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ANNUAL MEETING - JUNE 1968

Amendment to the International Convention for the Northwest Atlantic Fisheries

Memorandum by the United States

The United States has proposed that the Commission consider amendment of the Convention to provide greater flexibility in the types of fisheries regulatory measures which may be proposed by the Commission under the terms of Article VIII, paragraph 1, of the Convention. The United States believes that the inflexibility in this Article is a prime factor in the delays in achieving an adequate regime for the rational exploitation of the ICNAF fisheries. It may have been appropriate in 1949 to limit the Commission to five types of fisheries regulatory measures -- only one type of which it has ever found useful to propose. The changes which have come about in the fisheries, particularly in the fishing intensity, since that time, however, indicate that other regulatory techniques are necessary if the objective of rational utilization of the fishery resources is to be achieved.

A significant period has elapsed since ICNAF scientists concluded that regulatory measures in addition to the minimum mesh sizes now in force or pending entry into force are needed. The Commission has discussed this matter for several years with some progress but without concrete results other than the establishment of a new Standing Committee on Regulatory Measures which has only just begun to function. However, even in the early stages of that Committee's work, three things have come to the surface. First, there was in the Committee at its initial meeting a widely, if not unanimously, held view that it is probably not feasible to apply measures of the type suggested by ICNAF scientists; i.e. catch or effort limitation, without some system of allocating the general quota among the member nations fishing the resource. Second, it was the opinion of a substantial number of the members of the Committee that maximum economic benefits would not be achieved from regulation unless catch or effort quotas were allocated among the nations fishing the resource, and unless there were appropriate reductions in inputs at the national level. Third, there was no dissent from the proposition that the Convention does not authorize measures the purpose of which is to allocate quotas among the nations. In brief, while much biological work remains to be done and while the Committee has barely begun an examination of the administrative problems relating to these means of regulation, it is already evident that regulatory authority of types not permitted by the Convention is becoming more and more necessary.

While the United States recognizes that even with an accelerated pace it still will take some little time to reach the decisions on such additional regulatory measures it believes that the Commission should begin preparing for such action by amending the Convention to permit greater flexibility in adopting regulatory measures. If this additional flexibility is to be achieved quickly, a decision should be taken at the 1968 annual meeting on a suitable amendment. All governments are aware of the fact that it normally takes one and one-half to two and one-half years between adoption by the Commission of a proposal to amend the Convention and the signature of the Protocol, as was the case with the two urgently needed Protocols now awaiting ratification by a few Parties. They are also aware of the fact that two and one-half or more years elapse for entry into force after signature, as is the case with the two pending Protocols. It is now seven years since discussions were initiated on measures of control, or joint enforcement, within the Commission, and we have neither the amendment to the Convention in force nor have we reached agreement on a minimum inspection scheme.

Accordingly, the United States proposed the following course of action to introduce into the Convention as expeditiously as possible the necessary flexibility in adopting regulatory measures:

1. That a Protocol as set forth in the attached draft be adopted by the Commission at the 1968 Annual Meeting.
2. That the Commission request the Depositary Government to transmit the text of the Protocol to Contracting Governments and to open the Protocol for signature three months after such transmittal in the absence of objection by any Contracting Government. Since the Commission would have approved the complete text of the proposed Protocol under step #1 above, the Commission could appropriately request the Depositary Government to open the Protocol for signature without awaiting receipt by the Depositary Government of positive approval of the text from each Contracting Government, as would be the case if the Commission proposed, as in the past, only the text of the amendment itself and the Depositary Government drafted an appropriate Protocol subsequently. If any Contracting Party were to find the Draft Protocol objectionable prior to its being opened for signature, expeditious steps would be required to resolve the difficulty, but their exact nature would depend on the particular objections raised.
3. That each Contracting Government undertake to give high priority to ratification, approval, or adherence after the Protocol has been signed.

The Draft Protocol provides the Commission with considerable flexibility in the types of fisheries regulatory measures it may propose. It continues scientific criteria as a basis for such proposals as in the present Convention, but explicitly permits the Commission to take other factors into account if the Commission determines such to be necessary to achieve the rational exploitation of resources in the Convention Area.

Any such proposal would, of course, continue to be subject to review by Contracting Governments and entry into force under terms of later paragraphs of Article VIII, either as presently specified in the Convention or modified in accordance with the pending Protocol Relating to Entry into Force of Proposals Adopted by the Commission.

There is ample precedent for the broad language contained in the draft protocol. For example, the International Convention for the Conservation of Atlantic Tunas concluded in 1966 gives the commission created by that Convention broad regulatory authority. The same is the case with the Inter-American Tropical Tuna Commission whose power to recommend regulations for the tuna fisheries of the Eastern Tropical Pacific Ocean is expressed in broad terms. The North-East Atlantic Fisheries Convention concluded in 1959 specifies certain types of regulations which may be adopted based on scientific investigations as far as practicable, but goes on to permit a wide variety of measures in extraordinary circumstances. A study of International Fishery Bodies prepared by FAO (FAO Fisheries Technical Paper No. 64) gives a more comprehensive view of the latitude in regulatory measures found in various Commissions.

This amendment would permit the Commission to adopt proposals on national quotas, for example, if the present discussions in the Standing Committee on Regulatory Measures eventually reach that conclusion, but it would not, of course, require such proposals. Nor would the Draft Protocol restrict the Commission from considering many other possible regulatory measures, as does the present Convention, or as would a more limited amendment dealing only with the question of national quotas or effort regulations which are presently under discussion.

DRAFT PROTOCOL TO THE INTERNATIONAL CONVENTION FOR THE NORTHWEST ATLANTIC FISHERIES, RELATING TO REGULATORY MEASURES

The Governments parties to the International Convention for the Northwest Atlantic Fisheries signed at Washington under date of February 8, 1949, which Convention, as amended, is hereinafter referred to as the Convention, desiring to provide for greater flexibility in the types of fisheries regulatory measures which may be proposed by the International Commission for the Northwest Atlantic Fisheries, agree as follows:

ARTICLE I

Paragraph 2 of Article VII of the Convention shall be amended to read as follows:

"2. Each Panel, upon the basis of scientific investigations, or economic and technical considerations, or both, may make recommendations to the Commission for joint action by the Contracting Governments within the scope of paragraph 1 of Article VIII."

ARTICLE II

Paragraph 1 of Article VIII of the Convention shall be amended to read as follows:

"1. The Commission may, on the recommendations of one or more Panels, and on the basis of scientific investigations, or economic and technical considerations, or both, transmit to the Depositary Government appropriate proposals, for joint action by the Contracting Governments, designed to achieve the rational utilization of the stocks of those species of fish which support international fisheries in the Convention area."

ARTICLE III

1. This Protocol shall be open for signature and ratification or approval or for adherence on behalf of any Government party to the Convention.

2. This Protocol shall enter into force on the date on which instruments of ratification or approval have been deposited with, or written notifications of adherence have been received by, the Government of the United States of America, on behalf of all the Governments parties to the Convention.

3. Any Government which adheres to the Convention after this Protocol has been opened for signature shall at the same time adhere to this Protocol.

4. The Government of the United States of America shall inform all Governments signatory or adhering to the Convention of all ratifications or approvals deposited and adherences received and of the date this Protocol enters into force.

ARTICLE IV

1. The original of this Protocol shall be deposited with the Government of the United States of America, which Government shall communicate certified copies thereof to all the Governments signatory or adhering to the Convention.

2. This Protocol shall bear the date on which it is opened for signature and shall remain open for signature for a period of fourteen days thereafter, following which period it shall be open for adherence.

IN WITNESS WHEREOF the undersigned, having deposited their respective powers, have signed this Protocol.

Done at Washington this _____ day of _____ 1968, in the English language.

For Canada:

For Denmark:

For the Federal Republic of Germany:

For France:

For Italy:

For Norway:

For Poland:

For Portugal:

For Romania:

For Spain:

For the Union of Soviet Socialist Republics:

For the United Kingdom of Great Britain and Northern Ireland:

For the United States of America: