Alternatives to the Current U.S. Position on Fisheries

THOMAS A. CLINGAN, JR.
Professor of Law
University of Miami
Coral Gables, Florida 33124

My task today is to discuss with you alternatives to the current United States proposal for the territorial seas. That position has been articulately explained to you this morning by the first speaker, and, with his permission, my remarks will build upon that excellent statement. The question before us, of course, is not simply, as the title of this panel would seem to suggest, the U.S. position on the territorial seas. It is the broader question of the inter-relation of the breadth of those waters with the fisheries problem. It is this broader question that I wish to address.

Properly viewed, the three-article U.S. draft is an attempt to accommodate a number of highly important and specialized interests. Before I speak of alternatives to that scheme, therefore, I shall attempt to isolate these interests, because the viability of various alternatives depends upon the priority given to one or more special needs of the participants. My list is as follows:

1. The interest of coastal states in exercising competence over a specific resource adjacent to its coast, or to all of the resources located in a particular zone. Claims to extended territorial seas and coastal state preferences reflect this type of interest.

2. The interest of nations in the continued operation of established fishing enterprise, wherever located, into which has been put substantial effort and capital. Claims to historic rights reflect this interest.

3. The interest of all nations to the free exercise of rights of navigation on the high seas, and, to a more limited extent, in territorial seas. This is reflected in traditional claims to freedom of the seas.

4. The interest of certain nations in fishing pelagic species not directly associated with a particular coastal state or groups of states. Claims to freedom of the high seas are applicable here as well, but claims to historical shares may also be encountered.

5. The interest of a coastal state vis-a-vis other nations in anadromous species spawning in that state's waters. Claims to abstention reflect this interest.

6. The general community interest in full utilization of living resources without over-exploitation. Claims to rights to conserve, and rights to fish under-utilized stocks reflect this interest.

In order to attain success in creating a world fisheries plan, one must either accommodate these interests, or, failing that, seek agreement as to which of them is to be given priority in specified areas. In making such decisions, one is guided by the realization that the interests sometimes fall into natural sets. Howard Pollock, Deputy Administrator of the National Oceanic and Atmospheric Administration, recently identified these sets in terms of their potential for conflict: (1) conflicts between the desire to exploit and the desire to conserve; (2) conflicts between the needs of the coastal and distant-water fishing interests and (3) conflicts between fisheries and those seeking free navigation rights and fleet mobility.

The U.S. draft attempts, in Article III, to resolve these potential conflicts by

accommodation. If one were to take another tack, however, and approach the problem by selecting one or more of the various interests to be emphasized, he would undoubtedly come up with another scheme.

For example, if agreement could be attained on the principle that freedom of navigation is to be protected at all costs, then the most desirable scheme would be the limitation of the breadth of the territorial sea to as narrow a belt as possible, reserving no rights (or only carefully circumscribed rights) to the coastal state. The United States has long been an advocate of this position. Our tenacious adherence to the 3-mile limit, our unsuccessful attempts at 6- and -6 proposals in 1958 and 1960, and the presently proposed maximum 12-mile limit stand as evidence of this fact. Thus, alternative one would be the establishment of a narrow jurisdictional limit with little or no preferential rights beyond. I need not comment on this beyond pointing out that the resolution of most fisheries disputes would be left to the market place.

Should we desire, however, to maximize the interest of coastal states in their near-shore fisheries, the result would undoubtedly be a fixed zone in which the coastal state would exercise a high degree of control. As you are aware, some states already claim sovereignty, or near-sovereign rights, over zones extending to a minimum of 200 miles from the baseline from which the breadth of the territorial sea is measured. More recently, some other states have been speaking of less comprehensive, but still substantial, zones for the protection of the economic interests of coastal states. Both such types of claims must lead to a certain amount of apprehension on the part of the U.S. delegation.

Ambassador Pardo, in a speech before the Seabeds Committee last March (1971), made it clear that he believed an alternative of this character might be a real one. He estimated that of the approximately 135 member nations, a total of 35 had the ability to make claims to jurisdiction as far as 300 miles from their coasts, and 65 more could, if they wished, claim as far as 150 miles. This latter group includes more than half of the coastal states, and represents more than two-thirds of the world's population. He was of the opinion that:

> ". . .it is probable that agreement on the outer limits of coastal State jurisdiction in ocean space should be sought somewhere between 150 and 300 miles from the coast.
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> ". . .my delegation has come to the reluctant conclusion that, to avoid prolonged debate and haggling, it has become necessary to establish a distance of 200 miles from the coast as the outer limit of coastal State jurisdiction in ocean space."

Clearly, adoption of this alternative, if the jurisdiction is to be absolute, would not be acceptable to those whose primary concern is freedom of navigation, though it would well serve the number of nations who draw benefits from coastal fisheries.

It is perfectly clear to me that the United States, for example, would neither join in nor accept this alternative willingly. The Honorable John Stevenson, Legal Advisor to the Department of State (and a highly able one, I might add), made this point quite clear when he said last August:

> ". . .my government would be unable to conceive of a successful law of the sea conference that did not accommodate the objectives of these articles." (Ed. note — the articles include a provision for free transit.)
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> "We appreciate the fact that many countries attach greater importance to the question of offshore resource management than they do to freedom of navigation. We understand the reasons for this and it gives us hope that a successful law of the sea conference can be achieved through a process of negotiation with mutual respect for each other's interests."

I have an admittedly limited vantage point. And it is not clear to me why many nations would be persuaded to enter into this kind of bargaining, for it seems entirely possible that they are aware that collectively they are in a position to defeat a freedom of transit proposal without giving up or claiming any resource advantage as a consequence.

Now that I have conjured up the extreme alternatives, let me state the obvious by saying that something between the two is required. Such a solution must, it seems to me, have certain basic elements. The first need is for the establishment of a zone of at least limited coastal state jurisdiction that would be enough to enable the state to implement timely and effective fishery management and afford economic protection to coastal state fisheries. Regulations pertinent to such a management scheme necessarily pertain to stocks which do not conform to artificial boundaries, although we must realize that the drawing of such lines may be required for enforcement purposes and for the clear delimitation of economically significant zones. If such lines are drawn, however, they should be constructed on biological rather than geometrical criteria.

A proposal for effective management should also permit the coastal state to maximize its sustainable returns, reserving the remaining catch, if any, to other nations. Distant-water fisheries would suffer to some extent under this proposal, and thus their votes may be lost.

The management of high seas zones should not be placed under the control of large, slow-moving regulatory bodies subject to procedural delays and vetoes. The massive mobile fleets placing strains on certain coastal stocks do not usually leave much time for lengthy deliberation. It needed, more responsive, and smaller, groups of nations having realistic interests in the regulated stocks should be formed, and care should be taken in the manner by which the participating nations are identified. Finally, the scheme must have some effective mechanism for settlement of disputes.

You must have noted by this time the degree of similarity between what I have just outlined and some of the provisions of Article III of the U.S. draft. Indeed, I agree with much of that proposal. I support the general principles of coastal state preference and encouragement of conservation with full utilization. I also believe in the rejection of fixed and arbitrary fishing zones. I fear, however, that the draft attempts to accomplish too much. And even more I am afraid that the seeming intransigence with regard to freedom of transit, if it perseveres, will leave scant hope for acceptance of the U.S. proposal.

Howard Pollock has asked:

> "Well, what really is the outlook for fisheries? At the risk of stating the very obvious, I would say that the outlook for fisheries, that is the possibility of a successful fisheries convention, emerging from a final LOS conference, is simply and directly in proportion to the ability of states to reconcile their competing interests. . . .and to accommodate our navigational interests. And I simply won't predict, at this juncture, that they will do this."

And Jake Dykstra, of the Point Judith Fisherman's Cooperative, has recently expressed serious doubts that the 1973 conference will succeed because there are too many interests to be catered to.

If there is total failure, then what? Failure to agree is, after all, the final alternative. Without being privy to any special information, it would be my guess that failure to agree would stimulate a period of unrestricted unilateral claims to

increased coastal state competence. But this solution is inherently self-destructive, and the time will come when depletion of the resources will force the coastal states to realize that the biological and economic unity of the oceans call for more than a unilateral solution, and we will then see a return to the bilateral and multilateral agreement as a basic tool of fishery management.