Informal Comments on Foreign Competition and the U. S. Fisheries

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The seas are ancient, yet they are new. Their regimes are immutable, yet they are fragile. They are catalysts for progress, yet platforms for discord. The right to fish like the right to navigate finds its genesis in ancient history.

In the days of Caesar the Mediterranean was considered a Roman lake. No one fished or navigated there without Roman consent or license. In the realm of Edward the Third, such a British lake extended from Norway to Spain. The most extravagant and optimistic claim of title was published as a Papal Bull in 1494 when Pope Alexander neatly divided the Atlantic between Spain and Portugal. Spain received title to all west of the line and Portugal everything to the east. Thus, the Pacific, the Caribbean and the Gulf of Mexico was acknowledged as Spain's, while Portugal had to be content with the addition of the South Atlantic and the Indian Ocean.

Four-hundred years ago when the suppression of piracy became a matter of international mutual convenience and Great Britain concluded that a regime of freedom of the high seas encouraged ocean commerce and therefore wealth, the concept of freedom of the high seas flowered and flourished. Grotius, the Dutch publicist, reduced the concepts to writing and the civilized world, spearheaded by Great Britain, fought to make the concept of freedom at sea a reality.

Out of this grew the concept of a narrow territorial sea – 3 miles. And out of this grew a freedom to fish without constraint any place on the high seas outside of territorial waters.

A little over 250 years ago when modest increases in the ability to catch fish at sea evolved, there grew up, particularly in Europe, bilateral arrangements which essentially provided for qualified rights to fish between the participating countries. In fact, one of the very first treaties the United States made, as an infant nation, was with Great Britain pertaining to the conduct of fisheries in what is now the Canadian Maritime Provinces. That treaty still exists.

Some 70 years ago with a proliferation of fishing activity another element came into the equation and that was conservation. This principle of conservation grew in strength because of the growing awareness that the living resources of the high seas were not inexhaustible and that heavy continuous fishing could destroy valuable food resources -- thereby denying the resource to future generations.

For some stocks of fish it was too late – the world no longer has an Atlantic halibut fishery. For some stocks it came just in time -- we can witness the rebuilding of the North Pacific fur seal herds.

A whole family of international arrangements grew out of the application of the principle of conservation -- the United States is a party to nine of them.

The principle was incorporated in the Geneva Convention of 1958 as a guide to the conduct of fishing on the high seas.

That Convention simply stated that all states have the right for their nationals to engage in fishing on the high seas subject to their treaty obligations and to the need for conservation of the living resources of the high seas. In treaty language it is stated as follows:

"All States have the duty to adopt, or cooperate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas." In brief, it was being indicated that no one had the privilege of an unqualified right to fish -- fishing must be conducted so as not to destroy the fisheries for future generations.

The principles of conservation as enunciated in the 1958 Geneva Convention have served to protect numerous stocks of fish and indeed serves as a basis for innumerable multilateral and bilateral agreements now in force throughout the world.

It is apparent, however, that the world community, including the United States, no longer finds the principles of conservation *alone* to be sufficient to protect the fisheries off their coasts. Only 27 countries have ratified the Geneva Convention. As you are aware this dissatisfaction became evident to a marked degree with the appearance of large foreign fleets off the Atlantic and Pacific coasts of the United States. Even had the foreign fleets conducted their fisheries fully and precisely in accord with the principles of conservation it was clear that the affected U.S. fisheries found the situation very difficult. Thus, starting in 1967 bilateral agreements were reached with the Soviet Union, Japan and Poland regarding their conduct of fisheries off our coasts. In these cases the U.S. objective has been (1) to insure conservation of resources off our coast, (2) to insure *access* by U.S. coastal fishermen to traditional fishing grounds, and (3) to prevent gear conflicts which have occurred in some areas. On the reverse side of the coin in our negotiated bilateral agreements with Canada and Mexico involving U.S. fishing off *their* coasts, the United States has tried to strike a balance in order to maintain our fisheries off the foreign coasts. It should be noted that at the present time we are renegotiating our present agreement with Japan in Tokyo and plan to do the same with the Soviet Union in December and January.

I mentioned before the Geneva Convention on Fisheries. At that same conference, and again in 1960 at Geneva, the world community was unable to reach agreement on the breadth of the territorial sea. This failure to reach agreement has cast a shadow over many uses of the sea. Indeed, the situation regarding territorial and other special purpose jurisdictions has deteriorated to a point approaching anarchy -- this has an adverse impact in several respects: strategic, involving U.S. Navy mobility and strategy, commercial shipping, air transport, and scientific research as well as fisheries. We *recognize* the inequities involved in competition between large, mobile fishing fleets and coastal small-boat fisheries which are limited in range -- we believe some acceptable solution to this problem has to be found if agreement on the overall problem of jurisdiction is to be obtained. Beyond this, the general question of oceans policy has been a matter of increasing international debate, particularly as to jurisdiction and use of the seabed and the rising problem of pollution of the high seas.

From what I have said thus far two things are clear. One is that while certain principles regarding the living resources of the high seas are generally adhered to, major elements of the law of the sea are in a state of flux and, *secondly,* that with technological improvement and the expanded utilization of the high seas,

problems are increasing in both number and scope. These U.S. problems are reflected in various ways throughout the world and affect the fisheries of *all* countries whether coastal or distant water.

All of us know that since our country was first founded the United States has adhered to a 3-mile limit. It was only in 1966 that we extended our fisheries jurisdiction to 12 miles. This policy of a narrow limit was pursued because of our strong belief in the need for freedom of the seas. Events of the past 15 years have dictated that our classic posture be changed.

On May 23, 1970, President Nixon said of this nation's ocean policy, "The nations of the world are now facing decisions of momentous importance to man's use of the oceans for decades ahead. At issue is whether the oceans will be used rationally and equitably and for the benefit of mankind or whether they will become an arena of unrestrained exploitation and conflicting jurisdictional claims in which even the most advantaged states will be losers.

"The issue arises now -- and with urgency -- because nations have grown increasingly conscious of the wealth to be exploited from the seabeds and throughout the waters above, and because they are also becoming apprehensive about ecological hazards of unregulated use of the oceans and seabeds. The stark fact is that the law of the sea is inadequate to meet the needs of modern technology and the concerns of the international community. If it is not modernized multilaterally, unilateral action and international conflict are inevitable . . . It is . . . important to assure unfettered and harmonious use of the oceans as an avenue of commerce and transportation, and as a source of food. For this reason the United States is currently engaged with other states in an effort to obtain a new law of the sea treaty. This treaty would establish a 12-mile limit for territorial seas and provide for free transit through international straits. It would also accommodate the problems of developing countries and other nations regarding the conservation and use of the living resources of the high seas."

As noted by the President an important part of the U.S. proposal is a formula for a new international regime for fisheries. Perhaps the present situation in regard to international fisheries is clearly expressed by Roy Jackson, the Assistant Director General of FAO, when he stated, "The traditional assumption, that fishing is free to all, is unrealistic and has lead to inefficient resource management. Each fish stock is limited." Technological advance in the past decade has made it possible for large sophisticated fleets to harvest the allowable catch of any given stock of fish. Indeed, there are examples of a fishery being depleted because of the use of modern fishing equipment. It is also now manifest that conservation conventions, while generally successful in protecting, for posterity, a stock of fish, are not adequate to protect economic interests. In short, there is a need to consider the allocation of catches. Along with and part of the need to allocate catches is the need to recognize the special interests of the coastal state in fisheries located off their coast. It is this that lies at the heart of the U.S. proposal concerning a new international regime for fisheries.

Over the past 2 years we have been engaged in discussing our proposals with a great number of countries. Our formula for international fisheries, while recognizing the special interest of the coastal state, attempts to create a balance between the distant water state and the coastal state. It has received generally favorable comment. Of course, some conservative states are of the opinion that too much preference for the coastal state is provided; other states, particularly in the developing world, are of the view that greater preference should be given to

the coastal state; and a number of countries are of the opinion that the balance created hits the right note.

It is difficult to estimate when a world law of the sea conference will be called. My personal speculation is that the spring of 1972 is a good target date. Unquestionably, there is much work yet to be done. Whenever the date, it is clear that there will be changes in the regime for international fisheries growing out of such a conference. It is our hope that the resulting changes will reflect the basic elements of the U.S. proposal.