~ species above levels at which their reproduction may become seriously threatened.

or, if the population is below that required for traditional levels which can produce the MSY, the TAC shall be established at a level that allows the stock to rebuild.

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Existing FisheriesPHOTOCOPY
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1. In fisheries for which scientific information is available for the setting of TACs, the TACs shall be established below the level of MSY.

2. Effort limitations shall be established to restrain catches within TAC and quota limits or, in the absence of such limits, as independent management measures.

3. Precautionary management thresholds shall be established at which previously determined management action will be taken automatically to avoid delays in decision making.

4. Threshold TACs shall be established below which moratoria shall be automatically applied.

5. In cases where catch levels, catch rates or fish sizes decline over time, TACs and effort shall be reduced to levels aimed at arresting the decline, and any subsidies for fishing operations shall be stopped.

6. Bycatch limits shall be established to prevent the overfishing of limits set for stocks subject to TACs and to maintain or restore stocks of associated or dependent species above levels at which their reproduction may become seriously threatened.

7. In fisheries where catches are not limited by either TAC or effort limitations, controls shall be established on government assistance and licensing to avoid sudden large scale development of the fishery.

8. For straddling stocks, in cases where the coastal state determines that an emergency exists, the emergency measures prescribed by the coastal State shall apply for a period reasonable ~~prescribed by the coastal State up to a maximum of 6 months~~ during which the coastal State and the other interested states shall consult, directly or through the relevant international organizations or arrangements, on the measures to be applied following the prescribed period.

9. For highly migratory stocks, in cases where a majority of the coastal States through whose waters the stocks migrate determine that an emergency exists, the emergency measures prescribed by the majority of the coastal States shall apply for a reasonable ~~the period prescribed by these States up to a maximum of 6 months~~ during which the interested coastal States shall consult, directly or through the relevant international organizations or arrangements, on the measures to be applied following the prescribed period.

coastal States and other

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ANNEX
ANNEX III

ARBITRATION

1. A request for arbitration shall be made to the Secretary-General of the United Nations. The other Party or Parties involved in the dispute shall be notified of this request. Following such a request, an arbitral tribunal shall be constituted by the Secretary-General to decide on the dispute.
2. The tribunal shall be composed of three members. Parties concerned shall, within ten days of the date on which the request is transmitted pursuant to paragraph 1, each appoint one member of the tribunal. In the event that more than two Parties are involved in the dispute, the Parties sharing similar views on the questions to be considered shall seek to agree on the appointment of a common member of the tribunal.
3. If ^{any} ~~few~~ members of the tribunal ^{has been} ~~are not~~ appointed pursuant to paragraph 2 within the ten-day period it specifies, the Secretary-General shall, within ten days, appoint ~~them~~ ^{such a member}.
4. The two members thus appointed shall then select a third member, who shall be the Chair. In the event the two members are unable within ten days of the appointment of the second member to appoint the third, the Secretary-General shall, within ten days of the end of the latter period, appoint the third member of the tribunal, who shall not be a national of any of the Parties involved in the dispute.
5. Within ten days of the formation of the tribunal, the Parties concerned shall file with the tribunal a memorandum, copies of which shall be transmitted to all Parties concerned.
6. A ~~case~~ hearing shall be convened at a place and on a date to be determined by the tribunal, within thirty days following the formation of the tribunal.
7. Decisions of the tribunal shall be final and binding. They shall be taken by a majority of the members of the tribunal. ^{and the reasons on which it is based in writing}
8. The tribunal shall communicate its decision ^{to all Parties concerned} within thirty days of the end of the ~~case~~ hearing. ~~Reasons in writing shall be communicated to the Parties concerned within sixty days of the decision.~~
9. Once a dispute has been duly submitted to the tribunal, the tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the Parties concerned or to prevent damage to the stocks in question, pending a final decision.
10. The tribunal shall adopt such rules of procedure as it deems necessary ^{employing, as appropriate, the UNCITRAL Model}

Rules on Arbitration

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EXPLANATORY NOTE

This draft Convention draws on various sources, including the United Nations Convention on the Law of the Sea, other international agreements, Agenda 21, the draft FAO Flagging Agreement and EC Regulations, as indicated below:

Article

Source

*Food and Agriculture
Organization of the
United Nations,
Rome, Italy*

article I (b) of
Cf. definition of "international conservation and management measures" in the Draft Agreement on the Flagging of Vessels Fishing on the High Seas to Promote Compliance With International Conservation and Management Measures, document *CT 103/LIM/6*, June 1993 (the Draft FAO Flagging Compliance Agreement) *by Fishing*

- 1 (g) Cf. article 218 of the United Nations Convention on the Law of the Sea (UNCLOS)
- 1 (l) Cf. article 63 (2) of UNCLOS
- 4 (a) (i) Cf. article 119 (1) (a) of UNCLOS
- 4 (a) (ii) Cf. article 119 (1) (b) of UNCLOS
- 4 (b) (i) Cf. UNCLOS article 119 (2); EC regulation 3760, article 16; article VI, paras. (1) (b) and (3) of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries.
- 4 (b) (iii) Cf. EC regulation 3927, articles 4 (1) and 5 (2); Northwest Atlantic Fisheries Organization (NAFO) Measures, Part II, 3, schedules IV and V
- 4 (b) (iv) Cf. EC regulation 3927, article 4 (2); Agenda 21, paras. 17.46 (a); cf. NAFO Measures, Part II, A, C and Schedule VI
- 4 (b) (v) Cf. EC regulation 3927, article 4 (3); Agenda 21, paras. 17.46 (c) and 17.50; cf. NAFO Measures, Part I, 4 (a)
- 4 (b) (vi) *Cf. Agenda 21, para. 17.51*
- 4 (b) (vii) Cf. EC regulation 3760, article 12 (1); and NAFO measures, Part IV, 1 (i)

8 Inspired by:

Bergen Ministerial Declaration (article 7): Bergen Ministerial Declaration on Sustainable Development in the ECE Region, adopted at the Regional Conference on Action for a Common Future organized by the Government of Norway in cooperation with the United Nations Economic Commission for Europe (ECE) held at Bergen, Norway, from 14 to 16 May 1990. Ministers from 34 countries in the ECE region and the Commissioner for the

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Environment of the European Community attended the Bergen Conference;

Rio Declaration on Environment and Development (principle 15) adopted at the United Nations Conference on Environment and Development held at Rio de Janeiro, on 14 June 1992;

United Nations Framework Convention on Climate Change (article 3, para. 3) adopted at the United Nations Conference on Environment and Development held at Rio de Janeiro, on 14 June 1992;

Convention on Biological Diversity (preamble), adopted at the United Nations Conference on Environment and Development, held at Rio de Janeiro, on 14 June 1992;

Treaty on European Union (article 103r, para. 2) signed at Maastricht, Netherlands, on 7 February 1992.

6 Cf. ^{*Compliance*} draft FAO Flagging Agreement, article III (8)

6 (c) Cf. Agenda 21, para. 17.36 (b)

6 (d) Cf. Agenda 21, para. 17.36 (d)

7 (a) Cf. draft FAO ^{*Compliance*} Flagging Agreement, article III (7); NAFO Measures, Part III, A also refer

7 (b) Cf. EC regulation 3928/92 and NAFO Measures, Part VI

7 (c) Cf. EC regulation 3760/92, article 4 (2) (d) and (e)

8 Cf. EC regulation 3760/92; article 5, and draft FAO ^{*Compliance*} Flagging Agreement, article III, paras. (2) and (4)

9 ~~✗~~ Cf. draft FAO ^{*Compliance*} Flagging Agreement, article III (9)

10 Cf. Report of the 103rd Session of the FAO Council, Rome, 14-25 June 1993, paras. 63-72

11 Cf. Memorandum of Understanding on Port State Control, Paris, 20 January 1982, section 3.1; for port State enforcement in the context on pollution, article 218 of UNCLOS refers

12 Cf. draft FAO ^{*Compliance*} Flagging Agreement, article V ~~UNCLOS~~

13 Cf. article V of the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, in force 16 February 1993. Parties are Canada, Japan, Russian Federation and the United States

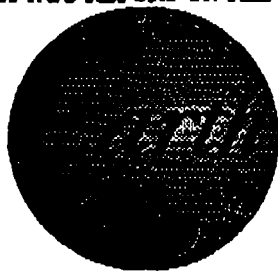
14 Cf. article 92 of UNCLOS

201 Paragraph 17.59 of Agenda 21 and article 118 of UNCLOS refer

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- 233 Paragraph 17.48 of Agenda 21
234 Cf. draft FAO ~~Flagging~~ ^{Compliance} Agreement, article VII~~X~~
245 Cf. draft FAO ~~Flagging~~ ^{Compliance} Agreement, article ~~X~~ VIII
256 Cf. Part XV of UNCLOS; article 33 of the Statute of the
International Court of Justice refers
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Negotiations Bulletin

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A Reporting Service for Environment and Development Negotiations

Vol. 7 No. 1

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Monday, 12 July 1993

A BRIEF HISTORY OF THE TREATMENT OF HIGH SEAS FISHERIES IN THE UN SYSTEM

One of the more contentious issues within the United Nations Conference on Environment and Development (UNCED) discussions on oceans was the concern, particularly among coastal and distant water fishing States, that the over-exploitation of living marine resources in the high seas has an adverse impact on resources within exclusive economic zones. According to the 1982 Law of the Sea Convention, straddling and highly-migratory fish stocks include species occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone (EEZ) and in an area beyond and adjacent to it. An exclusive economic zone is defined as an area extending 200 miles beyond and adjacent to the territorial sea.

The problems related to high-seas fishing are not new within the UN system. Participants at the Third UN Conference on the Law of the Sea were aware of the issue; however, attempts to deal with them during the course of the ten years of negotiations were not successful. The negotiators decided to leave such problems to be resolved between States concerned with high seas fisheries in different regions of the world.

During the last decade, however, events have indicated that with the advent of the EEZ, the pressure on high seas fisheries has grown rapidly and the problems have become more urgent. In a recent report, the Food and Agriculture Organization (FAO) stated that inadequate management and over-fishing are the major problems in the high seas. In this report, the FAO concluded that "excessive fishing is endangering the very sustainability of high seas fishery resources."

A number of events before the conclusion of UNCED indicated that an international conference should be convened to resolve the issues related to high seas fisheries, which had been discussed by regional fisheries organizations and by the FAO's Committee on Fisheries over the years. In 1991, the UN convened an experts' meeting that prepared a study on the problems of the implementation of the high seas fisheries provisions in the Convention on the Law of the Sea. The International Conference on Responsible Fishing was convened by the Government of Mexico, in collaboration with FAO, from 6-8 May 1992 in Cancun. The Conference adopted the Declaration of Cancun that contained provisions related to the management and utilization of high seas fisheries, requested the FAO to prepare an international code of conduct for responsible fishing and urged States to cooperate on all levels to establish and implement effective means and mechanisms to ensure responsible fishing on the high seas. The code of conduct aims at correcting the inefficiencies resulting from open-access conditions by focusing on the responsibility of those engaged in fisheries.

In line with Chapter 17 of Agenda 21, "responsible fishing" encompasses the sustainable utilization of fishery resources in harmony with the environment and the use of capture and aquaculture practices that are not harmful to ecosystems, resources or their quality.

THE UNCED PROCESS

During the extensive negotiations of Chapter 17 of Agenda 21, "Protection of oceans, all kinds of seas including enclosed and semi-enclosed seas, coastal areas and the protection, rational use and development of their living resources," the issue of high seas fisheries proved to be among the most difficult. At the conclusion of PrepCom III, which was held in August 1991 in Geneva, straddling and highly-migratory fish stocks were one of five unresolved issues in the section on living marine resources. The issue proved so divisive that the Secretariat did not prepare text on high seas fisheries in its draft of Chapter 17 of Agenda 21 for the start of PrepCom IV, held in March 1992 in New York. For nearly four of the five weeks of PrepCom IV a contact group on marine living resources (Programme Areas C and D of Chapter 17) met behind closed doors and attempted to reach consensus. By the conclusion of PrepCom IV, consensus remained elusive and the Plenary adopted the Oceans chapter with brackets around the paragraphs on straddling and highly migratory fish stocks.

At the Earth Summit in Rio in June 1992, the Chairman of the Main Committee (and formerly PrepCom Chair) Tommy T.B. Koh of Singapore requested that the United States conduct informal consultations in order to find compromise text on the issue of straddling and highly migratory fish stocks, rather than allowing lengthy and acrimonious discussions between Canada and the European Community. Twenty-four hours later a compromise was in hand. The resulting text for paragraph 17.52 read: "States should convene an intergovernmental conference under UN auspices with a view to promoting effective implementation of the provisions of the Law of the Sea on straddling and highly migratory fish stocks." The EC accepted this language once text was added to say that the conference would draw on scientific and technical studies by the FAO and be fully consistent with the provisions of the Law of the Sea, in particular the rights and obligations of coastal states and states fishing the high seas.

THE 47TH UN GENERAL ASSEMBLY

The UN General Assembly resolution establishing the Conference on Straddling Fish Stocks and Highly-Migratory Fish Stocks was one of five major resolutions on UNCED follow-up to be negotiated during the 47th General Assembly in 1992. The final text of UN Resolution 47/192 of 22 December 1992 agrees to convene the Intergovernmental Conference for three weeks in July 1993 at UN Headquarters in New York. The Conference, drawing on scientific and technical studies by FAO, should:

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- Identify and assess existing problems related to the conservation and management of highly-migratory and straddling fish stocks;
- Consider means of improving fisheries cooperation among States; and
- Formulate appropriate recommendations.

The resolution also states that an organizational session will be held prior to the Conference to elect officers and determine the organization of work. The Conference should complete its work "as early as possible" in advance of the 49th session of the UNGA. The Conference will take into account relevant activities at all levels with a view to promoting effective implementation of the provisions of the UN Convention on the Law of the Sea on straddling and highly-migratory fish stocks. NGOs from developed and developing countries are invited to contribute within the areas of their competence and expertise to the conference on the basis of UNCED procedures for their accreditation.

LIKE-MINDED STATES MEETING

In January, Canada hosted a meeting of like-minded states in St. John's, Newfoundland, to begin preparations for the UN high seas fisheries conference. Most of the countries attending were developing States with artisanal fisheries who were interested in the protection of migratory species and regulation of unauthorized excursions by distant fishing fleets into their waters. Countries opposed to such regulation or neutral on the issue were not invited. All participants endorsed efforts to obtain a legally-binding UN agreement or treaty to regulate fishing on the high seas.

Four discussion papers were submitted on: management principles; fishing by States that are not members of the regional conservation organization; surveillance, control, and enforcement on the high seas; and remedies for the violation of conservation measures. Finally, a report on the global overview of straddling and highly migratory fish stocks was presented identifying those countries with a highly migratory species problem or a potential problem.

ORGANIZATIONAL SESSION

The organizational session for the Conference was held at UN Headquarters in New York from 19-23 April 1993. The participants adopted its rules of procedure and agenda, elected all but one of its officers, appointed a Credentials Committee, and agreed on how its substantive work will be carried out and on its documentation requirements. Satya N. Nandan (Fiji) was elected Chair of the Conference. Nandan served from 1983-1992 as Under-Secretary-General for Ocean Affairs and the Law of the Sea and Special Representative of the Secretary-General for the Law of the Sea. The Conference also elected three of the four Vice-Chairs: Mauritania (for the African States); Italy (for the Western European and Other States); and Chile (for the Latin American States). The election of a Vice-Chair for the Eastern European States was deferred until the Conference.

The following countries were appointed to the Credentials Committee: Antigua and Barbuda, Argentina, Burundi, China, Kenya, New Zealand, Papua New Guinea, the Russian Federation and the United States.

The participants at the organizational session also agreed that: all substantive issues would remain the responsibility of the Plenary. In order to facilitate negotiations it was decided that consultations on specific issues would be assigned to ad hoc working groups or negotiating groups when appropriate. Due to the scientific and technical nature of substantive issues with technical content, delegations would include experts on fisheries matters. The Chairman should prepare a paper containing a list of substantive subjects and issues as a guide for the Conference, and delegations were requested to submit their proposals to the Secretariat by the end of May. Papers to be prepared by delegations must be without prejudice to any delegation on any matter, since the purpose of the papers is to guide the Conference on its future work and should not be binding on any delegation or on the Conference.

MAJOR ISSUES BEFORE THE CONFERENCE

The organizational session requested that the Chair prepare a paper containing a list of substantive subjects and issues. This document, A/CONF.164/10, "A guide to the issues before the Conference prepared by the Chairman," lists the following issues that should be addressed:

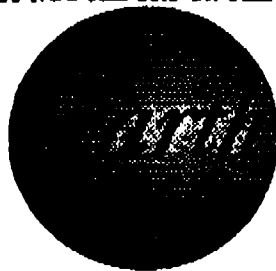
- What is the general nature of the measures that States must establish for the conservation and management of the two types of fish stocks?
- How should the mechanism for cooperation in respect of the two stocks be established?
- What should be the responsibilities of regional organizations or other regional arrangements concerning the two types of fish stocks?
- How to ensure compliance with regional conservation and management measures?
- How to ensure effective enforcement of the conservation and management measures established for a region or subregion in respect of a stock?
- How to deal with vessels fishing in an area where a regional conservation and management regime for a particular high seas stock, established in accordance with the provisions of the Convention, applies and the flag State of the vessel does not cooperate with other States in the regional arrangements?
- Without prejudice to recourse to the procedures contained in the Convention on the Law of the Sea for the settlement of disputes relating to the interpretation and application of the provisions of the Convention, what additional procedures and mechanisms are needed to resolve speedily, and on an ad hoc basis, disputes on matters of a technical nature arising from the implementation of the measures for the conservation and management of the two types of stocks in the high seas?
- How to establish minimum international standards for the conservation of straddling fish stocks or highly migratory fish stocks, for application in the high seas of a subregion or region, which could also serve as a recommendation for adoption by coastal States as a minimum standard for the conservation of the same fish stock in the exclusive economic zone, without prejudice to the sovereign rights of coastal States over the living resources in that zone, as provided for in the Convention?

THINGS TO LOOK FOR TODAY

PLENARY: The Conference will open at 10:00 am in Conference Room 2. The initial items on the agenda, as contained in document A/CONF.164/5, are primarily procedural in nature: opening of the Conference, election of the Chair, adoption of the rules of procedure, adoption of the agenda and election of officers other than the Chair. Other procedural matters to be discussed include the organization of work and the credentials of representatives for the Conference. After completion or postponement of these procedural items, the Plenary will turn to the substantive issues and commence three days of general statements. During the general debate, look for signals of government positions on the following issues: freedom to fish on the high seas versus the concept of global commons; announcements regarding commitments to a legally-binding UN agreement or treaty regulating fishing practices on the high seas; and the precautionary approach principle as applied to fisheries.

NGO ACTIVITIES: The NGO Strategy Session will meet at both 9:30 am and 6:30 pm in Conference Room C. These daily sessions will be devoted to sharing of information and discussing conference activities.

NGOs will also table a statement on straddling and highly migratory fish stocks today. This call for global fisheries reform has been endorsed by 55 NGOs from 25 countries. The primary emphasis of the statement is fisheries conservation, environmental protection and respect for the rights of traditional small-scale coastal fishing communities.



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Tuesday, 13 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS MONDAY, 12 JULY 1993

Satya N. Nandan, the Chair of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, opened the second session of the Conference at 11:00 am. He commented that the participants at the first session of the Conference, held in April, had agreed on the organization of work of the Conference (A/CONF.164/3) and, thus, this session could address the substantive issues, beginning with three days of general statements. He added that he has prepared a list of substantive subjects and issues before the Conference (A/CONF.164/10) and that numerous countries and the FAO have submitted papers as well.

In his opening statement, Nandan stated that this Conference meets at a time when there is a continued pressure on marine fish resources and a downward trend in fish catches. While under the 1982 Law of the Sea Convention the management of resources in the coastal zone is the responsibility of the coastal State, management on the high seas is a shared responsibility. He commented that there is a need for: the establishment of better fisheries management practices; a strong political commitment on the part of coastal and distant-water fishing States; accurate and timely data; research on monitoring and control of stocks; and enforcement of management measures. Flag States must honor their obligations under international law. Equally important is the need to address problems of non-contracting parties, the issue of new entrants into high-seas fishing, especially developing countries, and the need for effective dispute settlement. The issue before this Conference is not only the development of management measures, but also putting mechanisms into play that will restore depleted stocks. Management regimes should be harmonized without prejudice to State sovereignty. This Conference is timely due to: 1) the depleted state of many fish stocks is not only harmful to the marine ecosystem but also threatens the food supply; 2) the depleted state of fisheries affects the economic well-being of fishers and the fishing industry; and 3) the despair among States that believe the effort to secure high seas management is going nowhere.

AUSTRALIA: Richard Rowe stated that it is time for agreement on ways to effectively discharge the duty of States to cooperate in relation to high seas fisheries and the duty of flag States to control activities of their vessels on the high seas. A cornerstone for such action is the adoption of a precautionary approach in the management of high seas fisheries. There is also a need for accurate information from commercial fishing operations. There should be a basic obligation for all flag States to collect and share accurate and timely catch and effort data from their high seas fishing fleets. States should develop and promote the use of more selective gears and techniques used in high seas fisheries to ensure that catches are taken on an environmentally sustainable basis. He commented that the agreement

relating to flagging of fishing vessels being developed under FAO auspices has the potential to address a vital area of action needed in high seas fisheries -- raising global standards of flag State control. Before moving to prescribe new mechanisms or principles upon which to conserve and manage high seas fisheries, the Conference should be prepared to look carefully and honestly at the reasons underlying the failure in existing institutions and at the areas in which they have been successful. The difficult questions to be addressed by this Conference include: (1) the duties and responsibilities of fishing States that are not members of a regional fisheries management regime; and (2) the way in which the conservation and management regimes for fisheries on the high seas and those inside EEZs should relate to one another.

EUROPEAN COMMUNITY: Mr. Almeida Serra, Director-General for Fisheries at the Commission of the European Communities, speaking on behalf of the European Community, stated that the EC supports responsible fishing as defined at the Conference on Responsible Fishing held in Cancún, Mexico, in May, 1992, and the need for protecting the environment to ensure sustainable development as articulated at UNCED. The EC has already put into place an internal and external fisheries policy whose goals are the balanced and responsible exploitation of marine resources on a sustainable basis. To depart from the myth of unlimited freedom to fish, five principles need to be observed: conservation of marine resources should be based on scientific advice; protection of fisheries must take account of all factors influencing the state of the resource; in the absence of adequate scientific data, the precautionary approach can be an interim option; more selective fishing gear should be used; and, management and conservation measures must be realistic. The Conference should produce a collection of practical and technically feasible recommendations to serve as guidelines for cooperation among concerned States within regional and subregional organizations. The ultimate aim is conservation and management policies for the stocks that ensure rational, responsible and sustainable fishing.

PERU: Amb. Fernando Guillén stated that there needs to be a clear understanding of the legal framework of the Law of the Sea; however, its succinct provisions are not adequate to solve the problems related to high seas fisheries. Specific, comprehensive and binding rules are necessary. He emphasized that the freedom of fishing of the high seas is subject to the rights, duties and interests of coastal States. If the activities of distant fishing States conflict with coastal States, the rights of the latter must prevail. He pointed out three complementary criteria: (a) the consistency principle, where the measures adopted for the conservation and management of straddling and highly migratory fish stocks should be consistent with measures applicable within the EEZ; (b) the "no-adverse-effect" principle, where fishing activities in areas of the high sea adjacent to the EEZ should not have an adverse impact on the stocks in the EEZ; and (c) the precautionary principle, where in the absence of

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scientific certainty, precautionary measures should be adopted. He hoped for the adoption of an agreement that will solve this problem and put the necessary mechanisms in place. The purpose of this agreement should be to adopt jointly-elaborated rules on conservation measures, management of straddling and highly migratory fish stocks, supervision, monitoring and dispute settlement mechanisms.

CHILE: Andrés Couve, Under-Secretary for Fisheries, agreed that the Law of the Sea is an appropriate framework for negotiation on fisheries beyond national jurisdiction, but the Convention does not contain mechanisms for enforcement. Straddling and highly migratory fish stocks need an effective legal regime. The Japanese statement poses a difficult question: how can effective implementation be ensured through non-binding guidelines? He agreed with the Canadian statement that success depends on the binding nature of an international convention. The Conference will have to address the questions of supervision, the role of regional organizations, and cooperation mechanisms. The agreed text should reflect consensus on an international regime. New rules must be set up along the following governing principles: within the framework of the Law of the Sea Convention; in accordance with sustainable development, as highlighted in Agenda 21; with effective control by flag States over their vessels on the high seas; no negative impact on stocks sizes; conservation measures must take into account effects on related species; conservation measures must be based on the best scientific data available; preventive measures should be taken when species are at risk, even if the best scientific information is not available (precautionary approach); reflagging to avoid some of the provisions of the Law of the Sea should be prevented; regional organizations should be strengthened and include participation by all States; States should agree to dispute settlement provisions; and a regime for developing States.

CHINA: Jia Jiansan, Deputy Director of the Department of Aquatic Products, Ministry of Agriculture, said that the preservation, management and utilization of living marine resources should be carried out on the basis of equality between countries and mutual consultation. The Conference should guarantee the rational development and sustainable use of fish resources so that marine resources can continue to benefit humanity. Management of fish stocks on the high seas and in EEZs should be consistent with one another. As the two stocks are renewable resources, formulation of precautionary management measures should be based on sufficient, reliable scientific evaluations of marine living resources. Management measures include monitoring, supervision and the establishment of internationally recognized standards. The negotiations should result in recommendations to be submitted to the General Assembly.

CANADA: Minister of Fisheries and Oceans Ross Reid identified the failures of the Law of the Sea Convention, highlighted by the FAO report on the situation of high seas stocks. The mandate of this Conference is to identify the existing problems, consider means of improving fisheries cooperation and recommend proper courses of action to achieve sustainable development on the high seas, in accordance with the Law of the Sea. The high seas are a global commons, a new frontier of multilateralism. There is a need for environmental ethics and an increase in solidarity between States to avoid destruction of the resources through overfishing. The problem should be approached by considering fish as common property. Reid highlighted the consequences that overfishing on the high seas can have on coastal communities. Canada, he added, has committed mistakes in its management efforts but has always tried to set TACs at safe levels and to control its fleets. Major fisheries have been closed and will not be reopened until it is safe to do so. In these circumstances, overfishing outside the EEZ is intolerable. Because Canadian fishers are making sacrifices to rebuild depleted stocks, Canada calls for an effective international regime for conservation and management on the high seas. This regime should comprise reliable resource assessments, surveillance and control measures, and dispute settlement mechanisms that are

compulsory and binding. To be effective, this new international regime will have to be binding. Whereas States may tailor their own arrangements, a convention must provide a safety net in case of disagreement. Reid recognized that developing countries have more limited infrastructure and that their ability to fulfill their obligations concerning high seas fisheries is dependent on their capabilities.

RUSSIAN FEDERATION: The Deputy Prime-Minister of the Russian Federation, A. Zaveryukha, said that this Conference should look at the obligations of different States regarding the conservation and optimal use of stocks in open ocean areas, how cooperation can be strengthened, and what international recommendations can be put forth. He said that rational long-term cooperation should be initiated, taking into account the rights of and laws in coastal States and the Law of the Sea. Participants at this Conference must be ready to adopt decisions on a mandatory basis. Delegates should concentrate on: ways to strengthen the role of coastal States; how States can carry out activities, bearing in mind the conservation of fish stocks; and how to establish deadlines or time-frames.

NGOs: Matthew Gianni of Greenpeace and Sebastian Matthew, Executive Secretary of the International Collective in Support of Fish Workers (ICSFW), made a joint statement as NGO representatives. A number of NGOs recently negotiated a common fisheries statement for the Conference and so far 55 NGOs from 27 countries have endorsed it. The growing crisis in world fisheries has major implications for the livelihoods of fishworkers and their dependents, the health of the marine environment, and global food security. The FAO has classified virtually all commercially fished stocks as depleted, fully exploited or overexploited. Fisheries development programmes are largely directed toward short-term considerations. The NGO statement emphasizes the need for fisheries conservation, environmental protection, and respect for and recognition of the rights of small-scale, traditional, and indigenous fishworkers and fishing communities. It argues that a consistent management regime must apply throughout the range of both straddling and highly migratory fish stocks. An institutional mechanism to ensure global fisheries conservation could be a global fisheries conservation fund.

THE BUREAU

Conference Chair Satya Nadan of Fiji held his first Bureau meeting yesterday. It is not expected that the Bureau will meet daily. Members include: Amb. Mohamad Mahmoud (Mauritania); Andrés Couve (Chile); and Tullio Treves (Italy). Unresolved issues related to regional fishing rights in Eastern Europe, particularly between Poland and the Russian Federation, have delayed selection of the remaining Vice-Chair position in the Bureau. It is expected that the regional group will meet to take up this matter before the end of the week.

THINGS TO LOOK FOR TODAY

PLENARY: General debate will continue today. The tentative list of speakers includes: Doug Kidd, Minister of Fisheries (New Zealand); David Colson, Deputy Assistant Secretary of State (US); Dag Mjaaland, Assistant Director General, Ministry of Foreign Affairs (Norway); Dae Won Suh (Republic of Korea); and Mr. Horiguchi (Japan). NGOs who will speak are Al Chaddock of the Oceans Institute of Canada and Chris Chavasse from the Alaska Marine Conservation Council. Possible afternoon speakers include: Guido Di Tella, Minister of Foreign Affairs (Argentina); Rex Stephen Horoi, South Pacific Fisheries (Solomon Islands); a representative of Fiji; Dr. Zbigniew S. Karnicki, Director, Sea Fisheries Institute (Poland); Humberto Rivero Roaario (Cuba); Bernadette Dwyer of the Fuego Island Fish Cooperative; and Andranni Latchman of WWF.

NGOs: The NGO strategy session will begin at 9:00 am in Conference Room C. One-half hour after the conclusion of Plenary this afternoon, there will be an NGO-Government Dialogue with John Crosby of the Canadian delegation.



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Wednesday, 14 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS TUESDAY, 13 JULY 1993

NEW ZEALAND: The Minister of Fisheries, Doug Kidd, expressed concern about the disorder that remains among the world's high seas fishing fleets 11 years after the adoption of the Law of the Sea. He commented that New Zealand's fishing industry receives no subsidies, incentives or other financial support from the taxpayer. New Zealand's experience with tradeable quotas confirms that security of access to a resource brings about fundamental changes in the attitude of harvesters towards that resource. The same principle should hold true if applied to fisheries that are not within national jurisdiction. He mentioned four main areas to be addressed: the obligation of conservation, in relation to both target and bycatch species; cooperation in the conservation and management of highly migratory and straddling stocks; the responsibilities of fishing nations and management organizations to acquire and share data, conduct research and ensure the attainment of conservation and management objectives; and a definition of minimum standards to ensure effective compliance with agreed management regimes.

NORWAY: Dag Mjølaland said that the mandate of those participating in the Conference is to lay the foundation for responsible and sustainable exploitation of straddling and highly migratory fish stocks. These stocks can be subject to pressure that destroys reproductive capacity and reduces long-term harvesting potential of the stocks. Excessive fleet size, deficiencies in monitoring and enforcement, and reflagging are problems that need to be examined. The Conference should formulate detailed principles concerning jurisdictional competencies with respect to the two stocks by strengthening the role of coastal States in management and conservation. He supported others who spoke of cooperation with developing countries. The outcome of the Conference should enhance the capacity of developing countries to utilize resources under their jurisdiction.

UNITED STATES: David Colson, Deputy Assistant Secretary of State for Oceans and Fisheries Affairs, described the multifaceted nature of US interests as both a coastal State and a distant water fishing State. He urged coastal States and distant fishing States to work together to develop effective measures for conserving straddling stocks in high seas areas. He encouraged the establishment of strong, regional organizations among the States concerned, capable of managing straddling stocks and highly migratory species in a way that is consistent with the Law of the Sea. Three traditional arguments must be rejected: effective enforcement measures would be inconsistent with high seas freedoms; there is not enough scientific evidence to prove that fisheries or stocks should be controlled or reduced; and consensus is required before decisions can be taken. He also supported greater transparency in high seas commercial

fisheries, greater control by flag States, and multi-species ecosystem-oriented management.

REPUBLIC OF KOREA: Minister Dae-Won Suh offered the following suggestions on topics the Conference may want to consider: (1) As straddling stocks and highly migratory species have different places of occurrence and migratory range, it is not easy to invent a global framework for a fisheries conservation regime applicable to all parts of the ocean. (2) As the work by the FAO on a flagging agreement as part of the Code of Conduct for Responsible Fishing is being finalized, we should be careful to avoid unnecessary duplication of work on this issue. (3) Over-fishing by the coastal States of the fish stocks occurring within their EEZs may often cause greater adverse impacts on living resources than over-fishing in the adjacent areas of the high seas. (4) Conservation and management of fisheries within the EEZ and its adjacent areas of the high seas should be based on the "best scientific evidence available," as stated in Article 119 of the Law of the Sea Convention.

JAPAN: Matsuhiko Horiguchi stated that Japan has historically cooperated in the conservation and management efforts pursued by regional bodies. Living marine resources must be used sustainably, based on the best scientific evidence available, to be shared for future generations and so that depleted stocks can be restored. A fair balance must be maintained between the duties and rights of coastal States and those of fishing States. There should be consistency between measures taken both inside and outside the EEZs. Conservation measures covering all areas of migratory resources are necessary. He said that it is essential that States cooperate effectively on scientific research and the handling of data on the conservation of living marine resources. Likewise, cooperation among all States must be promoted with respect to global issues, such as reflagging, satellite monitoring, and assistance to developing countries. Japan finds it neither necessary nor appropriate to conclude a legally-binding instrument.

WORLD WILDLIFE FUND: Indrani Lutchman listed a number of criteria that should be considered in the development of effective approaches to regional management of fishery resources. Management should be conservation-based, and include, *inter alia*, a clearer definition of Maximum Sustainable Yield (MSY), and an evaluation of the environmental impact of new gear before use. Regional bodies, she added, should adopt a common goal of reducing bycatch, and allow for greater transparency and participation by the general public. The regional management entities need to be held accountable, possibly to a formal international high seas management authority. Membership in regional management bodies should be a requirement for fishing on the high seas, and management decisions by bodies should be legally binding for all members. Enforcement measures must be strengthened and might include on-board observers. A fee system might be established, requiring a royalty to harvest. Finally, dispute settlement mechanisms need to be set up before the Law of the Sea Convention enters into force.

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ALASKA MARINE CONSERVATION COUNCIL: Chris Chavasse urged non-signatory nations to sign, ratify and endorse the UN Convention on the Law of the Sea, including the enforcement and dispute resolution mechanisms. He recommended and encouraged governments to consider the following areas requiring recognition, agreement and legally-binding action: incorporation of a precautionary approach into all management plans and regulations; conservation, management and extraction of straddling and highly migratory fish stocks should be consistent with coastal States' conservation and management regimes; establishment of a Code of Conduct to govern or eliminate vessel re-flagging for marine living resource extraction purposes; establishment of contaminant monitoring on a permanent basis; creation of a neutral observer corps to monitor and report on catches, vessel operating standards and working conditions; and the establishment of a conservation fund by collecting fees for the extraction of marine living resources on the high seas.

ARGENTINA: Minister of Foreign Affairs Guido di Tella said that there should be an effective fishing regime based on international cooperation. Coastal States, in conformity with the Law of the Sea, have a mandate to preserve the seas within their EEZs. The new regime must adequately contemplate the rights of coastal States in accordance with the Law of the Sea and the rights of developing States to obtain rational benefit from the waters under their jurisdiction. He supported yesterday's remarks by the Chair and Canada.

SOLOMON ISLANDS: Amb. Rex Horoi, spoke on behalf of the 16 members of the South Pacific Forum Fisheries Agency and highlighted the problems that these States confront. He noted the experience gained by these States in negotiating common positions during the 1992 Manila Principles on High Seas Fisheries Management. Cooperation in the manner envisaged by existing regional and international fisheries commissions has not proved effective in the management and conservation of high seas resources. From a South Pacific perspective, elaboration of flag State responsibility needs to be reaffirmed. He concluded by calling on States to achieve tangible results during this session and not treat it as merely preparation for a longer process.

FIJI: Amb. Ratu Manasa K. Seniloli supported the Solomon Islands' statement and suggested that the Conference should concern itself with the substance and mechanisms of a proposed regime. Fiji believes that the collection of data on high seas catches is fundamental to understanding fish stocks in and beyond EEZs and would provide the basis for further investment opportunities. Better fisheries management practices, based on best available scientific evidence, and a deeper political commitment for all parties involved is needed for stocks to produce the maximum sustainable yield.

POLAND: Dr. Zbigniew Karnicki, Director of the Sea Fisheries Institute, said that at the time of the Law of the Sea Convention, highly migratory and straddling fish stocks did not seem particularly important but the situation has clearly changed. No one knows the exact reason for the collapse of stocks, but Poland has taken strong measures to remedy the situation. It is important for the Conference to address the issue of catch allocation and particularly historical participation. Even though there are limits to fishing on the high seas, no additional preference should be granted to coastal States. 95% of fish resources are already located within EEZs and it would be unfair to grant coastal States further advantage. Geographically disadvantaged States should be given priority in the allocation of quotas. The Polish Government has maintained full control over its distant fishing fleet and all vessels are registered and operate under licenses. The Conference should adopt a clear set of principles, acceptable to both coastal and distant water fishing States, within the framework of the Law of the Sea.

INTER-AMERICAN TROPICAL TUNA COMMISSION: James Joseph said that to properly manage tuna and other highly migratory species, one should bear in mind that

distant vessels also migrate and that markets are truly international in nature. He called on the creation of a single agency to manage migratory species worldwide, or at least greater coordination among existing agencies. One of the most vital issues that should be addressed is that of bycatch. The Commission has gained experience trying to reduce dolphin mortality. The potential changes within CITES for the listing of endangered species may further reduce bycatch of non-target species.

FOGO ISLAND COOPERATIVE: Bernadette Dwyer said that the 400-year-old Fogo Island communities are facing the same threat: the permanent destruction of northern cod. Since these people have little or no professional work skills outside the fishery, they will face total reliance on government social programs. A temporary two-year moratorium on northern cod, to allow stock rebuilding, went into effect in 1992. Current evidence suggests that the northern cod stocks are still in decline, and that much of the remaining body of northern cod has migrated into warmer, deeper water on the shelf of the Grand Banks, outside Canada's EEZ and, thus, is even more vulnerable to uncontrolled fishing. The temporary moratorium may have to be extended to the year 2000. She called for a temporary suspension of fishing of all threatened species in the area adjacent to and beyond Canada's EEZ.

OCEANS INSTITUTE OF CANADA: Al Chaddock deplored the rape of fisheries by high-tech "aquabusiness". He insisted that the aim of this Conference should not be solely to restore stocks to a sustainable level, but to bring back the fisheries to the people. Fisheries should not be seen as a source of profit for a few private enterprises, but as a source of food for the people of the world. He expressed hope that the mistakes of the past would not be repeated and that the need for such a Conference would not arise again.

THINGS TO LOOK FOR TODAY

PLENARY: The final day of general debate should begin sometime after 10:00 am. in Conference Room 2. The list of speakers for the morning includes: D.H. Anderson, Second Legal Adviser, Foreign and Commonwealth Office (United Kingdom); Henrique R. Valle, Head of the Department of Environmental Affairs, Ministry of External Relations (Brazil); Chandra Amerasekare (Sri Lanka); Per Wramner, Director-General, National Board of Fisheries (Sweden); José Robles (Mexico); P.K. Chisara, Senior Fisheries Officer (United Republic of Tanzania); Stanislav Klementyev, First Vice-Chairman of State, Commission for Fishing Industry (Ukraine); Henry A.R. Ngongou, Permanent Secretary, Department of Marine Resources (Sierra Leone); Rodolfo Jaramillo (Colombia).

The speakers for the afternoon should include: a representative of Trinidad and Tobago; Gudmundur Eiriksson, Legal Adviser, Ministry of Foreign Affairs (Iceland); Muchtar Abdullah, Director General for Fisheries, Department of Agriculture (Indonesia); Gustavo Gonzalez Cabal, Under-Secretary of Fisheries Resources (Ecuador); a representative from India; Francisco Berguido (Panama); a representative from Costa Rica; Mr. Riekstins, Ministry of Maritime Affairs (Latvia); Renagi Renagi Lohia (Papua New Guinea); James Gosselin, International Legal Adviser, Ministry of Foreign Affairs (Cook Islands); Humberto Rivero Rosario (Cuba); W. Krone, Assistant Director-General, Fisheries Department (FAO); Russell Barsh, Four Directions Council; and Geoffrey Laurence, Senior Assistant Secretary for Ocean Sciences and Living Resources, Intergovernmental Oceanographic Commission (an associated body of UNESCO).

At the conclusion of Tuesday's session the Chair announced that beginning on Thursday the meeting will look at the substantive issues according to the list in A/CONF.164/10 "A Guide to the issues before the Conference prepared by the Chairman." It is Nandan's intention that a detailed discussion will address the issues one-by-one beginning with the nature of conservation and management measures to be established through cooperation. Look for Nandan to further clarify his plans today.



Earth Negotiations Bulletin

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Thursday, 15 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS WEDNESDAY, 14 JULY 1993

UNITED KINGDOM: David Anderson, Second Legal Adviser, Foreign and Commonwealth Office, spoke on behalf of the UK's territories that do not fall under the scope of the European Community. He said that a common starting point is the need for regional cooperation, where appropriate. It will be important to formulate recommendations by way of consensus in accordance with the rules of procedure. Anything less may perpetuate present difficulties.

BRAZIL: Amb. Henrique R. Valle said that the main purpose of this Conference is to promote effective implementation of the provisions of UNCLOS that will lead to the goal of sustainable management and conservation of marine living resources. Brazil believes that to be truly effective, comprehensive measures, capable of regulating a crucial activity in the world economy, should be embodied within a legal instrument, constructively negotiated by all parties.

SWEDEN: Per Wramner, Director-General, National Board of Fisheries, said that the precautionary principle should be applied until scientific knowledge is sufficient. Continued work at the global level should be transferred to the Commission on Sustainable Development, in close cooperation with FAO. Over-utilization of fish stocks does not occur because of shortfalls in UNCLOS, since most of the regional bodies were established earlier. The Conference should recommend that funding agencies allocate resources to developing countries and regional bodies for work on the maintenance of biodiversity within high seas fisheries management.

SRI LANKA: Chandra Amerasekare said that recommendations of the Conference should promote a consensus approach regarding regulations and fishing management practices with respect to high seas fishing. Capacity-building for developing systematic ocean observing systems for developing countries is important. A legal framework alone is not sufficient to address the problems and find solutions. Regional intergovernmental organizations can play a vital role for assisting member countries in building up capacity.

MEXICO: José Robles said that it is important to improve the quality and reliability of fish statistics, collect and provide timely information on activities of high seas vessels, and establish mechanisms for the settlement of disputes. Any agreement adopted by this Conference should promote new international understanding that fishing on the high seas is subject to regulation and support a system of responsible fishing.

UKRAINE: Stanislav Klementyev, First Vice-Chairman of State, Commission for Fishing Industry, said the Conference should keep in mind the following guidelines: principles of consensus (regional international fishing organizations will

be the most effective approach); principle of scientific justification (decisions can be adopted only in the presence of scientifically reliable data); and the idea that living marine resources are the property of the whole of humanity.

TANZANIA: Peter K. Chisara, Senior Fisheries Officer, Ministry of Tourism, Natural Resources and Environment, said that conservation and management of straddling and highly migratory fish stocks are difficult due to lack of cooperation among States; new technological developments that encourage the use of unsustainable exploitation of ocean resources; and lack of commitment to sustainable management on the part of distant fishing fleets. Developed countries should assist developing nations in capacity-building.

SIERRA LEONE: Henry Ngongou highlighted the fact that, as a least developed country, Sierra Leone finds it difficult to face the additional responsibilities vested under the extension of the EEZ. Distant water fishing vessels do not always abide by regulations set up by the coastal States and they, in turn, are financially incapable of containing such violations. Financial assistance should be provided to facilitate collection of data and support for surveillance mechanisms. A special fund might be created to assist LDCs in the management of their fish stocks.

COLOMBIA: Rodolfo Jaramillo said that the time has come for the international community to consider a legally-binding regime to avoid further plundering and arbitrary use of natural resources by some States. Measures of conservation should be applied on the basis of the most up-to-date scientific information, but not in critical cases where the precautionary principle should be applied. He advocated consistency between the regimes of coastal States and the high seas and stressed the need to devise dispute settlement mechanisms.

SOUTH PACIFIC FORUM FISHERIES AGENCY: Michael W. Lodge said that the major constraint to effective cooperation is the fact that cooperative research and analysis is based on incomplete data. Unregulated transshipment of in-zone catches on the high seas contributes to increasing pressure on stocks within and beyond EEZs and to unreliability of data. The rapid expansion of driftnet fishing in the South Pacific in the late 1980s bears witness to the speed with which fishing operations on high seas can threaten regional fisheries resources.

COOK ISLANDS: James Gosselin, International Legal Adviser, Ministry of Foreign Affairs, expressed his support for the comments made by the representatives of Solomon Islands and the South Pacific Forum Fisheries Agency. He insisted on flag State responsibility, the recognition of the specificities of the South Pacific region and the special needs of developing nations. He called on appropriate restraints in the exercise of freedom to fish on the high seas.

INTERNATIONAL OCEANOGRAPHIC COMMISSION (UNESCO): Geoffrey Laurence, Senior Assistant Secretary for Ocean Sciences and Living Resources, made the following

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Earth Negotiations Bulletin

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Friday, 16 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS THURSDAY, 15 JULY 1993

CHAIR'S SUMMARY OF THE GENERAL DEBATE

The Chair, Satya Nandan, opened the meeting by summarizing the three previous days of general debate. He said that the discussion satisfied the first substantive item in the mandate of this Conference, as stated in resolution 47/192: "Identify and assess existing problems related to the conservation and management of highly migratory and straddling fish stocks." Nandan highlighted a number of issues where there appears to be convergence, including:

- Commitment to seeking long-term solutions.
- Effective conservation and management of straddling and highly migratory fish stocks over their range.
- Effective management can only be achieved through cooperation among States.
- The 1982 UN Convention on the Law of the Sea must be the legal framework within which conservation and management measures are developed.
- Adoption of a code of conduct for responsible fishing.
- Data and scientific information are essential for conservation and management measures. In the absence of such data, the precautionary approach principle should be applied, where appropriate.
- Principles of resources sustainability are an essential component of conservation and management.
- Agreement on compliance and enforcement is needed.
- Effective conservation and management must be reinforced by appropriate dispute settlement mechanisms.
- Conservation and management regimes of these stocks should not be undermined by non-parties.
- Technical cooperation should be provided to developing countries to enhance their capabilities in fisheries conservation and management.

METHOD OF WORK

Nandan explained that the next task of the Conference is to address the second and third components of the mandate: means of improving fisheries cooperation among States and formulation of appropriate recommendations. To do this, he proposed that the Conference examine the issues listed in A/CONF.164/10. The delegates should take Item I (conservation and management measures) first, followed by II and III together, since they are related to regional arrangements. Items IV and V are both related to control and surveillance. Then Item VI (non-parties), VII (settlement of disputes) and VIII (compatibility between national and international conservation measures) will be addressed sequentially. Following the discussion, the Chair will put together a basic text.

Tunisia suggested that the Chair prepare a text at the end of the discussion of each item so it could be dealt with in an informal group, while the discussion continues in Plenary.

This would allow greater transparency and involve all delegations. The Chair responded that there are only facilities for one meeting at a time so that a separate parallel meeting cannot be organized. He said that he will try his hand at a text and will welcome volunteers to meet with him in one of the smaller rooms to see if the text is balanced. In response to a question from Indonesia, he said that he did not know if three weeks would be enough, as this will depend on the acceptability of the text.

Peru commented that the mandate of the Conference does not preclude the possibility of an international legally binding agreement. In the absence of a legally binding agreement the coastal States have the right to regulate stocks in the high seas adjacent to their EEZ, either unilaterally or regionally, and adopt appropriate measures in order to avoid depletion. The Chair responded that it is inappropriate to discuss the outcome at this time; delegates should concentrate on substantive issues.

CONSERVATION AND MANAGEMENT MEASURES

Japan said that conservation and management measures should apply throughout the range of the species concerned. Thus management should be consistent in both the EEZs and the high seas. Yet the sovereignty of the coastal State within its EEZ should not be questioned. For conservation and management, a common standard of data not only from the high seas but also from coastal States is needed.

The US said that conservation regimes should employ a multispecies ecosystem approach and should recognize the principle of conserving resources at levels no less than that which will produce the long-term maximum sustainable yield, rather than short term profits. The precautionary approach should be used in managing these stocks.

The Philippines said that the legal or moral instruments and the operational and scientific modalities must be considered with great care. The concept of optimum utilization of fish stocks needs to be more clearly defined. China said that conservation and management measures must be observed inside and outside of the EEZs. Cuba said these measures should be compatible with legal standards.

Poland added that conservation and management must be geared toward the prevention of overexploitation and to the preservation of fisheries. Sweden said that no fish stock only occurs beyond the EEZs and that many occur within and outside the EEZs. These must be managed in a coordinated way on both sides. Management measures must differ between geographic areas. Norway stated that conservation and management, particularly in relation to Total Allowable Catch (TAC), should be based on the best available scientific data supplied by an internationally recognized scientific body. Scientifically-based conservation and management ensures sustainability and responsibility regarding fisheries.

The Russian Federation said that the general universal measures referred to in Item I of A/CONF.164/10 are the foundation on which regional and subregional cooperation should be built, with a view towards conservation and

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management of fish stocks. The EC said that States have an obligation to conserve living marine resources on both sides of the EEZ. WWF mentioned that to meet the conservation mandate, limited access, restricted seasons or areas, limiting gear types and promoting environmental impact assessments should be considered.

2 PRECAUTIONARY PRINCIPLE

The EC said that the precautionary principle comes directly out of Principle 15 of the Rio Declaration, which applies to chemicals, and that it cannot be translated automatically to fisheries management. FAO document A/CONF.164/INF.2 states what the principle means in the fishing field. There can be no autonomous transfer from the Rio Declaration to fisheries. New Zealand responded that it previously expressed its reservation on the limits of application of the precautionary principle, as adopted by the FAO. It is not the responsibility of the FAO's technical consultations to make the authoritative interpretation of the precautionary principle.

Japan agreed with the EC. In response to New Zealand's comment, he said that not all delegations have to agree with the content of the FAO report, but it is a good document that can be the basis for efficient and specific discussion. Fishery management and conservation should always be carried out in a cautious manner, partly because of the absence of sufficient data. The problem with the use of the precautionary principle is that it may at times be equated with the notion of banning fishing unless the user can demonstrate that fishing has no adverse impact on the stock. It is difficult, if not impossible, to prove a negative.

Chile said the Conference should not attribute greater or lesser value to some FAO documents. They are very valuable but are not the authority for the elaboration of the precautionary principle on the high seas. The US said that straddling stocks should be managed in a precautionary manner, recognizing that this does not require a moratorium. Allowable catch levels should be established based on the best scientific information available and take into account uncertainties concerning the size and production of the resource. The Philippines said that precautionary measures should be looked at with prudence and caution. China thought that this interim type of measure should not be too simplistic, leading to a moratorium on fishing.

Poland associated itself with the Philippines, saying that the Conference should take a precautionary approach to the precautionary principle. The Republic of Korea associated itself with both the EC and Japan that the application of the precautionary approach to fisheries was inappropriate. He quoted from three FAO papers to show that FAO took a consistent position in providing a negative picture of the application of the precautionary principle to fisheries.

Sweden felt that the precautionary principle has been used in handling environmental issues such as biodiversity and that in relation to fisheries, this principle has to be further elaborated. Australia said that there is no doubt that the precautionary principle, as set out in the Rio Declaration, has relevance in all fields of natural resource management. Australia felt that it was important for scientific assessment to take uncertainty into account. Norway's opinion was that the principle should be generally applied, and that it is important when the scientific basis for management is poor. Papua New Guinea agreed with Australia and New Zealand and said that the principle was discussed in detail at UNCED. Adoption of the principle here should take into account uncertainties of factors such as climate and economy. Consideration of the principle in the FAO documents was inadequate.

Iceland agreed with New Zealand that the principle is applicable throughout the entire range of human activity. There is a general obligation to apply precaution, but the lack of full certainty is not a reason to postpone such measures. Canada said that depletion of stocks are the accidents that point to the need for traffic lights, even in the absence of compelling statistics. The Russian Federation felt that the principle is important, but different States will have

different interpretations. Indonesia expressed sympathy for the principle and Trinidad and Tobago saw the principle as an important management tool.

Greenpeace said that the principle should be applied in all cases of uncertainty, and that its use does not necessarily lead to the application of moratoria. The Alaska Marine Conservation Council said that the precautionary approach is linked to long-term sustainable fishing for human consumption and for small-scale and industrial activity to protect the base of oceanic activity. Principle 15 of the Rio Declaration lacks scope to give developing nations the ability to incorporate the principle in regimes.

SPECIAL RIGHTS OF COASTAL STATES

Papua New Guinea said that special rights should be granted to coastal States on a regional basis only. Canada said that the Chair's paper does not deal with the special rights of coastal States and we should ask for no more than the application of modalities that will ensure that stocks management is compatible on both sides of the EEZ limit.

Norway associated itself with the inclusion of coastal States' interests. They were not included in the 1982 Convention but were in the 1958 Convention. In both conventions, there was reference to distant fishing "rights" but not "special rights". The difference is that coastal States also have duties that are not mentioned in the 1958 Convention.

Chile mentioned the complicated history of special rights in the Law of the Sea negotiations and warned against a selective reading of the Convention. India and Sierra Leone supported the rights of coastal States. Korea said it is impossible to infer special rights for coastal States from the Convention. Article 89 says that no State can subject the high seas to its sovereignty.

TOTAL ALLOWABLE CATCH (TAC)

Japan said straddling and highly migratory fish stocks are different and the same rules should not apply to their management. Species should be dealt with separately, with separate guidelines. Peru said measures established for the conservation of these regulated species should be directed to optimize Maximum Sustainable Yield (MSY) in accordance with the relevant economic factors. These measures should include the establishment of TACs by species, geographical area, season and fishing vessels, and use of procedures to reduce accidental bycatch of other species. The EC said that TACs have been applied for 15 years with good results. It is not an ideal system but it can be elaborated. Using TACs is an element of output regulation and it can be ameliorated by acting on the input, i.e., limiting the fishing effort through fleet restriction, the number of vessels and the time during which they can operate.

Japan said that all regional bodies set TACs throughout a species range if it is known. It is quite reasonable and appropriate to think of TACs as applicable to the whole range. Some highly migratory fish stocks are known to migrate through the EEZs of dozens of coastal States. If each State establishes its own TAC on account of its sovereign rights, it is likely that no TAC will be set up on the high seas.

THINGS TO LOOK FOR TODAY

PLENARY: The Conference will continue consideration of A/CONF.164/10, "A guide to the issues before the conference prepared by the Chairman." Debate today will move to the next two issues on Nandan's list, which relate to regional arrangements, "The mechanisms for cooperation" and "Responsibilities of regional fisheries organizations or arrangements." The two questions posed by the Chair are: How should the mechanism for cooperation in respect of the two stocks be established? and What should be the responsibilities of regional organizations or other regional arrangements concerning the two types of fish stocks? In response to yesterday's request by the Chair, look for governments to comment in greater detail on the gathering of scientific data and information, particularly in relation to stock assessments.

Week (2)

A DAILY NGO REPORT ON THE UN CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS



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Monday, 19 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS FRIDAY, 16 JULY 1993

The Plenary continued consideration of A/CONF.164/10. "A guide to the issues before the Conference." The delegates concluded their discussion of Item I. "The nature of conservation and management measures to be established through cooperation," before moving on to the consideration of Items II and III, mechanisms for cooperation and responsibilities of regional fisheries organizations?

I. CONSERVATION AND MANAGEMENT MEASURES

INTERESTS OF COASTAL STATES: Although some delegations mentioned that the special interests of coastal States should be considered by the Conference, China believes that this question exceeds the scope of UNCLOS. Uruguay disagreed and said that the special interests of coastal States are clearly based on provisions contained in the Convention. Peru said that UNCLOS only provides for the interests of distant water fishing States, but coastal States also have rights, obligations and interests. China responded that there is no mention of the preferential rights of coastal States in Article 119 in UNCLOS. Korea added that resolution 47/192 states the work of this Conference should be consistent with UNCLOS and in Article 116, paragraph (b), there is no mention of the word "especially" in relation to the interests of coastal States.

TOTAL ALLOWABLE CATCH (TAC): Tanzania supported the adoption of TACs within major fisheries management, but said that other measures should be considered, including mesh size restrictions, season closures, and the use of traditional and cultural conservation methods. Morocco said that TACs are effective when there are powerful regional authorities. Issues such as TACs, fish gear and optimum utilization of fish stocks all require a draft code of conduct for responsible fishing. Brazil said that the establishment of TACs is useful, but their implementation may be problematic since when statistics are available they are not always accurate.

PRECAUTIONARY APPROACH: Solomon Islands supported New Zealand and Australia with regard to the precautionary principle. Brazil, supported by Samoa and Argentina, said that the precautionary approach is controversial, but there is no reason why it should not be applied to fisheries.

RESPONSIBLE FISHING PRACTICES: Mexico said that this Conference should endorse decisions made in other fora on the issue of responsible fishing practices. Indonesia did not support linking management of coastal zones and the high seas.

DATA COLLECTION: The FAO commented that it can play an important role in the collection and dissemination of high seas fisheries data. The FAO intends to initiate consultations with concerned regional fisheries bodies in all

areas to review data requirements, minimum regulations, and reporting mechanisms to see how we can agree on standards. Tanzania supported the need for greater transparency, a centralized data base and harmonization of methods for data collection and analysis. Morocco said that the collection of data is the basis for every type of management measure to be implemented on the high seas. China said that all data and statistics regarding these stocks should cover areas both within and outside the EEZs.

Brazil said that provisions for the exchange of information may stimulate countries to collect and exchange scientific data. The Republic of Korea supported the need for adequate scientific data and said that FAO is the most important and appropriate body for collecting information submitted by governments. The Philippines said that research should be conducted with great objectivity so that this information might be used with greater ease. Indonesia said that it is the obligation of all States, whether coastal States or distant water fishing States, to collect data and information from vessels flying their flag. The EC said the most important data are catch statistics that include figures of landings and discarded waste. The Russian Federation said that the most effective type of scientific research is done within the framework of regional scientific organizations.

New Zealand said that data sharing can be done effectively on migratory species, as demonstrated by Japan's provision of data for the southern bluefish tuna. While Japan recognizes the rights of coastal States, it hopes that implementation of sovereign rights will be in line with the broader objectives of collection of necessary data both within and outside the EEZ. Gabon said that developing countries have specific, if not special, requirements with regard to statistical data. Countries that fish on the high seas generally display defiance when asked to provide data.

The EC mentioned the issue of confidentiality of data. New Zealand responded that we should be careful in discussing data requirements so as not to let the principle of confidentiality undermine the obligation to supply data. Japan said that the concept of data sharing with coastal States is natural with regard to data networks within regional and subregional organizations. Chile supported New Zealand's position and added that Japan's comment is instructive on the concept of a harmonized system for data collection. The EC responded that confidentiality cannot be used to undermine the data, but it should be disseminated only after it has been treated by scientists.

COOPERATION IN SCIENTIFIC RESEARCH: Chile, supported by Brazil, Mexico and Argentina, suggested that this sub-paragraph be considered under Item II. With regard to scientific cooperation, the Republic of Korea said that regional and subregional bodies are appropriate because these organizations are familiar with the area and have the know-how and experience. The Philippines and Chile said that capacity building in developing countries is important, including the transfer of technology on concessional and preferential terms, as in Chapter 34 of Agenda 21.

Earth Negotiations Bulletin is written and edited by Pamela Chasek (pchasek@edp.apc.org). Charlotte de Fontaubert (61155@chopin.ude.edu), Langston James Goree VI "Kimo" (kimo@web.apc.org) and Richard Jordan, with specific contributions from Lewis Clifton, and funding from the International Institute for Sustainable Development (IISD@web.apc.org). Additional funding for this volume of the Bulletin has been provided by External Affairs and International Trade Canada. The authors can be contacted at their electronic mail addresses and, during the Conference, by phone at +1-212-353-7300, ext. 2402 and by fax at +1-212-753-0366. IISD can be contacted by phone at +1-204-958-7700, by fax at +1-204-958-7710 or at 181 Portage Avenue East, 6th Floor, Winnipeg, Manitoba, R3B 0Y4, Canada. The opinions expressed in Earth Negotiations Bulletin are those of the authors and do not necessarily reflect the views of IISD. The contents of Earth Negotiations Bulletin may be freely used in other publications with appropriate citation. This volume of Earth Negotiations Bulletin is uploaded into the APC computer conference en.marine.

II. MECHANISMS FOR COOPERATION

The US supports the formation of organizations or bodies for the establishment of conservation regimes in specific geographic regions. The US supported the FAO's initiative to conclude a legally-binding instrument on the flagging of vessels. Sweden said that close cooperation between all States has to be institutionalized and management must not be ad hoc but ongoing. To give these regional and subregional organizations the necessary strength, they should have compulsory membership, firm international structures and financing from member States.

The Philippines agreed with Sweden that management of fishery resources is a permanent activity and an institutionalized mechanism should be set in place. Regional cooperation might be geographic or established according to the migratory species. The Russian Federation said that regional cooperation is the most adequate and appropriate way to resolve practical problems of conservation. This is most effective through agreements at the global level. The rights of coastal States should be strengthened and negotiations should begin to formulate objectives, timetables and solutions. Until then, if threatened, a coastal State can take unilateral temporary measures to preserve fish stocks.

Gabon warned against the proliferation of regional and subregional organizations. Tunisia said that existing organizations need to be strengthened. The EC said that regional and subregional cooperation is important and that organizations should be open to all interested States. Developing countries should receive preferential treatment. States have the right not to accede to organizations, but also have the right and duty to cooperate. Japan said that in existing regional fishery organizations, States should participate on an equal footing. It is the responsibility of both fishing States and coastal States to share in the financing of those organizations.

The Republic of Korea said that in II(b)(iii), membership should be open to all States on an equal basis. In II(b)(ix), new entrants to regional organizations could be of two types -- with or without previous fishing records -- but each could be given an equal opportunity to utilize fishing resources. Sri Lanka said that there should be direct cooperation through existing governmental regional or interregional organizations. Peru commented on II(a) (direct cooperation), stating that provisions should include alternative mechanisms. Norway said that in II(a)(iii) the objective of the consultations should be enlarged not only to agree on conservation measures but also on management, surveillance, control and enforcement. Norway also stressed the importance of II(b)(viii) on encouraging nonparties to join regional organizations and II(b)(x) on new entrants.

Argentina said that organizations should be strengthened through existing mechanisms. Peaceful settlement of disputes, assistance to developing countries, transparency, and open-endedness should be elements in regional organizations. Trinidad and Tobago said that institutionalized cooperation is the preferable option and that ad hoc consultations are useful where there are no institutions. Assistance should be given in establishing subregional agreements where they do not exist.

In II(b)(xi) Japan said that due consideration should be given to the situation of developing countries. Developed countries should transfer fishing technology to developing countries. Chile said that technical assistance should be provided for developing countries and that cooperation involves monitoring, control, and enforcement.

On II(d), Korea does not object to assisting developing States, but they could become new entrants. So, on the one hand, we would be helping them to develop and on the other hand we would be trying to prevent their joining. This is a problem that needs to be solved. On II(b)(iv), Korea said if conservation negotiations fail, unilateral action is permitted under the 1958 Convention. However, Article 89 of the 1982 Convention binds the States to negotiation.

Sierra Leone favors institutionalized cooperation with provision for ad hoc working groups to plan and strengthen programmes. Sierra Leone said in its position paper that the coastal States should be allowed to collect license fees from

vessels fishing in the high seas adjacent to their EEZs. These fees could be given to the regional bodies.

Malaysia agreed with the Chair's document but said it is not sufficient to say what to do or not to do. Regarding II(b)(viii), the ASEAN experience is a good example of cooperation, even with non-member states. The EC said the basis of the obligation to cooperate should be different for straddling stocks and for highly migratory stocks, so two different articles should address the problem. In II(b)(vi), a share of financing can be based on either catch figures or correcting GNP figures. WWF said research carried out by regional organizations should not be limited to single species studies but more of an ecosystem approach. India favors institutionalized consultation on mechanisms for cooperation. In II(b), coastal States should have special interests because of the dependence of the coastal communities on these species. In II(b)(vi), financing should be based on per capita rather than GNP.

III. RESPONSIBILITIES OF REGIONAL FISHERIES ORGANIZATIONS OR ARRANGEMENTS

The US said that regional organizations should emphasize a multi-species ecosystem approach and take into account the relationship between species and habitats. Regional arrangements should encourage scientific catch data, in an agreed format and timeframe. Sweden said that the Baltic Sea Commission might constitute a model for regional and subregional fisheries cooperation. The EC said that exchange of technical information between regions could strengthen resource management. The Philippines said that regional fishery organizations should promote information collection and dissemination. Trinidad and Tobago said there should be a mechanism to facilitate exchange of information between commissions, perhaps with FAO assistance. India suggested a new sub-paragraph (k) to provide assistance to developing states entering the fisheries.

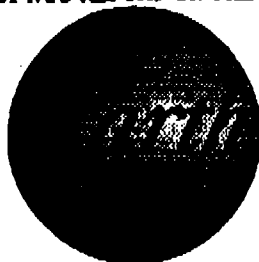
IN THE CORRIDORS

The long-awaited draft convention sponsored by Argentina, Canada, Chile, Iceland and New Zealand was released informally on Friday. It aims at complementing the existing Law of the Sea Convention and provides for an effective international regime for conservation and management of high seas fisheries. It is to apply worldwide to all fishing fleets and places legally binding obligations on States to abide by international fisheries conservation and management decisions. The draft provides for the settlement of disputes, includes principles recognizing the special interests of coastal States, and ensures consistency of conservation measures within and beyond recognized EEZs and fishing zones. During Friday's press briefing, Canadian Amb. A. Randolph Gheareon commented that he hoped the draft convention would act as "a catalyst for the convergence of views." The draft is expected to be released formally today as document A/CONF/164/L.11.

THINGS TO LOOK FOR TODAY

PLENARY: Discussion today should begin with the next two items on the Chair's list of issues (A/CONF.164/10): IV, "Compliance with conservation and management measures" and V, "Enforcement of high seas fisheries, conservation and management measures." The first question to be addressed is how to ensure compliance with regional conservation and management measures. This will include discussion on issues such as monitoring, use of quotas, data sharing on catch and effort, and enforcement action by port States. Another issue will be how to ensure effective enforcement of the conservation and management measures established for a region or subregion with respect to a stock. Discussion on this may include matters related to the responsibilities of flag States, the practice of flagging and reflagging of vessels, and enforcement of flag State responsibilities.

ON THE EAST RIVER: From 1:00 till 3:00 pm today the MV *Greenpeace*, one of the seven boats used by Greenpeace for its international environmental campaigns, will sail past the UN on the East River, displaying a banner that will read, "UN Stop Fishing for Excuses."



Negotiations Bulletin

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A Reporting Service for Environment and Development Negotiations

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Tuesday, 20 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS MONDAY, 19 JULY 1993

The Plenary continued consideration of A/CONF.164/10, "A guide to the issues before the Conference." The delegates concluded their discussion of Items II and III, mechanisms for cooperation and responsibilities of regional fisheries organizations, before considering Items IV and V, compliance with and enforcement of conservation and management measures, VI, non-parties to a regional agreement, and VII, settlement of disputes.

II. MECHANISMS FOR COOPERATION AND III. RESPONSIBILITIES OF REGIONAL FISHERIES ORGANIZATIONS OR ARRANGEMENTS

Solomon Islands, on behalf of the South Pacific Forum Fisheries Agency, said that although the FFA supports efforts to cooperate in the management of straddling and highly migratory fish stocks, many of these bodies have not been successful due to: inadequate information for decision making; competition; disagreement among members; domination of developed over developing countries; poor enforcement measures; failure to adapt the institutional frameworks to the geographic circumstances in each region; and lack of commitment to precise management approaches.

Iceland made the following points: there should be general obligations for regional and subregional cooperation, tailored to the individual region; and where there are no existing measures, coastal States and distant water fishing States should cooperate in organizations and arrangements. There should also be certain requirements for new entrants; technical assistance to developing countries to help them fulfill obligations; and a comprehensive system for dispute settlement. Morocco said that accession to regional and subregional organizations should be obligatory for any State involved in the exploitation of the resources. The financing of each commission and its work should be based on contributions by member countries on the basis of value of catch, adjusted to other criteria such as GNP. Papua New Guinea raised the point of new entrants into regional conservation and management organizations.

IV. COMPLIANCE WITH CONSERVATION AND MANAGEMENT MEASURES

Australia said that improved flag State enforcement should not be neglected. Other issues that must be addressed include: adoption of national measures to ensure compliance; fishing licenses or permits; identification and marking of vessels; global and regional agreements on catch; and funding of scientific research. Poland said that licenses or permits to control fishing (IV(b)) should be issued by flag States, not regional organizations. Norway said that there was a certain degree of overlap between Items IV and V. Enforcement action by port States is very important and Norway has taken legislative action to implement the

relevant rules of the 1982 Convention. He suggested that IV(f) be amended to include "other mechanisms of cooperation" in addition to investigating records of a vessel within a port. Gabon said with regard to licenses (IV(b)), that the fees collected within a region should go to the regional organization rather than to coastal States. Japan expressed reservations with IV(f). There are precedents for port State authority over ships that come under its jurisdiction with regard to activities that take place on the high seas, but it relates to cases of pollution discharges and UNCLOS does not provide for this kind of jurisdiction for fisheries.

On IV(e), Japan said the sharing of data should not be limited to the high seas but also occur within the EEZs. Regional organizations should coordinate methods of scientific research and data collection. Papua New Guinea agreed with Australian remarks that the issue of transshipment at sea should be dealt with. Chile said that in matters of enforcement, there needs to be a sense of proportion between crime and penalty, and yet, the legal and economic advantages for the State or nationals of the State fishing illegally within the regulated zone need to be addressed. Indonesia said there is a problem in identifying mechanisms to ensure compliance. Vessels known to have violated conservation measures could be blacklisted. More action should also be taken to discourage transshipment, particularly when it takes place very close to a coastal State.

The Philippines said that flag States should be very specific in their licensing as to the stock involved, the gear, the season, and the amount of catch allowed. Quotas can be shared, on an equitable basis, based on capacity, on historical rights, or on a bidding system. The EC suggested that IV(a), (b), (c), and (d) be grouped under three headings: regulation of access to an area through authorization, licenses and permits; the regulation of fishing activity, catch limits or effort limitations or a combination thereof; and the regulation of vessels. A good way to ensure compliance might be a "hail system" where a vessel announces its arrival in the fishing area.

Denmark said that Items II and III without IV and V are like Hamlet without the Prince of Denmark. He mentioned the particular problem with regard to flags of convenience; the importance of a hail system; and the problem of subsidization, sometimes combined with open registries. He also mentioned the possibility of sanctioning a ship that fishes legally, but whose sister ship is in an illegal situation.

Argentina said all States should include in their legislation a register of the vessels fishing on the high seas from their countries. Samoa said the Conference should seek the agreement that flag States accept the obligation of maintaining the regulation of their vessels on the high seas. Ukraine said that quotas and licensing on a national basis and inspections need to be actively supported. With regard to scientific activities, he suggested the establishment of a research fishing fleet.

Sweden supported the EC's recommendation to structure the recommendations in Items IV and V under three

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Negotiations Bulletin ²⁴

A Reporting Service for Environment and Development Negotiations

Vol. 7 No. 8

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Wednesday, 21 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS TUESDAY, 20 JULY 1993

The Plenary did not meet on Tuesday so that the Chair, Satya Nandan, could convene informal consultations on data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks. This smaller meeting was held in a conference room more conducive to frank face-to-face negotiations.

During a meeting with a small group of NGOs before the session, Nandan and the NGOs agreed that two NGO representatives would be allowed to observe the informal sessions. At this meeting, Nandan said that it was his objective to begin drafting text to be later submitted to the Plenary. He explained that in order to have a manageable working group, he requested all participants, including the Secretariat, to limit their numbers. This method of work is similar to that adopted during the Third UN Conference on the Law of the Sea.

During Tuesday's informal session, Nandan distributed a discussion paper containing the following five subheadings: fishery data collection; basic fishery data requirements; vessel data and information; data reporting and verification; and data exchange.

FISHERY DATA COLLECTION

HIGH SEAS/EEZ: As was highlighted by several delegates, the FAO has been instrumental in gathering data on high seas fisheries. Yet some participants insisted that there was a need to define the kind of catch that was involved, and particularly if this effort was not to be limited to straddling and highly migratory species. The past work of the FAO also raises the point of whether data on high seas fisheries should be compatible with that gathered on EEZ fisheries. At most, 10% of the fishing takes place on the high seas and, therefore, the data should be consistent within and outside the EEZ. Other questions raised included: what reporting is already being done; are specific zones being covered, and what types of logbook statistics are being compiled.

REPORTING OF DATA: Discussion focussed on what catch figures should be included; discards and undersized fish, catch of targeted species and non-targeted species, biological composition of catch, number of vessels, capacity and activity. There is also a need to distinguish what is caught inside and outside the EEZ. There was concern that

data from within EEZs are a matter of national sovereignty. Data collected should be representative. There was also discussion on the reliability and the timeliness of the data gathered from log sheets and data bases.

It was suggested that data be reported by gear, year, longitude and latitude. Other comments included: data can be given on biological composition; the possibility of having minimum sets of standards that national statistics offices must meet; should data be sampled on transshipment or at point of sale; and is data on the stock as a whole being provided.

DATA ANALYSIS: Discussion focussed on the treatment of the raw data. Questions raised included: for what purpose are the data collected and is there an effort being made to harmonize the collection of data. Data collection should have two goals: to deal with the impact of fishing on the stocks and to be used for scientific purposes. It was indicated that data gathered from research or scientific vessels should be treated separately from sampling catches.

DATA TRANSMISSION AND REPOSITORIES: Discussion focussed on whom data should be transmitted to, in what form, to do what, and according to what rules. It was suggested that either regional organizations or, when there are none, coastal States can serve as data repositories. Regional organizations, acting as the collecting agents, can then assemble data the way the FAO does. The FAO could be the ultimate archives holder. Some delegates were not convinced that coastal States should have control of the information on data exchange and stressed the need for a free flow of information. On the form in which data should be transmitted, it was mentioned that some countries have national statistics offices and that their format should be used. Other suggestions included use of FAO formats or regional organization formats. The data gathered may then be used to determine maximum sustainable yield (MSY) or ecological models in the future. Data banks should be linked to each other. It was also asked to what extent provisions in existing treaties shed light on cooperative arrangements. Data should be exchanged among as many countries as possible. Data sharing can be compulsory.

BASIC FISHERY DATA REQUIREMENTS

On this issue, a question was raised on whether scientific data and catch data should be handled separately. There appeared to be consensus on moving Items 6 and 7 (length, weight and sex composition, and other biological parameters) under this heading to a separate section to be.

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Friday, 21 July 1993

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itled "Scientific Data Exchange." It was also suggested that Item 7 be expanded to include oceanographic and ecological data. Another issue was whether the measures prescribed indicate the minimum amount of data that States should provide or only the path along which they should proceed.

After a brief discussion, it was agreed to use the FAO formula for nominal weight to determine the weight of fish catches. Other questions raised included: should States simply make their best efforts to describe data; should data facilitate effective stock assessment; how essential to conservation and management is the detailed provision of data; and what data should be provided on discard statistics: estimates on weight and number, or more specific information.

VESSEL DATA AND INFORMATION

One issue raised was whether vessel size should be linked to other statistics in effort data. There was also some concern that requesting data from individual vessels is too specific to be dealt with on a global basis and should be left to regional organizations. It was not determined just how detailed the data requirements should be. What type of information should be provided on individual vessels: dates (which could be helpful with regard to seasonal information) and times? Would such information be too specific? Are such data necessary for research or for monitoring and compliance? The issue might be left to be addressed by regional organizations. Some delegations expressed the view that collection of data on individual vessels was maybe going too far and that a more global approach should be adopted. Some countries argued that requesting data that are too specific might prove troublesome.

DATA REPORTING AND VERIFICATION

The issue of the use of satellite transponders gave rise to considerable discussion. According to an FAO study, the cost is small when compared to the cost of vessels, navigation equipment and operational costs. A number of delegates commented that the cost of transponders should be borne by the industry. Questions raised include: should all vessels carry transponders (including those that fish primarily in EEZs); what is the implication on coastal countries; what exact role should these transponders play and how can they contribute to real time evaluation. A number of delegates described their country or region's experience with transponders and how they can be used for position reporting and/or the transmission of real time catch and effort data.

Some delegates commented that aerial surveillance can also be an important tool for verification and should be

mentioned in this document. Others argued that aerial surveillance is an effective tool but has nothing to do with data reporting and verification and should be taken up under a section on compliance. There was a suggestion that the paper differentiate between data reporting and verification/compliance/enforcement. Others stressed that reporting and verification are intertwined and should be considered together, as they are in the Chair's discussion paper.

The use of ships' logs to verify catch was also mentioned. The issue of who should bear the cost of aerial, surface or satellite surveillance and/or verification was also discussed. Some countries said that the cost was the responsibility of the coastal States, whereas others said that this was the responsibility of the distant water fishing States.

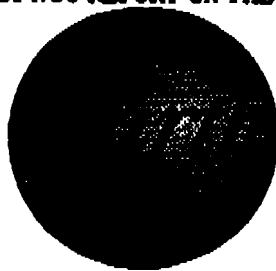
IN THE CORRIDORS

The Eastern European regional group has still not reached agreement on its nomination to the Bureau. This matter had been deferred from the organizational session, when the Russian Federation blocked the Polish candidacy over the problem of pollock fishing in the so-called "Peanut Hole", which is bound by the Russian EEZ in the Sea of Okhotsk. At a meeting held in Moscow in May 1993 attended by those countries fishing in the area, the framework for further negotiations was agreed on. Japan agreed to stop fishing in the region and other countries, including Poland, agreed to reduce their catch by 25%. Nevertheless, in June the Russian Federation announced a unilateral moratorium in the Sea of Okhotsk for all fishing. As there has still not been any resolution on the Polish candidacy during this session, Poland has mentioned the possibility of a vote in Plenary on this matter. Conference Chair Nandan has taken the matter into his hands and is holding private consultations.

THINGS TO LOOK FOR TODAY

At the end of Tuesday's session, Nandan announced that informal meetings will continue today. The first item on the agenda will be completion of the Chair's discussion paper on data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks. The section on data exchange still must be discussed. When the discussion on this item is complete, the Chair is expected to move on to a discussion of the precautionary approach. Nandan may distribute a paper on the precautionary approach at the outset of the discussion. Informal discussions are likely to continue through Thursday, with the resumption of Plenary on Friday.

The Earth Negotiations Bulletin will publish a final summary at the conclusion of this session of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. If you would like to receive a copy, drop your business card or a piece of paper with your name and address in the box provided in Conference Room C or contact USD at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4 Canada, tel: 1-204-958-7700 and fax: 1-204-958-7710.



Negotiations Bulletin 22

A Reporting Service for Environment and Development Negotiations

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Thursday, 22 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS WEDNESDAY, 21 JULY 1993

Informal consultations continued on Wednesday in Conference Room 6. Discussion first focussed on two sections of the Chair's paper on data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks: vessel data and information, and data exchange. Then the delegates opened discussion on the precautionary approach to fisheries management.

VESSEL DATA AND INFORMATION

The Chair's paper identifies a series of data required by any entity and serves as a guide to what States should be gathering for data analysis and for standardizing fleet composition and vessel fishing power:

1. vessel identification and type;
2. vessel specification, e.g. engine power, length, tonnage, hold capacity, storage methods, etc;
3. navigation and position-fixing aids;
4. communication equipment;
5. ownership, flag State, home port, etc;
6. construction details, vessel age, hull material, etc;
7. crew size and composition; and
8. type of fishing gear, quantity and specification.

The measures that met with the greatest degree of consensus were those most related to the catch, i.e., 1, 2, 5, and 8. The other measures were seen by some as irrelevant to the harvesting capacity and many pointed out the fact that this data is to be used to facilitate conservation and management. Some nations argued that the crew had little, if any, impact on the harvesting capacity while others answered that it, in fact, could influence the amount of catch. It was agreed that the crew had to be considered as a whole with the equipment aboard since some under-equipped vessels may be more labor-intensive and yet have lesser harvesting capacities. Navigation and position-fixing aids were also discarded as more relevant to the application of the SOLAS Convention than for the sake of data gathering.

A recurrent theme was the necessity to avoid the duplication of data already gathered. A few delegates pointed out that their national licensing systems gather more precise information. Some concern was voiced with regard to vessels fishing without flags or under flags of convenience and how they should be treated in vessel data, since these ships are unlicensed. A proposal was made that advocated distinguishing between data required at all times and data required as soon as the vessel enters the fishing ground. Support was shown for sending data to the regional

organizations, since much of the information in this section appears on the licences.

DATA EXCHANGE

The Chair's text on data exchange focussed on the sharing of data collected by flag States on all fishing operations within the EEZs of coastal States and high seas areas within a region for the same stock. The regular and timely provision of fishery data should be in accordance with the five diagrams on data flow arrangements provided. The paper also mentioned that, at the global level and at the regional level where no regional arrangement exists, the FAO is the appropriate body to collect and disseminate data.

Many delegates raised the issue of sovereignty and the obligation of coastal States to provide information. Data exchange is an obligation for all participants and should not prejudice coastal States or high seas fishing States. The different nature of information under and beyond national jurisdiction was mentioned. There was some concern that the data collected could be used to accuse coastal States of having mismanaged their resources. Assurances were given that this information should not interfere with the sovereignty of coastal States and that the primary concern is collecting data that will help in conservation and management. It was also mentioned that data should be exchanged on the basis of reciprocity.

Since UNCLOS III Article 63.2 provides that there should be consultations between coastal States and the distant water fishing nations on areas adjacent to the EEZs, coastal States need to get information on the high seas fisheries. Since the discussion is on two different regimes, sharing of data should be done by both flag States and coastal States. UNCLOS Articles 63.2 and 64 provide for cooperation on the stocks throughout the range. Where there are no regional organizations, the flag State will establish a regional data bank, and relevant data should go to the regional organizations.

An amendment to the Chair's text was proposed. It read: "Without prejudice to its sovereign rights to manage and exploit the fisheries resources within its EEZ, a coastal State should collect relevant data on fishing operation in its EEZ on specific straddling stocks and highly migratory species, as the case may be and as appropriate, and should share them with the relevant regional or subregional fisheries organization or arrangement." One delegate raised the question of how this would relate to the Mediterranean Sea where there are no EEZs. It was suggested that "EEZ" be replaced with the term "areas of national jurisdiction." Other amendments were suggested to this text, including replacing the words "should" with either "be encouraged to" or "may".

There is also provision in the Chair's paper for the regular and timely provision of fishery data in accordance with data flow arrangements within the coastal State EEZs and for

22 July 1993

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high seas fishing operations. Several delegates said they could not accept one of the data flow arrangements suggested by the Chair: Distant Water Fishing Fleets --> Coastal States National Fisheries Administrations --> Regional Fish Organization or Arrangement. Several delegates mentioned an equal sharing of information between fishing States and coastal States.

PRECAUTIONARY APPROACH

The precautionary approach gave rise to debate since it has been seen by some as a call for such extreme measures as moratoria. Experts, however, were quick to point out that moratoria are only one of the possible measures that can be taken as a result of the application of the precautionary approach. The concept itself has been seen in different lights, with some delegations referring to the precautionary approach and others to the precautionary principle. There was agreement, however, on the need for more responsible fishing, as exemplified by the collapse and overfishing of some stocks.

The concept of precautionary principle/approach clearly needs to be defined with more care. Some States would like to see Principle 15 of the Rio Declaration translated automatically to the field of fisheries, but others point to the FAO reports that clearly indicate that some adaptation has to be made before the principle is applied to fisheries. This has led to theoretical discussion on the relevance of Agenda 21 and the Law of the Sea with respect to fisheries.

The application of the principle also gives rise to some uncertainty, since in order to gain credibility it has to be applied both with consistency and throughout the range of migratory and straddling species. The principle has been seen as a means of limiting the natural law that has led to overfishing and replacing it with a more human law. In particular, it has been envisioned as a way to limit the entry into newly-discovered fishing grounds. In the absence of such measures, the effort carried out is likely to exceed the harvesting capacity of the stock and lead to overfishing.

The principle was accepted when it was considered as a general guiding concept, but the views diverged as to the extent to which it should be applied. While some delegations interpreted it as a justification for taking conservative measures such as Total Allowable Catch (TAC) below the Maximum Sustainable Yield (MSY), others insisted that the result may be the absence of TACs. In particular, one delegate highlighted the fact that fishing ought to be seen as an economic activity and that, in this respect, economic and social dimensions have to be kept in mind.

A delegate held the view that the precautionary approach should always be applied, but with even greater care in case of scientific uncertainty. There was, however, disagreement as to the definition of the best scientific information available. Representatives did agree that the application of the precautionary approach/principle needs to evolve over time with the availability of new scientific information.

A number of documents were circulated that identified different positions on the issue. The Chair's draft document referred specifically to Principle 15 of the Rio Declaration and thus met some opposition. The US position, as stated in document A/CONF.164/L.15, states that the precautionary approach should be used to maintain the stocks at a productive level and preserve future use options, but does not necessarily require a moratorium. Canada circulated a document in which it distinguished the application of the principle to straddling and highly migratory fish stocks. It also emphasized the need to adopt a precautionary approach in the case of newly discovered stocks, where the risk of excessive entry is the greatest. The NGOs expressed concern that all management measures take explicit account of the full range of uncertainties inherent in fisheries science and management. In the case of newly discovered stocks, they called on extremely conservative catch and effort levels to be established until sufficient data is known.

IN THE CORRIDORS

An EC paper on suggested guidelines for States in the conservation and management of straddling fish stocks and highly migratory fish stocks and on international cooperation for such regimes circulated in the corridors yesterday. The first part of the paper addresses conservation and management. It recommends that States should commit to responsible fishing in order not to jeopardize the integrity of the marine ecosystems, and rational and sustainable utilization of these resources. Conservation measures should be designed to maintain or restore populations of harvested species at levels that can produce the maximum sustainable yield.

Conservation measures should not discriminate against the fishers of any State. Conservation measures should be concerned with the whole stock as a biological unit in its entire area of distribution; designed so as to take due regard to the rights of other States; consistent within the areas of national jurisdiction and those applicable beyond; and based on the best scientific advice available, taking into account the levels of acceptable uncertainty. The effects of natural and human-induced environmental changes should also be taken into account. Research should be impartial and transparent, with a multi-species approach, and data collection should be harmonized with a view to improving the collection and the timely dissemination of accurate and complete statistical data relating to catches, including bycatches. Precautionary management does not automatically require moratoria or any other unnecessarily restrictive measure.

Part II outlines guidelines for international cooperation. All States should cooperate with each other in conservation and management of the stocks. International fisheries organizations shall be open, on a non-discriminatory basis to all States interested in exploitation of the stocks. Only States that cooperate in the decision-making of regional or subregional fisheries organizations should have access to regulated fish stocks in specified areas. States that are not party to an existing organization should be invited to join, and States that do not join an organization are not discharged from the obligation to cooperate in the conservation and management of the stocks. States should try to achieve consistency between conservation and management measures applicable within the areas of national jurisdiction and those applicable beyond those areas. Adequate assistance, including scientific and technological cooperation, should be provided to developing countries to enable them to fulfill their obligations relating to the conservation and management of these fish stocks.

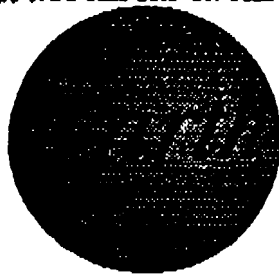
THINGS TO LOOK FOR TODAY

Informal meetings will continue today. The first item on the agenda is expected to be dispute settlement. It is likely that Nandan will distribute a new paper on this subject to guide discussion.

During yesterday's session, Nandan explained how he would like to proceed. The following subjects still need to be discussed in greater detail: dispute settlement, port State responsibilities, aspects of monitoring, control, and surveillance (including compliance and enforcement), and compatibility between conservation measures in EEZs and on the high seas. As this last issue (Item VIII in A/CONF.164/10) has not yet been discussed in Plenary, it is likely that Plenary will reconvene on Friday to address it.

If possible, Nandan would like to provide a text at the end of this three-week session. This way, delegates can take it back to their capitals and thus be able to move forward faster at the next meeting. Look for further discussion in the corridors and in the conference room on the Chair's proposed work plan today as delegates grapple with its implications, especially the need for additional sessions.

A DAILY NGO REPORT ON THE UN CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS



Negotiations Bulletin

23

A Reporting Service for Environment and Development Negotiations

Vol. 7 No. 10

Published by the International Institute for Sustainable Development (IISD)

Friday, 23 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS THURSDAY, 22 JULY 1993

Informal consultations continued on Thursday in Conference Room 5. Discussion focussed on the following three topics: dispute settlement, port State responsibilities and interests of developing countries.

DISPUTE SETTLEMENT

As an introduction to the discussion on this issue, the Chair circulated a paper, "Procedures for the Settlement of High Seas Fisheries Disputes." This paper, which focusses on the UNCLOS provisions on dispute settlement, is divided into four sections: Procedures under Regional Arrangements; Compulsory Conciliation; Special Arbitration; and Fact-Finding Procedures. Parties to the Convention are constrained to settle disputes by peaceful means and they are also required to submit to final and binding third-party procedures if all others fail. Dispute settlement procedures agreed upon by this Conference must be consistent with the Law of the Sea. There are formal institutionalized dispute settlement procedures, such as the Tribunal, the International Court of Justice and arbitration, and the Convention itself provides practical and expeditious means to settle disputes of a technical nature.

The section "Procedures under Regional Arrangements" states that if the management regimes for stocks is primarily regional, regional dispute settlement procedures could be appropriate. The Convention recognizes the importance of regional dispute settlement mechanisms and procedures under regional agreements (Article 282). However, States fishing on the high seas include those to whom regional procedures may not apply and, therefore, alternative means for dispute resolution will have to be provided.

Under "Compulsory Conciliation", the management regime for straddling and highly migratory fish stocks on the high seas interacts with the EEZ regime for such fisheries. A coastal State in the exercise of its sovereign rights in the EEZ, with respect to living resources, is not subject to binding procedures, except in the case when a coastal State "has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the EEZ is not seriously endangered" (Article 297.3(b)(i)).

Resolution of issues of a technical nature is included in the "Special Arbitration" section. This special procedure is flexible and permits variations of the procedure by agreement on an ad hoc basis for each case.

The Convention also provides for a special fact-finding approach, which could be conclusive or persuasive, whichever the parties agree to. The Special Arbitral Tribunal could also formulate recommendations (which do not have

the force of decisions) based on the findings of fact (Annex VIII, Article 5.3), and would be intended to provide the basis for review by the parties in question.

In the discussion, several countries agreed that UNCLOS provides a good mechanism for dispute resolution. Some argued against creating new procedures or mechanisms since agreed-upon procedures already exist in UNCLOS. Others stated that the 1982 Convention does not have adequate measures for conflict resolution on fishing matters. It was pointed out that UNCLOS has not yet entered into force and certain countries experiencing problems with straddling stocks and highly migratory species may not be party to the Convention. The authors of A/CONF.164/L.11 (Draft Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on the High Seas) pointed out that Article 25 contains mechanisms for dispute settlement. Its arbitration measures are fast-acting, follow UNCLOS, and are specifically adapted to the needs of this Conference. A contradiction in L.11 was pointed out -- it provides for three arbitrators (one nominated by each party and one neutral member), but does not provide for cases where there are more than two parties to a dispute. The response was that parties can always turn voluntarily to the UNCLOS provisions.

Some developing countries expressed concern about arbitration costs. The Law of the Sea provides for equal sharing of costs, except under certain circumstances. L.11 does not mention this issue.

One delegation expressed concern that the focus was not on the real problem -- the need for better decision making in existing regional organizations to avoid the need to settle disputes. A number of delegates agreed that dispute settlement mechanisms should be a last effort to solve a problem, not a first. It was suggested that a specific tribunal composed of legal and technical experts should be created. There was concern, however, that a global dispute settlement mechanism would increase the number of disputes, cost, time, etc. Disputes should be dealt with by the appropriate regional organizations. However, since some disputes occur between a party in a regional organization and a non-party, there should be some type of a global mechanism. There was agreement that the priority should be given to regional settlement when possible. Several delegations said that no agreement on mandatory dispute resolution is necessary at this time. Finally, some said that since disputes should be resolved by regional organizations, this Conference should only give recommendations.

PORT STATE RESPONSIBILITIES

It was agreed that this question is not well documented in the Law of the Sea Convention. Nevertheless, some delegates had divergent views on the extent of port State jurisdiction in terms of high seas fisheries. There was also disagreement on the customary international law in this respect. Some

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delegates advocated an extended jurisdiction for the port State, based on the coastal State's special interests. Others argued that port State's authority was the exception rather than the rule and is limited to a number of specific cases, such as the protection of the marine environment and the prevention of pollution. The amount of data that a vessel needs to provide the port State upon calling in might be dependent on its activity.

Port State jurisdiction might be exercised at the discretion of the port State or at the request of the flag State. This is particularly relevant in the case of open registries whose vessels rarely stop in their national waters. Other nations expressed their fear that this policing action on the part of the port State might lead to discrimination. This concern led to proposals that guidelines be established to limit the detention powers of the port State. In addition, it was agreed that a degree of proportionality had to be maintained between the suspected offense and the enforcement measures the port State might take.

INTERESTS OF DEVELOPING COUNTRIES

This topic was not included in the Chair's list of issues (A/CONF.164/10), but emerged as an item that required discussion. A number of developing States highlighted their dependence on marine resources, both for food and for livelihood. They commended the work of the FAO in this field and expressed their appreciation for documents A/CONF.164/L.11 and A/CONF.164/L.8, which recognize their special interest and needs. The debate, however, centered around the type of assistance that should be given to developing countries. It was agreed that assistance will enable developing States to fulfill their obligation to conserve and manage straddling and highly migratory fish stocks. However, an important point that was raised was that forms of assistance should not be limited to the development of fishing within national jurisdiction. Developing States expressed their intention to develop distant water fishing fleets and argued that the high seas fisheries should not be earmarked for developed States that are already harvesting.

Another point that gave rise to debate was how financial flows would be channeled. The creation of special development funds was mentioned as well as coordinating efforts through the Commission on Sustainable Development (CSD) or the Global Environment Facility (GEF). The CSD will be dealing with Chapter 17 of Agenda 21 on the oceans in 1996 but, in the meantime, the GEF can be used to fund projects through its focal point on international waters. Some, however, expressed their fear that the issue of high seas fisheries would be diluted within the global context of sustainable development and called for a regional organizations approach. It was felt that through regional organizations the developing coastal States would find it easier to shoulder the burden of participation in the regional management regimes. It was mentioned that the levy of participation fees in regional organizations should be proportional to the level of catch, but adjusted by GNP or per capita income levels.

In addition to the transfer of financial resources, countries requested the transfer of technology and training of personnel. Countries in transition to market economies explained that they were unable to provide developing States with financial assistance, but were more than willing to train personnel in the relevant fields. Developing countries used this discussion to express concern with their difficulties in complying with conservation and management measures, both in terms of data collection and enforcement and monitoring. It was also recognized that access to markets should be facilitated for developing countries.

IN THE CORRIDORS I

Toward the end of Thursday's meeting, the Chair spoke about the difficulties in reflecting the content of the day's discussions on the interests of developing countries and sources of funding in a document that deals with principles. Some delegates were surprised by this comment, as they had

been under the impression that the Chair was favoring a longer process leading to the elaboration of a legally-binding instrument. The Chair's suggestion to adopt a resolution on the needs of developing countries also met with some confusion. It is not clear what the outcome of this session will be and how such a resolution would relate to the outcome. Finally, there was talk that the Chair might submit a report, rather than recommendations, to the 48th Session of the General Assembly this fall and request additional funds to continue negotiations toward a legally-binding instrument. Although he may be consulting privately with delegations, Nandan has not yet made public his definitive thoughts on these matters.

IN THE CORRIDORS II

Although most NGOs have been barred from observing the informal meetings, they have been busy in the corridors. NGO comments have been tabled on the EC paper on suggested guidelines for conservation and management and international cooperation. The comments include the idea that in addition to ecosystems, the viability of the coastal fisheries and the communities that depend on them must be addressed. The right of the marine ecosystem to exist unimpaired must be the paramount consideration. The marine habitat also needs protection and monitoring. "Acceptable uncertainty" is not a criterion that can be defined for global application, since it is subject to arbitrary decision-making processes. Transparency must include public access to information. The precautionary principle is a fundamental tool for fisheries management that must be applied at all times. Part II of the paper states that the regional bodies must be nested in a global framework, both to set minimum standards and to encourage cooperation to manage highly migratory stocks throughout their geographic range. The NGOs also urged nations to move beyond UNCLOS.

NGOs have also drafted a statement on the consistency principle. For straddling and highly migratory fish stocks, a consistent conservation and management regime based on an ecosystem approach is needed. Such a regime must be applied throughout the ranges of the stock as a safeguard against over-exploitation. Any elaboration of States' rights regarding the stocks must deal with responsibility for conservation of the stocks and protection of the marine habitat.

THINGS TO LOOK FOR TODAY

PLENARY: For the first time since Monday, Plenary will meet this morning at 10:00 am in Conference Room 2. The topic of discussion will be Item VIII in the Chair's list of issues, A/CONF.164/10: Compatibility and coherence between national and international conservation measures for the same stocks. Nandan requested that delegates focus their comments on conservation and management of the two types of stocks. He added that it will serve no purpose to enter into a prolonged debate over who has rights and interests and where those rights and interests can be exercised. The concentration should be on how this Conference can produce compatible regimes without compromising the rights of coastal States to use resources in their EEZs.

INFORMAL CONSULTATIONS: Following the conclusion of the Plenary's discussion on Item VIII, informal consultations will begin on monitoring, control and surveillance. At the conclusion of Thursday's informal session, Nandan proposed that these consultations take place in Conference Room 2 so that everyone can attend. He suggested that the nameplates could be removed to retain a degree of informality. This decision was, in part, based on the standing-room-only crowds in Conference Room 5 on Thursday, where Delegates had to exchange seats to allow others to use the microphones. At one point, a delegate commented that the room had become like the adjacent high seas and, as a new entrant, he only got the surplus.



Week (3) Negotiations Bulletin

26-30

A Reporting Service for Environment and Development Negotiations

Vol. 7 No. 11

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Monday, 26 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS FRIDAY, 23 JULY 1993

The Plenary reconvened on Friday morning. The Chair opened the session by reviewing the progress made during the three days of informal sessions on data requirements, the precautionary approach, dispute settlement mechanisms, port State enforcement and the special interests of developing countries. Then, the Plenary began consideration of Item VIII in the Chair's list of issues (A/CONF.164/10): Compatibility and coherence between national and international conservation measures for the same stocks. The Chair had hoped that after the conclusion of this discussion delegates could begin an informal discussion on monitoring, control and surveillance, but the Plenary discussion lasted throughout the day.

COMPATIBILITY AND COHERENCE BETWEEN CONSERVATION MEASURES FOR THE SAME STOCKS

Japan said that neither the practices on the high seas nor the practices of coastal States should be subjected to the other. Specific arrangements must be elaborated by the countries concerned, usually within a regional or subregional organization. This arrangement must be open to all States -- coastal and distant fishing -- through the entire migratory range and habitat of the species. Although it is wise to apply the same measures inside and outside the EEZ, these measures should vary region by region, and specific measures cannot be applied on a global level. Compatibility and coherence require that due regard be given to all interests concerned.

India said that circumstances differ between oceans, regions and subregions. There should be a broad framework of guidelines at the international level that relate to features of all stocks, yet there should also be regional flexibility. A set of international guidelines will strengthen regional or bilateral efforts. Korea stated that he could not avoid the legal arguments as these are the roots of this discussion. He cited Articles 63 (paragraph 2), 117, 118 and 119 of the Law of the Sea Convention and UN publications that discuss the issue of the special rights of coastal States. He said that when a State signs a treaty, exceptions of sovereignty disappear with the acceptance of the treaty's obligations. Nandan responded that he did not want to debate the legal rights of coastal States at this time.

The Philippines said that obligations should be adjusted or delayed to meet the needs of developing States. To illustrate this he described the provisions for developing countries in the Climate Change Convention. Chile stressed the need for a balance between rights and duties. He said that there could be a single regime for certain species. Article 4 in A/CONF.164/L.11 addresses the application of coherence. Coastal States have the duty to provide

information, but they must have the cooperation of the distant water fishing States. Document A/CONF.164/L.14 contains a series of elements directed toward the practices of regional organizations, including a consultation mechanism with coastal States. He mentioned the need for an ecosystem approach to manage these species, a competent authority to impose conservation measures, and, if no consensus is reached, a binding system for settlement of disputes.

Argentina said that within the EEZ there are different regimes for the preservation of resources, but outside there is no system at all. Not only do we need coherent systems, but we need a system outside the EEZ. Everyone agrees that we need cooperation and consistency, but what is lacking is political will. He suggested the establishment of a drafting group to outline principles and standards, which should serve as guidelines for regional organizations.

China said that all countries concerned have common and equal responsibilities, obligations and interests; the different status between the high seas and the EEZs should be recognized; and conservation, management and exploitation of these stocks requires all countries to cooperate. Minimum international standards are needed and should be developed by regional organizations. We need to consider measures in the high seas when formulating EEZ regimes and vice versa, as well as the unequal social and economic needs of different countries.

The US said that all international regimes on living marine resources should be consistent with UNCLOS. The sovereign rights of States are fundamental. Often political and economic needs take precedence over ecosystem needs, so we must break new ground, find new solutions and seek consistency between the high seas and coastal zones.

Korea said that as long as coastal States insist they have a special right, we will have a problem. Although high seas overfishing affects EEZs, the opposite also occurs and conservation must take place on both sides. Japan commented that perhaps his earlier intervention was misunderstood. He explained that measures in the EEZs and the high seas must be consistent with one another; data must be provided by coastal States; and even if coastal States do not fish in adjacent areas, they should be consulted.

Australia said that there are competing priorities but there is also a common thread -- long-term sustainability of these resources. Cooperation should be based on EEZ regimes, but should also reflect interdependence. States fishing on the high seas need to respect the rights of coastal States and high seas measures should not place an undue burden on coastal States or on the resources of the EEZ. He supported Chile and Argentina's suggestion that a working group be established to elaborate ways to move from cooperation to practice.

The EC said we must negotiate within the framework of regional organizations, fully subscribe to consistency of measures within EEZs and beyond, respect the rights of all

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Monday, 26 July 1993

Negotiations Bulletin

Vol. 7 No. 11 Page 2

States, and recognize the sovereignty of coastal States. It is also important to look at the stocks on both sides of the 200-mile limit as part of one biological unit. The EC has circulated a paper on these guidelines, A/CONF.164/L.20. He also said that we have to deal with non-contracting parties so they do not undermine conservation measures.

Mexico said there should be a balance of interests between coastal States and distant water fishing States. It is in the interest of coastal States to conserve in the adjacent high seas. Peru said that it is necessary to make conservation and management measures in the EEZs and high seas coherent. She did not agree with statements of those who seek to place the rights of coastal States and distant water fishing States on egalitarian terms. This overlooks the fundamental principles of ecosystems and the economic and social needs of coastal States. It is important to bear in mind that the obligations of the coastal State are different from those of the distant water fishing nations.

Trinidad and Tobago said that the sovereign rights of coastal States include discretionary powers for the allocation of surpluses to other States, and the terms and conditions for conservation and management of the stocks in question. Coastal States must form the nucleus of any body that manages resources in the EEZs.

The Russian Federation said that, in his view, the majority of delegations support the idea of unity of stock throughout the area of habitat and the development of unifying measures for the regulation of stocks. Measures for conservation should include a strategy for long-term stock management with definitions of allowable catch, permissible fishing areas, the amount of fish taken, and measures governing fish to be caught and the type of gear used.

Norway agreed that cohesion and consistency should prevail, but asked on what premises they should be based. He said that the coastal States have the most expertise, experience and interest in dealing with the fisheries in their particular regions. Distant water fishing fleets can move to new grounds if a stock located within the adjacent high seas becomes depleted, but the coastal State has no such alternative. The two sides cannot be given equal footing unless we revert to a pre-UNCLOS situation. Broad guidelines should be set up, based on the EEZ measures and applied to the high seas, so that both are consistent.

Sweden said that the interventions of the US and Russia expressed a good basis for guidelines on compatibility and coherence between the regimes in EEZs and the high seas. He associated himself with the remarks of India on noncompulsory international guidelines at a general and broad level allowing for flexibility at regional and subregional levels. Perhaps the Secretariats of the regional organizations should be situated in coastal States. In the Commission on Sustainable Development (CSD) session in 1996, we should see how the recommendations of this Conference can be implemented and take further measures at that time. We should take advantage of the CSD High-Level Segment to encourage the political will necessary to implement decisions.

Iceland associated himself with the remarks of Chile, saying that special attention should be given to situations in different regions. He added that the special interests of coastal States and the regimes they have set up must be taken into consideration before a global regime is established.

Poland associated himself with Argentina, on the need for strong political will to reach agreement on cooperation, and with the EC, on defining cooperation to mean negotiation. He agreed with Sweden on the need to strengthen regional organizations. Regional organizations can be the forum in which States negotiate conservation and management regimes for straddling and highly migratory fish stocks.

Canada commented that UNCLOS should be seen as a living document, part of a law that can adapt and be interpreted. He also said that the differences can be bridged if examined from a practical point of view. Coastal States have special rights due to their special geographic situation. The Law of the Sea invites the coastal States to cooperate with regional organizations but not with other States.

Nationals of the coastal States suffer from discrimination since, under UNCLOS, they must fish in the adjacent high seas under the same rules as those nationals that fish in the high seas. Distant water fishing fleets are not bound by the same rules. The fact that 95% of the fishing takes place in the EEZ does not help management, as a biological unit should not be divided along jurisdictional limits.

Colombia said that Item VIII of the Chair's text contains the basic elements for the establishment of compatibility and coherence between national and international measures. He supported Mexico's comment on strengthening regional organizations.

The FAO said that regional bodies should be strengthened and cooperation among bodies encouraged. The dormant COFI subcommittees on international organizations connected with fisheries might be a model for an equivalent mechanism for regional organizations to discuss common concerns.

The EC pointed out that some straddling fish stocks may be out of the EEZs, but that this fact must be examined in the biological context, since due to seasonal mobility, a significant part of a stock may be out of the EEZ at some time of the year. Regarding the special status of coastal States based on UNCLOS, the EC did agree with many of the arguments raised, but he did not want to open the legal debate again. Korea abstained from any further legal discussion, but endorsed the EC statement, as did China.

In response to Korea's earlier intervention, New Zealand referred to the same Law of the Sea Office publication on high seas fisheries and UNCLOS to highlight the fact that the rights of coastal States should not be prejudiced.

Indonesia disagreed with the EC's point on the relevance of coastal States' interests and insisted that coastal States have special rights that should take precedence, but with possible exceptions. Argentina expressed regret for the failings of the second Convention on the Law of the Sea and Iceland suggested that the delegates meet in a legal library.

The debate closed with an intervention by the representative of Greenpeace who asked the delegates to bear in mind that consistency should apply not so much to the rights but to the duty of all the States involved to manage and conserve these stocks. With regard to coastal States, he insisted that those rights given special attention should be those of the traditional fisheries and coastal communities dependent on the fisheries.

IN THE CORRIDORS

The next round of the UN Secretary-General's informal consultations on Part XI of the UN Convention on the Law of the Sea (A/CONF.62/122) will be held from 2-6 August 1993 at UN Headquarters in New York. Part XI deals with the exploitation of sea-bed resources and the establishment of the International Sea-Bed Authority. Disagreement on this part of the Convention has delayed ratification by many States. At the last round of these informal consultations, the US stated that it is now ready to participate in negotiations to "repair" Part XI. If some agreement is reached in August, it is likely that an appropriate process will be found to commence accelerated negotiations on this section, making it possible for many countries to ratify the Convention. The Convention has been ratified by 56 of the 60 countries necessary for it to enter into force.

THINGS TO LOOK FOR TODAY

INFORMAL CONSULTATIONS: The Conference will meet in an informal closed session this morning in Conference Room 2 to discuss the Chair's working paper on compliance and enforcement. This paper sets out the responsibilities of the flag States both to ensure that their vessels comply with subregional and regional conservation and management measures, and to take steps to enforce these provisions. This document may be an indication of the format of Nandan's paper, which is expected to be circulated by the middle of this week.

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eco

Issue No. 1

Volume 85

Free

ECO has been published by non-governmental environmental groups at major international conferences since 1972. This edition is produced cooperatively by groups attending the United Nations Conference on Straddling and Highly Migratory Fish Stocks, New York, July 1993.

From Rio To New York: The NGO Fisheries Statement

During the 1992 Earth Summit in Rio, while emissaries from the world's governments negotiated over piles of paperwork at Rio Centro, NGOs were locked in their own deliberations over alternatives to the official documents. More than 40 alternative treaties were negotiated, including one on fisheries issues—an agreement which has garnered more than 140 NGO endorsements during and since the Earth Summit.

Without question, the alternative fisheries treaty was the genesis and foundation for the NGO Statement on fisheries that has been prepared for this month's UN Conference on Straddling and Highly Migratory Fish Stocks. (See page 2.)

However, the Statement also benefitted greatly from discussions during a special NGO Workshop held at the UN during the April organizational session for the conference. After further review and revisions the past two months by numerous North- and South-based NGOs, the text of the Statement was distributed in mid-June for endorsement. At press time, more than 35 NGOs had signed on, and many more endorsements are anticipated.

The NGO Statement calls for fisheries reforms that address several important substantive and procedural measures. Among the substantive measures, it calls for the adoption of a precautionary approach, which would require governments to reduce or halt fishing when scientific uncertainty would risk major harm. A related measure recognizes the need for ecologically sound fishing practices, taking into account the critical ecosystem linkages among species, the fishing en-

vironment, atmospheric changes and habitat destruction.

Those principles must, however, be accompanied by other reforms addressed in the Statement, such as:

- Effective data collection;
- The sharing of environmentally sound fishing gear and advanced monitoring technologies;
- Consistent conservation standards throughout a stock's range of movement;
- Strict compliance and enforcement systems;
- And always, transparency, accountability and decision-making processes that include affected local communities.

It also calls for special attention to be given to matters related to issues of equity and basic rights, a concern that was deemed to be of high priority by NGOs involved in writing the Rio alternative fisheries treaty.

Those reforms are complemented by the Statement's call for a widely acceptable Law of the Sea Convention and effective international institutional mechanisms to implement the substantive reforms, included but not limited to legally binding agreements at the global level, and a specialized Conservation Fund primarily for the benefit of less industrialized countries.

The proposed Conservation Fund would be jointly administered by NGO and government entities. Its main focus would be to finance global mechanisms needed for conserving and managing high seas fisheries, and initiatives directed toward the conservation and protection of habitat within EEZs, primarily for the benefit of less industrialized States.

EDITORIAL

Negotiation, Dialogue, Action

Today marks the start of an extremely important global negotiation. The United Nations Conference on Straddling and Highly Migratory Fish Stocks presents the opportunity—and responsibility—for governments to come up with effective solutions that will help reverse the escalating global fisheries crisis.

Fishing activity on the high seas has expanded rapidly in the last decade and is expected

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7/26 PJS

TO: DAVID DONAGHER
DESG OFA (ALSO FOR COLSON)
ROBIN TUTTLE
DEM COLLEGES
FM: ROSE DILLON

WHICH IS
MISSING A
PAGE

FOLLOWS FOR YOUR INFORMATION ARE
CHAIRMAN'S WORKING DRAFTS ON
THE (I) ISSUE/NATURE OF CONSERVATION
AND MANAGEMENT MEASURES, AND (II)
MECHANISMS FOR COOPERATION, AND
(III) REGIONAL ORGANISATIONS. THESE
WILL FORM THE BASIS OF THE
CHAIRMAN'S FINAL TEXT OF THIS
SESSION.

ALSO FOLLOWS FRI IS AN ADVANCE
OF A RUSSIAN PAPER ON UNCLOS
PROVISIONS RELATIVE TO STRADDLING
STOCKS.

13 PAGES



WORKING DRAFT

26 July 1993

(I) **The Nature of Conservation and Management Measures to be Established through Co-operation**

1. States¹ shall co-operate to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks on the high seas. States shall give effect to the duty to co-operate by establishing conservation and management measures for straddling fish stocks and highly migratory fish stocks, in a manner consistent with the relevant provisions of the 1982 United Nations Convention on the Law of the Sea. They shall:
 - (a) on the basis of the best scientific evidence available, ensure that conservation and management measures are directed at maintaining or restoring stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing states, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
 - (b) promote optimum utilisation and ensure long-term sustainability of the fish stock(s) concerned;
 - (c) ensure that harvesting of the target stock(s) does not result in associated or dependent species being reduced to levels at which their reproduction may become seriously threatened;
 - (d) promote the development and use of environmentally safe fishing techniques in order to minimise pollution, waste, discards and the catching of untargetted species, in particular of endangered species, taking into account the need for protecting biodiversity;
 - (e) take into account the special requirements of developing countries in relation to the stock(s) concerned including:
 - (i) the vulnerability of developing countries, particularly small island developing countries which are culturally and economically dependent on marine resources, especially in terms of impacts

¹ Hereinafter references to "States" should be read as references to States and entities. For the purposes of this document, references to "entities" should be read as including regional economic integration organisations having competence in matters referred to in this document and other entities whose vessels fish on the high seas.

on subsistence fisheries and dependent coastal communities;

- (ii) allowing for favourable access for developing countries located in the subregion or region;
- (iii) assistance to developing countries including financial, scientific and technological assistance and training, in order that they can fulfil their obligations with respect to conservation and management, of straddling fish stocks and highly migratory fish stocks and their interest in development of fisheries for the stock(s);

- (f) commit themselves to responsible fishing;
- (g) enhance the level of certainty in management decision-making by collecting and sharing timely, complete and accurate data from fishing activities, inter alia on position, catch, by-catch and fishing effort as referred to in Annex 1, as well as information from national research programs;
- (h) achieve coherent and coordinated conservation and management measures to protect the stocks from over-exploitation by adopting an approach which takes into account the interdependence of stock components on the high seas and in areas under national jurisdiction;
- (i) ensure that conservation measures do not discriminate in form or fact against the fishermen of any State.

2. In order to protect the environment and the living marine resources, the precautionary approach shall be applied widely by States to fisheries management and exploitation, in the following manner:

- (a) States shall take into account, inter alia, uncertainties with respect to the size and productivity of the targeted stock(s), the levels and distributions of fishing mortality, the impacts of fishing activities on associated and dependent species and variations in other relevant factors including climatic, oceanic and environmental changes;
- (b) the absence of adequate scientific information shall not be used as the reason for forgoing strict measures to protect the resource;
- (c) use of the precautionary approach, however, does not necessarily require moratoria;

- (d) fishing activities to which strict conservation and management measures have been applied shall be subject to enhanced monitoring in order to review continuously the status of stock(s) and the efficacy of the measures to facilitate revision of the measures in the light of new scientific evidence;
- (e) in the case of new or exploratory fisheries, conservative catch and/or effort limits shall be established until there are sufficient data to allow assessment of the impact of the fishery on the long-term sustainability of the stock(s) and associated ecosystems.

(Working Draft)

26th July 1993

(II) The Mechanisms for International Co-operation

1. States shall pursue their co-operation in relation to straddling fish stocks and highly migratory fish stocks bilaterally and/or multilaterally through regional fisheries management organisations or consultative arrangements taking into account the specific characteristics of the subregion or region. Consultations shall be initiated on the request of any interested State.
2. As a minimum, the purpose of such co-operation shall be to agree on conservation and management measures with respect to particular fish stock(s) to ensure sustainability of those stock(s).
3. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the stock(s) concerned may be under threat of over-exploitation. While differences remain, they shall act in good faith and in a manner which does not constitute an abuse of right and with due regard to the rights, interests and obligations of other States.
4. Where a subregional or regional fisheries management organisation or arrangement has the mandate and competence to establish conservation and management measures for particular straddling fish stock(s) or highly migratory fish stock(s), then States fishing for the stock(s) on the high seas and coastal States with an interest in the stock(s), shall give effect to their duty to cooperate by participating in the work of the regional organisation or arrangement, in accordance with the mandate and provisions of that organisation or arrangement.
5. Subregional and regional fisheries management organisations and arrangements shall be open to participation, on a non-discriminatory basis, to all States with an interest in the stock(s) concerned.
6. States which are not parties to an existing competent subregional or regional fisheries management organisation shall be encouraged to participate in the work of that organisation.
7. New members of a regional fisheries management organisation or parties to an arrangement shall generally be entitled to accrue benefits in exchange for the obligations that they undertake. This shall include equitable allocation of participatory rights taking account, inter alia, of:
 - (a) the prior contribution of the non-party to conservation and management of the stock(s), to the collection and provision of accurate

(III) Regional fisheries management organisations or arrangements

1. States which participate in a subregional or regional fisheries management organisation or arrangement shall :
 - (a) agree on conservation and management measures to ensure sustainability of the stock(s) in question;
 - (b) agree, as appropriate, on allocations of quota or allocations of effort limits;
 - (c) develop agreed standards for collection, reporting, verification and exchange of data and information on fisheries for the stock(s) in question;
 - (d) compile and disseminate accurate and complete statistical data, as described in Annex 1, relating to catches of target stock(s) and ecologically related species and any other relevant information necessary to ensure the best scientific evidence is available, while maintaining confidentiality where appropriate;
 - (e) conduct and disseminate the results of scientific analyses of data on the stocks(s) and scientific research on relevant factors including environmental and oceanographic factors;
 - (f) establish mechanisms for effective monitoring, control, surveillance and enforcement;
 - (g) promote the development and use of environmentally safe fishing techniques in order to minimise pollution, waste, discards and the catching of untargeted species, in particular of endangered species, taking into account the need for protecting biodiversity;
 - (h) promote the establishment and application of international minimum standards for the conduct of fishing operation;
 - (i) agree on the means by which the activities of the organisation or arrangement will be financed, bearing in mind the relative benefits derived from the fishery and differing capacities of countries, especially the developing coastal States, to provide financial and other contributions;
 - (j) agree on measures to deter non-parties from undermining the conservation and management

measures established by the organisation or arrangement;

- (k) agree on means by which the fishing interests of new entrants will be accommodated, having regard to the interests of both new entrants and existing participants, their respective contributions to conservation and management of the stock(s), the extent to which the stock(s) in question is fully utilised and the special requirements of new entrants from developing countries of the same region or sub-region;
 - (l) provide procedures for compulsory settlement of disputes, consistent with the relevant provisions of the 1982 United Nations Convention on the Law of the Sea. Procedures for settlement of disputes shall be applicable to all members of the organisation or parties to the arrangements, including those which may not be parties to the Convention;
 - (m) consult, co-operate and coordinate, as appropriate, with other relevant fisheries organisations and arrangements;
 - (n) establish procedures for regular review of the effectiveness of the organisation or arrangement.
2. In establishing a regional fisheries management organisation or arrangement in respect of an enclosed or semi-enclosed sea, States shall provide for consultation with the coastal State(s) concerned in the establishment of any conservation and management measures.
3. In giving effect to their duty to co-operate by participating in the work of the subregional or regional fisheries management organisation or arrangement, States shall:
- (a) ensure that data collection and processing adequately meets scientific assessment requirements and supports management objectives;
 - (b) compile and submit the catch, effort and other relevant data referred to in Annex 1 in an agreed format and time-frame;
 - (c) develop and share new resource assessment methodologies, management models, and other analytical techniques;
 - (d) cooperate in scientific analyses of data on the stock(s) and in the dissemination of results of

assessments and relevant information on the fisheries to interested parties;

- (e) promote the use of environmentally safe fishing gear, technologies and practices in order to minimise pollution, waste, discards and untargetted catches by their vessels and nationals;
- (f) ensure the full cooperation of their relevant national agencies and industries in the agreed work of subregional or regional fisheries management organisation or arrangement.

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 AMEMBASSY OSLO
 AMEMBASSY REYKJAVIK
 AMEMBASSY HALIFAX

E.O.12356: N/A
 TAGS: EFIS, SENV, PHSA, UNGA
 SUBJECT: UN CONFERENCE ON STRADDLING FISH STOCKS AND
 - HIGHLY MIGRATORY FISH STOCKS - WEEK TWO

REF: USUN 3522

1. SUMMARY. THE UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS HELD THE SECOND WEEK OF ITS FIRST SUBSTANTIVE SESSION JULY 19-23, 1993, AT UN HEADQUARTERS, NEW YORK. THE CONFERENCE CONTINUED DELIBERATING THE CHAIRMAN'S "GUIDE TO THE ISSUES BEFORE THE CONFERENCE", AS IT HAD DURING THE FIRST WEEK. THE CONFERENCE HELD INFORMAL CONSULTATIONS FOR THE MAJORITY OF THE WEEK TO DISCUSS A VARIETY OF ISSUES ON WHICH THE CHAIRMAN SOUGHT ADDITIONAL INFORMATION AND AN EXCHANGE OF VIEWS. NEXT WEEK, THE THIRD AND FINAL WEEK OF THIS SESSION, CAN BE PREDICTED TO BE HARIED AS A NUMBER OF DELEGATIONS EXPECT RESULTS AFTER A MONTH SPENT IN NEW YORK. END SUMMARY.

2. ~~AMONG THE ISSUES WHICH CONFERENCE DELEGATES DISCUSSED IN OPEN PLENARY AND INCLUDED IN THE CHAIRMAN'S GUIDE WERE (A) CONSERVATION AND MANAGEMENT ISSUES, PARTICULARLY THE INTERESTS OF COASTAL STATES, TOTAL ALLOWABLE CATCH (TAC), THE PRECAUTIONARY APPROACH, RESPONSIBLE FISHING PRACTICES, DATA COLLECTION, AND COOPERATION IN SCIENTIFIC RESEARCH; (B) MECHANISMS FOR COOPERATION, INCLUDING DIRECT COOPERATION, THE ESTABLISHMENT OF REGIONAL OR SUBREGIONAL ORGANIZATIONS OR ARRANGEMENTS WITH EMPHASIS ON NON-PARTIES AND NEW ENTRANTS, AND ASSISTANCE TO DEVELOPING COUNTRIES; (C) RESPONSIBILITIES OF REGIONAL FISHERIES ORGANIZATIONS OR ARRANGEMENTS; (D) COMPLIANCE WITH AND ENFORCEMENT OF HIGH SEAS FISHERIES CONSERVATION AND MANAGEMENT MEASURES, INCLUDING RESPONSIBILITIES OF FLAG STATES, ESTABLISHMENT OF COOPERATIVE ENFORCEMENT MECHANISMS, FLAGGING, REFLAGGING, AND UNAUTHORIZED USE OF A FLAG, AND METHODOLOGY OF DEALING WITH VESSELS WHICH CONCEAL THEIR IDENTITY; (E) NON-PARTIES TO A REGIONAL AGREEMENT, (F) DISPUTE SETTLEMENT; AND, (G) COMPATIBILITY AND COHERENCE BETWEEN NATIONAL AND INTERNATIONAL CONSERVATION MEASURES FOR THE SAME STOCKS.~~

3. ~~IN INFORMAL CONSULTATIONS, DISCUSSION WAS HELD ON A VARIETY OF ISSUES ON WHICH THE CHAIRMAN SOUGHT ADDITIONAL INFORMATION AND AN EXCHANGE OF VIEWS, INCLUDING (1) DATA REQUIREMENTS FOR CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH SPECIES; (2) PRECAUTIONARY APPROACH TO FISHERIES MANAGEMENT; (3) PROCEDURES FOR THE SETTLEMENT OF HIGH SEAS FISHERIES DISPUTES; (4) PORT STATE RESPONSIBILITIES; (5) INTERESTS OF DEVELOPING STATES; AND (6) MONITORING, CONTROL, AND SURVEILLANCE (MCS). THE CHAIRMAN PROVIDED DELEGATES WITH DISCUSSION PAPERS ON THE ISSUES OF DATA REQUIREMENTS, PRECAUTIONARY APPROACH, AND DISPUTE SETTLEMENT. THE ~~INGO'S~~ AND CANADA SUPPLEMENTED THESE DRAFTS WITH PAPERS ON THE PRECAUTIONARY APPROACH. THE U.S. SUBMISSIONS ON PRINCIPLES FOR CONSIDERATION BY STATES, ENTITIES, AND REGIONAL ORGANIZATIONS IN THE CONSERVATION AND MANAGEMENT OF STRADDLING STOCKS AND HIGHLY MIGRATORY SPECIES, STATISTICAL REPORTING ON HIGH SEAS FISHERIES, AND MONITORING HIGH SEAS FISHING VESSEL OPERATIONS BY SATELLITE ASSISTED IN FACILITATING THE DISCUSSION. THE CHAIRMAN SUMMARIZED THE CONSULTATIONS BY NOTING THAT THERE WAS A GREAT CONVERGENCE OF VIEWS. HE STATED THAT WITH REGARD TO THE PRECAUTIONARY APPROACH, THE TOPIC WAS NOT SO MUCH THE ISSUE AS IT WAS THE CIRCUMSTANCES.~~

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DISPUTE SETTLEMENT MUST BE ROOTED IN UNCLOS, BE EXPEDITIOUS, AND REFLECT A GENERAL APPRECIATION FOR PROPER PROCEDURES; AND ON DEVELOPING STATES VIEW POINTS EXPRESSED THE NECESSITY OF TECHNICAL ASSISTANCE AND TRAINING FOR THESE STATES TO CARRY OUT THEIR RIGHTS AND OBLIGATIONS UNDER UNCLOS.

4. MORE ON THE OUTCOME OF THE CONFERENCE: REFTEL DESCRIBED A CANADIAN "DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS", CO-SUBMITTED BY ARGENTINA, CHILE, ICELAND AND NEW ZEALAND. THIS WEEK THE EUROPEAN ECONOMIC COMMUNITY SUBMITTED A DOCUMENT ENTITLED "SUGGESTED GUIDELINES". THE GUIDELINES RELATE FIRSTLY TO CONSERVATION AND MANAGEMENT COMMITMENTS AND MEASURES, AND, SECONDLY, TO INTERNATIONAL COOPERATION, INCLUDING RIGHTS, RESPONSIBILITIES, OBLIGATIONS, BENEFITS AND DUTIES. THE EC DOCUMENT, WHICH, LIKE THE CANADIAN DRAFT CONVENTION, HAS NOT YET BEEN FORMALLY DISCUSSED, REPRESENTS THE OPPOSITE END OF THE SPECTRUM ON THE OUTCOME OF THE CONFERENCE. USDEL'S INITIAL READING OF THE EC DOCUMENT IS THAT, WHILE PROVIDING A GOOD BASIS, IT IS NOT COMPREHENSIVE ENOUGH TO BE SATISFACTORY AS AN OUTCOME OF THIS POST-UNCED CONFERENCE. THE CHAIRMAN HAS REITERATED HIS INTENTION TO PREPARE A BASIC TEXT BY THE END OF THE SESSION FOR FURTHER CONSIDERATION AT FUTURE SESSIONS. RESPONDING TO CRITICISM THAT PROGRESS HAS BEEN TOO SLOW, THE CHAIRMAN STATED THAT THIS PARTICULAR CONFERENCE DID NOT HAVE THE BENEFIT OF A PREPCOM, SO A FULL REVIEW AND AIRING OF VIEWS IS BOTH NECESSARY AND APPROPRIATE.

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5. NGO PARTICIPATION: WHEN DECIDING TO HOLD INFORMAL CONSULTATIONS, THE CONFERENCE CHAIRMAN INITIALLY SOUGHT TO RESTRICT ATTENDANCE TO DELEGATES ONLY, CAUSING A COMMOTION AMONG NGO'S AND DELEGATES ALIKE. THE CHAIRMAN AND NGO'S AGREED THAT NGO REPRESENTATIVES COULD PARTICIPATE AS OBSERVERS IN THE INFORMAL CONSULTATIONS. USDEL PRESSED FOR AS FULL PARTICIPATION OF NGO'S AS POSSIBLE, NOTING THEIR SIGNIFICANT AND IMPORTANT CONTRIBUTION TO THE CONFERENCE AND OTHER ASSOCIATED ACTIVITIES.

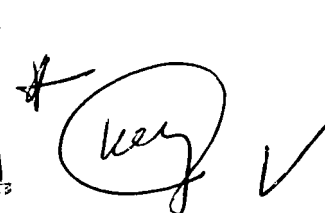
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6. ADDITIONAL DOCUMENTS RELEASED BY THE SECRETARIAT THIS WEEK INCLUDED AN AUSTRALIAN PAPER COMMENTING ON COMPLIANCE AND ENFORCEMENT; A RUSSIAN FEDERATION SUBMISSION ON THE DEFINITION OF STRADDLING STOCKS OF MARINE LIFE AND A LIST OF THEIR MAIN SPECIES; AND, A

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WORKING PAPER BY CHILE, COLOMBIA, ECUADOR, AND PERU ON
ELEMENTS OF AN INTERNATIONAL AGREEMENT ON THE
CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS
AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS.

7. ON THE MARGINS OF THE CONFERENCE, REPRESENTATIVES OF
VIRTUALLY ALL GOVERNMENTS THAT HAVE BEEN PARTICIPATING
IN NEGOTIATIONS ON THE FAO "FLAGGING AGREEMENT" ~~MET~~
INFORMALLY EACH EVENING TO DISCUSS THE BRACKETED
PROVISIONS OF THE TEXT. THANKS IN GOOD MEASURE TO THE
EFFORTS OF FAO LEGAL COUNSEL MOORE, THESE MEETINGS
PRODUCED AGREEMENT, ALBEIT INFORMAL AGREEMENT, ON EACH
OF THE UNRESOLVED ISSUES. WHILE PROBLEMS MAY WELL YET
ARISE, IT NOW APPEARS LIKELY THAT THE FAO CONFERENCE
WILL BE ABLE TO ADOPT THE AGREEMENT DURING ITS NOVEMBER
MEETING. THIS DEVELOPMENT MAY ALSO HAVE A SIGNIFICANT
BEARING ON THE ATMOSPHERE WITHIN THE UN CONFERENCE IN
THAT THE PROSPECT OF A FINALIZED FLAGGING AGREEMENT MAY
LEAD A NUMBER OF COUNTRIES TO QUESTION THE NEED FOR AN
ADDITIONAL TREATY ON HIGH SEAS FISHERIES AT THIS TIME.

ALBRIGHT##





United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

May 26, 1993

His Excellency Satya N. Nandan
Permanent Mission of the Republic of Fiji
One United Nations Plaza, 26th Floor
New York, New York 10017

Dear Mr. Ambassador:

I am pleased to submit the enclosed position statement for the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks which elaborates principles and guidelines for the conservation and management of these living marine resources. I request that this position statement, along with this letter, be translated and distributed to delegations in advance of the July session of the Conference.

As was discussed at the April session of the Conference, the work and results of the Conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS). Moreover, because straddling stocks and highly migratory species migrate on both the high seas and within exclusive economic zones, the Conference may need to consider interests with regard to these resources relating to both areas, consistent with UNCLOS.

The United States is flexible on the nature of the outcome of the Conference. The results could, for example, be reflected in a United Nations General Assembly resolution or declaration, or in some other appropriate document. The United States does not believe, however, that it would be appropriate -- or even possible -- for the Conference to attempt to draft a treaty or other legally binding instrument. Such an undertaking would likely take many years to conclude and would consume valuable time and funds that would be better spent strengthening fishery conservation and management regimes at the regional and subregional level.

I appreciate the opportunity to provide you with this position statement prior to the July session.

Sincerely,

Larry L. Snead
Director
Office of Fisheries Affairs

Enclosure: As stated.

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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS
New York
12-30 July 1993

Position Statement Submitted by the United States
of America

The United States proposes that the Conference consider and adopt the following principles and guidelines for the conservation and management of straddling fish stocks and highly migratory fish stocks for use by States and by regional and international organizations:

1. Living marine resource (LMR) conservation regimes, including those for straddling fish stocks and highly migratory fish stocks, should recognize the principle of conserving resources at levels no less than that which will produce the long-term maximum sustainable yield. Management of fisheries resources should recognize the principle of sustained utilization at high levels of productivity. These regimes should be designed to address discrete conservation and social needs and objectives in specific geographical regions. States and entities concerned with international LMR's, including straddling stocks and highly migratory fish stocks, in specific geographical regions should cooperate to form organizations or bodies responsible for establishing conservation programs in that region. The conservation programs established by such organizations or bodies should be consistent with the LMR provisions of the United Nations Convention on the Law of the Sea (UNCLOS).
2. Regional organizations or bodies should emphasize multi-species, ecosystem oriented management and other approaches which take into account the relationships among species and their habitats in the establishment of international conservation regimes. The differences among LMR's should also be taken into account when necessary, and the principles which apply to one species (or group of species) may not apply to all others.
3. States and entities that join and/or observe a conservation program established for a specified geographical area by an international organization or body that has been created for that purpose should generally be entitled to accrue

1/ The distinctions between straddling fish stocks and highly migratory fish stocks with respect to the rights and obligations of coastal States and distant water fishing States, as set forth in Article 63(2) and Article 64, of UNCLOS, should be taken into account in any international conservation program.

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benefits from the obligations that they share to conserve the specified resource. Other States or entities that seek to fish in a geographical area should cooperate with already established organizations or bodies responsible for conservation regimes in that area. Regional organizations or bodies should include provisions to establish conditions for allowing entry by new participants, on a case by case basis. However, all States and entities should give due consideration to the ramifications that would result from their initiating a new fishery on a resource which is already fully utilized.

4. Allowable catch levels should be established based upon the best available scientific information, and should take into account uncertainties concerning the size and productivity of the resource and its inter-relationships with other resources. Absent data or an agreed upon conservation program, it should be the responsibility of the flag State to ensure that its fisheries for straddling fish stocks and highly migratory fish stocks are adequately regulated and rigorously monitored to permit the timely assessment of environmental impacts and the state of the exploited stocks. As in the case of other LMR's, straddling fish stocks and highly migratory fish stocks should be managed in a precautionary manner, recognizing that this approach does not necessarily require a moratorium on fishing in a particular case, but that utilization should maintain the stocks at a productive level and preserve future use options. Stock assessments should accompany LMR utilization and be conducted with the cooperation and participation of other members of the international community with interests in the straddling fish stocks and/or highly migratory fish stocks of the region. The status of both target and associated species should be monitored to verify that catch levels are not having unacceptable impacts.
5. Conservation and management measures should be effectively enforced. Regional organizations should address enforcement; the flag State should ensure that its vessels follow agreed conservation and management measures (including effective monitoring, control and surveillance (MCS) of fishing and transshipment activities) and should establish adequate penalties to deter violations.
6. In establishing conservation programs, regional organizations or bodies should collect and share relevant catch and effort data, including bycatch data as well as other pertinent data -- biological or otherwise -- in an agreed format and time-frame.

- 3 -

7. States and entities should conduct scientific activities as may be established by the regional organization or body.
8. States and entities should seek to prevent flagging of fishing vessels for the purpose of avoiding conservation regimes adopted by regional organizations or bodies or any other activity that would undermine the conservation, scientific, or enforcement programs established by such organization or body.
9. States and entities as well as regional organizations or bodies should promote environmentally safe technologies, including minimizing pollution, bycatch, and other forms of waste, as part of any conservation program for the area.
10. Regional organizations or bodies responsible for conservation programs should include, as appropriate, a dispute-settlement mechanism.
11. States and entities should cooperate to prevent fishing by non-members that undermines agreed conservation and management measures. Remedies could include appropriate trade sanctions against countries operating in a manner that undermines international conservation measures.

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ECO

Issue No. 2

Volume 85

Free

ECO has been published by non-governmental environmental groups at major international conferences since 1972. This edition is produced cooperatively by groups attending the United Nations Conference on Straddling and Highly Migratory Fish Stocks, New York, July 1993.

One Step Forward... Two Steps Back

The UN conference on straddling and highly migratory fish stocks is nearly one-third completed, in terms of the 3-week period that has been set aside for governments to reach agreement on the many issues requiring attention and concrete action. In terms of real progress, however, the first three days of general debate and the initial discussions on substantive issue areas have been a big disappointment.

The presentations by many governments, thus far, have acknowledged that there is a fisheries crisis, that business-as-usual will no longer suffice. Likewise, there is general consensus that sustainable development of fisheries is required, and that the Law of the Sea Convention provides the framework of law and obligations underlying the negotiations.

All of that is good, but it has already been said in the agreed text of Agenda 21's oceans chapter, by FAO and in other analyses, including the 1987 Brundtland Commission's Our Common Future report.

Hopefully, the discussions on the eight substantive issue areas covered by the Chairman's "Guide to the Issues" (164/10) will put some flesh on the bones of the Agenda 21 text and UN General Assembly Resolution 47/192 which are the backdrop to the conference, while drawing on the Law of the Sea foundation.

Most statements by governments have reiterated previously stated views on what is needed. Basically, three different perspectives are being presented: those of distant water fishing states, those of coastal states concerned with overexploitation of straddling and highly migratory stocks beyond 200 miles, and those of states which have affinities with both the distant water and coastal state perspectives, depending on the fish stocks.

Unfortunately, there does not appear to be any progress, as yet, in bridging the differences between the distant water and coastal states on how to proceed.

Should the conference focus on global approaches? Should governments proceed through reliance on an enforceable legal document? As stated in the NGO Statement, the answer to both those questions is an unequivocal yes.

The tabling of a draft high seas convention by coastal states (L.11) should help focus these kinds of issues, but there is very little common ground, as yet, among the 100 or more delegations that are participating. Moreover, while that proposal is a concrete step in the right direction, governments must acknowledge and act to address conservation and management deficiencies within national zones of jurisdiction as well.

The first few days of this conference sounded very similar to the previous 2 to 3 years of UNCED, FAO and other discussion preceding this conference: lots of talk and no real results. If there were no fisheries crisis, the lack of progress could be passed off as unfortunate and regrettable, though not cause for alarm. However, given the serious and growing impacts of current fishing practices on people, fisheries, other marine species and marine ecosystems, the slow progress of governments in resolving their differences is inexcusable, at best.

In sum, governments are meeting, which is a significant step forward. But the lack of progress, thus far, in reaching agreement on the necessary reforms—given the growing, adverse impacts of business-as-usual—represent a regression that can only be characterized as taking several steps backwards from where they should be by now.

EDITORIAL

Fisheries and the Rights of Fishworkers

Given the inter-relationship between species and the fluidity of the ocean, the developments in the high seas and the EEZs have a direct impact—economic, social, political and biological—on the coastal waters, and on the millions of artisanal and small-scale fishworkers who contribute to the largest share of the world's fish production.

Economic overfishing and the consequent redundancy of capital

(continued on page 2)

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from NOAA

Robin Tuttle

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**POLICY, LEGAL, AND BIOLOGICAL DISTINCTIONS BETWEEN
STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS**

I. UNCLOS

The provisions of the 1982 United Nations Conference on the Law of the Sea (UNCLOS) relating to the conservation and management of the living resources of the high seas are found in Part VII, Section 2, articles 116-120 of the Convention. Additional provisions, specifically dealing with straddling fish stocks and highly migratory fish stocks are found in article 63(2) and article 64, respectively.

UNCLOS establishes a general obligation on all States to cooperate in the conservation and management of the living resources of the high seas. States whose nationals exploit the same living resource(s) or different living resources in the same area, have an obligation to enter into negotiations with a view to taking the measures necessary for the conservation of these living resources.

To this end, they are required, as appropriate, to cooperate to establish subregional and regional fisheries organizations. In addition, all States have the duty to take, or cooperate with other States in taking, measures necessary for the compliance by their nationals with the regimes for conservation and management of the living resources of the high seas (articles 117 and 118).

The Convention elaborates upon the nature of the actions that States are required to take for the conservation and management of living resources of the high seas (article 119). These include:

(a) the taking of measures, "on the best scientific evidence available," to ensure that harvested species are maintained at, or restored to, levels which can produce "maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;"

(b) the taking of measures to ensure that species associated with, or dependent on, harvested species are not reduced to levels at which their reproduction may become seriously threatened; and

(c) a general obligation to contribute and exchange on a regular basis, where appropriate, through subregional, regional, or global organizations, available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks.

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States are also required to ensure that conservation measures and their implementation do not discriminate in any form or in fact against the fishermen of any State.

The general obligations imposed on all States in respect of conservation of the living resources of the high seas are similar, if not identical, to the obligations imposed upon coastal States in respect of the conservation of the living resources of the exclusive economic zones. Compare article 119 with article 61, paragraphs 2, 3, and 4. Both call for States to ensure the sustainable yield of harvested stocks and avoid serious threats to associated and dependent populations.

With respect to straddling fish stocks and highly migratory fish stocks, the Convention establishes specific obligations for cooperation among concerned States.

II. Straddling stocks

"Straddling stock" refers to stocks of fish described in UNCLOS article 63 (2), that is, "the same stock or stocks of associated species [that] occur both within the exclusive economic zone [of a state] and in an area beyond and adjacent to the zone". In other words, a straddling fish stock is a stock of fish which exists both within and beyond the EEZ boundary line. For the purposes of UNCLOS, straddling stocks do not include anadromous (i.e., salmon), catadromous, highly migratory, or marine mammal stocks.

The specific term "straddling stock" is not used in article 63 or in any place in the Convention. Article 63 is titled "Stocks occurring within the exclusive economic zone of two or more coastal States or both within the exclusive zone and in an area beyond and adjacent to it".

Examples of straddling fish stocks include Atlantic cod off the Grand Banks of Newfoundland, Canada; Alaskan pollock in the "donut hole" of the area of the Central Bering Sea and in the "peanut hole" area of the Sea of Okhotsk, both in the North Pacific; redfish in the "loop hole" area of the Barents Sea off Norway; mackerel and squid off Peru and Chile in the Southeast Pacific; orange roughy on the Challenger Plateau off New Zealand; and hake and southern blue whiting off Argentina's Patagonian shelf.

"Donut, peanut, and loop" holes refer to areas of the high seas which are surrounded by the zones of coastal states, and therefore, not managed by the coastal states. A moratorium on fishing in the donut hole has been agreed to by the nations

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fishing there. The Russian Federation has unilaterally "suspended" all fishing in the peanut hole and is planning naval maneuvers to enforce the suspension.

Article 63(2) requires that the coastal State and States that are engaged in fishing for straddling fish stocks seek to agree upon the conservation measures necessary for the conservation of these stocks in the adjacent areas. This cooperation may be effected either directly or through appropriate subregional or regional organizations.

III. Highly Migratory Species

The term "highly migratory species" is used in the LOS Convention. The UN Conference was called to address straddling fish stocks and highly migratory fish stocks. The use of the designation "highly migratory fish stocks" should be treated as not inconsistent with the designation "highly migratory species."

"Highly migratory species" are not directly defined by article 64. Paragraph 1 of the article refers to "the highly migratory species listed in Annex I ". Annex I. Highly Migratory Species lists the following:

1. Albacore tuna
2. Bluefin tuna
3. Bigeye tuna
4. Skipjack tuna
5. Yellowfin tuna
6. Blackfin tuna
7. Little tuna
8. Southern bluefin tuna
9. Frigate mackerel
10. Pomfrets
11. Marlins
12. Sail-fishes
13. Swordfish
14. Sauries
15. Dolphin
16. Oceanic sharks
17. Cetaceans

Article 64 requires the coastal State and other States whose nationals fish in the region for highly migratory species to cooperate directly, or through appropriate international organizations, to ensure conservation and to promote the objective of optimum utilization of those species, both within and beyond the exclusive economic zone.

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This provision is without prejudice to the sovereign rights of the coastal State over the resources within its exclusive economic zone. If no appropriate regional organization exists, article 64 requires that the coastal State and other States that fish the species cooperate to establish such an organization and participate in its work.

IV. Specific U.S. Fishery Interests

The following straddling stocks and highly migratory stocks and/or species are of particular importance to the United States:

o Straddling Stocks

Central Bering Sea Pollock
Northwest Atlantic Groundfish

o Highly Migratory Stocks/Species

South Pacific Yellowfin
South Pacific Skipjack
South Pacific Albacore

Western Pacific Tunas
Western Pacific Swordfish
Western Pacific Billfish
Western Pacific Sharks

Eastern Tropical Pacific Tunas
Eastern Pacific Swordfish
Eastern Pacific Billfish
Eastern Pacific Sharks

North Pacific Albacore
North Pacific Bluefin

Atlantic Tunas
Atlantic Swordfish
Atlantic Billfish
Atlantic Sharks

Indian Ocean Yellowfin
Indian Ocean Skipjack

See Appendix 1 and Appendix 2 for descriptions of U.S. interests in these fishery resources and the international organizations or negotiations which address them.

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V. Legal Distinctions between Straddling Fish Stocks and Highly Migratory Fish Stocks

As noted above, Article 63(2) and Article 64 of the LOS Convention deal separately with straddling fish stocks and highly migratory fish stocks (HMS), respectively. These two provisions create important distinctions between the rights and obligations of coastal States and distant water fishing States with respect to these two types of stocks.

Straddling fish stocks. Article 63(2) requires coastal States and States fishing for straddling stocks in the area beyond and adjacent to the exclusive economic zone (EEZ) of a coastal State to seek to agree on conservation and management measures in the adjacent area. Several points emerge from this provision:

1. coastal States have an absolute right to participate in the negotiation of conservation measures for the adjacent area, whether or not they fish in the adjacent area.
2. the measures to be agreed in the negotiations are only for the adjacent areas.

Most straddling stocks of interest to the United States occur primarily in the EEZ's of one, or in some cases, two coastal States, rather than in adjacent high seas areas. In our view, this gives coastal States a particular interest in the management of the stock as a whole, which must be recognized in developing conservation measures under Article 63(2). Further, because most of the stock resides inside 200 miles, it is possible for the coastal State to take effective management action.

Highly migratory fish stocks. Article 64 requires coastal States and States whose nationals fish in the region for HMS to cooperate with a view to ensuring conservation and promoting the objective of optimum utilization of HMS "throughout the region, both within and beyond the [EEZ]."

Until 1992, the United States neither claimed nor recognized the exclusive right of a coastal State to manage tuna (the HMS of greatest commercial value) within its EEZ. Although we now claim and recognize this right, we believe that coastal States have no more right or interest in HMS while they are outside their EEZ's than any other State. Since HMS transit so many EEZ's and spend considerable part of their life cycle in the waters beyond 200 miles, no single State should have superior claim to such species on the high seas.

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Moreover, no State can effectively manage HMS on a unilateral basis; only a multilateral management regime can be effective. Article 64 of the LOS Convention calls for such management regimes, but does not in any way require that the interests of the coastal State be given preference in their development.

VI. Biological Distinctions Between Straddling Fish Stocks and Highly Migratory Fish Stocks

Straddling stocks generally have a well defined spatial distribution, closely associated with topographic features, such as shallow banks on continental shelves, coastal upwelling, or seamounts in more oceanic regions. These are often critical locations in the life history of a population, such as spawning grounds, or nursery grounds for juveniles. When these topographic features are divided by national boundaries, the fishery resource that straddles the boundary, is known as a straddling stock.

On the other hand, highly migratory species have wide ranging distributions, often spanning entire oceans. While they favor certain areas, such as the edges of major ocean currents, like the Gulf Stream, entire populations of highly migratory species generally do not aggregate together, and the areas of aggregation are less likely to be within an EEZ.

These biological differences have important implications for fisheries management, which is reflected in UNCLOS. Since straddling stocks are often dependent on specific locations within an EEZ and they are often concentrated and vulnerable to fishing in such locations, national responsibility for management is essential, and potentially effective. Of course, fisheries management within an EEZ may be undermined by irresponsible fishing practices beyond the EEZ, which is why UNCLOS requires cooperation in management on the high seas. On the other hand, no single nation has a unique level of responsibility for the management of highly migratory species, nor is effective management possible based primarily on management regimes developed within EEZs. This is why UNCLOS requires cooperation in the management of highly migratory species throughout their range.

Watch for DC fears that
little agreements on
restrictions (sust. yields)
will lead to bans.
(IWC issue)

A DAILY NGO REPORT ON THE UN CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS



Earth Negotiations Bulletin

28

A Reporting Service for Environment and Development Negotiations

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Wednesday, 28 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS TUESDAY, 27 JULY 1993

Informal consultations continued on Tuesday in Conference Room 2. At the outset of the meeting, the Chair, Satya Nandan, commented that the purpose of these informal meetings was to exchange views on specific aspects. He requested specific comments on the working drafts that he has circulated in order to incorporate all concerns into the final draft paper that will serve as the basis for future discussion and negotiation.

In addition to the papers distributed yesterday, Nandan circulated a new draft on compatibility and coherence between national and international conservation measures for the same stocks. One delegate requested that this latter document be discussed first, as it must be looked at in conjunction with all the other papers. Another responded that although this is a valid point, there was no opportunity to examine this paper. Thus, discussion began on the nature of conservation and management measures to be established through cooperation.

NATURE OF CONSERVATION MEASURES TO BE ESTABLISHED THROUGH COOPERATION

SCOPE OF APPLICATION: The first sentence of the draft reads: "States shall cooperate to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks on the high seas." A number of delegates were of the view that the principle of biological unit must prevail. Therefore, this agreement's application cannot be limited to the high seas but should also include the EEZs. This was strongly opposed by a number of delegates from coastal States and led to a legal debate on the changes brought about by the Law of the Sea. It is not the first time that this particular issue was brought up. It was argued that the issue can only be solved through greater cooperation, and if equal rights are granted to all, special rights to coastal States could undermine the balance. A delegate commented that the exercise of jurisdiction of the coastal State within its EEZ is similar to motherhood. Though nobody denies the mother's right to her child, she may still receive some advice from third parties. Likewise, the coastal State can benefit from counseling in the management of its EEZ resources.

"STATES" FOOTNOTE: This footnote, which says references to "States" should be read as references to States and entities (including regional economic integration organizations), generated a number of comments. It has been argued by some delegates that regional organizations, and the EC, need to be taken in full account. Their mention in the footnote would then be redundant. The matter of EC participation had been discussed and agreed to during the adoption of the rules of procedure. It was also suggested that States be defined according to the UNCLOS terminology as coastal States and States whose vessels fish on the high seas.

OPTIMUM UTILIZATION AND LONG-TERM SUSTAINABILITY

The question of optimum utilization (1(b)) is defined as a situation where incremental cost equals incremental benefits, but the notion fails to indicate what incremental costs will be borne for each species. In that respect, the goal should be to attain sustainable use and minimize discard and waste. Management and conservation measures should not be applied solely to stocks but also to the peoples involved.

PROTECTION OF ASSOCIATED AND DEPENDENT SPECIES: Paragraph 1(e) calls on States to ensure that harvesting of the target stock(s) does not result in associated or dependent species being reduced to unsustainable levels. It was pointed out that in the EC document A/CONF.164/L.20, the approach was different since it focused on the protection of endangered species that should not go so far as to endanger the target species.

ENVIRONMENTALLY SAFE METHODS OF FISHING: Paragraph 1(d) addresses the use of environmentally safe fishing techniques to minimize pollution, waste, discards and the catching of untargeted species. Some delegates believe that the provisions should not include pollution since there is no reference to it in paragraph 55 of Chapter 17 of Agenda 21. A delegate saw the provisions of 1(d) as too close to a blank check. Maximum Sustainable Yield was also mentioned by certain delegates as an environmentally safe method.

SPECIAL CONDITIONS OF DEVELOPING COUNTRIES: Most delegates agreed on the importance of paragraph 1(e), which mentions the special requirements of developing countries. Some said that more needs to be known about these countries' requirements so as to evaluate their chances of compliance. The question of how much access these countries will have to international agreements and whether they should be granted favorable access also needs to be addressed. This issue is rather ambiguous and was previously dealt with in UNCLOS. Some delegates supported the view that the special interests of coastal States should be dealt with in a separate subparagraph. It might be important to support developing countries wishing to enter fishing grounds on the high seas adjacent to their EEZs.

RESPONSIBLE FISHING: Some delegates viewed this issue as an essential one and questioned its relegation to the sixth point of the first paragraph (1(f)). They asked if it would be more appropriate to mention it earlier in the text. It was also suggested that a chapeau be added that would contain the principle of responsible fishing as well as other agreed basic principles, such as the rational use of the stocks and ecosystem protection.

SCIENTIFIC RESEARCH: There is consensus on the need to encourage scientific research. It was suggested that 1(g) could be rewritten to stress the importance of scientific research and the role it can play in management and conservation of these fish stocks.

COLLECTION AND SHARING OF DATA FROM FISHING ACTIVITIES: A delegate disagreed with provision 1(g), in so

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far as it refers to data on the position of fishing vessels, which is too detailed and suggested that this provision be replaced with the notion of "area". Others commented that research programmes should not be only national, but also regional and international.

PRECAUTIONARY APPROACH PRINCIPLE: Though everyone agrees on the need to proceed cautiously, there were dissenting views on the exact meaning of the precautionary approach, as prescribed in paragraph 2. In particular, some viewed the negative reference to moratoria as too strong and possibly leading to its non-application when there is scientific uncertainty. It was recommended that the subject be referred to a group of experts who could define it in greater detail. It was pointed out that exploitation of fisheries could be mentioned more specifically.

MECHANISMS FOR INTERNATIONAL COOPERATION

ACTING IN GOOD FAITH: Paragraph 3 addresses States entering into consultations in good faith. Caution was urged in the use of terms such as "abuse of right." Agreements should be reached expeditiously, and a compulsory and binding dispute resolution mechanism should be included. The resources also should be protected during the negotiating process.

COOPERATION WITH REGIONAL ORGANIZATIONS: In paragraph 4, it was mentioned that special consideration might be given to coastal communities that are dependent on fishing in adjacent areas. There should be cooperation between the coastal States and the distant water fishing nations in the work of the organization. Although this paragraph deals with the high seas, it does not say where cooperation between regional bodies, coastal States and distant water fishing States will occur. Such organizations should be open to all States interested in the stocks concerned without discrimination and should give due regard to developing States.

PARTICIPATION IN REGIONAL AND SUBREGIONAL MANAGEMENT ORGANIZATIONS: Paragraph 5 deals with subregional and regional fisheries management organizations and arrangements. Generally, a delegate said, the word "agreements" might be a better choice than the word "arrangements" throughout the document. Regional organizations should be open to all States that are interested in the exploitation of the living marine resources. Important factors to remember are the status of the stock under consideration, the fishing effort, and the expectations of parties. It was pointed out that paragraph 10 in A/CONF/164/L.20 comments on paragraphs 5, 7 and 8. Paragraph 10 calls for international fisheries organizations to be open, on a non-discriminatory basis, to all States interested in the exploitation of the stocks concerned.

ACCESS TO THE REGULATED FISHERY: In regard to paragraph 8, it is important for States to join regional fisheries management organizations or arrangements. States fishing in the high seas should participate in the work of the organization, even though they may not be members of the region. Subparagraph 1(n) of Document III, "Regional fisheries management organizations or arrangements," is relevant here, since it is not clear if organizations outside the region would have the authority to review the effectiveness of a specific regional organization.

ESTABLISHMENT OF ORGANIZATIONS: Paragraph 10 deals with the agreement of States, when establishing subregional or regional fisheries management organizations, on aspects such as the fish stock(s) to which conservation and management measures apply, the area to be covered, relationship to existing organizations, mechanisms for obtaining scientific advice, and processes to facilitate timely determination of conservation and management measures. The nature of the fisheries, a delegate said, should be directed at the biological characteristics of the stocks.

IN THE CORRIDORS I

At an informative roundtable on "legal mechanisms" organized by the NGO Network, representatives from several governments met with NGOs to discuss the pros and cons of the various options for implementing substantive and

procedural agreements. The options discussed included: 1) a treaty regime, either free-standing or as a protocol to UNCLOS; 2) an authoritative interpretation of UNCLOS with regard to fisheries provisions; 3) the adoption of rules and regulations under UNCLOS; 4) an agreed statement of principles made legally-binding through regional agreements, national law and/or customary international law; 5) a UN General Assembly resolution; and, 6) a hybrid of two or more of the above options (e.g., a free-standing treaty complemented by a General Assembly resolution committing governments to abide by the treaty pending its entry into force).

IN THE CORRIDORS II

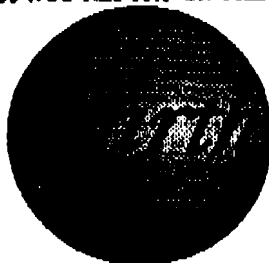
The New Zealand delegation, in an unusual move, tabled a three-page response to two articles published in ECO, an NGO publication circulated at the Conference. New Zealand took this measure after unsuccessfully attempting to respond in ECO to the stories. These articles, written by Leith Duncan, discuss both private ownership of fisheries resources in New Zealand and the introduction of individual transferable quotas (ITQs). ITQs are schemes through which shares of a stock are allocated to individual fishers, based on their historical catch, in an effort to ensure sustainable use. New Zealand's response states that there is little evidence to support the thesis of the articles that "private ownership of fisheries resources is inimical to the conservation of fisheries and the welfare of fishing people." The ECO article attributes depletion of stocks to the implementation of ITQ schemes. These, however, are often seen by fisheries economists as a means of putting an end to the so-called "Tragedy of the Commons." When property rights are not clearly assigned, individuals will, in a classic example of the "Prisoner's Dilemma," tend to catch as much as they can regardless of sustainability in order to harvest the fish before somebody else does. It is argued that when property rights are assigned, fishers have an economic incentive to harvest their own quotas in the most sustainable manner. Discussion in the corridors indicated that New Zealand's response was a sign that some governments are taking the views of NGOs quite seriously. Yet, the question being asked was why, with such a range of predatory fishing countries available as target species, New Zealand was singled out by ECO as its by-catch. *How does US feel about this?*

THINGS TO LOOK FOR TODAY

INFORMAL CONSULTATIONS: Work will continue this morning at 10:30 on the Chair's working paper, "The mechanisms for international cooperation." Discussion on this document should continue through the morning before the group turns to the next of the draft chapters of Nandan's eventual text, "Regional fisheries management organizations or arrangements." If there is time this afternoon, debate will move to the draft circulated yesterday, "Compatibility and coherence between national and international conservation measures for the same stock."

NANDAN'S DRAFT TEXT: Look for more sections of Nandan's draft text to be circulating today. At the outset of yesterday's meeting, Nandan outlined his paper, which he expects to serve as the basis for further discussion and negotiation in the coming months. The proposed chapter headings are: I. The nature of conservation and management measures to be established through cooperation; II. The mechanisms for international cooperation; III. Regional fisheries management organizations or arrangements; IV. Compliance with conservation and management measures; V. Enforcement of high seas fisheries conservation and management measures; VI. Port State enforcement; VII. Non-parties to a regional or subregional agreement or arrangement; VIII. Dispute settlement; IX. Compatibility and coherence between national and international conservation measures for the same stocks; and, possibly, a review of measures and of any agreement reached during this Conference. There will also be an annex that will contain the revision of the draft paper on data collection that was discussed last week.

A DAILY NGO REPORT ON THE UN CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS



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29

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HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS WEDNESDAY, 28 JULY 1993

On Wednesday, the Chair convened another informal session to discuss the following three working drafts: The mechanisms for international cooperation; Regional fisheries management organizations or arrangements; and Compatibility and coherence between national and international conservation measures for the same stock.

THE MECHANISMS FOR INTERNATIONAL COOPERATION

PARTICIPATION IN REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS: One delegate suggested that the wording of paragraph 5 be changed to limit participation to those States engaged in high seas fishing. He added that support for this point can be found in UNCLOS Article 118. Another delegation supported in principle the idea that organizations be open to all interested States, but that the concept should not be used without necessary modifications due to special circumstances and that States with tangible interests in the stocks concerned should avail themselves of the openness of the organization.

NEW MEMBERS: One delegate suggested that paragraph 7 should be deleted, since subparagraph 1(k) in the document on regional fisheries management organizations or arrangements deals with new entrants. Another delegate commented that new members of regional or subregional organizations would accrue benefits in exchange for obligations, with special consideration for coastal States.

In 7(b), language dealing with historical fishing rights as opposed to historical fishing patterns may be preferable. A phrase might also be added to the end of the sentence so that this subparagraph reads "the historical fishing patterns of the non-party which have not undermined regional conservation and management measures."

Subparagraph 7(c) should take into account the traditional dependence of people on fishing for nutrition, food, or for livelihood. Some argued that this subparagraph should be expanded to include mechanisms for regional organizations to provide training for nationals in all aspects of fisheries management, to provide assistance in technology, and to promote general fisheries development.

A delegate mentioned that a new subparagraph 7(a) might be developed to deal with the state of the stocks and fishing efforts employed by existing members of a regional fisheries management organization. Concern was also voiced about possible discrimination in the application of criteria concerning the contribution of non-parties to conservation and management of stocks.

ACCESS TO REGULATED FISHERIES: Some delegates thought that paragraph 8 was harsh and, therefore, might be deleted. Another delegate felt that this paragraph might best follow paragraph 5, as 5 deals with open participation of

the regional fisheries management organizations and 8 addresses access to the regulated fishery.

ESTABLISHING REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS: In paragraph 10, some delegations favored deletion of the words "on the high seas" from the chapeau so that the measures deal with management of stocks in both EEZs and the high seas. Echoing statements made Tuesday, some argued for deletion of the word "arrangements" for reasons of transparency and for consistency with the draft convention on flagging, which uses the term "treaties and international agreements" instead of "arrangements." Emphasis could be placed on cooperation between coastal States and distant water fishing nations, as well as on seeking technical and economic cooperation with developing countries. Others argued that retaining the word "arrangements" had merit, since the term "agreements" was too narrow.

In subparagraph 10(a), it was argued that the phrase "biological characteristics of the stock(s) concerned" should be replaced by the phrase "biological unity of the stock(s) concerned", with regard to conserving and managing these stocks. In 10(b), a delegate asked just what socio-economic factors should be taken into account. This subparagraph also needs to be read in concert with subparagraph (a), which deals with all elements of a given species over its complete geographic range.

It was also suggested that subparagraphs could also be added regarding: the opportunity for States and entities to enter arrangements where port States assist coastal States on monitoring and enforcement; the need to assist developing countries with technical or scientific expertise; and the development by regional organizations of decision-making processes which are time-efficient.

REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS OR ARRANGEMENTS

OBLIGATIONS OF STATES IN REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS: Even though the concept of Maximum Sustainable Yield (MSY) works in theory, it is time to move ahead and leave the door open for application of technical ideas in the future. Subparagraph 1(d) on statistical data raised questions regarding the term "ecologically related species." A delegate thought that such a term could be abused and that this section should be more specific. Are these associated or dependent species? Yet, if one accepts an ecosystem approach, use of the term "ecologically" may not be too far off course.

Subparagraph 1(j), on deterring non-parties from undermining measures, engendered some reservations since it was suggested that the point is not in line with the rules of general international law. In subparagraph 1(k), the criteria of conservation and management are referred to as conditions for a new entrant's utilization of the resource. It was also mentioned that there should be special consideration for the needs of coastal States.

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In subparagraph 1(i), it was mentioned that the statement of settlement dispute procedures being applicable to members of an organization who are not parties to the Convention is not in line with international law. Because of the peculiar nature of fisheries, concrete procedures and choice of dispute settlements is best done within each organization. Provisional measures should be taken during the negotiation period to preserve the stocks.

ENCLOSED OR SEMI-ENCLOSED SEAS: Paragraph 2 addressed consultation with concerned coastal States when establishing a regional fisheries management organization with respect to an enclosed or semi-enclosed sea. Article 123, paragraph (d) of UNCLOS suggests that coastal States do not enjoy special status over States interested in fishing or participation in conservation efforts in an enclosed sea.

Some debate also occurred on what is meant by the precautionary approach. Some delegates voiced a preference for FAO to produce a paper on the principle before the next session of the Conference, while others thought that there should be informal consultations held within the scope of this Conference.

COMPATIBILITY AND COHERENCE BETWEEN NATIONAL AND INTERNATIONAL CONSERVATION MEASURES FOR THE SAME STOCK

The Chair introduced his working draft on this controversial issue by emphasizing the two opposite views on the matter. On the one hand, a number of delegates have called for a biological unity approach through which measures taken for the management of a stock on the high seas have to be applied throughout its range, i.e., within the EEZ. But coastal States see this as a clear impingement on the jurisdictional rights granted to them by UNCLOS. As the Chair put it, the two views -- one biological and the other jurisdictional -- have to be reconciled for the sake of effective conservation and management of straddling fish stocks and highly migratory fish stocks.

STATE SOVEREIGNTY: One of the delegates initiated the debate by calling on all States to relinquish part of their sovereignty in order to achieve a better solution for all. Distant water fishing nations have to yield to special rights of the coastal States, while the coastal States must allow for some outside intervention in the management of the straddling and highly migratory fish stocks in their EEZs. This proposal, while approved by some, met with some strong opposition from other delegates. A delegate insisted that each State give due regard to the interests of others. A solution to this apparently unsolvable problem can be reached if all parties negotiate on an equal footing. Another delegate, however, insisted that the States were not on equal footing to start with since the nomadic vessels fishing on the high seas have access to other fishing grounds while the coastal communities depend on the straddling stocks for their livelihood. Another delegate responded that socio-economic needs of the distant fishers should also be taken into consideration. It was also argued that UNCLOS does not provide for equality among States but grants coastal States a clear advantage. It was argued, however, that these special rights are not absolute, but subject to a number of stringent conditions that need to be met.

AN ECOSYSTEM APPROACH TO MANAGEMENT: This approach was advocated by the proponents of the biological unity approach, who argue that due to their biological particularities, these stocks cannot be managed separately within the EEZs and on the high seas. As one delegate put it, a single stock cannot be managed by two separate entities.

SCOPE OF APPLICATION: There was some degree of controversy as to where the measures taken by the regional organizations should apply. Some parties insisted that "on the high seas" be deleted from paragraph 2 to make sure that those measures cover the whole range of the stocks. This was also reflected in the debate on paragraph 3, where the conservation measures taken are to place no undue burden on the coastal States. Some opposed this provision as subordinating the freedom to fish on the high seas to the rights of the coastal States.

MEASURES TO BE TAKEN IN CASE THE NEGOTIATIONS FAIL: Paragraph 5 met with strong opposition from distant water fishing nations who oppose the priority given to coastal States' measures if no agreement is reached. Instead, it was suggested that the States be compelled to negotiate further and provisionally and voluntarily adopt measures based on the best available scientific evidence to ensure that the condition of the stocks does not deteriorate. Some coastal States thought this was too weak to protect depleted stocks. This suggestion gives high seas fishers too much judgement in the adoption of conservation measures.

NATURE OF THE CONSERVATION MEASURES: Conservation measures should take into account all the relevant factors such as stock conditions but also the socio-economic impacts on the fishers and their communities. A delegate pointed out that while economic factors are mentioned in UNCLOS, social factors are not and they should be clearly defined before they are integrated in the final document. A nation insisted that measures applying to straddling stocks should be different from those applying to highly migratory stocks.

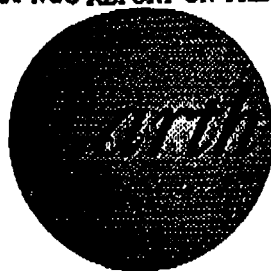
THE FAO CODE OF CONDUCT ON RESPONSIBLE FISHING: The Code of Conduct was singled out as a good indication on how management and conservation measures should be carried out. A delegate suggested that the Code of Conduct should be fully implemented by 1996, when the UN Commission on Sustainable Development will be addressing the implementation of the oceans chapter of Agenda 21.

THINGS TO LOOK FOR TODAY

INFORMAL CONSULTATIONS: Discussion will continue this morning at 11:00 on Nandan's working draft, "Compatibility and coherence between national and international conservation measures for the same stock". Debate will then turn to the two documents distributed yesterday afternoon, "Port State enforcement" and "Non-parties to a subregional or regional agreement or arrangement."

Look for a proposal today from Nandan regarding the dates and number of future "sessions" of the Conference to be held in 1994. Nandan announced yesterday that on Friday he plans to hear limited discussion on this item and adjourn this session of the Conference at 1:00 pm.

A/CONF.164/L.11/REV.1: The revised version of the ~~Draft convention on the conservation and management of straddling stocks on the high seas and highly migratory fish stock on the high seas, submitted by Argentina, Canada, Chile, Iceland and New Zealand, will be released today as A/CONF.164/L.11/Rev.1.~~ This new text has been discussed in detail during a series of consultations held by the sponsors with representatives of various regional groups. The changes in this document reflect the input from these meetings, an NGO paper on L.11, and certain trends emerging in Nandan's informal consultations. Noteworthy changes in L.11/Rev.1 include: 1) the addition of Annex II "Selected precautionary measures on the high seas" that adds detail to Article 5 on the precautionary approach; 2) the reorganization of Article 7 on surveillance and control measures that includes provision for minimizing costs for coastal developing countries and on the particular circumstances in individual regions; 3) provision in Article 18(c) for the establishment of funds to enable developing countries to defray the costs of dispute settlement; 4) qualifying language related to the jurisdictional basis of port State enforcement in Article 11; 5) the addition of a new article 16 titled "Information on disposition of cases" that requires the flag State that receives one of its own arrested fishing vessels to inform the coastal arresting State within 12 months of the final disposition of the case; and 6) improved provisions of Article 24 on technical cooperation with developing countries. Some of the sponsors hope that L.11/Rev.1 will continue to evolve, in a process not unlike that taken by the draft agreement on flagging, and might, eventually, be merged with the outcome of Nandan's consultations.



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Friday, 30 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS THURSDAY, 29 JULY 1993

Informal sessions on Thursday continued the discussion on the Chair's working paper on compatibility and coherence between national and international conservation measures for the same stock. Discussions then moved to the following working papers: Port State Enforcement, Non-parties to a subregional or regional agreement or arrangement, and Special requirements of developing countries.

Before the substantive discussions began, Nandan made a few procedural announcements. He said that his final paper should be available in the morning. This paper is based on the comments made by delegates on his draft working papers, the written submissions of delegations, and the formal discussions held in Plenary. This paper will form the basis for the future work of the Conference. As the Conference needs to conclude its work by the 49th General Assembly in 1994, Nandan proposed the convening of two additional sessions: a 3-week negotiating session from 14-31 March 1994 and a final session to adopt the text from 15-26 August 1994. In addition, there may also be expert group or ad hoc meetings on the precautionary approach and the concept of maximum sustainable yield.

COMPATIBILITY AND COHERENCE BETWEEN NATIONAL AND INTERNATIONAL CONSERVATION MEASURES FOR THE SAME STOCKS

As a lengthy debate of this topic took place Wednesday, discussion on this matter did not take too much time. With regard to the measures that should be adopted in case negotiations fail, a delegate pointed out that coastal States are not always able to establish conservation measures. In this case, distant water fishing vessels should comply with certain international minimum standards. Another intervention highlighted the difficulties developing States may have in conducting stock assessments, and called for further international assistance.

PORT STATE ENFORCEMENT

SCOPE OF APPLICATION: The ever-recurrent issue of the final outcome of this Conference surfaced once more when some delegates questioned whether port State enforcement should be specific to regional organizations' arrangements or should be enshrined in a document applicable at the global level. As a proponent of the legally-binding document approach put it, the global approach can be seen as a safety net in case the application of the measures fails at the regional level. Another delegate asked that there be no safe refuge for vessels violating the conservation and management measures agreed upon. Some parties agreed to the principle only in so far as it would be

applied through the regional organizations and not at the global level.

PORT STATE JURISDICTION: This issue was characterized by one of the delegates as similar to most of the questions debated during this Conference: participants may agree on the principle but dissent on its application. The principle itself was questioned by one delegate who first claimed that it was not recognized in UNCLOS, customary international law or customs of international maritime law. After another delegate pointed out that Article 218 of UNCLOS provides precisely for port State enforcement in cases of violation of marine pollution conventions, the first delegate claimed that, in any event, UNCLOS has yet to enter into force and should thus give way to customary international law which has not yet elevated port State enforcement to the status of a general principle. This last assertion was questioned by some.

PORT STATE ENFORCEMENT -- A RIGHT OR A DUTY: With regard to the provisions of the Chair's draft paper, the majority of States argued that port State jurisdiction is no longer questioned and, therefore, need not be mentioned further. As a result, verbs such as "may" need to be replaced by "should" or even "shall" to emphasize the point that in fulfilling their obligation to conserve and manage the straddling and highly migratory fish stocks, the port States are required to exercise some control over the foreign vessels that call in their ports. In particular, it was argued that application of conservation measures should not be left to the good will of the port States.

With regard to the enforcement by port States at the request of another State, several delegates expressed the view that this should remain a right and not a duty since the port State and the requesting State may have conflicting interests. It was also suggested that "Parties" rather than States be allowed to ask for port State cooperation.

MEASURES THAT THE PORT STATE MAY/SHOULD TAKE OUT:

- The right to request information from flag States was not disputed and some delegates attached to it a collateral obligation on the part of the flag State to provide this information.
- It was agreed that inspection of vessels suspected of violating the prescribed measures should be limited to cases where the port State has reason to suspect that the vessel's fishing practices undermine the conservation measures adopted. All agreed it is impossible to inspect all the vessels that call in but, as FAO pointed out, the simple examination of the fishing log may give good indications on the legality of the fishing. Some developing nations questioned their own capacity to carry out such inspections and suggested that on-board inspection schemes be set up to help them in this task. Others called for transfers of technology, such as satellite tracking devices, to enhance cooperation between flag

State and port State. This was also seen as a way to avoid the possible partiality of on-board inspectors. If a distant water fishing vessel also fishes in the coastal area, chances are that the port State may be prejudiced against it. The concept of "undermining" practices was also questioned as being too vague and including an element of intention.

- Detainment of vessels that have violated the conservation and management measures raised the question of how long a vessel could be detained -- until the flag State has been notified or until the port State is satisfied that the proper measures have been taken by the flag State. The principle of proportionality, which should be applied to this situation, needs to be further refined.
- Refusing entry to vessels that are known to have violated conservation and management measures as well as the blacklisting of offending vessels has been applied in practice and has met with some success.
- Refusing to land catches that were harvested in violation of the conservation and management measures caused some worry that this measure would be in violation of GATT provisions. It was explained, however, that GATT does not apply to direct imports from the high seas.
- Hailing is a practice that has been successful in the past and was recommended for inclusion in this section.
- Confiscation of vessels or fishing gear was suggested in the case of the most serious violations.

A minor incident occurred when one delegate renewed claim of jurisdiction over the Kuril Islands. The other nation, which claims sovereignty over the same islands, regretted the intervention, claiming it contradicted the mandate of this Conference.

NON-PARTIES TO A SUBREGIONAL OR REGIONAL AGREEMENT OR ARRANGEMENT

One delegate said a key element of the framework is the subregional or regional organizations and arrangements that will apply rules, regulations and principles with due regard to the peculiarities of the region. States will then have legal tools to challenge the unlawful use of stocks. Another delegate insisted that regional organizations should be open to everyone on a non-discriminatory basis.

In paragraph 1, a delegate thought that the first line should not mention only the cooperation of flag States, but that the obligation to cooperate should lie with all States. Another delegate thought that the phrase "flag States" could be replaced by the phrase "all States concerned." It was mentioned that references to criminal law terminology should be avoided. One delegation said that a reference to straddling fish stocks or highly migratory fish stocks should be made in this paragraph. To maintain the reference to the stocks, the last word of the paragraph, "fishery," should be replaced with the phrase "regulated stocks."

In paragraph 3, one delegate asked about the criteria to be used in determining what undermines the effectiveness of relevant conservation and management measures. Specific language should spell this out.

In paragraph 4, one delegate said that blacklisting of vessels seems to be an effective mechanism that should be given some serious consideration, along with other measures that are consistent with international law. This paragraph could be strengthened if the final sentence of paragraph 4, "Such actions shall be consistent with international law," was incorporated into the first sentence so that compliance with conservation and management measures could be promoted. The revised paragraph would then read: "States shall cooperate in a manner consistent with international law to the end that fishing vessels entitled to fly the flags of non-parties do not engage in activities that undermine the effectiveness of relevant international conservation and management measures."

SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

This working paper considers the special needs of developing countries regarding straddling fish stocks and

highly migratory fish stocks, the need to enhance assistance to them on a regional or subregional basis, and how to channel such assistance effectively.

One delegate thought that a new subparagraph 1(a) should be included to address the vulnerability of developing countries whose geography makes them dependent on exploiting living marine resources for their populations.

In subparagraph 2(a), one delegation mentioned the importance of including a provision on the vulnerability of coastal communities in these countries that are dependent on fishing.

In paragraph 3, regarding specific forms of assistance to developing countries for the purposes set out in this section, one delegate thought it advisable to permit rapid and regular access to data and information, and assistance in increasing data collection capacity. In subparagraph (b), scientific research should relate to stock assessment. Exchange of information and training of personnel is also important. One delegate said that thought should be given to the means of implementing subparagraph (c) on providing training and funding to help developing countries build their capacity with regard to monitoring, control and surveillance. It was mentioned that subparagraph (d) does not go far enough in discussing access to global dispute mechanisms. It was also suggested that the creation of a voluntary fund to defray costs be considered and the development of gear technology be included among the specific forms of assistance. A delegate thought that the FAO was conspicuous in its absence in relation to the provision to developing countries of scientific research and the collection, verification, and exchange of data.

Paragraph 4 deals with special assistance to developing countries to enhance their ability to conserve, manage and develop their own national fisheries for these stocks. It was argued that this assistance is not limited to the high seas, but should include the EEZs. A provision should be developed to reflect the ability of developing countries to enjoy the benefits of these stocks "in their own zones and on the high seas."

IN THE CORRIDORS

The decision to hold two further negotiating sessions during 1994 raises a series of procedural concerns, which were discussed in the corridors by some of the delegates who will have to deal with this issue at the next General Assembly. As this Conference is part of the implementation of decisions and recommendations of UNCED, it will be handled by the Second Committee of the General Assembly under item 100(c) of the provisional agenda (A/48/150). Any resolution calling for additional negotiating sessions of this Conference will have to include a statement of programme budget implications considered by the Fifth Committee, which handles administrative and budgetary matters. Based on the figures in the budget implications for the 1993 session (A/C.5/47/78), it is estimated that additional sessions of three and two weeks in 1994 will cost approximately US\$ 1,230,000 for conference servicing (translation, interpretation, etc.).

THINGS TO LOOK FOR TODAY

PLENARY: The Plenary will meet today at 11:00 am in Conference Room 2. The Chair has announced that he will circulate his draft text, although Conference Services cannot guarantee it will be available at the beginning of the meeting. Peru, Chile, Korea and Colombia have already indicated that they will speak this morning. Three NGOs are also expected to speak: Women and Fisheries Network, on behalf of many participants in the NGO Network; Fisherman, Food and Allied Workers; and Inshore Fisheries from Newfoundland. The Chair has said that he hopes the business of the formal meeting will not be prolonged and that governments will keep their statements about future sessions short. Nandan hopes to adjourn this session of the Conference at or before 1:00 pm.

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TO: DAVID DONAGER
BRIAN HALLMAN
(FOR COLSON)
ROBIN TUTTLE

FM: BOIL - DILLAY

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TAGS: EFIS, SENV, PHSA, UNGA
SUBJECT: UN CONFERENCE ON STRADDLING FISH STOCKS AND
- HIGHLY MIGRATORY FISH STOCKS - WEEK TWO

REF: USUN 3522

1. SUMMARY. THE UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS HELD THE SECOND WEEK OF ITS FIRST SUBSTANTIVE SESSION JULY 19-23, 1993, AT UN HEADQUARTERS, NEW YORK. THE CONFERENCE CONTINUED DELIBERATING THE CHAIRMAN'S "GUIDE TO THE ISSUES BEFORE THE CONFERENCE", AS IT HAD DURING THE FIRST WEEK. THE CONFERENCE HELD INFORMAL CONSULTATIONS FOR THE MAJORITY OF THE WEEK TO DISCUSS A VARIETY OF ISSUES ON WHICH THE CHAIRMAN SOUGHT ADDITIONAL INFORMATION AND AN EXCHANGE OF VIEWS. NEXT WEEK, THE THIRD AND FINAL WEEK OF THIS SESSION, CAN BE PREDICTED TO BE HARRIED AS A NUMBER OF DELEGATIONS EXPECT RESULTS AFTER A MONTH SPENT IN NEW YORK. END SUMMARY.

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2. AMONG THE ISSUES WHICH CONFERENCE DELEGATES DISCUSSED IN OPEN PLENARY AND INCLUDED IN THE CHAIRMAN'S GUIDE WERE (A) CONSERVATION AND MANAGEMENT ISSUES, PARTICULARLY THE INTERESTS OF COASTAL STATES, TOTAL ALLOWABLE CATCH (TAC), THE PRECAUTIONARY APPROACH, RESPONSIBLE FISHING PRACTICES, DATA COLLECTION, AND COOPERATION IN SCIENTIFIC RESEARCH; (B) MECHANISMS FOR COOPERATION, INCLUDING DIRECT COOPERATION, THE ESTABLISHMENT OF REGIONAL OR SUBREGIONAL ORGANIZATIONS OR ARRANGEMENTS WITH EMPHASIS ON NON-PARTIES AND NEW ENTRANTS, AND ASSISTANCE TO DEVELOPING COUNTRIES; (C) RESPONSIBILITIES OF REGIONAL FISHERIES ORGANIZATIONS OR ARRANGEMENTS; (D) COMPLIANCE WITH AND ENFORCEMENT OF HIGH SEAS FISHERIES CONSERVATION AND MANAGEMENT MEASURES, INCLUDING RESPONSIBILITIES OF FLAG STATES, ESTABLISHMENT OF COOPERATIVE ENFORCEMENT MECHANISMS, FLAGGING, REFLAGGING, AND UNAUTHORIZED USE OF A FLAG, AND METHODOLOGY OF DEALING WITH VESSELS WHICH CONCEAL THEIR IDENTITY; (E) NON-PARTIES TO A REGIONAL AGREEMENT, (F) DISPUTE SETTLEMENT; AND, (G) COMPATIBILITY AND COHERENCE BETWEEN NATIONAL AND INTERNATIONAL CONSERVATION MEASURES FOR THE SAME STOCKS.

3. IN INFORMAL CONSULTATIONS, DISCUSSION WAS HELD ON A VARIETY OF ISSUES ON WHICH THE CHAIRMAN SOUGHT ADDITIONAL INFORMATION AND AN EXCHANGE OF VIEWS, INCLUDING (1) DATA REQUIREMENTS FOR CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH SPECIES; (2) PRECAUTIONARY APPROACH TO FISHERIES MANAGEMENT; (3) PROCEDURES FOR THE SETTLEMENT OF HIGH SEAS FISHERIES DISPUTES; (4) PORT STATE RESPONSIBILITIES; (5) INTERESTS OF DEVELOPING STATES; AND (6) MONITORING, CONTROL, AND SURVEILLANCE (MCS). THE CHAIRMAN PROVIDED DELEGATES WITH DISCUSSION PAPERS ON THE ISSUES OF DATA REQUIREMENTS, PRECAUTIONARY APPROACH, AND DISPUTE SETTLEMENT. THE NGO'S AND CANADA SUPPLEMENTED THESE DRAFTS WITH PAPERS ON THE PRECAUTIONARY APPROACH. THE U.S. SUBMISSIONS ON PRINCIPLES FOR CONSIDERATION BY STATES, ENTITIES, AND REGIONAL ORGANIZATIONS IN THE CONSERVATION AND MANAGEMENT OF STRADDLING STOCKS AND HIGHLY MIGRATORY SPECIES, STATISTICAL REPORTING ON HIGH SEAS FISHERIES, AND MONITORING HIGH SEAS FISHING VESSEL OPERATIONS BY SATELLITE ASSISTED IN FACILITATING THE DISCUSSION. THE CHAIRMAN SUMMARIZED THE CONSULTATIONS BY NOTING THAT THERE WAS A GREAT CONVERGENCE OF VIEWS. HE STATED THAT WITH REGARD TO THE PRECAUTIONARY APPROACH, THE TOPIC WAS NOT SO MUCH THE ISSUE AS IT WAS THE CIRCUMSTANCES;

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DISPUTE SETTLEMENT MUST BE ROOTED IN UNCLOS, BE EXPEDITIOUS, AND REFLECT A GENERAL APPRECIATION FOR PROPER PROCEDURES; AND ON DEVELOPING STATES, VIEW POINTS EXPRESSED THE NECESSITY OF TECHNICAL ASSISTANCE AND TRAINING FOR THESE STATES TO CARRY OUT THEIR RIGHTS AND OBLIGATIONS UNDER UNCLOS.

4. MORE ON THE OUTCOME OF THE CONFERENCE: REFTTEL DESCRIBED A CANADIAN "DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS", CO-SUBMITTED BY ARGENTINA, CHILE, ICELAND AND NEW ZEALAND. THIS WEEK THE EUROPEAN ECONOMIC COMMUNITY SUBMITTED A DOCUMENT ENTITLED "SUGGESTED GUIDELINES". THE GUIDELINES RELATE FIRSTLY TO CONSERVATION AND MANAGEMENT COMMITMENTS AND MEASURES, AND, SECONDLY, TO INTERNATIONAL COOPERATION, INCLUDING RIGHTS, RESPONSIBILITIES, OBLIGATIONS, BENEFITS AND DUTIES. THE EC DOCUMENT, WHICH, LIKE THE CANADIAN DRAFT CONVENTION, HAS NOT YET BEEN FORMALLY DISCUSSED, REPRESENTS THE OPPOSITE END OF THE SPECTRUM ON THE OUTCOME OF THE CONFERENCE. USDEL'S INITIAL READING OF THE EC DOCUMENT IS THAT, WHILE PROVIDING A GOOD BASIS, IT IS NOT COMPREHENSIVE ENOUGH TO BE SATISFACTORY AS AN OUTCOME OF THIS POST-UNCED CONFERENCE. THE CHAIRMAN HAS REITERATED HIS INTENTION TO PREPARE A BASIC TEXT BY THE END OF THE SESSION FOR FURTHER CONSIDERATION AT FUTURE SESSIONS. RESPONDING TO CRITICISM THAT PROGRESS HAS BEEN TOO SLOW, THE CHAIRMAN STATED THAT THIS PARTICULAR CONFERENCE DID NOT HAVE THE BENEFIT OF A PREPCOM, SO A FULL REVIEW AND AIRING OF VIEWS IS BOTH NECESSARY AND APPROPRIATE.

5. NGO PARTICIPATION: WHEN DECIDING TO HOLD INFORMAL CONSULTATIONS, THE CONFERENCE CHAIRMAN INITIALLY SOUGHT TO RESTRICT ATTENDANCE TO DELEGATES ONLY, CAUSING A COMMOTION AMONG NGO'S AND DELEGATES ALIKE. THE CHAIRMAN AND NGO'S AGREED THAT NGO REPRESENTATIVES COULD PARTICIPATE AS OBSERVERS IN THE INFORMAL CONSULTATIONS. USDEL PRESSED FOR AS FULL PARTICIPATION OF NGO'S AS POSSIBLE, NOTING THEIR SIGNIFICANT AND IMPORTANT CONTRIBUTION TO THE CONFERENCE AND OTHER ASSOCIATED ACTIVITIES.

6. ADDITIONAL DOCUMENTS RELEASED BY THE SECRETARIAT THIS WEEK INCLUDED AN AUSTRALIAN PAPER COMMENTING ON COMPLIANCE AND ENFORCEMENT; A RUSSIAN FEDERATION SUBMISSION ON THE DEFINITION OF STRADDLING STOCKS OF MARINE LIFE AND A LIST OF THEIR MAIN SPECIES; AND, A

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WORKING PAPER BY CHILE, COLOMBIA, ECUADOR, AND PERU ON
ELEMENTS OF AN INTERNATIONAL AGREEMENT ON THE
CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS
AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS.

7. ON THE MARGINS OF THE CONFERENCE, REPRESENTATIVES OF
VIRTUALLY ALL GOVERNMENTS THAT HAVE BEEN PARTICIPATING
IN NEGOTIATIONS ON THE FAO "FLAGGING AGREEMENT" MET
INFORMALLY EACH EVENING TO DISCUSS THE BRACKETED
PROVISIONS OF THE TEXT. THANKS IN GOOD MEASURE TO THE
EFFORTS OF FAO LEGAL COUNSEL MOORE, THESE MEETINGS
PRODUCED AGREEMENT, ALBEIT INFORMAL AGREEMENT, ON EACH
OF THE UNRESOLVED ISSUES. WHILE PROBLEMS MAY WELL YET
ARISE, IT NOW APPEARS LIKELY THAT THE FAO CONFERENCE
WILL BE ABLE TO ADOPT THE AGREEMENT DURING ITS NOVEMBER
MEETING. THIS DEVELOPMENT MAY ALSO HAVE A SIGNIFICANT
BEARING ON THE ATMOSPHERE WITHIN THE UN CONFERENCE, IN
THAT THE PROSPECT OF A FINALIZED FLAGGING AGREEMENT MAY
LEAD A NUMBER OF COUNTRIES TO QUESTION THE NEED FOR AN
ADDITIONAL TREATY ON HIGH SEAS FISHERIES AT THIS TIME.

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7/22/93

TO:

DAVID DONAGER
BRIAN HULLMAN (ALSO FOR COLSON + CHRISTOVICH)
ROBIN TUTTLE
DAVE BENTON
DAVE BURNETT

FM:

BILL DILDAY

FOLLOWS FYI IS THE DAILY
NBO NEWSLETTER ON THE UN
FINANCIAL CONFERENCE.



A DAILY NGO REPORT ON THE UN CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

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Friday, 23 July 1993

HIGH SEAS FISHERIES CONFERENCE HIGHLIGHTS THURSDAY, 22 JULY 1993

Informal consultations continued on Thursday in Conference Room 5. Discussion focussed on the following three topics: dispute settlement, port State responsibilities and interests of developing countries.

DISPUTE SETTLEMENT

As an introduction to the discussion on this issue, the Chair circulated a paper, "Procedures for the Settlement of High Seas Fisheries Disputes." This paper, which focusses on the UNCLOS provisions on dispute settlement, is divided into four sections: Procedures under Regional Arrangements; Compulsory Conciliation; Special Arbitration; and Fact-Finding Procedures. Parties to the Convention are constrained to settle disputes by peaceful means and they are also required to submit to final and binding third-party procedures if all others fail. Dispute settlement procedures agreed upon by this Conference must be consistent with the Law of the Sea. There are formal institutionalized dispute settlement procedures, such as the Tribunal, the International Court of Justice and arbitration, and the Convention itself provides practical and expeditious means to settle disputes of a technical nature.

The section "Procedures under Regional Arrangements" states that if the management regimes for stocks is primarily regional, regional dispute settlement procedures could be appropriate. The Convention recognizes the importance of regional dispute settlement mechanisms and procedures under regional agreements (Article 282). However, States fishing on the high seas include those to whom regional procedures may not apply and, therefore, alternative means for dispute resolution will have to be provided.

Under "Compulsory Conciliation", the management regime for straddling and highly migratory fish stocks on the high seas interacts with the EEZ regime for such fisheries. A coastal State in the exercise of its sovereign rights in the EEZ, with respect to living resources, is not subject to binding procedures, except in the case when a coastal State "has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the EEZ is not seriously endangered" (Article 297.3(b)(i)).

Resolution of issues of a technical nature is included in the "Special Arbitration" section. This special procedure is flexible and permits variations of the procedure by agreement on an ad hoc basis for each case.

The Convention also provides for a special fact-finding approach, which could be conclusive or persuasive, whichever the parties agree to. The Special Arbitral Tribunal could also formulate recommendations (which do not have

the force of decisions) based on the findings of fact (Annex VIII, Article 5.3), and would be intended to provide the basis for review by the parties in question.

In the discussion, several countries agreed that UNCLOS provides a good mechanism for dispute resolution. Some argued against creating new procedures or mechanisms since agreed-upon procedures already exist in UNCLOS. Others stated that the 1982 Convention does not have adequate measures for conflict resolution on fishing matters. It was pointed out that UNCLOS has not yet entered into force and certain countries experiencing problems with straddling stocks and highly migratory species may not be party to the Convention. The authors of A/CONF.164/L.11 (Draft Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on the High Seas) pointed out that Article 25 contains mechanisms for dispute settlement. Its arbitration measures are fast-acting, follow UNCLOS, and are specifically adapted to the needs of this Conference. A contradiction in L.11 was pointed out -- it provides for three arbitrators (one nominated by each party and one neutral member), but does not provide for cases where there are more than two parties to a dispute. The response was that parties can always turn voluntarily to the UNCLOS provisions.

Some developing countries expressed concern about arbitration costs. The Law of the Sea provides for equal sharing of costs, except under certain circumstances. L.11 does not mention this issue.

One delegation expressed concern that the focus was not on the real problem -- the need for better decision making in existing regional organizations to avoid the need to settle disputes. A number of delegates agreed that dispute settlement mechanisms should be a last effort to solve a problem, not a first. It was suggested that a specific tribunal composed of legal and technical experts should be created. There was concern, however, that a global dispute settlement mechanism would increase the number of disputes, cost, time, etc. Disputes should be dealt with by the appropriate regional organizations. However, since some disputes occur between a party in a regional organization and a non-party, there should be some type of a global mechanism. There was agreement that the priority should be given to regional settlement when possible. Several delegations said that no agreement on mandatory dispute resolution is necessary at this time. Finally, some said that since disputes should be resolved by regional organizations, this Conference should only give recommendations.

PORT STATE RESPONSIBILITIES

It was agreed that this question is not well documented in the Law of the Sea Convention. Nevertheless, some delegates had divergent views on the extent of port State jurisdiction in terms of high seas fisheries. There was also disagreement on the customary international law in this respect. Some

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Friday, 23 July 1993



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delegates advocated an extended jurisdiction for the port State, based on the coastal State's special interests. Others argued that port State's authority was the exception rather than the rule and is limited to a number of specific cases, such as the protection of the marine environment and the prevention of pollution. The amount of data that a vessel needs to provide the port State upon calling in might be dependent on its activity.

Port State jurisdiction might be exercised at the discretion of the port State or at the request of the flag State. This is particularly relevant in the case of open registries whose vessels rarely stop in their national waters. Other nations expressed their fear that this policing action on the part of the port State might lead to discrimination. This concern led to proposals that guidelines be established to limit the detention powers of the port State. In addition, it was agreed that a degree of proportionality had to be maintained between the suspected offense and the enforcement measures the port State might take.

INTERESTS OF DEVELOPING COUNTRIES

This topic was not included in the Chair's list of issues (A/CONF.164/10), but emerged as an item that required discussion. A number of developing States highlighted their dependence on marine resources, both for food and for livelihood. They commended the work of the FAO in this field and expressed their appreciation for documents A/CONF/164/L.11 and A/CONF/164/L.8, which recognize their special interest and needs. The debate, however, centered around the type of assistance that should be given to developing countries. It was agreed that assistance will enable developing States to fulfill their obligation to conserve and manage straddling and highly migratory fish stocks. However, an important point that was raised was that forms of assistance should not be limited to the development of fishing within national jurisdiction. Developing States expressed their intention to develop distant water fishing fleets and argued that the high seas fisheries should not be ear-marked for developed States that are already harvesting.

Another point that gave rise to debate was how financial flows would be channeled. The creation of special development funds was mentioned as well as coordinating efforts through the Commission on Sustainable Development (CSD) or the Global Environment Facility (GEF). The CSD will be dealing with Chapter 17 of Agenda 21 on the oceans in 1996 but, in the meantime, the GEF can be used to fund projects through its focal point on international waters. Some, however, expressed their fear that the issue of high seas fisheries would be diluted within the global context of sustainable development and called for a regional organizations approach. It was felt that through regional organizations the developing coastal States would find it easier to shoulder the burden of participation in the regional management regimes. It was mentioned that the levy of participation fees in regional organizations should be proportional to the level of catch, but adjusted by GNP or per capita income levels.

In addition to the transfer of financial resources, countries requested the transfer of technology and training of personnel. Countries in transition to market economies explained that they were unable to provide developing States with financial assistance, but were more than willing to train personnel in the relevant fields. Developing countries used this discussion to express concern with their difficulties in complying with conservation and management measures, both in terms of data collection and enforcement and monitoring. It was also recognized that access to markets should be facilitated for developing countries.

IN THE CORRIDORS I

Toward the end of Thursday's meeting, the Chair spoke about the difficulties in reflecting the content of the day's discussions on the interests of developing countries and sources of funding in a document that deals with principles. Some delegates were surprised by this comment, as they had

been under the impression that the Chair was favoring a longer process leading to the elaboration of a legally-binding instrument. The Chair's suggestion to adopt a resolution on the needs of developing countries also met with some confusion. It is not clear what the outcome of this session will be and how such a resolution would relate to the outcome. Finally, there was talk that the Chair might submit a report, rather than recommendations, to the 48th Session of the General Assembly this fall and request additional funds to continue negotiations toward a legally-binding instrument. Although he may be consulting privately with delegations, Nandan has not yet made public his definitive thoughts on these matters.

IN THE CORRIDORS II

Although most NGOs have been barred from observing the informal meetings, they have been busy in the corridors. NGO comments have been tabled on the EC paper on suggested guidelines for conservation and management and international cooperation. The comments include the idea that in addition to ecosystems, the viability of the coastal fisheries and the communities that depend on them must be addressed. The right of the marine ecosystem to exist unimpaired must be the paramount consideration. The marine habitat also needs protection and monitoring. "Acceptable uncertainty" is not a criterion that can be defined for global application, since it is subject to arbitrary decision-making processes. Transparency must include public access to information. The precautionary principle is a fundamental tool for fisheries management that must be applied at all times. Part II of the paper states that the regional bodies must be nested in a global framework, both to set minimum standards and to encourage cooperation to manage highly migratory stocks throughout their geographic range. The NGOs also urged nations to move beyond UNCLOS.

NGOs have also drafted a statement on the consistency principle. For straddling and highly migratory fish stocks, a consistent conservation and management regime based on an ecosystem approach is needed. Such a regime must be applied throughout the ranges of the stock as a safeguard against over-exploitation. Any elaboration of States' rights regarding the stocks must deal with responsibility for conservation of the stocks and protection of the marine habitat.

THINGS TO LOOK FOR TODAY

PLENARY: For the first time since Monday, Plenary will meet this morning at 10:00 am in Conference Room 2. The topic of discussion will be Item VIII in the Chair's list of issues, A/CONF.164/10: Compatibility and coherence between national and international conservation measures for the same stocks. Nandan requested that delegates focus their comments on conservation and management of the two types of stocks. He added that it will serve no purpose to enter into a prolonged debate over who has rights and interests and where those rights and interests can be exercised. The concentration should be on how this Conference can produce compatible regimes without compromising the rights of coastal States to use resources in their EEZs.

INFORMAL CONSULTATIONS: Following the conclusion of the Plenary's discussion on Item VIII, informal consultations will begin on monitoring, control and surveillance. At the conclusion of Thursday's informal session, Nandan proposed that these consultations take place in Conference Room 2 so that everyone can attend. He suggested that the nameplates could be removed to retain a degree of informality. This decision was, in part, based on the standing-room-only crowds in Conference Room 5 on Thursday, where Delegates had to exchange seats to allow others to use the microphones. At one point, a delegate commented that the room had become like the adjacent high seas and, as a new entrant, he only got the surplus.

To: David and Katie

From: P.J.

Date: July 27, 1993

Re: Review of Events at UN Conference on Straddling and Highly Migratory Fish Stocks, July 7-30, 1993

DRAFT

I. Background

- Straddling and highly migratory fish stocks include species which occur within the exclusive economic zones (EEZs) of two or more coastal states, or which occur both within the EEZ and an area beyond and adjacent to it.
- The FAO recently classified almost every commercial fish species in every ocean and sea as "depleted," "fully exploited," or "over exploited." Stocks in 4 of the world's 17 major fishing regions are seriously depleted, while catches in 9 others are declining. One of the most contentious issues at UNCED was that the over-exploitation of living marine resources in the high seas has an adverse impact on resources within exclusive economic zones (EEZs).
- Moratoria on high seas fishing are in effect for certain stocks off the Grand Banks of Canada, in the Bering Sea "donut hole." There is a unilaterally imposed prohibition on fishing in the Sea of Okhotsk off Russia's East coast.
- The UN Conference is being held to promote effective implementation of the provisions of the UN Convention on the Law of the Sea (UNCLOS) on straddling and highly migratory fish stocks by: (1) identifying and assessing existing problems related to the conservation and management of these stocks; (2) considering the means of improving fisheries cooperation among states; and (3) formulating appropriate recommendations.
- Currently, there is no effective regime to regulate high seas fishing, as UNCLOS is not yet in effect.
- Canada and its "core group" (Argentina, Chile, Iceland, New Zealand) indicated before the Conference that they were seeking a new, global legal regime; this is contrary to the U.S. desire to apply non-binding guidelines or principles which could be applied on a regional, case-by-case basis.
- Canada also proposed that similar management measures be applied to the problems of both straddling and highly migratory stocks [the "Santiago Declaration"]. The U.S. opposed this approach, since it is inconsistent with UNCLOS.
- The U.S. entered the Conference with a flexible position on the outcome: the

delegation would have supported incorporating the results into a UN General Assembly resolution or declaration or other appropriate document. It would not, however, find it appropriate--or even possible--for the Conference to attempt to draft a treaty or other legally binding instrument; this would take years to conclude, and would consume valuable time and funds that would be better spent strengthened fishery conservation and management regimes at the regional and sub-regional level.

II. Main Conference Issues

- The Conference is dealing with issues under the following categories: (1) the nature of conservation and management measures; (2) mechanisms for cooperation; (3) responsibilities of regional fisheries organizations; (4) compliance with conservation and management measures; (5) enforcement of conservation and management measures; (6) non-parties to a regional agreement; (7) settlement of disputes; and (8) compatibility between national and international conservation measures.

III. NGO Position at the Conference

- The NGO statement at the Conference emphasized the need for fisheries conservation, environmental protection, and respect for and recognition of the rights of small scale, traditional and indigenous fishworkers and fishing communities. The statement argued that a consistent management regime must apply throughout the range of both straddling and highly migratory stocks. It called for effective international institutional mechanisms to implement substantive reforms, including but not limited to legally binding agreements at the global level, and a specialized, global fisheries "Conservation Fund" primarily for the benefit of less industrialized countries.

IV. Key U.S. Positions at the Conference

- The U.S. delegation said it is mainly concerned with the sustainable use of marine resources over the long term. It is interested specifically in Alaskan Pollock in the Central Bering Sea and U.S. tuna fisheries (within the US EEZ off the East coast, Hawaii, and U.S. islands in the Pacific, and South Pacific tuna fleet).
- The U.S. favors regional approaches to conservation and management, which are "best designed and adopted to address discrete conservation and social needs and objectives."
- The delegation called for greater control by flag states over their vessels, and endorsed the International Code of Conduct for Responsible Fishing and the FAO's initiative to conclude a legally-binding instrument on the flagging of vessels. It has emphasized

multi-species ecosystem oriented management, and favors a distinct treatment of straddling stocks and highly migratory species as contained in UNCLOS. It believes that the precautionary approach should be used in managing these stocks when scientific data is in question.

V. General Agreement Among Delegates on Basic Issues:

- Commitment to seeking long-term solutions.
- Reorganization of the need for effective conservation and management of stocks over their full range.
- Effective management requires cooperation among states.
- UNCLOS must be the legal framework within which conservation and management measures are developed.
- There is a need for an International Code of Conduct for Responsible Fishing
- Flag state enforcement is fundamental and essential.
- Data and scientific information are essential for conservation and management measures. A precautionary approach should be used when and where appropriate
- Resource sustainability is essential.
- Clear understanding of monitoring, control and surveillance is essential for effective conservation and management.
- Speedy, effective dispute settlement is necessary.
- The issues of non-parties to conservation and management agreements and new entrants to existing fisheries must be addressed.
- Technical assistance to developing countries is necessary.

VI. Key Conference Developments and Debates

- Differences in Views on Conference Outcome: Several countries have called for an internationally legally binding result in the form of a convention or similar instrument. Others want a resolution or declaration. The U.S. suggests an agreement on suggested guidelines or principles which could be applied on a regional basis. It does not favor an attempt at drafting a treaty, which would be time and resource consuming.
- Developing Countries Seek Aid: Many developing countries are stressing the need for capacity building measures and financial assistance to help them in managing fish stocks, collecting data and supporting surveillance systems.
- Canadian Draft Convention: Canada submitted a draft convention (co-sponsored with Argentina, Chile, Iceland and New Zealand) on the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas. The draft is **not supported** by the US delegation at this time--because of both form and substance.

Just are aren't even a party to this Convention!
What does this mean for our participation??
but this is a problem caused mainly by developed countries right??

- US Reaction to Canada Proposal: Instead of supporting Canada draft convention, US delegation is trying to gain support for adoption of general principles which should be adopted by states, entities and regional organizations on a voluntary and regional basis depending on the particularities of a region. It would have reporting requirements versus globally, legally binding provisions.
- EC Proposal: Following Canada's introduction of its draft convention, the EC submitted a document entitled, "Suggested Guidelines," that related to conservation and management commitments and measures and to international cooperation, rights, responsibilities, obligations, benefits and duties. It represents the opposite end of the spectrum from the Canadian draft on the outcome of the Conference. The Canadian and EC proposals have not yet been formally discussed, but the U.S. believes it is not comprehensive enough to be a satisfactory as an outcome of this Conference.
- NGO participation: When deciding to hold informal consultations, the Conference chairman initially sought to exclude NGOs. The U.S. pressed for full NGO participation, and the chairman and NGOs agreed that NGO representatives could participate as observers in the informal consultations.
- FAO Flagging Agreement: Representatives from most all governments (including the U.S.) participating in negotiations on the FAO "Flagging Agreement" have met each evening and have agreed informally on each of the unresolved issues. It appears as though the FAO Conference will be able to adopt the agreement during its November meeting. The USDEL thinks that **this development may have significant bearing on the atmosphere of this UN Conference**, since the prospect of a finalized flagging agreement may lead a number of countries to question the need for an additional treaty on high seas fisheries at this time.

*What is the
Substance
This agreement?*



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United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

June 25, 1993

MEMORANDUM

TO: DISTRIBUTION

FROM: OES/OFA - William E. Dilday 

SUBJECT: Documents from the UN High Seas Fisheries Conference

For your information, attached is a list of documents related to the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, being held at UN Headquarters, New York, July 12-30, 1993.

If you would like a copy of any document, please contact Mr. Adam Paris on 202/647-1948, Room 5806.

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p)
July 9, 1993.

UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS
NEW YORK
12-30 JULY 1993

NOTES FOR AN ADDRESS

BY

AMBASSADOR DAVID A. COLSON
DEPUTY ASSISTANT SECRETARY
OCEANS AND FISHERIES AFFAIRS
DEPARTMENT OF STATE
UNITED STATES OF AMERICA

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MR. CHAIRMAN:

ON BEHALF OF THE GOVERNMENT OF THE UNITED STATES, ALLOW ME TO CONGRATULATE YOU ON YOUR ELECTION AS CHAIRMAN OF THIS IMPORTANT CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS. YOUR EXPERTISE IN LAW OF THE SEA MATTERS STEMMING FROM YOUR VAST EXPERIENCE IN THIS FIELD WILL GUIDE AND SERVE THE CONFERENCE WELL. WE PLEDGE TO YOU OUR FULL COOPERATION IN ACHIEVING A SUCCESSFUL CONFERENCE OUTCOME.

THE 1992 UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT RECOGNIZED AND AGREED UPON THE NEED TO CONSERVE AND MANAGE THE WORLD'S RESOURCES PROPERLY, INCLUDING THE LIVING MARINE RESOURCES OF THE OCEANS, SEAS, AND COASTAL AREAS. CHAPTER 17 OF AGENDA 21 STATES THAT "THE MARINE ENVIRONMENT ... IS AN ESSENTIAL COMPONENT OF THE GLOBAL LIFE-SUPPORT SYSTEM AND A POSITIVE ASSET THAT PRESENTS OPPORTUNITIES FOR SUSTAINABLE DEVELOPMENT." THERE CAN BE NO QUESTION ABOUT THE IMPORTANCE OF CONSERVING AND SUSTAINABLY UTILIZING LIVING MARINE RESOURCES. WE ALL AGREE. BUT THEN WHY ARE WE HERE?

THE REASON WE ARE HERE IS THAT WE -- THE GOVERNMENTS OF THE WORLD -- HAVE NOT ALWAYS DONE A PARTICULARLY GOOD JOB IN THIS REGARD, BOTH IN THE WAY WE MANAGE THESE RESOURCES IN OUR OWN 200 MILE ZONES AND IN THE EFFORTS WE HAVE MADE TO COOPERATE ON CONSERVATION AND MANAGEMENT OF THESE RESOURCES ON THE HIGH SEAS. THERE ARE AREAS OF SUCCESS WHICH CAN BE IDENTIFIED, BUT TOO MANY FISHERIES STILL SUFFER FROM OVERFISHING AND STOCK CONSERVATION PROBLEMS.

IN THE WORLD WE LIVE IN, WE NORMALLY HAIL NEW TECHNOLOGY AND ECONOMIC EFFICIENCY. BUT, MR. CHAIRMAN, IN THE FIELD OF FISHERIES THESE OTHERWISE POSITIVE ATTRIBUTES OFTEN CAUSE SUBSTANTIAL CONSERVATION PROBLEMS.

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MANKIND TODAY IS PUTTING ENORMOUS PRESSURE ON THE WORLD'S FISHERY RESOURCES. AS THE NEEDS OF AN EXPANDING WORLD POPULATION GROW, AND NEW TECHNOLOGIES MAKE IT EVEN EASIER TO EXPLOIT THE WORLD'S FISHERY RESOURCES, WE CAN EXPECT THE PRESSURE TO MOUNT. AND THIS WE KNOW: FISH STOCKS DO CRASH; FISH STOCKS CAN BE OVERFISHED; FISH STOCKS CAN BE MADE COMMERCIALY EXTINCT. ALL OF THESE THINGS HAVE HAPPENED.

THE REASON THE UNITED NATIONS TOOK ACTION TO HALT HIGH SEAS DRIFTNET FISHING WAS BECAUSE IT WAS CLEAR THAT HIGH SEAS DRIFTNET FISHERMEN WOULD NOT CONTROL THEMSELVES, THAT HIGH SEAS DRIFTNET FISHING WAS EXPANDING, AND THAT TECHNOLOGY HAD MADE IT POSSIBLE TO ENWRAP THE WORLD IN A CURTAIN OF FISHING NETS. WE -- THE GOVERNMENTS OF THE WORLD -- DETERMINED THAT WE HAD SEEN ENOUGH AND THAT WE DID NOT NEED TO WAIT UNTIL WE FACED A NEW CONSERVATION CRISIS OF ENORMOUS CONSEQUENCE. INSTEAD, WE TOOK EARLY CAUTIONARY ACTION BASED ON OBSERVER DATA SHOWING THE ADVERSE IMPACTS OF SUCH FISHING.

MR. CHAIRMAN, UNCED ESTABLISHED A BOLD AND AMBITIOUS MANDATE FOR THIS CONFERENCE. WE ARE HERE TO IDENTIFY AND ASSESS PROBLEMS RELATED TO STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH SPECIES, TO CONSIDER MEANS FOR IMPROVING FISHERIES COOPERATION AMONG STATES, AND TO FORMULATE APPROPRIATE RECOMMENDATIONS WITH THE GOAL TO IMPLEMENT MORE EFFECTIVELY THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA RELATING TO THESE STOCKS. WE MUST FOCUS ON THIS SPECIFIC MANDATE, WHICH WILL PROVIDE CHALLENGE ENOUGH. WE CANNOT HOPE TO ADDRESS ALL INTERNATIONAL FISHERY PROBLEMS THAT ONE MIGHT LIST.

THE UNITED STATES COMES TO THIS TASK WITH CONSIDERABLE INTERESTS AT STAKE. PERHAPS, UNLIKE MANY HERE, OUR INTERESTS ARE MULTIFACETED IN RELATION TO THE CORE RELATIONSHIPS TO BE ADDRESSED IN THE CONFERENCE.

IN THE BERING SEA, THERE IS A SMALL AREA WE CALL THE DONUT HOLE WHICH IS ENCIRCLED BY THE 200 MILE ZONES OF THE UNITED STATES AND RUSSIA. A STOCK OF POLLOCK -- THE ALEUTIAN BASIN STOCK -- EXISTS IN THE U.S. AND RUSSIAN ZONES AND IN THE DONUT HOLE AREA. IT IS A STRADDLING STOCK. MORE THAN 85 PERCENT OF THE BASIN LIES IN THE U.S. AND RUSSIAN 200 MILE ZONES.

THE DONUT HOLE FISHERY ON THE HIGH SEAS ON THIS STOCK IS A NEW FISHERY BEGINNING ONLY IN THE MID-1980s. THE FISHERY FOR THIS STOCK IN OUR ZONES GOES BACK MANY YEARS. THE UNITED STATES AND RUSSIA, AS THE COASTAL STATES, COOPERATE IN RESPECT OF THIS STOCK. BUT IT PROVED IMPOSSIBLE TO GET THE STATES FISHING IN THE DONUT HOLE TO AGREE TO CONSERVATION RESTRICTIONS UNTIL A POINT HAD BEEN REACHED WHERE IT WAS IMPOSSIBLE TO HAVE

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AN ECONOMICALLY VIABLE FISHERY. ONLY THEN, LAST YEAR, DID THEY AGREE TO SUSPEND VOLUNTARILY THE FISHERY, AT THE SAME TIME THE COASTAL STATES HAD TO DO THE SAME TO CONSERVE THIS STOCK IN THEIR ZONES. THUS, WE SHARE THE STRONG INTERESTS OF COASTAL STATES HERE THAT WISH TO PRESS FOR STRICTER AND MORE EFFECTIVE CONSERVATION MEASURES IN RESPECT OF STRADDLING STOCKS IN AREAS BEYOND AND ADJACENT TO THEIR 200 MILE ZONES. WE SHARE THE FRUSTRATION OF OTHER COASTAL STATES AS WE SEE FISHERIES IN OUR OWN 200 MILE ZONES DAMAGED -- EVEN CLOSED -- DUE TO THE OVERFISHING OCCURRING JUST OUTSIDE OUR ZONE. AND WE GROW IMPATIENT WITH A NEGOTIATING PROCESS IN WHICH HIGH SEAS FISHING INTERESTS DENY THE RELEVANCE OF THE LAW AND GEOGRAPHY: THE COASTAL STATES HAVE SOVEREIGN RIGHTS AND JURISDICTION WITH RESPECT TO STRADDLING STOCKS WITHIN THEIR 200 MILE ZONES.

BUT AS I SAY THIS, NEW ENGLAND FISHERMEN WOULD BE QUICK TO REMIND ME THAT THEY HAVE FISHED ON STRADDLING STOCKS ON THE GRAND BANKS OF NEWFOUNDLAND SINCE BEFORE OUR COUNTRY BECAME AN INDEPENDENT NATION. THEY WANT A FAIR OPPORTUNITY. WE THUS RECOGNIZE THAT COASTAL STATES AND FISHING STATES MUST WORK TOGETHER TO DEVELOP EFFECTIVE MEASURES FOR CONSERVING STRADDLING STOCKS IN HIGH SEAS AREAS.

SO, WE CAN SEE TWO SIDES OF THIS PROBLEM.

AND, ALSO, WE CAN SEE TWO SIDES OF THE PROBLEMS ASSOCIATED WITH HIGHLY MIGRATORY SPECIES. AS IS WELL KNOWN TO MANY COUNTRIES HERE, U.S. TUNA VESSELS FISH ON THE HIGH SEAS IN MANY REGIONS. AS A HIGH SEAS FISHING STATE, WE BELIEVE THAT WE HAVE ACTED RESPONSIBLY IN REGULATING THE ACTIVITIES OF OUR TUNA VESSELS. I BELIEVE THAT THE MEMBER STATES OF THE SOUTH PACIFIC FORUM FISHERIES AGENCY, WITH WHOM WE HAVE HAD A COMPREHENSIVE TUNA TREATY SINCE 1988, WOULD SHARE THIS ASSESSMENT.

WHAT IS PERHAPS NOT SO WELL KNOWN ARE THE LARGE AND IMPORTANT DOMESTIC FISHERIES INTERESTS WE HAVE RELATING TO TUNA IN THE U.S. 200 MILE ZONE -- PARTICULARLY OFF THE EAST COAST OF NORTH AMERICA, HAWAII, AND U.S. ISLANDS IN THE PACIFIC.

MR. CHAIRMAN, AS WE APPROACH THIS CONFERENCE WE ARE MOTIVATED PRINCIPALLY BY THE NEED TO ENCOURAGE THE ESTABLISHMENT OF STRONG REGIONAL ORGANIZATIONS AMONG THE STATES CONCERNED CAPABLE OF MANAGING STRADDLING STOCKS AND HIGHLY MIGRATORY SPECIES, CONSISTENT WITH THE 1982 CONVENTION ON THE LAW OF THE SEA, BUT UNENCUMBERED WITH THE TRADITIONS OF THE PAST -- TRADITIONS WHICH WE NOW SEE HAVE BROUGHT US TO THIS POINT -- TRADITIONS WHICH HAVE HIDDEN BEHIND THREE ARGUMENTS THAT CAN NO LONGER BE ACCEPTED:

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(1) THE ARGUMENT THAT EFFECTIVE ENFORCEMENT MEASURES WOULD BE INCONSISTENT WITH HIGH SEAS FREEDOMS;

(2) THE ARGUMENT THAT THERE IS NOT ENOUGH SCIENTIFIC EVIDENCE TO PROVE THAT FISHERIES ON STOCKS SHOULD BE CONTROLLED OR REDUCED; AND,

(3) THE ARGUMENT THAT AGREEMENT BY ALL IS REQUIRED BEFORE DECISIONS CAN BE TAKEN.

THIS CONFERENCE MUST REJECT THESE ARGUMENTS.

EFFECTIVE ENFORCEMENT OF THE RULES IS REQUIRED FOR GOOD CONSERVATION.

GOOD SCIENCE IS NEEDED FOR GOOD CONSERVATION AND MANAGEMENT, BUT THE LACK OF RELEVANT INFORMATION MEANS OUR MANAGEMENT MUST BE CAUTIOUS -- NOT THAT FISHERIES CAN CONTINUE AND GROW UNHINDERED.

AND, EFFECTIVE CONSERVATION AND MANAGEMENT CANNOT ALWAYS BE ACHIEVED BY CONSENSUS. RESOURCE MANAGEMENT CANNOT BE EFFECTIVE IF EVEN THE MOST UNREASONABLE ATTITUDES, THE MOST SELF-INTERESTED ATTITUDES, THE MOST SHORT-SIGHTED ATTITUDES MUST BE TAKEN INTO ACCOUNT IN RESOURCE MANAGEMENT DECISION-MAKING.

WE FOCUS HERE ON REGIONAL APPROACHES BECAUSE REGIONAL APPROACHES CAN BE BEST DESIGNED AND ADOPTED TO ADDRESS DISCRETE CONSERVATION AND SOCIAL NEEDS AND OBJECTIVES. WHAT IS THE BEST APPROACH IN THE SOUTH PACIFIC MAY NOT BE THE BEST APPROACH IN THE NORTH ATLANTIC. WE NEED NOT ONLY TO BREAK NEW GROUND BUT WE ALSO NEED TO TAKE THE BEST FROM EXISTING ORGANIZATIONS: THE INTER-AMERICAN TROPICAL TUNA COMMISSION HAS MADE A 100 PERCENT INTERNATIONAL OBSERVER PROGRAM WORK EFFECTIVELY; THE SOUTH PACIFIC FORUM FISHERIES AGENCY PIONEERED THE REGIONAL REGISTRY OF FISHING VESSELS CONCEPT; THE NEW NORTH PACIFIC ANADROMOUS STOCKS CONVENTION CONTAINS INNOVATIVE HIGH SEAS ENFORCEMENT PROVISIONS. AND I AM SURE SIMILAR EXAMPLES COULD BE FOUND IN OTHER FISHERY ORGANIZATIONS AND AGREEMENTS.

WE ARE HOPEFUL THAT THIS CONFERENCE CAN GIVE US NEW DIRECTION TO ENABLE THE IMPROVEMENT OF EXISTING AGREEMENTS AND THE ESTABLISHMENT OF NEW ONES -- GUIDANCE AND DIRECTION THAT BREAKS NEW GROUND, AND THAT HAS AS ITS CENTERPIECE THE SUSTAINABLE USE OF THESE RESOURCES OVER THE LONG-TERM -- NOT THE MAXIMIZATION OF SHORT-TERM PROFIT FOR THE COMMERCIAL FISHING INDUSTRY. IN THE LONG RUN, OUR FISHERMEN WILL BE BETTER OFF WITH SUSTAINED CATCHES, EFFECTIVE DECISION-MAKING, AND STRICT ENFORCEMENT UNDER BINDING REGIONAL AGREEMENTS TO

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WHICH ALL CONCERNED ARE PARTIES. GLOBALLY, WE NEED TO DEVELOP GUIDELINES FOR NEW STATE-OF-THE-ART STRADDLING STOCK AND HIGHLY MIGRATORY SPECIES REGIONAL AGREEMENTS.

MR. CHAIRMAN, I KNOW THAT IN ALL OF OUR COUNTRIES FISHERMEN HAVE STRONG TRADITIONS. THEY DON'T LIKE THE RULES THAT GOVERNMENTS REQUIRE. THEY THINK THEY KNOW BEST. THEIR ATTITUDE IS UNDERSTANDABLE, MR. CHAIRMAN, BUT IT MUST CHANGE.

MR. CHAIRMAN, THERE MUST BE TRANSPARENCY IN HIGH SEAS COMMERCIAL FISHERIES. THE FISHERY RESOURCES THEY HARVEST ARE TOO PRECIOUS FOR THE INTERNATIONAL COMMUNITY NOT TO KNOW OF THEIR ACTIONS; THE OPPORTUNITY TO IMPINGE UPON COASTAL STATE JURISDICTION IS TOO GREAT NOT TO PROVIDE FOR EFFECTIVE MONITORING AND ENFORCEMENT; AND, OUR COMMON INTEREST REQUIRES THAT NO ONE COUNTRY STAND OUTSIDE AGREED REGIONAL ARRANGEMENTS AND EFFECTIVELY FRUSTRATE THEM TO THE DETRIMENT OF THE REST OF US.

FOR THE MOST PART, THE FISHING VESSELS CAPABLE OF FISHING ON THE HIGH SEAS ARE LARGE VESSELS. THEY COST A LOT OF MONEY TO BUILD, TO MAINTAIN, AND TO CREW. ONE THING THAT FRUSTRATES ME IS THAT WHILE SUCH COMMERCIAL VESSELS AND THE INTERESTS BEHIND THEM ARE QUICK TO EXPLOIT NEW TECHNOLOGY TO CATCH MORE FISH, THEY RESIST TECHNOLOGY THAT WOULD ENABLE GOVERNMENTS TO MONITOR THEIR LOCATION AND PROVIDE FOR MORE EFFECTIVE ENFORCEMENT. WE BELIEVE THAT MUST CHANGE. ANOTHER THING THAT MUST CHANGE IS THE UTILIZATION OF OBSERVERS TO MONITOR CATCHES AND TO ENGAGE IN OTHER SCIENTIFIC ACTIVITY. THIS SHOULD BE A COST OF DOING BUSINESS -- LIKE OTHER ASSOCIATED COSTS -- BORNE BY THE COMMERCIAL ENTERPRISE CONCERNED, NOT THE GOVERNMENTS.

ANOTHER THING THAT MUST CHANGE IS THAT GREATER CONTROL MUST BE EXERCISED BY FLAG STATES. THERE NEEDS TO BE CLEAR AUTHORIZATION BY FLAG STATES TO ALLOW VESSELS FLYING THEIR FLAG TO FISH ON THE HIGH SEAS. WE NEED STRICT ACCOUNTABILITY OF FLAG STATES FOR THE ACTIONS OF THEIR VESSELS ON THE HIGH SEAS. IN THIS REGARD, WE ARE GREATLY ENCOURAGED BY THE WORK UNDERWAY IN FAO ON A CODE OF CONDUCT ON RESPONSIBLE FISHING AND THE WORK THAT HAS BEEN DONE ON A REFLAGGING CONVENTION. WE HOPE THAT THE FAO CONFERENCE WILL BE IN A POSITION TO ADOPT THAT CONVENTION THIS FALL AND THAT THE WORK ON THE REST OF THE CODE WILL PROCEED JUST AS EXPEDITIOUSLY.

FINALLY, MR. CHAIRMAN WE MUST ENSURE OUR FISHERIES AGREEMENTS EMPHASIZE MULTI-SPECIES ECOSYSTEM-ORIENTED MANAGEMENT AND OTHER APPROACHES WHICH TAKE INTO ACCOUNT THE RELATIONSHIPS AMONG SPECIES AND THEIR HABITATS IN THE APPLICATION OF INTERNATIONAL STRADDLING STOCK AND HIGHLY MIGRATORY SPECIES AGREEMENTS.

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MR. CHAIRMAN, THESE ISSUES ARE DIFFICULT. AND YOUR LEADERSHIP WILL FACE CONTINUING CHALLENGE IN THE DAYS AHEAD. YOU WILL NEED TO BE FIRM IN UPHOLDING THE 1982 CONVENTION AS THE ESSENTIAL LEGAL FOUNDATION; YOU WILL NEED TO KEEP DISTINCT THE TREATMENT OF STRADDLING STOCKS AND OF HIGHLY MIGRATORY SPECIES CONTAINED THEREIN; AND, PERHAPS MOST OF ALL, YOU MUST ENCOURAGE ALL OF US TO THINK NEW THOUGHTS ABOUT FISHERIES CONSERVATION AND UTILIZATION IN THE WORLD'S OCEAN, TO REJECT OLD APPROACHES AND TRADITIONS, AND TO DEVELOP THE MEANS TO BRING ABOUT TRULY COOPERATIVE AND SUSTAINABLE FISHERIES ON STRADDLING STOCKS AND HIGHLY MIGRATORY SPECIES.

THANK YOU MR. CHAIRMAN.