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DEPARTMENT OF STATE
BRIEFING MEMORANDUM

S/S

November 12, 1975

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TO: The Deputy Secretary
The Under Secretary for Security Assistance

FROM: D/LOS - John Norton Moore *JNM*

Progress Report on the 200-Mile Bill

I. Status in the Foreign Relations Committee

The 200-mile bill is expected to be considered in Executive Session by the Senate Foreign Relations Committee this Thursday, November 13. Voting will take place then unless the Secretary agrees to testify and we successfully obtain a postponement. If Senator Case votes with us, we expect to be able to carry the Committee; if not, we could lose. I believe that under either of the following courses of action we would probably keep Case with us and ensure a favorable vote:

1. Secretary Kissinger testifies before the full Committee (with an immediate request we may be able to obtain a full Committee hearing on November 19 or possibly even later). The Secretary's testimony would have to indicate that under fisheries agreements now in place we have turned the tide on protection of coastal stocks; or
2. The President releases the press statement on opposition to the 200-mile bill and his fisheries initiative and tells the White House Congressional Office to move strongly against the bill. This news must be conveyed to the Committee before Thursday to be effective.

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Action memoranda on the above have been submitted. Attached is a status report on the Committee and our efforts to date, prepared by Jack MacKenzie (H).

II. Status in the Armed Services Committee

We are continuing to rely on a referral to the Armed Services Committee in addition to the Foreign Relations Committee referral. Our present information is that we probably will obtain the referral, although this is not yet definite. If we obtain the referral, our discussions, particularly with new Committee members, lead us to believe that we will be able to get a negative report from the Committee (we lost 8-6 last year).

III. Status in the Full Senate

We are concentrating our initial efforts on the members of the Foreign Relations and Armed Services Committee. When that is completed, however, we will broaden our effort to the full Senate. Our efforts will include:

1. A distribution of summaries concerning reasons for opposition to all Senators.
2. Individual meetings with all Senators to the extent possible.
3. Individual meetings with all staff.

To date we are encountering the same reaction in the Senate that we did on the House side; that is, most Senators are unaware of the serious implications of the bill and when made aware, many are indicating that they are changing their positions. These include

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Humphrey, McGovern, Gravel, Taft and others. There is also widespread feeling that the White House should not sit this one out. This is key. With strong White House opposition and a behind-the-scene understanding of a veto we may be able to stop this bill in the Senate. In any case, we can definitely prevent a veto override.

IV. Most Effective Arguments

We have prepared new briefing material for us in the Senate fight (you should already have a new briefing book). We are also getting a sense of the arguments that are most effective. These are:

1. Under agreements presently in force, any "emergency" in protection of our fish stocks of any consequence is now under control.
2. The bill violates solemn treaty obligations of the United States.
3. The bill could seriously harm our defense interests.
4. The bill would undermine the LOS negotiations.

The first of these is crucial. We are now putting together a memorandum on the state of fisheries stocks off our coasts to support our position. Attached for your quick review is a similar memorandum prepared by the U.S. Committee for the Oceans (a private group).

Attachments:

1. Briefing Book
2. Status Report on Senate Foreign Relations Committee
3. Summary of Status of Fish Stocks Under Agreements Presently in Force Prepared by the U.S. Committee for the Oceans

Drafted: D/LOS: JN Moore: ps
x29098 11/11/75

Concurrence: H - Mr. MacKenzie

SENATE FOREIGN RELATIONS COMMITTEE

Sparkman - visited by Moore and MacKenzie. Intends to talk to Pell re scheduling full Committee briefing if HK or Deputy agrees to appear. Not very alert to foreign policy implications (Voted for in Committee and on floor).

Staff--Dave Keaney - receives continuing information and attention from Nordquist. Also, MacKenzie in constant touch with Kuhl.

Mansfield - contacted by Amb. McCloskey; short conversation; will give our position serious consideration. I feel he will be receiving strong pressure from Magnuson. (Voted against in Committee, no vote on floor.)

Staff--Frank Voleo - briefed by Moore and MacKenzie. Indicated support of position. However, suggested White House involvement.

Church - to be contacted by Amb. McCloskey. However, he has discussed the legislation with P. Dickey. He suggested commitment to Magnuson but pleaded a lack of understanding of any foreign policy problems. (Voted for in Committee and on floor.)

Staff--Mick Wetherell, AA. He will be contacted by P. Dickey, briefed and furnished back-up material. Further follow-up by T. Leitzell, L/OES. Also being contacted by outside group.

Symington - to be contacted by Maw. Also briefing by Moore on November 12. (Voted for in Committee and on floor. Also member of Armed Services Committee but did not vote in that Committee.) Don Sanders, DOD feels that security arguments should convince him.

Staff--David Raymond - to be contacted by Adm. M. Morris. Will follow up if necessary. NOTE: Also being contacted by "outside group."

McGee - to be contacted by Amb. McCloskey. He is firmly in support of our position. Staff has advised he will actively work within Committee and on floor. (Voted against in Committee and on floor.)

Staff--Dick McCall, on board, arranged briefing by Moore and Morris for Senate legislative assistants.



McGovern - briefed by Moore and MacKenzie. Also has been contacted by Amb. McCloskey. Advised Moore that he appreciated our position; was not committed to Magnuson. Every indication of supporting State's position. Also gave favorable consideration to Amb. McCloskey arguments. (Voted for in Committee and on floor.)

Staff--John Holum, LA, briefed by MacKenzie, said he was surprised with last year's vote and felt Senator would change his position.

Humphrey - briefed by Moore, MacKenzie, Dickey. Fully in support of our position. Demands strong vibrations from White House. Will fight for us in Committee and on floor. A key if properly stimulated. (Voted for in Committee and on floor.)

Staff--Dan Spiegel, working with MacKenzie on SFRC scheduling and has been briefed and supplied with back-up material.

Clark - contacted by Amb. McCloskey. Advised he was strongly against bill. He was briefed by Moore on Friday and indicated full support and requested speech for SFRC meeting. (Voted against on floor.)

Staff--Andrew Loewi, will be supplied with back-up material by MacKenzie and briefed by Terry Leitzell, L/OES.

Biden - to be contacted by Amb. McCloskey. Probably subject to strong fishing industry pressure. (Voted for on floor.)

Staff--Wes Barthelmes, Dale Lewis. Will be briefed by Leitzell of L/OES along with fisheries stat. expert.

Case - has been thoroughly briefed by Moore and MacKenzie. Philosophically is supportive of our position. He is one of key members for successful opposition to bill in Senate. He has made clear that he wants a positive sign of opposition to unilateral action as well as Presidential endorsement of interim measures reached by negotiation. With Case we will win in Committee; without him it is going to be exceedingly difficult. (Voted against both in Committee and on floor.)

Staff--Nordquist is in daily touch with Jack Vandenberg who is cooperative and understands State's position.



Javits - has been briefed by Moore and MacKenzie. No clear cut position but critical of Law of Sea delays. An un-Javits like posture concerning negotiations vs. unilateral action but can be held if we are convincing in our endorsement of interim measures. Case lead will be significant. (Voted against in Committee and on floor.)

Staff--Pete Lakeland was present during briefing. We are keeping him informed and supplied with back-up material.

Scott - in an enigma on this issue. He has been generally briefed by Mr. Ingersoll and MacKenzie. However, he seemed confused over the position taken by Secretary Kissinger at early October leadership meeting. He referred to heavy political pressure which can only mean Sen. Stevens. Said he would approach with open mind and talk to Sen. Case and Sen. Beall before voting. (Voted against bill in Committee and for on floor.)

Staff--Ken Davis and Bob Burton (SRFC Staff) supplied with information. However, White House leadership essential rather than substance argument.

Pearson - this is a tough one. To be contacted by Mr. Maw. Sen. Pearson is ranking minority on Senate Commerce Committee. There is always a lot of back scratching among those Committee members so he may be committed to Magnuson or Stevens. (Last year he voted for in Committee SFRC and against on floor.)

Staff--Jerry Harper briefed by MacKenzie. Gave every indication of sympathetic understanding. If there is any hope of negative vote, he is probably the key. Went back to Harper with Moore with more complete discussion of implication of unilateral action.

Percy - we are trying to set up briefing session for Senator by Moore. (Voted against in Committee and on floor.)

Staff--Scott Cohen advised that Sen. Percy was firmly in support of our position. Supplied with background material by MacKenzie.

Griffin - briefed by Moore, Morris, and MacKenzie. Indicated total support and advised he would work actively. However, as he has limited knowledge in area he recognized this as limiting his effectiveness on the substance. But it goes without saying his opposition politically will be helpful. (Voted against in Committee and on floor.)

Staff--Bob Turner has been completely cooperative. Assisted in setting up Senate staff briefing session on Friday, Nov. 7.

CAN U. S. COASTAL FISH BE CONSERVED WITHOUT NEW LEGISLATION?

Eight months ago, the answer seemed to be "No." A number of fish species already were seriously depleted, or in imminent danger. Reducing overfishing by treaties negotiated with other nations had fallen short of real success.

THE NORTHEAST COAST

But an historic breakthrough occurred at the September meeting of ICNAF (the International Commission for Northwest Atlantic Fisheries). The 17 nation agreement for the area from Maine to North Carolina included:

**The overall fish catch quotas for foreign nations was reduced from 728,000 metric tons to 420,000 metric tons in 1976, a reduction of 42.4%.

**The total of USSR and Polish quotas was reduced from 494,700 metric tons in 1974 to 253,750 metric tons in 1976, a reduction of 48.7%.

**The U. S. quota was raised from 195,000 metric tons in 1974 to 230,000 metric tons in 1976, an increase from 21.1% of the total quota to 30.8%.

**The total of all quotas was reduced from 923,900 in 1974 to 650,000 in 1976, a decrease of 28.6% (41.7% decrease from the estimated catch of 1,115,000 metric tons of 1973)

**Most of the Georges Bank area is closed to ground trawlers capable of catching depleted stocks.

Informed fishery experts believe that this agreement, if lived up to, will allow the total biomass of important fish species in this area to rebuild. Will the total actual 1976 catch be close to the agreed quotas? Informed sources report that the total catches in 1974 and 1975 (the first years with total catch quotas) were reasonably close to the agreed quotas. This augurs well for 1976.

How about enforcement under ICNAF? U. S. inspectors can board foreign fishing vessels, inspect their catch, and report violations to their governments for punishment. In some cases, this has been ineffective. A special ICNAF session will be held in January, at which the U. S. will make strenuous efforts to improve enforcement.

Will non-members of ICNAF who fish the area upset this agreement? No, catches by non-members almost certainly will not be an important factor.

On balance, we believe that the fish conservation crisis off the U. S. northeast coast, which was very real up to this year, is now being met effectively.

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The December 1974 agreement with Japan was a considerable step toward fish conservation. The Japanese quotas for pollock in the E. Bering Sea was reduced from 1,500,000 metric tons to 1,100,000. Quotas for some other fish in specific conservation zones were lowered. Additional protection was provided for halibut and Pacific Ocean perch through area and time closures. The quotas for king and tanner crab are low, and

apparently Japanese fishing for king crab, at least, has ceased.

The July 1975 agreement with the USSR also represented some progress by reducing quotas, instituting time closures, and eliminating trawling in certain areas.

However the Japanese and USSR pollock quotas in the E. Bering Sea total 1,310,000 metric tons, which still exceeds the estimated maximum sustainable yield of 1,000,000 metric tons.

Bristol Bay salmon are in serious trouble, due partially to bad weather and to Japanese catch at sea, west of the 175 degree East abstention line. Whether the 200 mile bill would be of much help is debatable. Other species still are in trouble.

This underscores the importance of the International North Pacific Fisheries Commission now meeting in Vancouver. Bilateral talks are scheduled with Japan in December, and with the USSR after the first of the year 1976. Success at ICNAF augurs well for real conservation progress at these sessions.

THE SOUTHEAST COAST

Here, mackerel appears to be the only commercial species to face imminent danger of depletion due to foreign fishing. U. S. commercial fishing for this stock is of minor importance. There appear to be as yet no depleted commercial stocks in the Gulf of Mexico, and only menhaden, which is protected by the 12 mile exclusive fishing zone is in imminent danger of depletion, due entirely to U. S. overfishing.

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Here, only Pacific hake appears to be depleted or in imminent danger due to foreign fishing, and it is of little or no commercial value to the U. S.. California baracuda, Pacific sardine, and Pacific bonito appear to be in trouble due to U. S. fishing.

OUR CONCLUSION: VIGOROUS NEGOTIATIONS, NOT UNILATERAL LEGISLATION

We conclude that it is no longer accurate to say that the choice is between waiting for conclusion of the Law of the Sea treaty while important fish resources are wiped out, and passing the 200 mile bills. The prospective 200 mile economic zone in the Law of the Sea treaty, and pressure within the U. S. for a 200 mile bill, have made foreign fishing nations more willing to accept effective limitations on their fishing off U. S. coasts.

Under these conditions, we believe that vigorous negotiations now offer an acceptable route for conserving the coastal fish off the shores of the United States.

S. R. Levering, Secretary
United States Committee for the
Oceans
November, 1975
245 2nd St. N.E. Washington, D. C.
20002 tel: 202 544 2312

TENTATIVE DRAFT: COMMENTS INVITED



POSSIBLE EFFECT OF S 981 AND HR 200 ON U. S. FISHERIES

Figures were obtained from the table on COMMERCIAL LANDINGS OF FISH AND SHELLFISH BY U. S. CRAFT, pages 14-17, FISHERIES OF THE UNITED STATES, 1974.

These have been divided by dollar value of landings, by species, into the following groups:

I. SITUATION PROBABLY UNAFFECTED BY 200 MILE BILLS \$286,193,000.

This group consists largely of (1) "shellfish et al" caught within 12 miles of shore (except shrimp in the South Atlantic and Gulf areas) and (2) menhaden & mullet. These are caught almost exclusively by U. S. fishermen.

II. SITUATION PROBABLY IMPROVED BY 200 MILE BILLS \$234,909,000.

This includes all U. S. fisheries for finfish, except salmon, off U. S. coasts, since catching of such stocks beyond 12 miles by foreign fishermen may in some cases decrease the catch out to 12 miles. It also includes "shellfish et al" caught between 12 and 200 miles.

This possible improvement assumes foreign compliance with the 200 mile legislation, which we consider most doubtful.

III. SITUATION PROBABLY DAMAGED BY 200 MILE BILLS \$316,986,000.

This includes all finfish and shellfish caught off foreign coasts and shrimp caught off the S. Atlantic and Gulf Coasts. These shrimpers probably would suffer from competition if the U. S. distant water shrimp fleet was forced back home from waters off foreign coasts.

IV. EFFECT OF 200 MILE BILLS ON SITUATION DEBATABLE \$121, 312,000.

This includes salmon. If the 200 mile bills result in repudiation of the present treaty prohibiting ocean fishing for salmon east of the 175 degree East abstention line, the U. S. salmon industry could be severely damaged. If, in order to continue to harvest pollock and other groundfish, the Japanese agreed to reduce their salmon fishery west of this line, the U. S. salmon fishery, especially in Bristol Bay Alaska would receive some benefit. It should be noted that leading spokesmen for the salmon industry have opposed the 200 mile bill.

OUR CONCLUSIONS

We believe that possible gains to U. S. fisheries by enacting the 200 mile bills are at least matched by possible U. S. fishery losses. In our judgment, possible gains are much less than possible losses to other broad U.S. ocean interests including navigation, scientific research, environmental protection, conservation of living resources, international trade, and broad acceptance of orderly rules for ocean development.

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U. S. Committee for the Oceans
245 2nd St. N.E. Washington. D. C.



DEPARTMENT OF STATE

Washington, D.C. 20520

November 12, 1975

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MEMORANDUM FOR: Mr. Jack Marsh
Counsellor to the President

Mr. Max Friedersdorf
Assistant to the President
for Legislative Affairs

SUBJECT: Needed Action on the 200-Mile Fishing
Bill - S. 961

Attached is a briefing book on the 200-mile bill which summarizes the serious harm to our national defense, oceans and foreign relations interests from the bill.

I am also enclosing a summary prepared by a private group working against the bill (The US Committee for the Oceans) which points out that under agreements now in force we do not have an emergency in protecting fish stocks off our coasts which would justify passage to the 200-mile bill in violation of our solemn treaty obligations. The real breakthrough was the historic ICNAF agreement reached on September 28 which provides for an overall quota under which principal stocks are expected to increase in the key area from Maine through North Carolina.

Soundings on the Hill indicate that we can stop this bill if we take vigorous action. That action should, I believe, include the following:

- (1) we must obtain a negative report from the Foreign Relations Committee. Senator Case is key to this effort;
- (2) we must obtain a referral and a negative report from the Senate Armed Services Committee. A systematic White House-DOD-State effort on the Committee is key to this effort;

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Determined to be Administration Material

Date 11/16 By DAD

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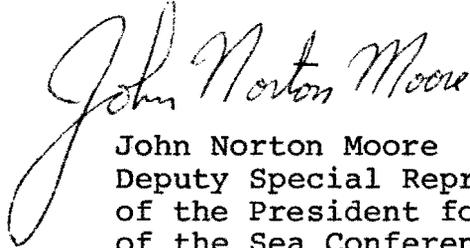
- (3) both Committees must be persuaded on the merits of the fishery case as well as the foreign relations and defense arguments. This is important in the thinking of Senators Case, Stennis, and Thurmond, among others;
- (4) if at all possible the Secretary or Deputy Secretary of State should testify before the full Foreign Relations Committee and the Chairman of the Joint Chiefs of Staff and a high DOD official should testify before the full Armed Services Committee. We should seek adequate time in all hearings;
- (5) the President should immediately issue a press release indicating the recent success in the ICNAF meeting and his commitment to improved protection for fisheries through negotiations but stating why he opposes a unilateral extension. If done well this could be an opportunity to point out:
 - the success of the Administration's negotiations in the fishery area and the high priority to be given the issue;
 - the commitment of the Administration to maintaining a strong defense posture; and
 - the importance of a leadership role for the United States in pursuing cooperative solutions to global problems.
- (6) the White House must go to work on the Senate and Republican leadership making clear that the bill must be stopped and that there will be no compromise by the Administration;
- (7) if despite these actions the bill should pass the Senate, the President must be prepared to veto it. We can uphold a veto and it will

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be broadly understood as an act of statesmanship by the President. Major editorial opinion is running against the bill.

A handwritten signature in cursive script that reads "John Norton Moore". The signature is written in dark ink and is positioned to the left of the typed name and title.

John Norton Moore
Deputy Special Representative
of the President for the Law
of the Sea Conference and
Chairman, the NSC Interagency
Task Force on the Law of the Sea

Attachments:

1. Briefing Book on the 200-Mile Bill
2. Summary concerning coastal fish stocks under agreements now in force

cc: Les Jenka
Denis Clift

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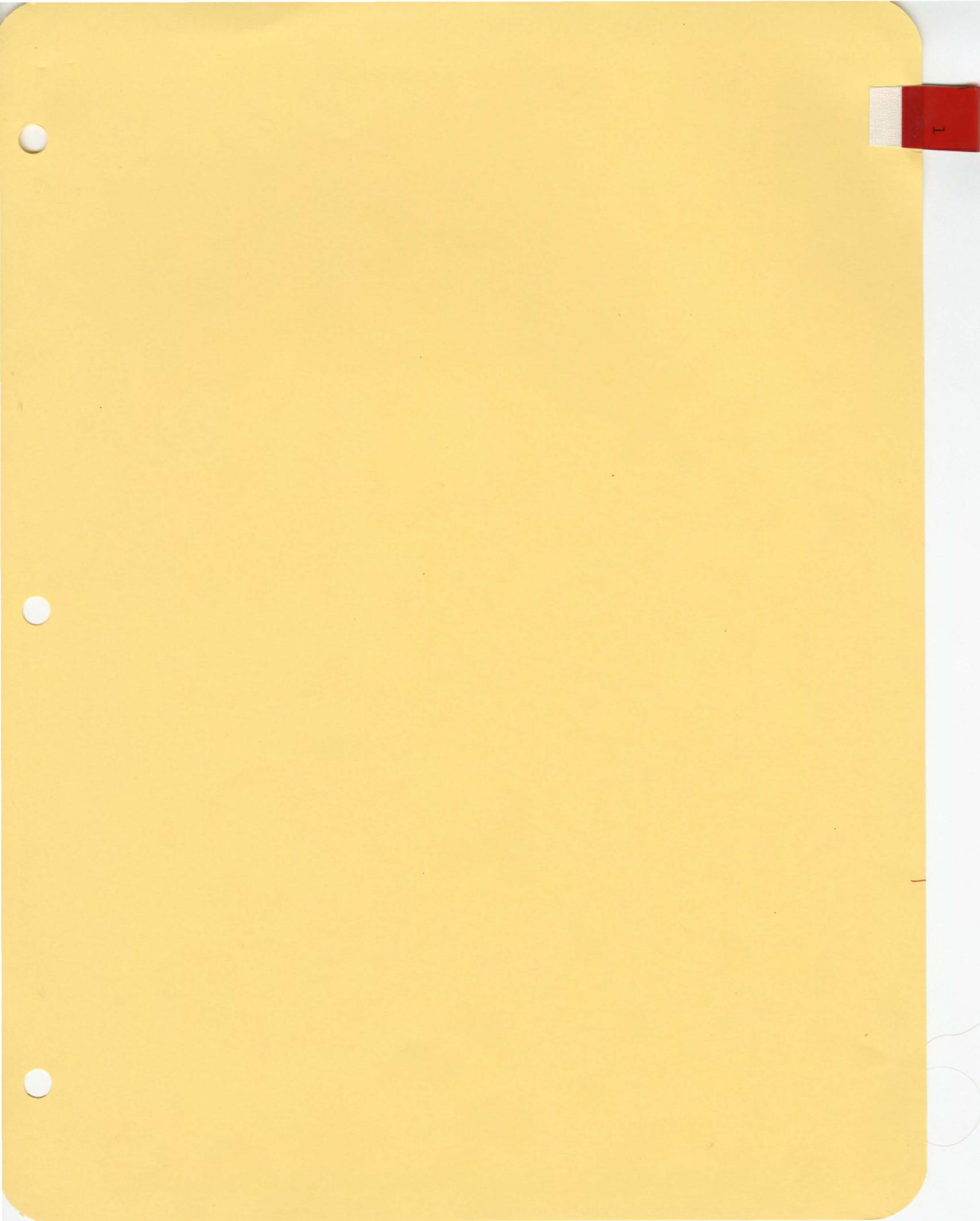
TENTATIVE DRAFT: COMMENTS INVITED

200-MILE FISHING LEGISLATION

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2. Fact Sheet on Arguments For and Against S.961
3. Recent Editorials on the 200-Mile Fishing Legislation
4. Department of Defense Talking Points
5. A 200-Mile Fishing Limit: Is it Legal?
6. International Commission for the Northwest Atlantic Fisheries
7. Excerpt From the Remarks of Secretary of State Kissinger to the American Bar Association, August 11, 1975
8. Testimony of The Under Secretary of State for Security Assistance Carlyle E. Maw and the Honorable John Norton Moore, Chairman, National Security Council Interagency Task Force on the Law of the Sea Before the Senate Foreign Relations Committee Subcommittee on Oceans and International Environment, October 31, 1975





Summary of Reasons for Opposition
to S.961 Which Would Unilaterally
Extend U.S. Fisheries Jurisdiction
Over the High Seas to 200 Miles

The Executive Branch strongly opposes S.961 or other legislation that would unilaterally extend U.S. fisheries jurisdiction over the high seas to a distance of 200 miles. The reasons for that opposition are:

- Such a unilateral extension whenever it were to occur would violate the pledged word of the United States given on solemn treaty obligations including the 1958 Geneva Convention on the High Seas, the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, and the Northwest Atlantic Fisheries Convention. The issue is so clear that Philip C. Jessup, a former Judge of the International Court of Justice, writes: "I do not know any responsible and qualified person who maintains that such a claim (unilaterally established 200-mile fisheries limit) would be in accordance with international law." Similarly, Professor Louis B. Sohn of the Harvard Law School writes: "There is no question in my mind that such an extension would be invalid under international law and would violate the rights of other states."

- The avoidance of unilateral oceans claims contrary to international law is a cardinal tenet of United States oceans policy. The U.S. consistently protests such claims by other nations and passage of S.961 would undermine our ability to prevent unilateral claims by others which could be seriously harmful to U.S. oceans interests. Such claims by others would not be confined to coastal fishing jurisdiction and could include:



- claims asserting control over ship construction or operation which could endanger our navigational freedom to transport vital oil supplies. At current prices, the value of petroleum imports by sea into the U.S. in 1976 will exceed \$26 billion;
 - claims asserting control over U.S. oceanographic research ships. The U.S. has a greater interest in oceanographic research than any other nation in the world;
 - claims asserting control over navigation and overflight through vital straits, endangering the mobility and secrecy of our general purpose and strategic deterrent forces.
- Enforcement of a unilateral 200-mile fisheries claim against the Soviet Union, Japan and other nations fishing off our coasts would pose a risk of confrontation or retaliation against U.S. economic interests.
- S.961 would seriously injure important U.S. tuna, shrimp and other fishermen who fish within 200 miles of other nations. The value of tuna landings alone by U.S. fishermen off foreign shores exceeds \$138 million per year. Such a unilateral extension could also endanger existing treaty arrangements protecting our valuable salmon stocks, that range beyond 200 miles (including the Atlantic salmon moratorium and the agreements with Japan and Korea and the understanding with the Republic of China covering our Pacific salmon).



- S.961 could seriously damage U.S. objectives in the ongoing Third United Nations Conference on the Law of the Sea. If U.S. unilateral action encourages a wave of such claims, the incentive for agreement may be removed and the Conference could collapse or be seriously delayed. At the best, such a unilateral claim would lessen the U.S. bargaining position at the Conference and could harden positions of other nations making their own unilateral claims. Paradoxically, if we encourage the negotiations to succeed, a comprehensive treaty is virtually certain to include a 200-mile economic zone with the kinds of protection we seek for coastal species and salmon.

- S.961 would undermine the establishment of binding international measures for the conservation and full utilization of ocean protein supplies. Such measures must be agreed through multilateral agreement and cannot be achieved unilaterally. Unilateral actions merely encourage the extensions of national jurisdiction without the necessity of agreeing to such conservation and full utilization standards.

- Needed additional protection for fish stocks off the U.S. coast can best be provided through bilateral and multilateral negotiations now underway. These negotiations are in addition to the Law of the Sea negotiations and within the last year we believe we have turned the tide with respect to protection of our fish stocks. Results include:
 - under the International Convention for the Northwest Atlantic Fisheries (ICNAF) agreement reached on September 28 of this year, agreed quotas are at a level to provide for a recovery of the principal stocks in the important area from Maine through North Carolina. This was a historic breakthrough.



- during the past three years the total allowable catch within the ICNAF area has dropped by more than 40% while the U.S. quota has more than doubled.
- the recently concluded agreement with the Japanese contains the following substantial reductions: for the northeast Pacific, 20% in total bottomfish, 75% in rockfish, and 63% in bottomfish for certain specific conservation zones. For the Eastern Bering Sea, 27% reduction in pollock and 10% reduction in bottomfish. The Japanese agreement also achieves a substantial reduction in the catch of crab, provides additional protection for U.S. fishermen against gear loss, and affords additional protection to halibut and Pacific Oceans perch through extensive area and time closures.
- the recently concluded agreement with the Soviets contains the following reductions: for the Eastern Bering Sea, 27% reduction in pollock and 12% reduction in herring. For the Gulf of Alaska, 29% reduction in pollock. For the states of Washington-California, 60% reduction in rockfish incidental catch. The Soviet agreement also closes the southern Washington, Oregon and northern California coasts to all Soviet trawling operations between November 1 and April 25 to protect rockfish, flounder and sole and protect hake, bottomfish and rockfish by eliminating Soviet trawling off defined areas of Oregon, Washington and California.



-- Last year the Senate Foreign Relations Committee and this year the House International Relations Committee reported unfavorably on bills to unilaterally extend the U.S. fishing zone to 200 miles. The International Relations Committee report stated:

- in submitting this oversight report the Committee on International Relations is expressing its interest in seeking the most effective means of protecting all U.S. interests in the oceans including fisheries, while respecting international law and treaty obligations.
- it is the considered judgment of the Committee on International Relations that H.R. 200 should not pass. ...

Department of State
November 7, 1975



Department of State - NSC Interagency Task Force
On the Law of the Sea

Fact Sheet on Arguments
For and Against S.961,
The Bill to Unilaterally
Extend U.S. Fisheries
Jurisdiction for 200 miles
on the High Seas

Argument: The 200-mile bill is needed as an emergency measure to protect coastal fish stocks against heavy foreign fishing.

Response: It is true that many stocks off the United States coasts have been depleted by foreign over-fishing during the past 15 years. But the issue is not whether stocks have been depleted by past over-fishing; rather it is whether under agreements presently in force and which can reasonably be anticipated there is an emergency situation threatening serious depletion of stocks until a Law of the Sea Treaty can be brought into force. On this point, there is a real question as to the extent of the threat to the stocks at levels of fishing permitted under agreements now in place and those which can be reasonably expected in the coming months. For example, under the latest ICNAF agreement, agreed quotas are at a level to provide for a recovery of the principal stocks in the important area from Maine through North Carolina.

We should keep in mind that a unilateral extension of jurisdiction would not provide added protection for our major fisheries within 12 miles or for continental shelf fishing resources, both of which are already under U.S. fisheries jurisdiction.

We expect to be able to continue to reduce foreign fishing through ongoing fishery negotiations. Such negotiations, in the present negotiating climate, are the best way to provide added



protection quickly. Though problems remain, recent bilateral and multilateral agreements have been much more effective in protecting stocks off the United States. Moreover, such an approach would not undercut our important interests in tuna, salmon, and coastal species caught within 200 miles of other nations or run the risk of losing international recognition of the 200 mile area within the Law of the Sea negotiations.

Argument: The Law of the Sea Conference is taking too long and we cannot wait.

Response: We are not relying on a Law of the Sea Treaty to resolve our interim fisheries problems. Rather we have within the last year greatly intensified our efforts at bilateral and multilateral fishing agreements. In two key negotiations, ICNAF and the 1974 Japanese agreement, we have had substantial success. We achieved a 23% reduction in ICNAF, and last year the Japanese agreed to more than a 25% decrease in their total catch off our coasts.

The Law of the Sea Conference is, of course, taking time and is not moving as fast as we would like. It is not clear whether a treaty can be completed in 1976 although we will make every effort to do so. We are, however, engaged in the most complex and comprehensive multilateral negotiation ever undertaken. Substantial progress is being made as evidenced by the production of a single negotiating text at the Geneva session of the Conference last spring and an emerging consensus on most major issues (including a 200-mile economic zone with protection for our coastal and salmon fishing interests). As long as substantial progress is being made, because of the importance of the issues at stake, including vital national security interests, we should strongly support the Conference. Most importantly, to make a major unilateral fisheries claim could undermine our ability to achieve international agreement in a Law of the Sea Treaty recognizing the very 200-mile fisheries jurisdiction which we seek.



Argument: S.961 will strengthen the hands of our Law of Sea negotiators.

Response: Although the existence (as opposed to passage) of the 200-mile bill may strengthen the hands of our bilateral fisheries negotiators, the bill is seriously harmful to the broader Law of the Sea negotiations. The reasons why the bill undercuts rather than strengthens the hands of our Law of the Sea negotiators include:

- we have said that we could recognize a 200-mile economic zone only if our vital interests were protected by a treaty. A 200-mile economic zone is one of the major objectives of many coastal States in the negotiations. For Congress to enact such a zone would give those States one of their principal objectives without our achieving vital objectives in return;
- passage of the 200-mile bill even with a delayed effective date could encourage extremists to stall the negotiations and wait until United States action validates their long-standing claims;
- if United States unilateral action encourages a wave of more extreme unilateral claims, the incentive for agreement may be removed and the Conference could collapse or be strung out indefinitely;
- at the least, such unilateral claims could harden positions and make the negotiations more difficult.

Argument: The United States has taken unilateral action before without harm to our interests.

Response: In 1945 President Truman proclaimed United States jurisdiction over the resources of the continental shelf and in 1966 the United States extended its fisheries jurisdiction from 3 to 12 miles. More recently, in 1973 the United States declared the American lobster a "creature of the continental

shelf" under the Continental Shelf Convention and thereby subject to United States jurisdiction. These unilateral United States oceans actions are fundamentally different from a unilateral extension of our fisheries jurisdiction to 200 miles. The differences include:

- none was made during the course of a relevant multilateral Conference;
- in the case of the extension of our fisheries jurisdiction to 12 miles, many nations, including the Soviet Union, had a 12-mile territorial sea at the time;
- it was evident at the time that there would be few protests from the United States action and this was borne out in fact;
- the latter two United States fisheries claims were of minor significance compared to an extension of fisheries jurisdiction from 12 to 200 miles.

Moreover, even these more innocuous actions were not free from costs. Some states used the Truman Proclamation to justify 200-mile territorial sea claims. And the more recent claim to include lobster as a "creature of the continental shelf" has given rise to a fisheries dispute with the Bahamas in which Florida-based spiny lobster fishermen have been excluded from their traditional fishing in the Bahamas. It may be instructive to examine the balance sheet on this extension of jurisdiction with respect to the American lobster as a creature of the shelf. Gains in the United States lobster fishery as a result of the United States declaring lobster a creature of the shelf have been slight. But invocation of the same doctrine by the Bahamas has resulted in excluding U.S. fishermen from the Bahamas spiny lobster fishing at a substantial cost in financial and human terms.



Argument: The 200-mile fishing bill provides an opportunity for renegotiation of our fisheries bilaterals and as such would not violate U.S. treaty obligations or international law.

Response: Enactment of the 200-mile fishing bill would violate solemn treaty obligations of the United States and constitute a serious setback to development of cooperation rather than conflict in the oceans. Whatever the effect of the ambiguous provisions concerning our bilateral fisheries agreements, the bill would violate the fundamental 1958 Geneva Convention on the High Seas, the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, and the Northwest Atlantic Fisheries Convention, to which the U.S. is a party. The issue is so clear that Philip Jessup, formerly a judge of the International Court of Justice, has recently written: "I do not know of any responsible and qualified person who maintains that such a claim (unilateral 200-mile fisheries zone) would be in accordance with international law." Similarly, Professor Louis B. Sohn of the Harvard Law School writes: "There is no question in my mind that such an extension would be invalid under international law and would violate the rights of other states."

Argument: The bill would protect sportfishing off the United States coasts.

Response: The vast majority of United States sportfishing for groundfish takes place within 12 miles, an area already under United States exclusive jurisdiction. An argument can be made that foreign fishing efforts outside of 12 miles have an effect on sportfishing within this limit, but United States commercial fishing operations have the same effect. Sportfishing aimed at billfish and other migratory species such as bluefin tuna, can only be protected by regulations applying to the entire stocks, which range far beyond 200 miles. Passage of the bill could actually have an adverse effect on this segment of sportfishing if exclusive claims by Atlantic



coastal states, including Europeans and Africans, resulted in abandonment of the effort to manage these species through the International Commission for the Conservation of Atlantic Tuna (ICCAT).

Argument: The bill is needed to protect ocean protein supplies.

Response: It is true that satisfactory fisheries management requires an extension of jurisdiction throughout the range of coastal species. For this reason an extension to 200 miles is generally accepted within the Law of the Sea negotiations as part of a comprehensive oceans treaty. Protection of ocean protein supplies, however, also requires establishment of binding international measures for the conservation and full utilization of ocean protein and special treatment for anadromous species (salmon) and highly migratory species (including tuna and whales). Such measures can only be achieved through broad multi-lateral agreement. Unilateral actions (with or without such provisions) merely encourage the extension of national jurisdiction without the necessity of agreeing to such conservation and full utilization standards. If such action undermines the Law of the Sea treaty, we will lose the best, and perhaps the only opportunity, we have had to achieve binding measures for the conservation and full utilization of ocean protein.

Argument: Other nations already make such extended claims over fisheries, why shouldn't we?

Response: Only 15 nations (out of 125 independent coastal states) claim a territorial sea or fisheries jurisdiction to 200 miles. None of these nations is a major maritime power with a diverse range of important oceans' interests. In contrast, the U.S. has the largest oceans' interests of any country in the world and its actions would have far greater impact on the development of oceans' law than that of smaller nations. The U.S. has, and must, exercise its influence to promote an oceans' regime based on cooperation and common interest rather than unilateral national claims. A stable legal regime



for the oceans will contribute to ordered development of the oceans, protection of the marine environment, and avoidance of conflict among nations.

Argument: The nations of the world have already agreed at the Law of the Sea Conference on a 200-mile economic zone, so why not anticipate the result?

Response: It is true that there is general agreement within the Law of the Sea Conference on a 200-mile economic zone. The agreement, however, is predicated on a comprehensive treaty in which the nations agreeing achieve protection for their interests in other areas; for example, guarantees of unimpeded transit through and over straits used for international navigation. To seek to anticipate the result could undermine the package deal and the very consensus needed to achieve international recognition of a 200-mile economic zone with full protection for our fisheries interests. Many of those nations accepting the 200-mile economic zone in the comprehensive negotiations have told us flatly that they will not accept a unilaterally imposed 200-mile fisheries zone.





Washington Post

November 4, 1975

Editorial

The Fishing Bill

The Philadelphia Inquirer

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Friday, October 24, 1975

Page 10-A

U.S. shouldn't go it alone
on 200-mile fishing limit

LOS ANGELES TIMES , 10/29/75



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6-Part II

WEDNESDAY MORNING, OCTOBER 29, 1975

A Law for Some of the Seas



Wall Street Journal, October 23, 1975

p. 18

Congress Tackles a Fishy Problem

By ARLEN J. LARGE

A Frequently Forgotten Point

Wall Street Journal

Oct. 23, 1975 p. 18

"Congress Tackles a Fishy Problem"

THE EFFECT OF A UNILATERAL DECLARATION OF A 200 MILE FISHERIES ZONE BY THE UNITED STATES ON NATIONAL SECURITY

THE GENERAL EFFECT OF SUCH A DECLARATION-If the U.S. should unilaterally claim a 200 mile fisheries jurisdiction, it would lead other states to make unilateral claims of their own which would in all probability not be limited to fisheries. If these states witness the U.S. taking unilateral action, they in turn would feel no constraints in regard to taking similar action. Their reactions could run all the way from claims of fisheries zones, to areas of strict pollution control, to claims of territorial jurisdiction.

Multilateral action, such as is being developed through the UN Law of the Sea Conference, could be an effective antidote to such competing claims. The Conference is not trying to prevent expansion of fishery and other jurisdictions, but is only trying to control them so that such extensions do not injure the interests of other states. Assuming these negotiations are successful, if a state wished to extend its fisheries jurisdiction to 200 miles, this would be done through a treaty mechanism. A clause would be written into the treaty that such jurisdiction would not be territorial, that it would allow unimpeded innocent passage by vessels of other states. Passage beyond the territorial limit of 12 miles would be safeguarded. A "divided jurisdiction" would be established under international law whereby the jurisdiction of the coastal state would extend only to fisheries, for example, assuring that other states would retain all the rights of navigation of the high seas currently granted them by international law.

Without such protection, a unilateral extension by an influential state like the U.S., which in the past has opposed all such unilateral extensions, would set off a chain reaction by other states, acting to protect themselves as quickly as possible. Anyone who doubts that this could happen should remember that before the U.S. instituted a 12 mile fisheries zone in 1966, only 25 states had such claims. Since the U.S. unilateral extension, about 55 states have made similar claims. The example which would be set by the U.S. would be too strong to ignore.

THE EFFECT OF 200 MILE TERRITORIAL WATERS CLAIMS ON U.S. NATIONAL SECURITY-If all states with coasts and islands claimed a territorial limit (or effective equivalent) of 200 miles, fully 36% of what is now high seas would become territorial waters. This would effect the rights of passage

in these waters and would also result in the closing of every international strait to free passage. This would have an adverse impact on the national security of the U.S.

EFFECT ON U.S. NUCLEAR DEFENSE FORCES-The most important impact would be in the area of our strategic nuclear defenses, our system of nuclear deterrence. This system is based on three types of weapons: airborne bombers and missile forces, land-based ICBM's, and nuclear submarines carrying Polaris and Poseidon missiles. These weapons systems are useful only if they can survive a nuclear "first strike by enemy forces and return a retaliatory "second strike." In this sense, they provide our nuclear deterrence to war. Nuclear submarines are the least vulnerable to a first strike because they can cruise the oceans and seas of the world for months at a time underwater, and are therefore impossible to locate.

If 36% of the world's high seas become territorial, and if all the straits become territorial, U.S. nuclear submarines would be easily monitored and located. This is due to several factors. First, upon entering territorial waters, a submarine must surface and show its native colors. Thus, an enemy power would be able to know how many U.S. submarines were in, for example, the Mediterranean, since they would have to pass through a now "territorial" Strait of Gibraltar. Second, the possibility exists that the entire Mediterranean could be closed to U.S. submarines and surface vessels if every littoral state enforced a 200 mile claim. This would also apply to all of the seas in the area of the East Indies. Thus, targeting areas for major cities in the U.S.S.R. and People's Republic of China would be vastly reduced. This in turn would reduce the cruising area of the nuclear submarines, making them easier to find.

If submarines can be monitored, then they can be traced and located. If their targeting areas are small, this also aids in their location. A submarine which can be found is vulnerable to a first strike. This would undermine the entire U.S. system of deterrence and bring us one step closer to nuclear holocaust.

EFFECT ON GENERAL PURPOSE FORCES-There would also be an impact on our naval general purpose forces. These are forces which are kept at the ready for a non-nuclear conflict. To be effective these forces must be highly mobile. This mobility would be greatly reduced if these ships have to negotiate a route through a series of territorial waters in order to get to where they were needed, or were forced to detour. For instance, if there were a 200 mile territorial sea, then the Seventh Fleet, in order to pass from the Pacific to the Indian, would have to travel south of Australia, a route four times as long as the present route. The situation in the Middle East would be even more difficult. As was

mentioned previously, the Mediterranean could be cut off, thus effectively eliminating the operating area of the Sixth fleet. Aid to Israel, Turkey and other allies in the area would be almost impossible.

EFFECT ON AIR FORCES-There would also be an impact on our tactical air forces. All air space above territorial waters is considered to be equally territorial. Permission is needed to fly through it. Thus, air forces would be effected the same as naval forces if any rerouting is necessary or if any areas are made inaccessible to U.S. forces. In the last Mideast conflict many states denied the U.S. permission to use their air space. Increased territorial air space could now totally cut off U.S. air support for its Mideast allies.

The above are some of the factors which have influenced President Ford, Secretary of State Kissinger, Chairman of the Joint Chiefs of Staff, General George Brown, and the Foreign Relations Committee to oppose a unilateral 200 mile extension of fisheries jurisdiction by the U.S.



Department of State

A 200-Mile Fishing Limit: Is It Legal?

"I do not know any responsible and qualified person who maintains that such a claim would be in accordance with international law. Nor can the advocates of the proposed law take the position that the United States should abandon its historic position as a defender and upholder of international law, sinking to the level of those other countries which we denounce as law-breakers."

Philip C. Jessup
Former Judge
International Court of Justice

"In my view, H.R. 200, if enacted, would not be consistent with the obligations of the United States under existing international law. It is established, and the International Court of Justice has recently reiterated (in the Icelandic Fisheries Case) that a coastal state cannot extend its exclusive fishing jurisdiction into the high seas at will, against all."

Louis Henkin
Columbia University Law School

"There is no question in my mind that such an extension would be invalid under international law and would violate the rights of other states. It would be in particular inconsistent with our various agreements on fisheries, especially the Northwest Atlantic Fisheries Convention. Such countries as the Soviet Union in the Atlantic and Japan in the Pacific could validly argue that their rights have been grossly violated by such action of the United States. Such legislation would also constitute a violation of the United States obligations under the Convention on Fishing and Conservation of the Living Resources of the High Seas, concluded in Geneva in 1958. This Treaty provides various methods for safeguarding of a coastal nation's interests. The proposed legislation does not follow the detailed provisions of the Convention for dealing with the problem.

"In addition, the proposed legislation disregards the basic rule of international law, embodied in Article 2 of the Convention on the High Seas of 1958, which provides that in exercising its rights on the high seas each state must pay reasonable regard to the interests of other states in their exercise of the freedoms of the high seas, which include the freedom of fishing."

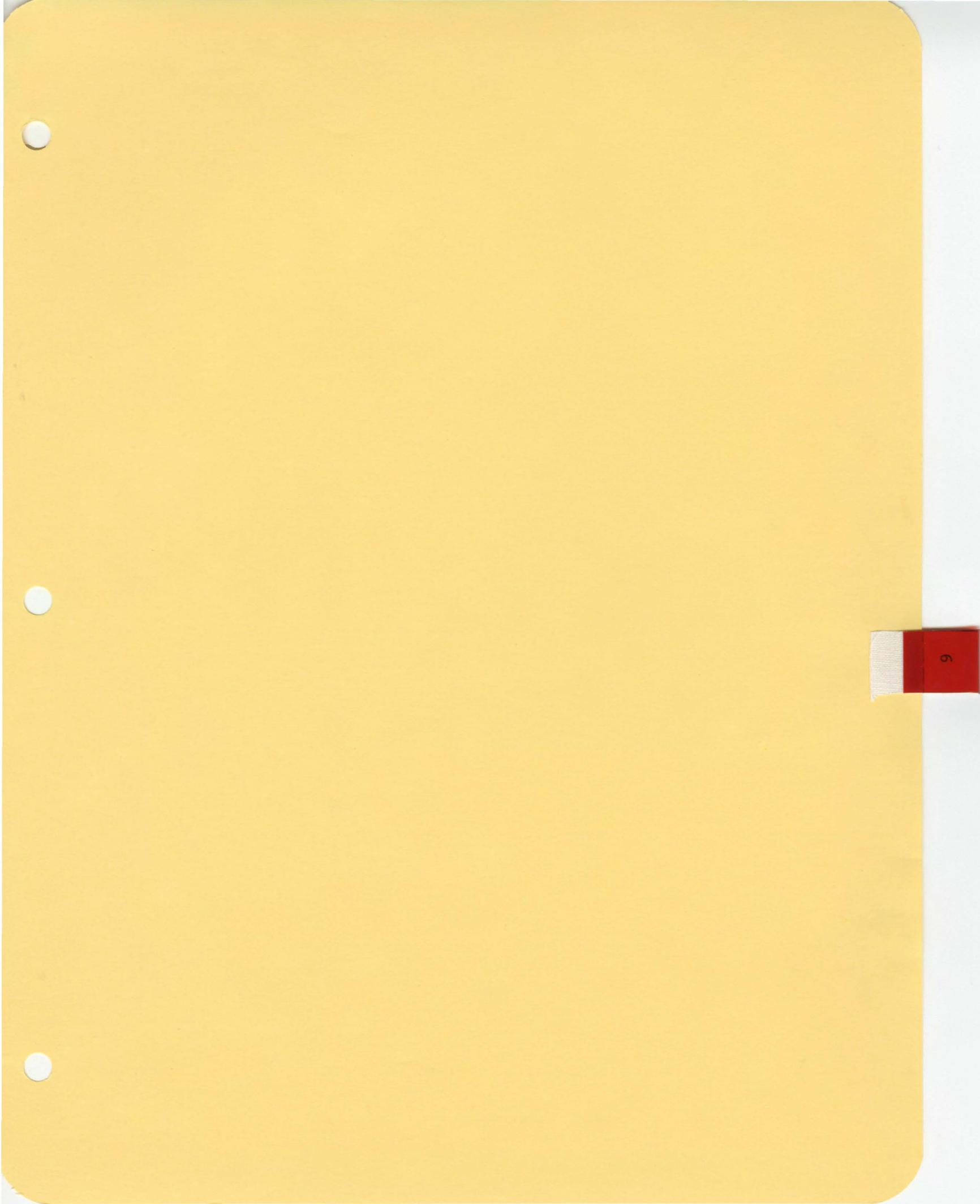
Louis B. Sohn
Harvard University Law School

"On the other question, whether unilateral adoption of a 200-mile exclusive-fisheries zone by the United States would violate present-day international law, it is my belief that the answer must be given, 'Yes, there would be such violation'."

William Bishop
University of Michigan Law School

"H.R. 200 is thus not simply a case of doing now what will ultimately be done anyway under the terms of the treaty. In the words of the popular song of years ago 'It's not what you do but the way that you do it.' There is a world of difference between a generally agreed 200-mile economic zone, with jurisdiction over the coastal species, under the terms of a general international agreement, and a unilateral grab of a 200-mile fisheries zone, which would be the signal for other states to lay even more sweeping claims over the 200-mile zone, up to and including a 200-mile territorial sea claim."

Richard R. Baxter
Harvard University Law School



PRESS DEPARTMENT OF STATE



October 1, 1975

No. 510

CONCLUSION OF SEVENTH SPECIAL MEETING OF INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES MINUTES OF THE MEETING

Satisfactory agreement was reached September 28 on all major United States proposals before the International Commission for the Northwest Atlantic Fisheries (ICNAF). The Seventh Special Meeting of the Commission concluded Sunday after a week of deliberations which were characterized as some of the most successful in the Commission's 25-year history by David H. Wallace, Chairman of the U.S. Delegation.

The special meeting of the 17 member nation body which deals with the conservation of fish stocks in the Northwest Atlantic was called at the request of the U.S. and Canada to resolve outstanding issues on the reduction of fishing effort and quotas in the Convention Area which had not been satisfactorily resolved at the Annual Meeting of the Commission in June.

The Commission took positive action on U.S. proposals for a reduced 1976 overall catch quota for the entire fish biomass off the United States coast, a closure of most of the Georges Bank area to vessels capable of catching valuable and depleted groundfish species, a national system of vessel registration, and more restrictive and enforceable exemption provisions for trawl net fisheries conducted off the U.S. and Canadian coasts.

Opening ceremonies at the start of the special meeting on September 22 included an address by U.S. Under Secretary of State, Carlyle E. Maw, who brought with him a message from the President of the United States of America. The President's message to the Commission stressed the great importance which the United States attaches to effective conservation measures, efficient enforcement of those measures and the particular importance of a successful ICNAF meeting at this critical time.

A principal U.S. objective at the Montreal meeting was to obtain a 1976 overall fishing quota for the area off the U.S. coast which would allow a rapid recovery of the depleted biomass. This "Second Tier Quota" is allocated nationally to limit what each nation can harvest from the biomass as a whole. It is imposed as a ceiling figure over the individual species quotas and is less than the sum of the individual species quotas in order to encourage the development of fishing methods which concentrate on the target species and reduce the by-catch of other species. The second tier system was first approved in 1973 for application in the 1974 fishing season in an effort to substantially reduce overall foreign catches off the U.S. coast. Second tier quota levels established for 1974 and '75 were designed to stabilize the biomass and the Commission had agreed that the 1976 level would be set at an amount which would allow recovery of the biomass to the maximum sustainable yield level. The June Annual Meeting had agreed to what the United States regarded as an excessive level of 724,000 metric tons by excluding squids from the regulation. This had not been the case in either 1974 or '75. Scientists estimated that at such a level at least a full decade would be required for stock recovery. The United States regarded this as unacceptable and filed a formal objection

For further information contact:

to the regulation under the rules of the Commission. As a result of this week's meeting, the Commission has agreed to set the 1976 level at 650,000 metric tons including squids. This level should provide a high probability of recovery within seven years, according to U.S. fisheries scientists.

No action had been taken at the June meeting on a U.S. proposal to limit by-catches of valuable and seriously depleted yellowtail flounder and haddock stocks on Georges Bank through closure of this area to vessels using gear capable of catching these groundfish. Arguments had been raised by others that such a regulation would seriously interfere with fisheries for species such as cod and the hakes. At the Montreal meeting, agreement was reached on a regulation closing a large area on Georges Bank to such vessels throughout the year. Though slightly smaller than the area originally proposed for closure by the U.S., the area is sufficiently large to provide satisfactory protection for these important stocks.

Further progress in the critical area of improved international enforcement was also a principal U.S. objective at the special meeting. This was achieved to a significant extent with the approval of a U.S.-proposed system of national registration for vessels engaged in fishing or fish processing in the Convention Area. Such a system is designed to assist member governments and international enforcement personnel in monitoring fishing effort deployed throughout the area.

U.S. efforts at the Annual Meeting in June to secure approval of such a system had not been successful. Additional progress in this area as well as added control over by-catches of regulated species was achieved with the approval of a more restrictive and more easily enforceable exemption for trawl net fisheries conducted off both the U.S. and Canadian coasts.

Canada was successful in securing approval for a regulation designed to substantially reduce fishing effort on groundfish stocks in five portions of the Convention Area off the Canadian coast. The regulation provides for reduction in fishing days for various fishing vessel tonnage and gear categories ranging from 40 to 50 percent from that reported in the 1972 and 1973 periods.

The meeting concluded with an announcement by the Observer from Cuba that action required for Cuba to become a member of the Commission would be immediately initiated by his government. The Commission had approved adjustments in quota allocations for a number of stocks providing the specified catch allocations necessary for Cuba to fish within established conservation regulations throughout 1976.

The next meeting of the Commission will be held in Rome, Italy, in January 1976. The meeting has been called to establish quotas for a number of Northwest Atlantic herring stocks fished off both U.S. and Canadian coasts. Additional proposals on enforcement, made by the United States, will also be on the agenda.

THE WHITE HOUSE

WASHINGTON

September 18, 1975

This special meeting of the International Commission for the Northwest Atlantic Fisheries takes up the most difficult problem in the Commission's twenty-five year history. I send my warmest greetings and good wishes to the participants.

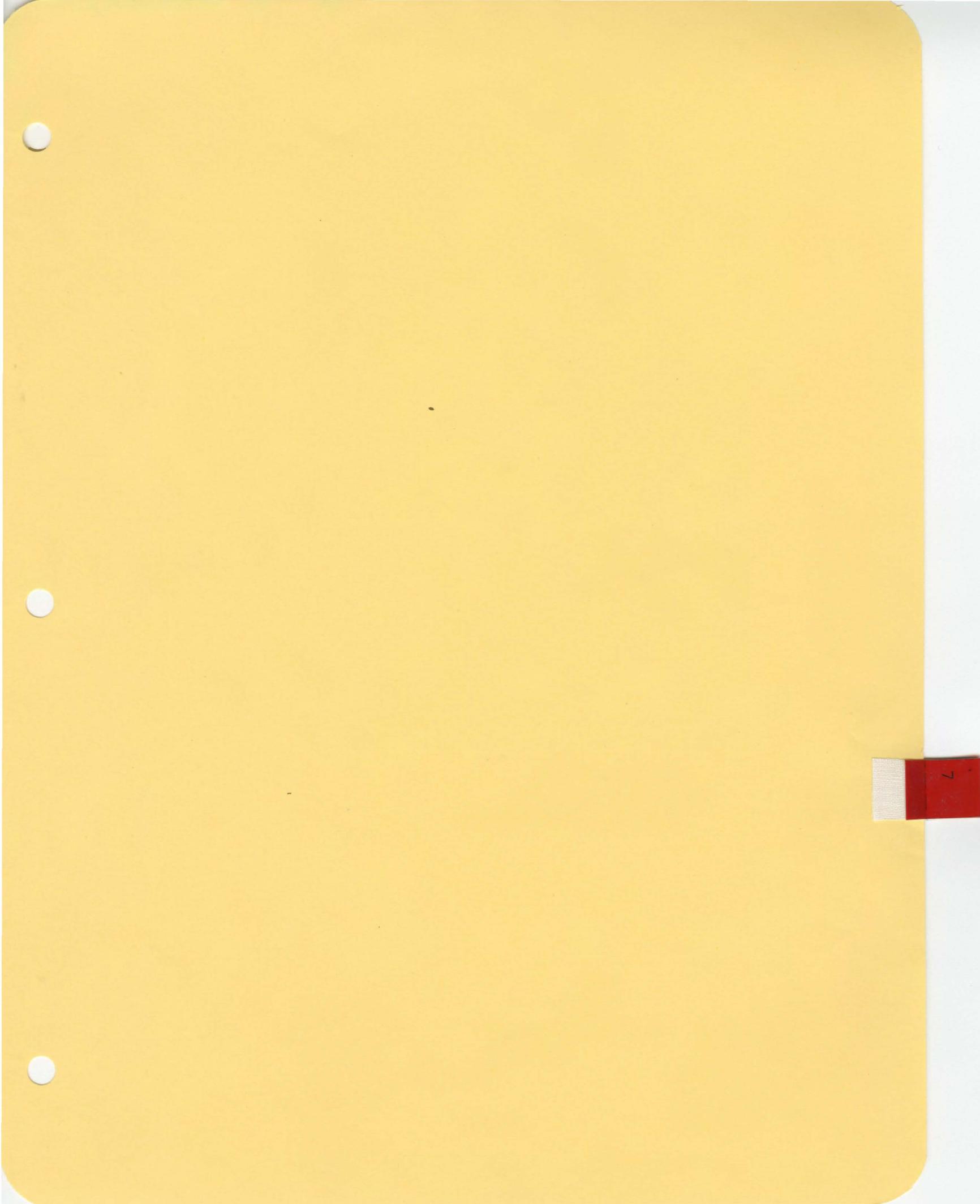
It is imperative that the Commission succeed in establishing adequate conservation measures and enforcement procedures to rebuild the important fishery stocks of the Northwest Atlantic. If agreement cannot be reached on reasonable conservation and enforcement measures, the ability of the Commission to fulfill its stated purposes will be called into question. For our part, I pledge the full support of the United States to sound fisheries management and conservation practices, based on scientific evidence and implemented within the framework of internationally negotiated agreements.

I am strongly opposed to unilateral claims by nations to jurisdiction on the high seas. However, pressures for unilateral measures do exist, and will continue to mount, if international arrangements do not prove to be effective.

It is my earnest hope that the Commission will vindicate the trust we place in it and fully justify our mutual efforts to find cooperative approaches to fisheries conservation and management for the benefit of all mankind. In this spirit, I send you best wishes for a productive and rewarding session.

Harold R. Ford

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Excerpt From an Address by Secretary of State Henry
A. Kissinger Before the American Bar Association,
Montreal, Canada August 11, 1975



The urgency of the problem is illustrated by disturbing developments which continue to crowd upon us. Most prominent is the problem of fisheries.

The United States cannot indefinitely accept unregulated and indiscriminate foreign fishing off its coasts. Many fish stocks have been brought close to extinction by foreign overfishing. We have recently concluded agreements with the Soviet Union, Japan, and Poland which will limit their catch and we have a long and successful history of conservation agreements with Canada. But much more needs to be done.

Many within Congress are urging us to solve this problem unilaterally. A bill to establish a 200-mile fishing zone passed the Senate last year; a new one is currently before the House.

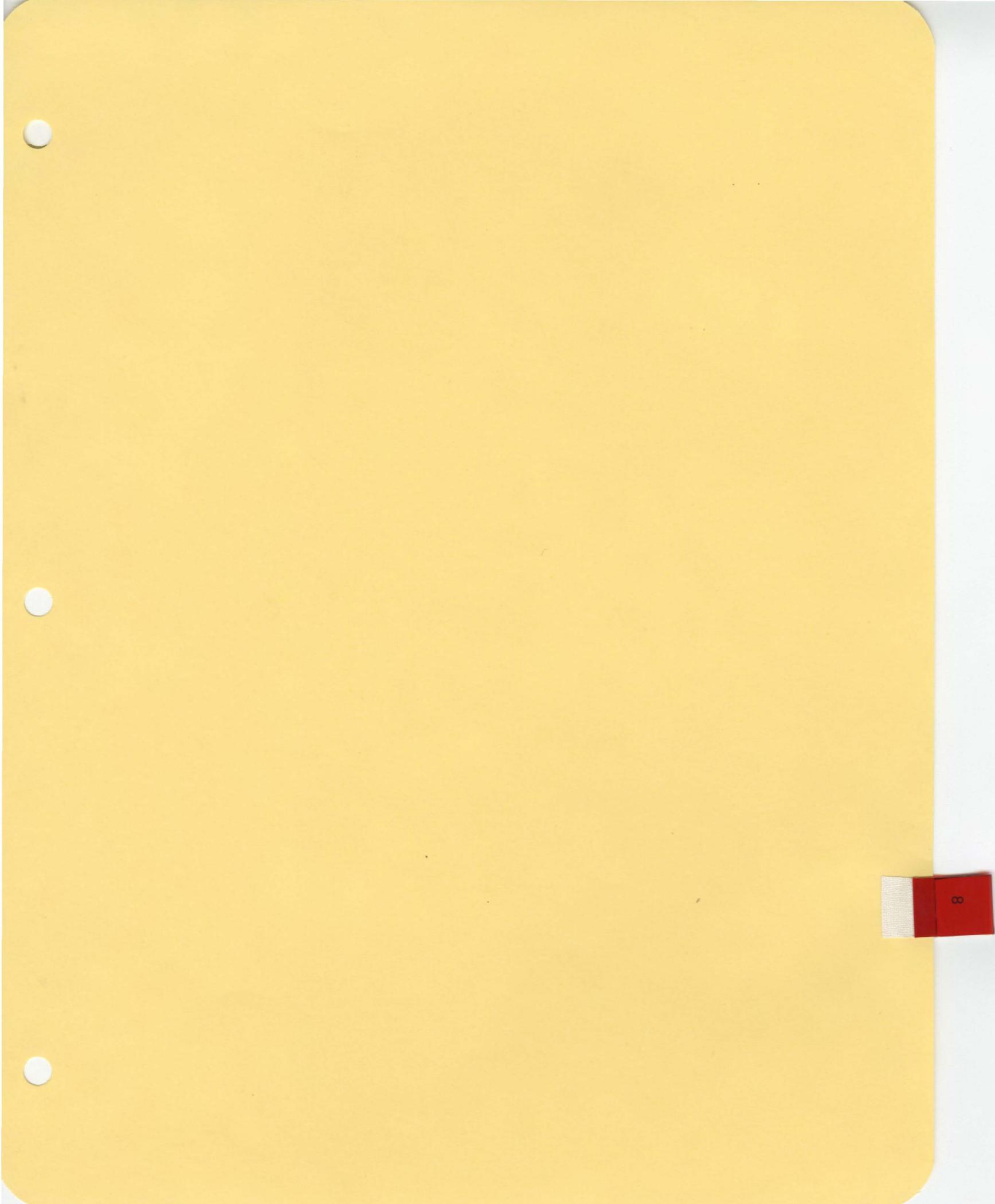
The Administration shares the concern which has led to such proposals. But unilateral action is both extremely dangerous and incompatible with the thrust of the negotiations described here. The United States has consistently resisted the unilateral claims of other nations, and others will almost certainly resist ours. Unilateral legislation on our part would almost surely prompt others to assert extreme claims of their own. Our ability to negotiate an acceptable international consensus on the economic zone will be jeopardized. If every state proclaims its own rules of law and seeks to impose them on others, the very basis of international law will be shaken, ultimately to our own detriment.

We warmly welcome the recent statement by Prime Minister Trudeau reaffirming the need for a solution through the Law of the Sea Conference rather than through unilateral action. He said, "Canadians at large should realize that we have very large stakes indeed in the Law of the Sea Conference and we would be fools to give up those stakes by an action that would be purely a temporary, paper success."

That attitude will guide our actions as well. To conserve the fish and protect our fishing industry while the treaty is being negotiated, the

United States will negotiate interim arrangements with other nations to conserve the fish stocks, to ensure effective enforcement, and to protect the livelihood of our coastal fishermen. These agreements will be a transition to the eventual 200-mile zone. We believe it is in the interests of states fishing off our coasts to cooperate with us in this effort. We will support the efforts of other states, including our neighbors, to deal with their problems by similar agreements. We will consult fully with Congress, our states, the public, and foreign governments on arrangements for implementing a 200-mile zone by virtue of agreement at the Law of the Sea Conference.

Unilateral legislation would be a last resort. The world simply cannot afford to let the vital questions before the Law of the Sea Conference be answered by default. We are at one of those rare moments when mankind has come together to devise means of preventing future conflict and shaping its destiny rather than to solve a crisis that has occurred, or to deal with the aftermath of war. It is a test of vision and will, and of statesmanship. It must succeed. The United States is resolved to help conclude the Conference in 1976 -- before the pressure of events and contention places international consensus irretrievably beyond our grasp.



TESTIMONY OF
THE UNDER SECRETARY OF STATE
FOR SECURITY ASSISTANCE
CARLYLE E. MAW
SPECIAL REPRESENTATIVE OF THE PRESIDENT AND
CHIEF OF THE UNITED STATES DELEGATION
TO THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE SUBCOMMITTEE ON
OCEANS AND INTERNATIONAL ENVIRONMENT
FRIDAY, OCTOBER 31, 1975

Mr. Chairman and members of the Committee, I am pleased to appear today on behalf of the Executive Branch to testify on S.961, which proposes to extend United States fisheries jurisdiction to 200 miles off our coasts. I am accompanied by John Norton Moore, Chairman of the NSC Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference, and Rozanne Ridgway, Acting Deputy Assistant Secretary of State for Oceans and Fisheries Affairs.

Mr. Chairman, the Administration believes that the proposed 200-mile fisheries legislation could create serious foreign policy problems.

Secretary Kissinger, in an address to the Annual Meeting of the American Bar Association in Montreal on August 11, stated that "unilateral action is both extremely dangerous and incompatible with the thrust of the (Law of the Sea) negotiations....". He added:

"The United States has consistently resisted the unilateral claims of other nations, and others will almost certainly resist ours. Unilateral legislation on our part would almost surely prompt others to assert extreme claims of their own. Our ability to negotiate an acceptable international consensus on the economic zone will be jeopardized. If every state proclaims its own rules of law and seeks to impose them on others, the very basis of international law will be shaken, ultimately to our own detriment."

The Administration is also seriously concerned about the depletion of many fish stocks off our coasts as a result of overfishing. In the long run, we believe that a Law of the Sea Treaty which is accepted by the fishing nations of the world is the best way to conserve fish stocks and to protect our fishing interests. The principal nations fishing off our coasts accept the general consensus at the Law of the Sea Conference in favor of a 200-mile economic resource zone that would include coastal fisheries. They have stated that they would not recognize such a zone created by unilateral action.

I agree with the proponents of S.961 that action must be taken now to halt the depletion of fish stocks off our coasts. Mr. Chairman, the Administration is

taking that action. I would like to outline for the Committee this morning the measures we have recently taken to reduce overfishing off our coasts and the additional steps we will be taking in the immediate future. These measures have become possible because of the emerging consensus in the Law of the Sea Conference, as I have mentioned.

Secretary Kissinger announced in his American Bar Association speech that we would begin immediately to negotiate new agreements with nations fishing off our coasts to provide a transition to a 200-mile zone. To carry out this program, an interagency group on fisheries negotiations has developed a plan to effectuate a transition to a 200-mile coastal fisheries zone off the U.S. coasts through bilateral and multilateral negotiations as promptly as possible. I would like to emphasize that this plan does not require us to wait for the conclusion of the Law of the Sea Conference. We have at least 11 bilateral fisheries agreements due for renegotiation next year, as well as regular meetings of six multilateral fisheries commissions. In the next few months, we will be renegotiating agreements with Romania, Poland and the Soviet Union.

Most importantly, Mr. Chairman, this plan is based on negotiations, not unilateral action.



In our negotiations, we intend to accomplish the following objectives within 200 miles of our coasts:

- establish an effective conservation regime based on the best available scientific evidence;
 - create, consistent with such a regime, preferential harvesting rights for U.S. fishermen. This will result in substantially reduced foreign catches since only the surplus will be allocated among foreign fishermen;
 - implement a standardized system for collecting fisheries data from both foreign and domestic fishermen;
 - introduce more effective enforcement procedures;
- and
- implement satisfactory arrangements to resolve gear conflicts and insure adequate foreign compensation to U.S. fishermen in cases of negligence by foreign fishermen.

We expect that most of our fisheries objectives will be accomplished within two years. Mr. Chairman, the central point I wish to make in my testimony this morning is that I believe that under this negotiating plan we can achieve the functional aspects of a 200-mile fishing zone off the coasts of the United States by agreement with the nations concerned. I believe

that we will be more successful dealing in an atmosphere of negotiation rather than in one of confrontation. Consequently, we will achieve our ultimate goal -- conservation of the fisheries stocks -- more rapidly than could be accomplished by 200-mile legislation.

It is fair to ask why this plan can succeed when past negotiations have not been fully successful in protecting the stocks. My answer, as I have indicated, is that the widespread agreement in the Law of the Sea Conference on a 200-mile coastal fisheries zone has produced a new negotiating climate making these negotiations possible. Prior to the development of a consensus on a 200-mile economic zone in the Law of the Sea negotiations, we would not have been able to demand in bilateral negotiations that other nations fishing off our coasts recognize the objectives which we now seek to establish. We believe that it is in the interests of nations fishing off our coasts to cooperate with us in negotiating a transition to an eventual 200-mile zone. However, these same nations may feel obliged to resist, as a matter of principle, a unilateral declaration by the United States of a 200-mile zone, just as we have felt obliged to resist similar claims made by other nations.



The first test of our new negotiating plan occurred at the September meeting of the International Commission for the Northwest Atlantic Fisheries (ICNAF) in Montreal last month. I addressed the opening session of ICNAF and delivered a personal message to the delegates from President Ford. The President said, and I quote:

"It is imperative that the Commission succeed in establishing adequate conservation measures and enforcement procedures to rebuild the important fisheries stocks of the Northwest Atlantic... . For our part, I pledge the full support of the United States to sound fisheries management and conservation practices, based on scientific evidence and implemented within the framework of internationally negotiated agreements."

With your permission, Mr. Chairman, I offer my statement and the statement of President Ford for inclusion in the record.

I am pleased to report, Mr. Chairman, that on September 28, 1975, the seventeen member nations of ICNAF agreed to reduce their total 1976 fishing effort off the U.S. coast from Maine to North Carolina from 850,000 metric tons to 650,000 metric tons. This represents a 23 percent reduction from the 1975 quota and more than a 43 percent reduction from the actual



catch of 1,154,000 metric tons in 1973, when there was no quota. Mr. Chairman, the real significance of this agreement cannot be seen from the numbers alone. Our experts tell us that under these quotas, the principal fish stocks with which the United States is concerned will begin to increase rather than continue to decline in the area from Maine to North Carolina. If these experts are correct, and I hope and sincerely trust they are, we have passed the crisis point and these stocks will at long last be restored.

Two other very significant achievements emerged from the September ICNAF meeting. ICNAF members agreed to a U.S. proposal for closing a large area of George's Bank off New England throughout the year to bottom fishing in order to protect the valuable and seriously depleted yellowtail flounder and haddock. Although the closed area is slightly smaller than the area originally proposed by the United States, it is sufficiently large to provide satisfactory protection for these important stocks.

ICNAF members also approved a U.S. proposed system of national registration for vessels, which will materially assist member governments and international enforcement personnel in monitoring fishing operations throughout the area.



We believe that the decisions taken at ICNAF indicate that other nations fishing off our coasts are now concerned with conserving fisheries resources. With your permission, Mr. Chairman, I offer for the record the report of the U.S. Delegation to the ICNAF meeting.

Mr. Chairman, as we proceed with our negotiations, we are confident that other nations will be prepared to negotiate mutually acceptable arrangements that will permit their continued participation in coastal fisheries. We also believe that the course of bilateral and multilateral negotiations on which we are embarked will permit negotiations on behalf of our shrimp and tuna fleets that unilateral action on our part might preclude.

Mr. Chairman, in your deliberations on S.961, I believe that the essential question for this Committee to consider is whether the rules governing uses of the oceans are to be developed through international negotiation and agreement, or whether such rules are to be established by a pattern of inconsistent national claims. The example set by the United States in the oceans can encourage international cooperation; or it can promote international disorder and conflict.



We are all agreed that we must take energetic action to meet the legitimate, pressing concerns relating to our fishing interests. We believe that the approach to our bilateral and multilateral fisheries negotiations, which I have outlined this morning, will create a system of conservation and enforcement that will protect important United States fisheries resources.

Thank you, Mr. Chairman.

TESTIMONY BY THE HONORABLE JOHN NORTON MOORE
CHAIRMAN, NATIONAL SECURITY COUNCIL
INTERAGENCY TASK FORCE ON THE LAW OF THE SEA
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE
SUBCOMMITTEE ON OCEANS AND INTERNATIONAL ENVIRONMENT
OCTOBER 31, 1975

Mr. Chairman:

I appreciate the opportunity to testify on behalf of the Administration in opposition to S.961, a bill which would unilaterally extend United States fisheries jurisdiction to 200 miles. There is general agreement that an extended 200-mile area of fisheries jurisdiction over coastal fish stocks is desirable for the protection of such stocks. The issue, however, is whether such an extension should be unilaterally imposed in violation of solemn treaty obligations of the United States or whether it should be achieved through international negotiations now underway. Few issues have presented a starker choice for the future of our national oceans policy. How we decide this issue may largely determine whether we move forward to cooperative solutions to oceans problems or precipitate a spiral of unilateral national claims leading to confrontation and conflict.

We have recently concluded a thorough evaluation of our interim fisheries policy and have determined strongly to oppose measures unilaterally extending our fisheries jurisdiction. Factors which were weighed in that determination include the following:



First, we are continuing to make progress toward a comprehensive Law of the Sea Treaty which will provide balanced protection for all U.S. oceans interests and particularly our fishery interests. The single negotiating text prepared at the Geneva session of the Conference provides for a 200-mile economic zone with coastal State preferential rights and management responsibility over coastal species within the zone and broad protection for our important anadromous stocks within and beyond the zone. These provisions when implemented will provide a sound basis for protecting coastal and anadromous species on a world-wide basis. With your permission I would like to submit for the record the relevant provisions of the single negotiating text dealing with the fisheries issues. Although we have been disappointed with the work schedule of the Law of the Sea Conference we believe that we are approaching the final sessions in this important and complex multilateral negotiation. Paradoxically, unilateral action to extend our fisheries jurisdiction could endanger the best opportunity we have had to achieve international recognition of the jurisdictional arrangements adequate for the protection of U.S. fishing interests on a world-wide basis.



Second, in the period between now and the conclusion of a Law of the Sea Treaty, efforts to ensure greater protection of fish stocks through unilateral action in violation of international law could well be seriously counterproductive. Such unilateral action by the U.S. will not be accepted by states fishing off our coasts and could result in a hardening of positions impairing our ability to protect such stocks. In contrast, efforts to ensure greater protection through negotiations are making substantial progress as the recent highly successful ICNAF agreement, discussed by Under Secretary Maw, illustrates.

Third, a unilateral extension of fisheries jurisdiction such as that of S.961 would be a major blow to our foreign relations and oceans interests. The serious costs of such action include:

-- Abandonment of a cardinal tenet of United States oceans policy - the avoidance of unilateral action contrary to international law. We have consistently protested such unilateral oceans claims by other nations. Such a major unilateral claim would undercut our ability to prevent unilateral

claims by others, harming important U.S. oceans interests. Such unilateral action could, for example, lead to claims which:

- are contrary to our security interests;
- endanger our navigational freedom to transport vital oil supplies. At current prices the value of petroleum imports by sea into the U.S. in 1976 will exceed \$26 billion; or
- subject our oceanographic research vessels to the control of coastal nations.

-- Enforcement of a unilateral 200-mile United States fisheries claim against the Soviet Union and other nations fishing off our coasts could pose a risk of confrontation or retaliation against United States economic interests which would not be posed by a negotiated solution.

-- Enactment of the 200-mile bill would seriously undercut United States objectives in the Law of the Sea negotiations.

-- Enactment of the 200-mile bill could undermine the opportunity through the Law of the Sea Conference to develop universal fisheries conservation obligations. It is not enough that coastal fisheries juris-



diction be extended. Sound conservation also requires that coastal nations be subject to binding conservation obligations. Such obligations can only be achieved through multilateral agreement.

-- Enactment of the 200-mile fishing bill would violate solemn treaty obligations of the United States and constitute a serious setback to development of cooperation rather than conflict in the oceans. The bill would at least violate the fundamental 1958 Geneva Convention on the High Seas to which the U.S. is a party. The issue is so clear that Philip Jessup, formerly a judge of the International Court of Justice, has recently written: "I do not know of any responsible and qualified person who maintains that such a claim (unilateral 200-mile fisheries zone) would be in accordance with international law."

-- A unilateral extension of United States fisheries jurisdiction would seriously injure important United States tuna and distant water fishermen who fish within 200 miles of other nations. The value of tuna landings alone by U.S. fisheries off foreign shores exceeds \$138 million per year. Such a unilateral extension could also endanger existing treaty



arrangements protecting our valuable salmon stocks (including the Atlantic salmon moratorium and the agreement with Japan covering our Pacific salmon) throughout their range beyond 200 miles.

Finally, Mr. Chairman, we note that S.961 is not a narrowly drawn conservation measure aimed solely at the prevention of depletion of stocks off the U.S. coasts and applying in a non-discriminatory way to both U.S. and foreign fishermen. Rather it is a sweeping measure aimed at broad extension of fisheries jurisdiction and preferential rights for U.S. fishermen. We believe such objectives, which we support, are best pursued through negotiations.

Mr. Chairman, in addition to indicating the reasons for strong opposition to S.961 it may be useful to analyze some of the arguments made by the proponents of the bill in support of such unilateral action.

- (A) The 200-mile bill is needed as an emergency measure to protect coastal fish stocks against heavy foreign fishing.

It is true that many stocks off the United States coasts have been depleted by foreign overfishing during



the past 15 years. But the issue is not whether stocks have been depleted by past overfishing; rather it is whether under agreements presently in force and which can reasonably be anticipated there is an emergency situation threatening serious depletion of stocks until a Law of the Sea Treaty can be brought into force. On this point, there is a real question as to the extent of the threat to the stocks at levels of fishing permitted under agreements now in place. For example, under the latest ICNAF agreement, agreed quotas are at a level to provide for a recovery of the principal stocks in the important area from Maine through North Carolina.

We should keep in mind that a unilateral extension of jurisdiction would not provide added protection for our major fisheries within 12-miles or for continental shelf fishing resources, both of which are already under U.S. fisheries jurisdiction.

Most importantly, we expect to be able to continue to reduce foreign fishing through ongoing fishery negotiations. Such negotiations, in the present negotiating climate, are the best way to provide added protection quickly. Though problems



remain, recent bilateral and limited multilateral agreements have been much more effective in protecting stocks off the United States. Moreover, such an approach would not undercut our important interests in tuna, salmon, and coastal species caught within 200 miles of other nations.

(B) The Law of the Sea Conference is taking too long and we cannot wait.

We are not relying on a Law of the Sea Treaty to resolve our interim fisheries problems. Rather we have within the last year greatly intensified our efforts at bilateral and limited multilateral fishing agreements. In the two key negotiations, ICNAF and the 1974 Japanese agreement, we have had substantial success. We achieved a 23% reduction in ICNAF, and last year the Japanese agreed to more than a 25% decrease in their total catch.

The Law of the Sea Conference is, of course, taking time and is not moving as fast as we would like. It is not clear whether a treaty can be completed in 1976 although we will make every effort to do so. We are, however, engaged in the most complex and comprehensive multilateral negotiation ever undertaken. But despite the difficulties, substantial progress is being



made as evidenced by the production of a single negotiating text at the Geneva session of the Conference last spring and an emerging consensus on most major issues (including a 200-mile economic zone with protection for our coastal and salmon fishing interests). As long as substantial progress is being made, because of the importance of the issues at stake, including vital national security interests, we should strongly support the Conference. Most importantly, to make a major unilateral fisheries claim could undermine our ability to achieve international agreement in a Law of the Sea Treaty recognizing the very 200 mile fisheries jurisdiction which we seek.

(C) S.961 will strengthen the hands of our Law of the Sea negotiators.

Although the threat of passage of the 200-mile bill may strengthen the hands of our bilateral fisheries negotiators, the bill is seriously harmful to the broader Law of the Sea negotiations. The reasons why the bill undercuts rather than strengthens the hands of our Law of the Sea negotiators include:

-- we have said that we could recognize a 200-mile economic zone only if our vital interests were protected by a treaty. A



200-mile economic zone is one of the major objectives of many coastal States in the negotiations. For Congress to enact such a zone would give those States one of their principal objectives without our achieving vital objectives in return;

- passage of the 200-mile bill even with a delayed effective date could encourage extremists to stall the negotiations and wait until United States action validates their long-standing claims;
- if United States unilateral action encourages a wave of more extreme unilateral claims, the incentive for agreement may be removed and the Conference could collapse or be strung out indefinitely;
- at the least, such unilateral claims could harden positions and make the negotiations more difficult.

(D) The United States has taken unilateral action before without harm to our interests.



In 1945 President Truman proclaimed United States jurisdiction over the resources of the continental shelf and in 1966 the United States extended its fisheries jurisdiction from 3 to 12 miles. More recently, in 1973 the United States declared the American lobster a "creature of the continental shelf" under the Continental Shelf Convention and thereby subject to United States jurisdiction. These unilateral United States oceans actions are fundamentally different from a unilateral extension of our fisheries jurisdiction to 200 miles. The differences include:

- none was made during the course of a relevant multilateral Conference;
- in the case of the extension of our fisheries jurisdiction to 12 miles, the Soviet Union recognized a 12-mile territorial sea at the time;
- it was evident at the time that there would be few protests from the United States action and this was borne out in fact;
- the latter two United States fisheries claims were of minor significance



compared to an extension of fisheries jurisdiction from 12 to 200 miles.

Moreover, even these more innocuous actions were not free from costs. Some states used the Truman Proclamation to justify 200-mile territorial sea claims. And the more recent claim to include lobster as a "creature of the continental shelf" has given rise to a fisheries dispute with the Bahamas in which Florida-based spiny lobster fishermen have been excluded from their traditional fishing in the Bahamas. It may be instructive to examine the balance sheet on this extension of jurisdiction with respect to the American lobster as a creature of the shelf. Gains in the United States lobster fishery as a result of the United States declaring lobster a creature of the shelf have been slight. But invocation of the same doctrine by the Bahamas has resulted in excluding U.S. fishermen from the Bahamas spiny lobster fishing at a substantial cost in financial and human terms.

Mr. Chairman, we must not and will not sacrifice the protection of fish stocks off our coasts. We are committed to a 200-mile economic zone as part of a comprehensive Law of the Sea Treaty and to the immediate negotiation of a transition to the 200-mile



zone. A unilateral extension of fisheries jurisdiction, however, would not be in the best interests of our fisheries or of the overall oceans and political interests of our nation.

From time to time there is an issue of transcendent importance for national policy and the direction of our foreign relations. This is such a time and such an issue. It is imperative that we join together in reaffirming cooperative solutions to our oceans problems.

Thank you, Mr. Chairman.

