

ANNUAL MEETING - JUNE 1965Report on Proposals by Member Countries
on possible systems for Joint Enforcement of ICNAF Trawl Regulations

1. At the 1964 Annual Meeting, the ad hoc Committee on Trawl Regulations was asked to study the problem of international enforcement and recommend the next steps toward establishing possible international measures of control. With a view to having an agreed system of joint enforcement ready for introduction as soon as the Commission is authorized to make proposals for national and international measures of control for measures in force under the Convention (amendment to Article VIII of the Convention proposed at the 1963 Annual Meeting) and in order that each member country might consider the views of the other, the following recommendation was made by the ad hoc Committee on Trawl Regulations and adopted by the Commission:

"that each member country supply to the Commission Secretariat ... a general statement of its views as to the forms that should ultimately be taken by a system of international inspection or joint enforcement when powers are available in the Convention ..."

(Ann. Proc. Vol. 14, Part 2, p. 15, para. 9(iii))

2. To date, the following reports have been received from Canada (22 March 1965); France (25 February 1965); Italy (23 November 1964); Norway (19 November 1964); Portugal (7 January 1965); USSR (21 December 1965); USA (15 March 1965).
UK (26 March 1965).

Canada

"Canadian proposal for International Enforcement of Regulations
applicable to the Convention Area of ICNAF"

"At the present time Canada is a party to two bilateral conventions (Sockeye Salmon and Pacific Halibut Conventions between Canada and the USA) and two multilateral conventions (North Pacific Fisheries Convention between Canada, Japan and the USA; and the Fur Seal Convention between Canada, Japan, the USA and the USSR) in which provision is made for joint enforcement. In these conventions powers of boarding, searching, seizure and arrest are conferred on authorized officers of each member country in respect of the fishing vessels of any of the member countries operating in the high seas of the Convention Areas. The trial of offenders is, however, reserved for the country to which the offending vessel belongs. The country whose officers discover the offence simply undertakes to provide the necessary witnesses or other evidence for the trial.

"The Canadian Commissioners are of the opinion that a joint enforcement scheme of this type would prove effective in the ICNAF Convention Area but wish to assure their colleagues that they will give serious consideration to all other proposals for international enforcement which are submitted by representatives of other governments party to the Convention."

France

"International Inspection - Memorandum of the French Delegation"

"Without wanting to give a complete description of the international enforcement system which could be adopted by the Commission, nor to involve ourselves definitely on this subject, the French Delegation can, as of now, state the lines of

direction following which, it will be convenient, in our opinion, to organize such a control.

"From our point of view, three essential questions can be asked on this proposal: What would be the status of the control ships? What would be the means of action of the controller and how would the infractions be reprimanded?

"1. Status of Enforcement Ships

"The French Delegation has the opinion that the fisheries protection vessels need to be for the time being kept under their own flag and national charge. This system is, moreover, the one adopted by the Convention on the Policing of Fisheries in the North Sea of May 6, 1882.

"The fisheries protection vessels would fly a special flag or pennant and their officer in charge would have a commission signed by the President of the Permanent Commission.

"The plans of operation of these vessels would be established by the authorities of their country of origin, the Commission having only the power to coordinate these plans.

"The number of fisheries protection vessels necessary for control would be determined in advance and each member country would see itself imposed a participation (in number of vessels and in period of surveillance) proportional to its fishing efforts in the Convention area.

"2. Means of Action of Responsible Officers

"For it to be a genuine control and be able to carry on, the officer in charge of the fisheries protection vessels must be able to stop fishing vessels of all nationalities (insofar as it is from a member country), go aboard and inspect fishing gear and catch. However it should be agreed that safeguards would be necessary to ensure that there would be no interference from the protection vessel with fishing activities.

"If a fishing vessel refuses to obey a protection vessel, this refusal must be considered as a grave infraction.

"The officer in charge of the protection vessel must be able to make an official report and send it to the authorities of the country whose flag the fishing vessel flies. It is wished that the transmission of such report be carried out directly between competent authorities pertaining to fisheries without passing (as is generally the rule followed) through Foreign Affairs Ministry channels.

"In practice, since the protection vessel and the delinquent vessel would often be of different nationality, we would anticipate that the officer in charge of the control ship would affix seals on the trawl or part of trawl under seizure. The captain of the trawler must on returning from his trip, present the seized object to the authority of his home port which would have been or will be warned by the official report.

"As to the fish caught not having the legal size, probably the only practical solution possible would be to have them thrown overboard and mention of this made in the official report.

"3. Repression of Infractions

"It would be necessary to fix a general framework of sanctions in which each government would be free to fix the scale of fines. However each country should make an effort to be in harmony, and in addition it would be essential that the Commission receive official communication of the laws and regulations passed by each country.

"It would be equally indispensable that an annual report be made on the actions taken following the submission of official reports.

"Such are the general ideas in the matters of international inspection or joint enforcement of fisheries that the French Delegation would wish to see adopted. But there still remains, understandably, during discussions to take place among work groups that its position may be modified in taking account of the ensuing discussion and of the general direction taken during the work of the Committee."

Norway

"General statement of Norway's views as to the form of international inspection or joint enforcement"

"In principle Norway regards it of very great importance for the effectiveness of the conservation measures introduced that they are satisfactorily controlled. Norway also agrees in principle that some kind of international inspection or joint enforcement should be considered.

"To introduce an international inspection is, however, a complicated question, both from a legal and a practical point of view. Therefore this problem needs a close consideration. The inspection system will also more or less depend on the regulation measures to be inspected.

"It is presumed that a system of international inspection under the auspices of the Commission itself would be preferable. However, this will mean that the Commission will be faced with both economic and practical problems which would be difficult to solve.

"Norway is also prepared to consider the idea of some kind of joint enforcement or mutual international inspection, provided that a reasonable balance of inspection among the various member states can be established; and further provided that the rules for such inspection are so formulated that the inspection does not interfere with the actual fishing."

USSR

"The Soviet view point on the problem of international inspection or enforcement"

"As known the International Convention on the Northwest Atlantic Fisheries, 1949, does not stipulate the adoption of international control measures in high seas for the purpose of ensuring the application of the Convention and measures passed thereunder.

"In this connection, at the 12th Annual Meeting of ICNAF held in Halifax in June 1962, the Soviet and English delegations prepared a proposal concerning the introduction of appropriate amendments in the Convention. As regards this, the Commission passed a recommendation that was made by the sense along the same lines as the above Soviet-English proposal. On these grounds, the depositary of the Convention - the State Department of the USA - on the 25th of September 1963 sent to all the ICNAF member Governments the draft Protocol relating to the introduction of amendments in Article VIII of the Convention which determines functions of the Commission. In its note of 1 June 1964 the Embassy of the USSR in the USA informed the State Department of the USA of the fact that the draft Protocol to the International Convention on the Northwest Atlantic Fisheries, 1949, regarding control measures was acceptable to the Government of the USSR and it was ready to sign the said Protocol.

"As far as we know, yet not all the ICNAF member Governments have given their consent to sign the Protocol.

"Thus, for the time being the Commission has no formal right to adopt any recommendations on national and international control measures, since these questions are beyond its competence. Obviously, the introduction of such measures can be done only after the Protocol is signed by all the ICNAF member governments and comes into force.

"The Soviet delegation had already unofficially expressed its point of view relating to possible forms of international control.

"In our opinion, it is unlikely that the idea of the establishment of international inspection would be backed by other delegations. One should presume that enforcement system, under which control is to be carried out on mutual basis, would be more efficient.

"In principle we could support this version. However, in the course of discussions on the drawing up of an agreement regarding enforcement system it will be necessary to discuss and solve a number of practical problems relating, in particular, to the rights and way of work of inspectors, distinctive signs of vessels on board which they would be, forms of identity cards for inspectors and forms of acts of established infringements, organization of special reporting on measures applied towards infringers, etc. Obviously, one will have also to think over the question on guarantees against abuse of the formal right of control in high seas.

"One should, of course, keep in mind the fact that until the competence of the Commission is extended the Commission, it is to be supposed, will not be able to pass any decisions and recommendations on international control.

"In conclusion, I would like to stress the fact that any system of international control over fishery in high seas can be effective only in case it embraces all the members of the Convention with no exclusion.

"May I express hope that problems which the Commission are facing now, including those connected with international control, will be successfully solved."

USA

"Comments on Proposed Joint Enforcement System within the Northwest Atlantic Convention Area"

"During the 1961 annual meeting of ICNAF, an ad hoc committee was appointed to study the need for establishing a joint enforcement system. Upon the recommendation of this ad hoc committee, a resolution was adopted by the Commission calling for a further study of the problem by a special ad hoc committee prior to the 1962 annual meeting.

"Each year since then, the matter of joint enforcement has occupied a place on the Commission agenda. During the 1964 meeting, the Commission accepted a recommendation of the ad hoc Committee on Trawl Regulations which requested each member government to submit its views as to the form that should ultimately be taken by a system of international inspection or enforcement when powers are made available in the Convention. (Plenary Item 13 - 1964 Annual Meeting) In reply to this request the United States Government submits the following views.

"The United States believes there are sound reasons for instituting a joint enforcement system. Many countries, members of ICNAF, are geographically far from the convention area and it is difficult for them to conduct at sea enforcement activities in most instances. Their enforcement activities, therefore, are generally confined to efforts ashore before the fishing vessels leave

port for the fishing grounds and after they return to port from the fishing grounds. The United States believes that the best enforcement system requires both on shore and at sea enforcement. A joint enforcement system would permit greater at sea enforcement by pooling the efforts of all nations at sea. The United States believes that coupling the present on shore enforcement activities with at sea enforcement through joint efforts will result in a more effective and uniform enforcement system for the ICNAF area. The United States presently uses this dual procedure of both on shore and at sea enforcement against its own nationals and has found it most effective.

"Based on the foregoing considerations, the United States believes that a joint enforcement system should be instituted for ICNAF under which duly authorized officers from any ICNAF country would be authorized to board fishing vessels from any other ICNAF country in the Convention area. Such officers should be regular enforcement officers of the national government. Adequate safeguards should be instituted in any such system to insure that there is no undue interference with fishing activities. The nature and extent of these safeguards needs to be further considered by ICNAF, but should include as a minimum a requirement for a report by the boarding officer to ICNAF, to his own government, and to the government of the flag state of the fishing vessel boarded giving first the reason for the boarding and second the observations of the officer.

"The boarding officer should have the authority to arrest the master and seize the vessel when he finds an actual infringement of the regulations taking place. In any such case the master and vessel should be turned over to enforcement officials from the flag state as soon as possible. In the event enforcement officers from the flag state are unable to reach the fishing vessel at sea within a reasonable period arrangements might be made for detaining the vessel in the nearest large port until officers can arrive. In cases where the boarding officer does not find an actual violation taking place but finds evidence that a violation has taken place, he should be empowered to seize all pertinent evidence to be turned over to the flag state together with his report. The flag state would prosecute for all offenses.

"The United States believes that such a system would provide the most effective joint enforcement effort. The United States further considers that immediate arrest is desirable when a fishing vessel is detected in actual violation of the regulations. Unless an arrest is made then it may be difficult to prosecute the violator under certain national laws. Moreover, the prospect of immediate arrest should have a greater deterrent effect than possible arrest and later prosecution.

"Prosecution would always take place in the courts of the flag state of the arrested vessel."

UK

"Suggestions for Joint Enforcement System for ICNAF Trawl Regulations"

Memorandum by the U. K. Delegation

"1. The United Kingdom, in submitting its report on the British system of national control, undertook to provide the Commission, in due course, with a statement of its views on the international enforcement of conservation measures. These are set out in the succeeding paragraphs.

"2. The first question to be dealt with is whether an inspecting force belonging to and operated by the Commission should be set up, or whether the task should be performed, at least at the outset, by the national enforcement vessels according to arrangements agreed by all countries. It appears to the United Kingdom that, on the score of simplicity and economy, the latter arrangement is preferable.

"3. The following further questions arise:-

- (a) The powers that should be given to the enforcement authorities when acting internationally;
- (b) The type of officers on whom the powers should be conferred;
- (c) Whether it is necessary to write into the schemes safeguards against excessive or vexatious use by any country of the powers of inspecting vessels of other countries.

"4. On (a), the United Kingdom feels that the powers should not include seizure or arrest of vessels or persons of other nationalities but should be confined to those necessary for investigation and report. That is to say, enforcement officers should be empowered to stop and board the vessels of any of the Commission countries on the High Seas, examine all gear and catch and any documents relevant to the investigation, question the master and crew and, if satisfied that a contravention has taken place, seal up or confiscate part of the illegal nets and report the offence to the flag state of the vessel and to the Commission. The question of punishment of infringements discovered by the international procedure should be left to the flag state.

"5. With regard to (b), it must be borne in mind that the current practice in national enforcement is not the same in all countries, in that in some countries seaborne enforcement officers are naval officers only, while other countries use civilian and not naval officers. The most reasonable solution seems, therefore, to be that inspection powers should be exercised by either naval or civilian officers provided that they are responsible officers properly accredited by their respective governments. The United Kingdom would think it desirable that countries should, before any arrangement is operated, give each other a close definition of the class or classes of officers whom they proposed to appoint and that this should be subject to the agreement of the other governments concerned.

"6. On question (c), (whether safeguards are needed in the scheme against over-officious inspection), it would be clearly desirable to have a rule that inspections of gear should not be made so as to interrupt actual fishing. For example, the scheme could provide that no vessel should be subjected to a net inspection when her trawl or seine was actually down or while shooting or hauling was taking place but that the inspection should take place after the operation in question had been completed. In addition there could be a limitation on the number of inspections to be made in any period. There might for example be a rule that no enforcement vessel should inspect more than a certain number of vessels of any one country per annum. The United Kingdom, however, consider that the right of member countries under Article VIII(9) of the Convention to withdraw acceptance of recommendations should in itself be a sufficient safeguard against vexatious inspection (assuming that it is the Commission's intention that the right of withdrawal in Article VIII(9) should apply to recommendations for international inspection made under Article VIII(5) when amended by Protocol). It is hoped that countries would be willing to rely on the good sense and moderation of the commanders of enforcement vessels without regulating their activities in minute detail.

"7. In addition the Commission may wish to have views in some detail on the procedure for inspecting a vessel's gear and catch. It is suggested that it might be convenient to follow the general lines of the procedure already provided for in Articles XXIX-XXXII of the North Sea Convention of 1882 for the enforcement of the rules of conduct, which has the advantage of being familiar to several of the countries concerned. That is to say: the accredited officer should inspect the vessel's document establishing her nationality and endorse on it that he has inspected it; he should confine his visit and search aboard to the minimum necessary to obtain proof of the facts; he should draw up in his language a formal statement of the facts, to which the accused and witnesses shall be entitled to add in their language any observations which they may think suitable. Throughout these proceedings the officer should have with him as witness another officer of the accredited class. The statement would then be part of the report made to the Commission and the flag state."

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on possible systems for Joint Enforcement of ICNAF Trawl RegulationsPortugal"System of International Inspection or Joint Enforcement"

"When the Portuguese Delegation to the ICNAF suggested in the meeting of Panel 2 in 1961, the convenience of a system of inspection for enforcement of the ICNAF Trawl Regulations, it had in mind that such system would be exclusively made by agents of the ICNAF.

"This is the system that the Portuguese Government is ready to accept, because it seems to be that which may be more easily put in force without raising problems which are to be expected, namely that of the sovereignty, because it respects to a fleet of 13 countries constituted by about one thousand trawlers.

"In its general lines and without entering now in details, such system should be as follows:

- i) One of the inspectors chosen by the ICNAF and depending on same, would embark, at the beginning of the campaigns, at any port of the member-countries, more convenient for economical reasons, and would proceed to the fishing grounds in that particular trawler; the inspections would then be initiated to that same trawler.
- ii) As soon as such trawler was in the vicinity of any other trawler of whatever member-country or the same of that in which the inspector was embarked, the inspector would pass then to that second trawler where he would stay until a 3rd trawler of any other member-country or the same was in the vicinity;
- iii) The procedure indicated in ii) would be repeated until the end of the 1st voyage of the trawlers and the inspector of the ICNAF would then embark in the most convenient trawler for the ICNAF to return him home;
- iv) After the unloading of the trawlers and their return back to the fishing grounds, one inspector would initiate a new procedure equal to those indicated in i), ii) and iii).
- v) All the member-countries would take the compromise that their trawlers would facilitate the passing of the inspectors from one trawler to the other. It must be emphasized that such manoeuvre would only interrupt the fishing activities of the two trawlers during a maximum of 30 minutes to the utmost (the one transporting the inspector and the one taking him on board). The trawlers would also supply lodging and food to the inspector.
- vi) All the infringements verified by the inspectors are to be transmitted to the ICNAF that, in turn, will put same before the member-countries."