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the Northwest Atlantic Fisheries

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Remarks by United States delegation on Plenary Agenda Item 15

Monday, 14 June 1976

Mr. Chairman, we think, upon reflection, it was quite wise of you to have provided some several days between our initial consideration of the future of ICNAF and our exchange this morning. It has given us an opportunity to hear the views of others, to hear from others the questions which were raised by our statement, and to try to respond to those questions in an additional statement today. We have not, however, anticipated some of the questions which you posed this morning in introducing the subject, but we would certainly, in an exchange which might follow, be prepared to try to respond to those specific questions.

Let me try once again to provide some insight into the United States position and to do so from a perspective somewhat different from that employed last week. Let me try, this time, to state our position in terms of what the United States Government will be looking for at such time as the Commission completes its deliberations and the results are circulated to governments. After the conclusion of this Annual Meeting, when the United States Government receives

the proposed Commission regulations for 1977, it will look for the following:

First, do the regulations take into account the provisions of United States law which will be binding for the United States as of March 1, 1977?

Second, do the Commission regulations create a conflict between United States law and what would become treaty obligations on the United States were the United States to accept the ICNAF proposed regulations and were ICNAF to remain in force for 1977?

To take the second question first, obviously the United States Government cannot put itself in a position of having to choose, on March 1, 1977, between abiding by its own domestic law and abiding by its treaty obligations under the Convention. Either the United States law and the international commitments we accept at the time we accept Commission proposals are consistent, or the United States will face such a choice. Clearly, the choice would be in favor of its own law. It would be intolerable for any government knowingly to place itself in a position in which its behavior, while consistent with international treaty obligations, is inconsistent with its domestic regulations.

Turning then to the first question, do the regulations take into account the provisions of United States law? The United States, in reviewing the Commission proposed regulations which would flow from this meeting, and the recommendations, would seek specifically to determine whether

-- first, the proposed regulations provide for coastal state enforcement within the limits of national fisheries jurisdiction as those limits are determined by a coastal state;

-- second, do they provide, also within the limits of national fisheries jurisdiction, for a national permit system determined by the coastal state in a manner consistent with its domestic law?

-- third, the United States, in reviewing the proposed Commission regulations, would seek to determine whether those regulations intrude into the arena of domestic rule-making with respect to the management of fishery resources within the limits of national fisheries jurisdiction.

-- fourth, do the proposed regulations for 1977 establish quotas which take into account the setting of the total allowable catch within the limits of national fisheries jurisdiction by the coastal state and the determination by the coastal state of its needs before the allocation of any surplus.

The United States believes these four prerequisites to United States acceptance of the Commission-proposed regulations must be met if the United States is not to exercise its intention to withdraw by December 31, 1976. We think that they can be achieved within the limits of the present Convention. Whether they can be achieved without raising questions of principle for other members, is a matter which is not for the United States to determine. If the nations represented here find that questions of principle are raised, even though we see them as practicalities, and that they cannot be accommodated,

then clearly the delegations representing their nations within the Commission would act on that finding. Or their governments, subsequently, would decide questions of principle had been raised which cannot be accommodated and would act on that finding. The result is very much the same whether it flows from Commission proceedings or subsequent decisions by governments to object to the regulations. To the extent that it is not possible for the ICNAF regulations for 1977 to meet the four objectives I have stated above, the United States would have to move toward withdrawal.

If I may, in an aside here, just say that the task that we have struggled with in the weeks preceding this Commission meeting is the task posed by the second question we offered. Is it tolerable for any government to put itself in a position where it must choose between international treaty obligations or domestic law? We decided that it was not. We are trying to structure a situation in which the treaty obligations which would flow from the acceptance of the proposed regulations are the same as domestic law and, therefore, a conflict does not arise.

There are two items which do require specific comment. First, the question was raised the other day by the FRG -- what does the United States mean when it says that additional conservation measures might be applied within the zone following March first? If the Commission regulations and recommendations are acceptable to the United States and ICNAF remains in force for the United States for 1977, it would nonetheless

be the intention of the United States to reserve for itself the right to expand on those regulations after March first. This is not to say that the United States would not abide by the determinations of surplus and allocations reached at this meeting. There are, however, other ways by which coastal states may manage the fisheries. These include area and season closures and gear regulations. We can foresee that as the program of domestic management of fisheries resources comes into force for the United States, decisions would be reached by the United States which amplify the international measures agreed to within ICNAF or which are new. We believe it essential that somehow provision be made for the coming into force of such additional measures after March 1, 1977 if the United States should decide upon such measures. We certainly are not unaware that this reservation of authority creates fears that such measures might be used to negate the decisions reached here with respect to surplus and allocations. I can only hope that the United States' commitment to abide by its treaty obligations which would be inherent in the acceptance of the Commission-proposed regulations, would be seen as assurance enough that those additional measures which might come into force, if any, would be consistent with the measures we have agreed to internationally.

All of what I have said up until now relates to a single question for the United States -- that is, whether it is possible, through ICNAF, to provide a transition for coming into force of extended jurisdiction off the coast of the United

States -- the transition to last only for 1977. Thereafter, distant water states which wish to fish off the coast of the United States would have to have entered into bilateral agreements. In many instances in 1977, in this transition, it is obvious that the relationship would be governed in a rather dual fashion, both by the treaty obligations and by those bilateral agreements which we negotiate between now and March 1.

The question of the future of ICNAF becomes more clear if one makes this distinction between managing the fisheries in 1977 in a way that provides a transition, and discussing the multi-lateral relationship that might exist once we have moved through the transition period. Clearly, the United States cannot remain in ICNAF, as we know ICNAF, past 1977. Thus, I am, this morning in talking about the future, talking about a new organization which, if agreed upon, would come into force no later than 1978. The United States would support the renegotiation of the Convention, or any other approach to reaching agreement on new arrangements, whichever approach is found to be the more appropriate for the new situation. We are here with no firm guidelines as to what the future might be. We are prepared to participate fully in an examination of the guidelines, or in any other preparatory work that others might find appropriate. We are prepared to respond positively to the proposal that there be a Working Group and that the Working Group operate, without commitment, to examine what might be appropriate means for the future, or what might be the appropriate arrangements for a multilateral organization.

I think that you will find us here wanting not to go into great detail as to our participation in such a Working Group. One, we want to be without commitment to a particular solution, to be able to examine, frankly, and without mental reservation, if you will, what the various proposals are; we are prepared to take into account the interest that others might have in assigning specific duties in a new organization, both with respect to the management of stocks which are transboundary or to the discussion of consultative arrangements, if any, that might apply within the zone. We do not think that this work needs to be completed in 1976. It should be initiated in 1976 if there is to be a transition without interruption. It would obviously have to be completed by 1977 and ready to go into force no later than 1978.

Mr. Chairman, I hope this makes more clear what it is the United States is trying to achieve in this Commission meeting. The two tasks, reaching agreement on proposed regulations for 1977 and preparing the way for the future are, in our view, entirely separate. We are prepared to participate in both. We hope that the outcome of both is favorable to continued international cooperation. I have not, as I said in the beginning, answered some of the specific questions which you posed. We would be happy to answer those questions specifically in the course of this morning.

