Implications to North Atlantic Fisheries of Preparatory Sessions on Law of the Sea

JACOB J. DYKSTRA
Point Judith Fishermen's Cooperative Association
Narragansett, Rhode Island 02882

The program for this morning says that we are to discuss the implications of the preparatory sessions on the law of the sea to the fisheries in our respective areas. I'm sure it was expected that we would take some liberties in emphasizing certain aspects of this very broad subject. Accordingly, I've depended on my fellow panelists to give you an overview of the background and range of the complicated issues that face us in the law of the sea, and what has been going on at the most recent sessions. Their analyses are thorough and accurate and I won't try to cover the same ground. However, there may be some value in presenting some of the same circumstances and developments from a different point of view.

Although the various fishery interests of the United States have managed to espouse and support a common policy on the fishery question in the law of the sea negotiations, and the position they have taken is essentially that which the U.S. government outlined in its latest fishery proposal at Geneva on August 4, 1972, the position is a compromise; and a compromise, as we all know, is something the parties concerned hope to be able to support but none of them like. So let's examine some aspects of the present situation in the conference and in the fisheries of the North Atlantic with the understanding that the North Atlantic coastal fishermen support the present government approach and that the proposed articles, though we may not expect them to sell as is, represent a pretty good position for the U.S. *at this point in time.*

First, in the conference, the votes are heavily weighted towards the developing nations. Not only are the votes heavily weighted this way, but the representatives of these nations to the preparatory meetings – who are diplomats and lawyers – are working overtime to create an atmosphere favorable to their interests. This consists substantially of repeating over and over the following theme: (1) that they had no voice in formulating the present law of the sea; (2) that, at least partially because of this exclusion from the lawmaking process, they are desperately poor "have not" nations and the gap between them and the developed nations is widening; and (3) that the purpose of this conference is in the most part to redress the present situation and achieve a more equitable distribution of the wealth of the oceans.

Understandably the developed nations are not in complete agreement with this attitude, but we must not lose sight of the fact that this type of thinking permeates the atmosphere of the United Nations, and this is the arena in which any decisions that are reached will be made. So what position do these developing nations take at the present time? It seems to me that they are saying that,

beyond their territorial sea, there shall be what is called an economic zone or patrimonial sea or whatever you wish to call it. They say that the extent of this zone is the subject of compromise at the conference and may even vary from one part of the world to another, but 200 miles is the most mentioned figure. The developed nations attempt to talk about whether there shall be a zone or not, but the developing nations have already decided that there shall be a zone and are offering to discuss whether the zone will be totally exclusive or whether they will compromise and allow foreign activities, such as scientific research and some controlled resource exploitation, within their zone. Furthermore they are saying that, although they would prefer that such zones be created by international agreement, if it becomes necessary they will create them unilaterally, and as you know some of them have already done so.

In the face of this attitude from the predominant force at the preparatory meetings, it seems to me inevitable that any treaty which is signed will include a zonal approach to resources. Certainly we can hope to combine the species approach of the present U.S. position with a zone and still come out with something with which all U.S. fisheries can live. But to expect to devise a treaty that does not have a rather exclusive resource zone as a cornerstone of the arrangements agreed upon is, in my view, wishful thinking.

So what of the coastal fisherman in the New England and Middle Atlantic area? Well, his situation is not the best. In 10 short years, production of food fish in New England has dropped in half. Yet in that same period the production of fish by highly mobile and heavily subsidized foreign fleets has increased from near zero to about four times the present take of the U.S. vessels. In other words, 10 years ago we took all of the fish and now we get only about 1/5 of it.

Let me describe for you the management tools we have presently available in this area. They are the International Commission for the Northwest Atlantic Fisheries, commonly called ICNAF, and bilateral agreements with the USSR, Poland and Canada. Some people have said that ICNAF has made more progress in the past 2 years than in all of the previous years of its existence. This may be true from the point of view of a government official. Country quotas have been established on several species of fish and the principle of coastal state preference to coastal stocks of fish has been recognized. However, from the point of view of the fisherman, ICNAF continues to be the facade which stands in the way of effective management. Among the many reasons for this situation are: the continued excess of total fishing pressure, lack of effective enforcement, nonmember catches over which ICNAF has no control and fleets so massive that the incidental catch of some species exceeds the allowable catch without any directed fishery at all for that species.

Let me give you an example. Last Wednesday a group of us spent all day wrestling with the problem of herring. In January 1973, quotas must be set for the two stocks of herring off the Atlantic coast of the U.S. The stock in the Gulf of Maine is small and in poor shape. It is under quota. But, although we don't know for sure – because we don't even recognize them as a nation and if we did and they were members of ICNAF we would still have to take their word for what they caught – it appears that the East Germans caught more herring from

this stock than the U.S., Canada and all other ICNAF members combined in 1972.

Thus from this stock under ICNAF management there was probably taken three times the fish allowable to maintain the stock even at its present low level. The other stock on George's Bank and south was a very large stock only 4 or 5 years ago. The scientists tell us that the standing stock now may be at 10% of the original level. In spite of this situation, the members of ICNAF insisted on taking 150,000 tons of fish from this stock last year, which was about double the recommended catch. Of this amount the U.S. quota was 5,000 tons, or 3.3% of the overall quota. The U.S. has a developing fishery on this stock and expects to be able to catch more than this quota, but the expectation is that the total will be drastically reduced and the U.S. will be expected to reduce its take.

Now as to the bilateral agreements. The most important one is with the Russians because they take more fish from the area than all others combined. The overriding reason that they entered this bilateral was to gain access to our ports for their vessels. The agreement was originally signed in 1967 and has periodically been reviewed, but there has been no effective access to our ports for the Russian fishing fleet. Needless to say, the agreements leave much to be desired under these circumstances.

The rest of the day could be spent going into the details of the frustrating situation in which the fisherman in my part of the world finds himself, but these brief samplings convey the general idea. So to get back to the law of the sea preparatory meetings – what promise of relief do we have from this source? Well, it appears that if there is agreement at the conference, it could well be an agreement which is most satisfactory to the east coast fishermen. But it is also most obvious that there is a good chance of no ageement and that if agreement is reached it will not be timely. In other words by the time the law of the sea approach is translated into effective management tools, both the resources and fishing businesses will be ruined.

This inescapable conclusion leads to the inevitable further conclusion that long before an international solution emerges from the law of the sea conference, the pressure for interim unilateral action by the U.S. will cause this question to erupt on the national scene, including the halls of Congress, in a more or less violent fashion. It is my view that this will happen regardless of what position those of us in the coastal fisheries, who have had some influence to date, take. We can only hope to channel it into taking forms which are the least damaging to U.S. fisheries as a whole.

Suggestions that *have* been made for such action include: (1) ultimatums that the U.S. withdraw from multilateral and bilateral agreements if they are not made much more effective; (2) vigorous application of the conservation provisions of the 1958 convention; (3) moratorium on foreign fishing; (4) unilateral application of the principles of the U.S. Law of the Sea position if not applied in timely fashion internationally; and, of course, (5) a 200-mile fishery zone – to mention only a few.

Representatives of our distant water fisheries, including some present here today, are quick to point out that almost any aggressive action by the U.S., while the present law of the sea exercise is going on, will have an effect on those

deliberations – possibly, though not certainly, detrimental to their fisheries – and therefore have opposed all proposals put forward to date. What I ask now is that we rethink the situation and try to determine whether it may not be in the interest of us all to join in support of some rather aggressive measures designed to bring relief to the coastal fisheries during the period before an international agreement becomes effective. I am hopeful that we can. The alternative – which is distant water U.S. fishermen opposing any aggressive moves by the U.S. coastal fisherman (and that only perhaps because of potential adverse effect) – in my view not only will not enhance their law of the sea negotiating position, it will reflect unfavorably on the whole industry in many ways.

I guess what I'm trying to say is that the question on the law of the sea facing all of us at the moment is not what comes out of a conference some years hence, but what happens on the domestic scene in the next few months, and that it is my hope we can continue to work together to the mutual benefit of all U.S. fishermen during what promises to be a critical period.