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| FORM OF DOCUMENT | CORRESPONDENTS OR TITLE | DATE | RESTRICTION |
|--------------------|--|---------------------|--------------|
| | 1. <u>Moore to Marsh, 12/19/75</u> | | |
| a. Memo | Robert S. Ingersoll to the President re fisheries legislation (6 pp.) <i>declassified State Ltr. 12/30/93; ut 2/18/94</i> | Undated | A |
| | 2. <u>Moore to Marsh, 12/19/75</u> | | |
| a. Memo | John Norton Moore to Jack Marsh re results of unilateral action (1 p.) <i>opened in part; State Ltr. 12/30/93; ut 2/18/94</i> | 12/19/75 | A |
| b. Memo | Philip Habib to the Deputy Secretary re meeting with Ambassador Yasukawa (6 pp.) <i>opened in part 3/18/92 KBH</i> | 12/19/75 | A |

FILE LOCATION

Marsh Files
General Subject File
Fisheries Jurisdiction - General (2)

Box 17

RESTRICTION CODES

- (A) Closed by Executive Order 12356 governing access to national security information.
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(C) Closed in accordance with restrictions contained in the donor's deed of gift.

WHM, 1/13/86

November 10, 1975

MEMORANDUM FOR:

MAX FRIEDERSDORF

FROM:

JACK MARSH

Would some of your people on the Senate side check with Ed
Braswell today in reference to the 200 mile limit question,
and find out his views.

JOM/dl

opened in 12/30/94
detached State Mr. 12/30/94

in part

opened
3/18/92 KBH



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200 mile
limit

November 11, 1975

MEMORANDUM FOR:

JACK MARSH

FROM:

BOB WOLTHUIS

Yesterday I went up to see Ed Braswell re the 200 mile limit. Janka also went along. Ed said that Stennis is inclined toward a hearing sometime next week. Stennis will talk to Magausen who is apparently not opposed to an Armed Services referral, but is concerned about a delaying effort which is our objective.

Should Magausen oppose the unanimous consent request for referral, Stennis may hold a hearing without the bill. Ed remains concerned about what the White House position really is and hopes we can have a united, strong position by the time of the SASC hearing.

Braswell said we should send General Brown and Admiral Holloway as the Defense witnesses. Janka has alerted Defense to be ready.

JOM/dl

cc: Gen. Scowcroft



Cong.

November 11, 1975

MEMORANDUM FOR:

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FROM:

JACK MARSH

SUBJECT:

200 Mile Limit

Because of the increasing interest in the 200 mile limit and the need to try to work out something on this, could you have one of your House people check with Pete McCloskey to see just where he stands and whether or not he can give us a hand on getting consideration of this delayed until after the first of the year.

JOM/dl



THE WHITE HOUSE
WASHINGTON

November 11, 1975

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November 11, 1975

MEMORANDUM FOR:

BILL KENDALL

FROM:

JACK MARSH

SUBJECT:

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Please stop by to see Ed Braswell in reference to the 200 mile limit issue.

The Armed Services Committee have before them the Magnuson bill and Ed is seeking guidance from the Administration as to whether we want the hearings. I gather he is not too anxious to press it.

You should touch base with Bob Wolthuis who has some additional information to that which I have set out above.

cc: Max Friedersdorf

JOM/dl



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JOM/dl



NOV 14 1975

THE WHITE HOUSE
WASHINGTON

November 13, 1975

MEMORANDUM FOR: JACK MARSH
THROUGH: MAX FRIEDERSDORF *mf*
FROM: VERN LOEN *VL*
SUBJECT: 200 Mile Limit

You inquired about the possibility of delaying action on H. R. 200, the 200 mile limit fishing bill, and S. 961, its Senate counterpart, until after the first of the year.

H. R. 200 passed the House 208-101 with one voting present on October 9. Pete McCloskey was the leading opponent of the bill.

The Senate version was reported by the Commerce Committee on October 7. Foreign Relations formally requested that it be allowed to consider it also. Just today Foreign Relations reported it unfavorably by a vote of 7-6. McCloskey testified during the Foreign Relations hearings on October 21.

Senate Armed Services now has informally requested that it be allowed to look at the bill. If Armed Services does not make a formal request to review the measure, It should be on the Senate floor next week. However, if Armed Services reviews it, floor action would be postponed until the first or second week in December.

The Senate Commerce Committee staff feels that the adverse report by Foreign Relations does not reflect sentiment of the full Senate. They expect it to be passed. McCloskey has been apprised of the above and will do what he can to bring about postponement of Senate consideration or conference action.

*D-
A/m re an issues notebook*

DEC 20 1975



DEPARTMENT OF STATE

Washington, D.C. 20520

December 19, 1975

~~CONFIDENTIAL~~

MEMORANDUM FOR:

Mr. Jack Marsh
Counsellor to the President
The White House

Subject: Options Paper on the 200-Mile Bill

For your information I am attaching an options paper recently sent to the President on the 200-mile bill and a draft Article 7 bill.

John Norton Moore
Deputy Special Representative
of the President for the
Law of the Sea Conference

Attachments:

As Stated.

CC: Mr. Wolthuis
RADM Morris
Mr. French

~~CONFIDENTIAL~~

GDS

DAO
1/21/86



DEPARTMENT OF STATE
WASHINGTON

~~CONFIDENTIAL~~

MEMORANDUM FOR: THE PRESIDENT

From: Robert S. Ingersoll
Acting Secretary

Subject: 200-Mile Fisheries Legislation

I. PROBLEM

A Senate vote on the 200-mile fisheries bill is due shortly. We need to consider the desirability of signaling a veto and also to consider introduction now of legitimate conservation legislation to protect coastal fish stocks off the U.S. as an alternative to the 200-mile fisheries bill.

II. ANALYSIS AND BACKGROUND

The 200-mile fisheries bill (S.961) was reported favorably by the Senate Armed Services Committee on December 3 by a vote of 9-7. The bill is now before the Senate and a vote could come any time. Pursuant to a Presidential decision of August 22, 1975, we have continued strongly to oppose S.961 without signaling a Presidential veto. Following this strategy, we believe that we have gained sufficient support so that a veto would be sustained.

Senate leaders against the bill, such as Stennis, Thurmond and Humphrey, have told us that a veto signal at this time would attract additional support

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E.O. 12356, Sec. 3.4.

NR 91-25, #12; State Mr. 12/30/93

By lt NARA, Date 2/17/94

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against the bill. Of course, an actual decision to veto the bill would not be necessary if we could muster sufficient votes to defeat S.961 on the basis of such a signal.

It is not clear, however, that a veto signal unaccompanied by an alternative solution to the problem of overfishing would be sufficient to defeat the bill. Senator Case has long held, and Senator Williams recently stated on the Senate floor, that the Executive Branch must present a timely, affirmative fisheries initiative to deal with overfishing in order to defeat S.961. Our program of negotiating bilateral and regional fisheries agreements as a transition to a 200-mile fisheries zone has been successful to date in securing agreement to substantial reductions in foreign overfishing. But the pace of these negotiations is too slow to satisfy the demands of our coastal fishermen and their Congressional advocates.

Accordingly, we have concluded that unilateral domestic action tailored to the genuine U.S. coastal fisheries conservation problems must be considered in conjunction with a veto decision. A working group of the NSC Interagency Task Force on LOS has prepared draft legislation that, arguably, would not be incompatible with our treaty obligations and existing international law. The draft bill is based on Article 7 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas. Article 7 permits a coastal state to adopt unilateral measures of conservation for endangered stocks of fish in areas of the high seas adjacent to its coasts if negotiations with other nations have not led to an agreement within six months.

We would prefer no legislation. We believe, however, that legislation based on Article 7 would be substantially less damaging to our overall ocean interests than 200-mile fisheries legislation. Under Article 7 legislation, the conservation measures would apply to all nations fishing off our coasts whether or not they were parties to the 1958 Convention. In the

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final analysis, if good faith efforts to reach agreement were not successful, we would have to be prepared to enforce the provisions against non-parties, including Japan and the Soviet Union. Our rights unilaterally to enforce such measures against non-parties are, however, the weakest part of our legal case. Nevertheless, we believe we have a reasonable legal basis for enforcement of an Article 7 approach against non-parties.

The proposed legislation could be introduced as an administration bill or could be offered by our supporters, perhaps by way of substitution for S.961. It is drafted to permit implementation even more rapidly than S.961. We believe that an Article 7 initiative would be welcomed by those fisheries groups genuinely concerned with protecting coastal stocks off the U.S. since it requires both U.S. and foreign fishermen to refrain from fishing for endangered stocks. However, it would not meet the desires of all of our fishermen who would prefer to restrict only foreign fishermen.

The Soviets and Japanese understand the heavy domestic pressures we face. Although they are not parties to the 1958 Convention, we have reason to believe that the USSR and Japan would go along with Article 7 action.

III. THE OPTIONS

A. Continue strong opposition and signal veto of S.961 before Senate vote.

PRO:

- Would attract additional votes in Senate.
- Would demonstrate clear commitment to negotiated solutions for oceans problems.
- Would reinforce LOS and international posture of U.S.
- Might make actual veto unnecessary.

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CON:

- Might not attract sufficient votes to defeat bill.
- Could expend Presidential political capital.
- Might risk coupling of fisheries legislation with other pending legislation.

B. Continue strong opposition and signal veto of S.961 now while simultaneously indicating we can accept appropriate legislation based on Article 7 of the 1958 Geneva Convention.

PRO:

- Could garner sufficient support to defeat S.961.
- Would preserve LOS and international posture of U.S.
- Would provide a timely, affirmative and non-discriminatory initiative designed to solve genuine U.S. coastal fisheries problems with respect to endangered species.
- Would meet the stated objectives of U.S. coastal fishermen that fisheries stocks off our coasts be conserved, while not alienating our distant water fishermen. (It would not meet the desires of many of our fishermen to exclude or restrict only foreign fishermen, since it would apply equally to foreign and U.S. fishermen.)

CON:

- Might not garner votes necessary to defeat S.961 at this late date.
- Probably would not satisfy principal Congressional proponents of S.961.
- Might open U.S. to charge of acting in violation of treaty obligations or international law. (Although, unlike the 200-mile bill, we would have a reasonable case under international law.)

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- Might open U.S. to charge we were supporting unilateral legislation.

C. Continue strong opposition to S.961 without signaling a veto.

PRO:

- Might obtain a veto-sustaining 1/3 of the Senate vote.
- Would preserve political capital for other issues.
- Would postpone veto decision until last moment.
- Would preserve LOS and international posture of U.S.

CON:

- Would reduce ability to attract votes necessary to defeat bill.
- Would merely postpone veto decision.
- Could increase possibility for superficially attractive amendments such as a delayed effective date, which would not ameliorate the harmful effects of passage of the legislation.
- Would be unpopular with U.S. coastal fisheries groups.

RECOMMENDATIONS:

That you approve Option A to continue strong opposition and signal veto now.

Approve _____ Disapprove _____

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That, as a fallback to Option A, you approve
Option B to signal veto now and indicate acceptance
of Article 7 legislation.

Approve _____ Disapprove _____

CONFIDENTIAL

Draft Fisheries Legislation Based On
Article 7 of the Convention on
Fishing and Conservation of the Living
Resources of the High Seas

To provide for the conservation of fisheries and for other purposes in the interim period prior to the coming into force of a comprehensive Law of the Sea Convention.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Interim Fisheries Conservation Act of 1975."

FINDINGS AND PURPOSE

Recognizing the need for the conservation of fisheries in the interim period prior to the coming into force of a comprehensive Law of the Sea Convention, realizing the need for international agreements to effect the transition to a 200-mile fisheries zone off the coasts of the United States, and bearing in mind that the Law of the Sea Convention will provide for preferential harvesting rights and management authority for coastal States over coastal species:

Sec. 2. The Congress finds and declares that: (1) under the Convention on Fishing and Conservation of Living Resources of the High Seas and based on the holding of the International Court of Justice in the 1974 Fisheries Jurisdiction Case, a coastal nation has a special interest in the conservation of the coastal and anadromous stocks of fish on the high seas adjacent to its territorial sea, and all nations engaged in a fishery have an obligation under international law to negotiate in good faith toward achieving necessary conservation measures for the stocks which they exploit; (2) there is a right in international law for a coastal nation to adopt emergency conservation measures appropriate to coastal and

anadromous stocks of fish in any area of the high seas adjacent to its territorial sea if negotiations to that effect with other nations concerned have not led to agreement within six months, and if there is the need for the urgent application of conservation measures which are based on appropriate scientific findings and which do not discriminate against foreign fishermen; (3) the Convention on Fishing and Conservation of the Living Resources of the High Seas provides appropriate procedures for the establishment of such urgent measures; (4) scientific findings indicate that certain coastal and anadromous stocks in areas of the high seas adjacent to the United States territorial sea are depleted and other such stocks are in danger of depletion unless proper conservation measures are applied; (5) in light of the existing knowledge of these fisheries, there is a need for the urgent application of conservation measures; (6) the United States recognizes that the most appropriate solution to these problems is a widely accepted Law of the Sea Treaty which would provide for coastal nation jurisdiction over coastal fisheries within a 200-mile economic zone, including certain duties on coastal nations to ensure the conservation and full utilization of the stocks and special treatment for anadromous and highly migratory species; and (7) until such a comprehensive Law of the Sea Treaty can be concluded, the United States should take necessary measures consistent with international law and urgently required for the conservation of fisheries stocks.

DEFINITIONS

Sec. 3. For the purposes of this Act: (1) the term "international fishery agreement" means any bilateral or multilateral agreement which deals with fishery management or conservation and to which the United States is a party; (2) the term "contracting party" means any government party to an international fishery agreement; (3) the term "fishing" means the catching, taking, harvesting, or attempted catching, taking, or harvesting, of any species of fish for any purpose, and any activity, or attempted activity, at sea in support of such taking, catching, or harvesting; (4) the term "fish" includes all species of finfish, mollusks, crustaceans, marine mammals (except polar bears, walrus, manatee, and sea otter) and all other forms of marine animal or plant life, exclusive of other highly migratory species and birds;

(5) the term "vessel" means every description of watercraft or other contrivance which is used or is capable of use on water for fishing purposes;

(6) the term "Secretary" means the Secretary of Commerce; (7) the term "State" means the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam;

(8) the term "person" means any individual, corporation, partnership, association, or organization; and (9) the term "United States" shall include the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

FINDINGS AND REGULATIONS

Sec. 4.(a) (1) On the basis of appropriate scientific evidence, the Secretary of Commerce shall, within 60 days of the effective date of this Act, determine if, as specified in Article 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, bilateral or multilateral conservation measures are required to maintain the productivity of the stocks of fish in the area of the high seas adjacent to the territorial sea. Thereafter, he shall continue to monitor the stocks and make additional findings when appropriate. In making such findings, the Secretary shall consult with and take into account the views of other Federal agencies, any interested State agencies, and the commercial and recreational fishing industries affected, any marine fisheries commission, any fisheries advisory body, and any other person having an interest in the conservation of the fish involved and in the enhancement of the marine fisheries of the United States; and

(2) on the basis of these findings the Secretary shall advise the Secretary of State of the findings and possible measures necessary to protect fish stocks in any area

of the high seas adjacent to the territorial sea.

(b) In order to conclude agreements to ensure conservation and the maintenance of the productivity of the stocks of fish in any area of the high seas adjacent to the territorial sea, the Secretary of State shall, in cases in which the Secretary makes the determination specified in Sec. 4(a)(1):

(1) enter into negotiations and may conclude such agreements with other contracting parties to the Convention on Fishing and Conservation of the Living Resources of the High Seas; or

(2) enter into such other bilateral and multilateral negotiations and may conclude such agreements as may be appropriate.

(c) The Secretary of State:

(1) shall at the request of any nation affected by this Act that is not a party to the Convention on Fishing and Conservation of the Living Resources of the High Seas, enter into an agreement mutually accepting the dispute settlement provisions of Article 9 of that Convention or any other appropriate compulsory dispute settlement procedure with respect to any dispute that may arise regarding measures taken pursuant to this section; and

(2) may appoint, in consultations with the Secretary, the United States member to any special commission invoked pursuant to such Convention or the equivalent in any other dispute settlement body.

(d) The Secretary of State shall certify to the Secretary the provisions of any agreement concluded or that, following at least six months of negotiations, agreement has not been reached. In the latter case, the Secretary of State shall continue to negotiate with the concerned nations.

(e) (1) Upon certification by the Secretary of State of the results of negotiations, the Secretary shall promulgate regulations governing fishing in the area of the high seas adjacent to the territorial sea by vessels documented under the laws of the United States, or otherwise registered under the laws of any State, and by any other vessel for the purposes of --

(A) fulfilling the international rights and obligations of the United States under any international fishery agreement; and
(B) conserving and maintaining the productivity of the fish in such waters.

(2) Any regulation promulgated to carry out paragraph (1) (B) may designate zones where, and establish periods when, no fishing shall be permitted; establish size and catch limits for any species of fish; prohibit the use of certain types of fishing gear; and prescribe such other measures as the Secretary deems necessary and appropriate, provided that such regulations do not discriminate in form or in fact against foreign fishermen.

(3) With regard to any regulations applicable to a fishery in which a reduction of the catch is required, the Secretary may take into account the following factors, in addition to other factors he deems relevant, in order to

avoid discrimination in form or fact from such regulations:

(A) the size and impact on the fishery of any affected vessels; or fleets;

(B) the capability of any affected vessels to divert their effort to other areas;

(C) the capability of any affected vessels to divert their effort to other species;

(D) the special dependence of any affected vessels and fishermen on the fishery for their livelihood; and

(E) the continued fishing over long periods of years and the historic dependence of any affected vessels on the fishery.

(f) (1) Upon completion of the procedures specified in Sec. 5 below, regulations issued pursuant to paragraph (e) (1) (A) of this Section shall have force and effect with regard to nations which are contracting parties to the relevant international agreement, and regulations issued pursuant to paragraph (e) (1) (B) shall have effect with regard to all other nations engaged in the relevant fishery.

(2) The Secretary of State shall notify all affected nations of the effective date of regulations.

(g) Subsection (f) shall not apply in case of any foreign vessels or the master or other person in charge of such vessel, if the Secretary of State in consultation with the Secretary determines that such foreign vessel is engaged in scientific

research activities which are not directly in support of fishing.

PROCEDURES FOR ISSUING PROPOSED REGULATIONS

Sec. 5. (a) Following certification by the Secretary of State pursuant to section 4 (d) and before any regulation is promulgated pursuant to Section 4, the Secretary shall --

(1) consider existing and projected population levels of the fish involved;

(2) evaluate the need for, and the extent to which, the regulation will contribute to the conservation of such fish;

(3) consider existing management programs, statistics, and data relating to such fish;

(4) consult with the Secretary of State, if such regulation will apply to foreign vessels;

(5) consult with the Secretary of the department in which the Coast Guard is operating, if such regulation involves methods and procedures for enforcement at sea;

(6) consult with other Federal agencies and any interested States agencies;

(7) consult with and take into account views and proposals put forth by representatives of the commercial and recreational fishing industries affected, and take into account views and proposals put forth by any marine fisheries commission, any advisory fisheries/body, and any other person having an interest in the conservation of the fish involved and in the enhancement of the --marine fisheries of the United States; and

(8) consult with the Secretary of State with respect to regulations promulgated under Sec. 4(e)(1)(A) to ensure that they conform with the relevant agreements and with respect to those promulgated under Sec. 4(e)(1)(B), for the purpose of ensuring that the relevant criteria set forth in Article 7 of the Convention on Fishing and the Conservation of the Living Resources of the High Seas are met.

(b) The Secretary shall publish in the Federal Register any regulation which he proposes to promulgate pursuant to Section 4. Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit written data, views, or comments.

(c) On or before the last day of a period fixed for the submission of written data, views, or comments under subsection (b), any person who, or State which, may be adversely affected by such proposed regulation may file with the Secretary written objections to the specified provision of the proposed regulation, stating the grounds therefor, and may request a public hearing on such objections. If the Secretary determines that the person filing objections may be adversely affected, or if a State requests a hearing, the Secretary shall not promulgate the regulation, except as provided for by subsection (d).

(d) As soon as practicable after the period of filing objections has expired, if the Secretary determines that the person filing objections may be adversely affected or if a State requests a hearing, the Secretary shall publish in

the Federal Register a notice specifying the time and place at which a public hearing shall be held, the provisions of the proposed regulation to which such objections have been filed, and such other provisions as he may designate for consideration. The Secretary thereafter shall hold a public hearing in accordance with Section 553 of Title 5, United States Code, for the purpose of receiving information relevant to the matters identified in the notice of hearing. If two or more persons or States request hearings within the prescribed period and the Secretary deems such hearings appropriate, the Secretary may, as he deems appropriate, consolidate such hearings in the interests of time and economy. At the hearing any interested person or State may be heard. As soon as practicable after the completion of the hearing, the Secretary shall act upon such objections, make his determinations public (including a statement of his reasons therefor), and promulgate the proposed regulation with such modifications, if any, as he deems appropriate.

(e) The Secretary may from time to time revise any regulation promulgated pursuant to Section 4 in accordance with the procedures prescribed in subsections (a) through (d).

(f) Notwithstanding subsections (b), (c), and (d), the Secretary may waive the requirements for notice and public hearing set forth in such subsections with respect to any proposed regulation if he finds (and incorporates the finding and brief statement of the reasons therefor in the publication of the

regulation) that, due to an emergency situation, notice and hearing thereon, are impracticable, unnecessary, or contrary to the public interest. Written objections may be submitted within 30 days after the promulgation of any such proposed emergency regulations.

VIOLATIONS AND PENALTIES

Sec. 6. (a) (1) It shall be unlawful for any vessel or master or other person in charge of a vessel to engage in fishing in violation of any regulations in force pursuant to Section 4 of this Act.

(2) It shall be unlawful for any master or other person in charge of a vessel knowingly to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken in violation of such regulations.

(3) It shall be unlawful for any person knowingly to fail to make, keep, submit, or furnish any record required by regulation to be made, kept, submitted or furnished, or to refuse to permit anyone authorized pursuant to Section 7 to inspect any record or report required by regulation to be made, kept, submitted, or furnished;

(4) It shall be unlawful for any person knowingly to refuse to permit anyone authorized pursuant to Section 7 to board a vessel pursuant to Section 8(b)(1), or to forceably assault, resist, oppose, impede, intimidate, interfere with, or kill anyone authorized pursuant to Section 7 to enforce the provisions of this act and the regulations issued thereunder while engaged in or on account of the performance of his official duties.

(b) Except as otherwise provided in an international fisheries agreement,

(1) Any person violating subsection (a) (1) of this section shall, upon conviction, be fined not more than \$25,000 or \$250 per net tonnage weight of the vessel, whichever is greater, and for each subsequent offense of a similar nature, in addition to a fine, the fish or such vessel, including its fishing gear, or both, or the monetary value thereof as determined by the court, may also be ordered forfeited in whole or in part to the United States or otherwise disposed of by the court. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XX~~

(2) Any person violating subsection (a) (2) of this section shall, upon conviction be fined not more than \$5,000, and for each subsequent offense of a similar nature, not more than \$10,000.

(3) Any person violating subsection (a) (3) of this section shall, upon conviction, be fined not more than \$10,000.

(4) Any person violating subsection (a) (4) of this section shall be fined not more than \$10,000 or imprisoned not more than three years, or both. Any person violating subsection (a) (4) of this section who kills any such person shall be punished as provided under sections 1111 and 1112 of Title 18, United States Code.

ENFORCEMENT

Sec. 7. (a). The provisions of this Act and the regulations issued thereunder shall be enforced by the Secretary, and the Secretary of the Department in which the Coast Guard is operating. The Secretary and the Secretary of the Department in which the Coast Guard is operating may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or, with respect to any vessel documented under the laws of the United States or otherwise registered under the laws of any State, the personnel, services, and facilities of any State agency, in carrying out the provisions of this Act and the regulations issued thereunder, including those relating to enforcement.

(b) Anyone authorized pursuant to subsection (a) to enforce the provisions of this Act and the regulations issued thereunder may--

(1) board and inspect any vessel documented under the laws of the United States or otherwise registered under the laws of any State or any other vessel of a nation party to an international fishing agreement fishing in an area for which conservation measures are in effect pursuant to this Act and inspect its catch and gear, for the purpose of enforcing conservation measures in effect.

(2) arrest any person, with or without a warrant, when he has reasonable cause to believe that such person has violated this Act or any regulation issued thereunder;

(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) seize any vessel, including all fish and fishing gear found on board such vessel, which violates the provisions of this Act or any regulations issued thereunder, and seize any fish taken in violation of this Act or the regulations issued thereunder, and any vessel, fish, or fishing gear so seized may be ^{ordered forfeited to the US or otherwise} disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulations;

provided that with respect to a foreign flag vessel, the Secretary of State has determined that if the state of nationality of the vessel has effective procedures for the punishment of vessels fishing in violation of such laws and regulations, such vessels shall be delivered promptly to duly authorized officials of the state of nationality of the vessel for legal proceedings.

(c) State officers authorized pursuant to subsection (a) to function as Federal law enforcement agents shall not be considered to be Federal employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(d) The Federal district courts shall have exclusive jurisdiction over all cases arising under this Act, and may issue all warrants or other processes as may be necessary. In the case of Guam, actions arising under this Act may be brought in the district court of Guam, and in the case of

the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa, such actions may be brought in the District Court of the United States for the District of Hawaii, and such court shall have jurisdiction of such actions.

(c) Notwithstanding the provisions of Section 2464 of Title 28, United States Code, when a warrant of arrest or other process in rem is issued in any case under this Section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the respondent or claimant of the fish a bond or other surety satisfactory to the court, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such case. Such bond or other surety shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

JURISDICTION AND APPLICATION

Sec. 8 (a) Nothing in this Act shall derogate from the provisions of any international agreement or any statute implementing the same or any other statute which may apply to the subject matter of this Act, including, inter alia, the Act of May 20, 1964, 16 U.S.C. 1085 (a) relating to continental shelf fisheries resources; the Act of October 14, 1966, 16 U.S.C. 1091-1094 concerning the contiguous fisheries zone; the Act, 16 U.S.C. 1081-1086 relating to foreign fishing in U.S. territorial waters; the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361, 1362, 1371-1384, 1401-1407; and the Endangered Species Act of 1973; 7 U.S.C. 136, 16 U.S.C. 460 L-9, 460 R-1, 668 dd, 715 i, 1362, 1371, 1372, 1402, 1531-1543.

(b) Nothing in this Act shall be construed to extend or diminish the jurisdiction of any State seaward of the coastline of the United States.

APPROPRIATIONS

Sec. 9 There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

PERIOD OF APPLICATION

Sec. 10 This Act shall cease to have force and effect upon the effective date for the United States of (i) legislation implementing the fisheries ^{provision} / of the Law of the Sea Convention resulting from the Third U.N. Conference on the Law of the Sea or (ii) legislation provisionally ^{applying} / the fisheries ^{provision} / of the Law of the Sea Convention.



DEPARTMENT OF STATE

Washington, D.C. 20520

DEC 20 1975

December 19, 1975

~~SECRET~~

MEMORANDUM FOR: Mr. Jack Marsh
Counsellor to the President
The White House

Subject: First Fruits of Unilateral Action

Attached is a recent memorandum indicating that the Japanese are now threatening to extend their territorial sea from the present 3-mile limit to 12 miles. This move is clearly linked to the 200-mile bill either in terms of popular pressure to follow our lead or as a deliberate signal to us not to unilaterally extend our jurisdiction. An extension without prior agreement in an LOS treaty on unimpeded transit of straits could be severely damaging to US security interests. Extension of the Japanese territorial sea from 3 to 12 miles would overlap the important Tsugaru straits, among others. Domestic pressure could then force the Japanese to side with the extreme strait states in opposing submerged transit of nuclear submarines, overflight, or other important aspects of unimpeded transit of straits.

Unless we stop the 200-mile bill we can expect a host of such harmful unilateral claims.

John
John Norton Moore
Deputy Special Representative
of the President for the Law
of the Sea Conference

Attachment:
As Stated.

CC: RADM Morris, Mr. French, Mr. Wolthuis, Mr. Clift

~~SECRET~~
~~XGDS~~

DECLASSIFIED - EO 12958 Sec. 3.4

MR 91-25, #13 ; St. 17. 12/30/93

By *lt* WADA, Dec 2/15/94



DEPARTMENT OF STATE
BRIEFING MEMORANDUM

S/S

December 19, 1975

SECRET

TO: The Deputy Secretary
FROM: EA - Philip C. Habib
D/LOS - John Norton Moore

Your Meeting with Ambassador Yasukawa
Friday, December 19 - 2:30 P.M.

PARTICIPANTS

US

The Deputy Secretary
John Norton Moore, D/LOS
Rust Deming, EA/J (notetaker)

JAPAN

Ambassador Yasukawa

CHECKLIST

- Express great concern about possible GOJ unilateral declaration of twelve-mile territorial sea during LOS negotiations; note we understand political pressure for unilateralism, but we continue to resist similiar pressure here.
- State we would be unable to recognize twelve-mile territorial sea claim, complicating our bilateral relations.
- Note that extension of claim over straits conflicts with national interests of both countries that merchant and naval vessels as well as aircraft be guaranteed unimpeded passage through and over straits used for international navigation.
- Express belief that twelve-mile exclusive fishery zone would solve Japan's problem; note we have had a twelve-mile fishery zone since 1966.

DECLASSIFIED - E.O. 12356, Sec. 3.4
With PORTIONS EXEMPTED
E.O. 12356, Sec. 1.3 (a) (5)

CONFIDENTIAL
XGDS - 3

MR 91-25, #14 State Dr. 2/10/92

By YBH, NARA, Date 3/17/92

- Emphasize that success of LOS Conference is essential not only for stable oceans regime but also for reinforcing the role of law in international society; express hope that both Governments will continue to work for the success of the LOS negotiations.

BACKGROUND

You are calling in Ambassador Yasukawa this afternoon to express our concern about indications that Japan may unilaterally claim a twelve-mile territorial sea. Japan has worked closely and effectively with us in the LOS negotiations, but as these discussions have stretched out, the GOJ, like the USG, has come under increasing pressure from its fishing industry to take immediate steps to protect the fishery resources off its coasts. In Japan's case, the problem is caused by Soviet fishing fleets which, during the winter months, take large quantities of marine resources within twelve miles of Japan's coast. Bilateral agreements between Japan and the Soviet Union have failed to control the problem, and Japanese fishing interests, pointing to the unilateral action either already taken or contemplated by other states, are demanding that the GOJ declare a twelve-mile territorial sea as soon as possible in order to thwart the Soviet fishing fleets.

In response to this pressure the GOJ has agreed to study the problem and to put forward a unified position within the next few weeks. The Foreign Ministry, supported by the Defense Ministry, continues to oppose any unilateral action during the LOS Conference. They argue within the GOJ that unilateral action at this time would severely damage Japan's broader interests and would complicate its relations with other states, particularly the US. The other ministries, the LDP, and the Diet are much more attuned to the domestic pressures than to the potential international complications of unilateral action.

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JAPAN'S POSITION

The Japanese coastal fishing industry and its supporters are convinced that Japan can only control Soviet fishing activity off its coast by declaring a twelve-mile territorial sea. Fishery officials have reportedly considered a twelve-mile "exclusive fishing zone" but may have rejected this approach in the belief that international law remains ambiguous on the legality of such a scheme and because of the fear that Japan might be forced to grant access to the zone to states which have historically fished these waters. On the other hand, the Foreign Ministry and, to a lesser degree, the Defense Ministry remain firmly opposed to the unilateral declaration of a twelve-mile territorial sea because it would undermine the LOS effort, complicate its relations with the US, and encourage other states to take unilateral action which would adversely affect Japan. Moreover, such a claim, in the absence of an international unimpeded transit regime on straits, poses particular problems for Japan.

The extended territorial sea claim would encompass the Tsugaru straits and the sea lanes between the Ryukyu Islands. In the absence of a concurrent Japanese disclaimer of jurisdiction over international straits, this claim would run directly counter to Japan's strong interests in maintaining unimpeded passage in Malacca, Hormuz and other straits. The claim would also put Japan in direct conflict with the straits position of the United States and the other maritime powers, strengthen the hand of the hard-line straits states, and undermine the tentative compromise on the straits issue achieved in Geneva.

The GOJ is deeply concerned about the possibility of a US unilateral claim to a 200-mile fisheries zone and they have made a number of high-level approaches to the USG against the bill. In John Moore's recent discussions in Tokyo, GOJ representatives made a subtle but clear linkage between our possible unilateral action on fisheries and their possible unilateral move toward a

twelve-mile territorial sea with its resulting straits problem.

The Foreign and Defense Ministries positions appear to be losing ground within the councils of the GOJ. The possibility is increasing that Japan will take unilateral action no later than early Spring or, at the minimum, that they are signalling they will move unless we stop the 200-mile fisheries bill.

US POSITION

We are opposed to unilateral action by Japan to expand its territorial sea to twelve miles because:

-- unilateral action by any state prior to agreement in the LOS Conference will further undermine the prospects for the success of that Conference.

-- Japan's claim to a twelve-mile territorial sea would encompass several international straits. Such a claim would be in direct conflict with our mutual, worldwide interest in unimpeded transit through and over straits, would threaten a direct confrontation between the USG and the GOJ over straits passage issues, and would undermine our joint efforts to protect navigational freedom.

We believe that Japan can best meet its immediate fishing problem with the Soviet Union by establishing a twelve-mile "exclusive fishing zone" in lieu of expanding its territorial sea. Establishment of a twelve-mile fishing zone is consistent with existing international law, in contrast to a purported territorial sea extension, and thus would not raise navigation issues. Reported legal objections to such a zone are, in our view, without merit. Indeed the US has had a twelve-mile zone since 1966.

In approaching the GOJ on this problem we are, of course, in a rather awkward situation. We do not know what action, if any, the Senate will take on the 200-mile fishery bill or if the President will veto such

a bill if it does pass. Moreover, we do not accept a direct linkage between Japan's possible territorial sea extension and a possible US fisheries extension. In any event, we believe that we cannot wait until our domestic situation clarifies before making our views known to the GOJ.

YOUR TALKING POINTS

-- We are deeply concerned by reports that Japan may unilaterally declare a twelve-mile territorial sea. We understand the kind of domestic political pressure for unilateralism you face as we have a similar problem on a 200-mile fishery zone. However, we continue to oppose unlawful action by any state prior to a LOS agreement, and we are making every effort to defeat the bill now before the Senate.

-- We would be unable to recognize and thus compelled to protest such a claim, thereby unnecessarily complicating our bilateral relations.

-- The extension of Japan's territorial sea claim to encompass international straits poses a more general problem. We believe that it is essential to the national interests of both countries that merchant and naval vessels as well as aircraft be guaranteed unimpeded transit through and over international straits. Japan's contemplated action would greatly complicate this effort.

-- We believe that establishment of a twelve-mile exclusive fisheries zone by Japan would solve Japan's fisheries problem with the Soviet Union. Such action would be consistent with existing international law and would not raise the divisive issues inherent in a unilateral claim to an expanded territorial sea. Indeed we have had a twelve-mile fisheries contiguous zone ourselves since 1966.

-- The US and Japan have worked closely and constructively on LOS matters. I believe that both governments recognize that the success of this effort is not only essential to an orderly system of navigation and ocean resource exploitation but also will have a great bearing on the future role of law in international society. I hope that both governments will avoid actions

which could complicate reaching a successful conclusion to these negotiations.

Drafted: EA/J:RMDeming:bam
X23152 12/19/75

Clearance:

T - Mr. Craft *RCma*
D/LOS - Mr. Nordquist *mm*
L/OES - Mr. Colson *mm*
OES - Mr. Scully *TCM*
PM/NPO - Mr. Nojenzo *mm*

JAN 21 1976

THE WHITE HOUSE

WASHINGTON

January 21, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: MAX FRIEDERSDORF *MF.6*

SUBJECT: 200 Mile Limit Bill

Senator Ted Stevens (R-Alaska) reports that he will offer his amendment extending the implementation of the 200 Mile Limit Bill until Jan. 1, 1977, on the Senate floor today and he expects it to pass because of Senator Magnuson's support.

Senator Stevens also advises that he and the Chairman would be receptive to a further extension date next year if this year's negotiations fail to produce a resolution of the issues and progress is being made at the Law of the Sea Conference.

Under the Stevens Amendment the machinery to implement the bill could be set up prior to the trigger date but there would be no enforcement until January 1, 1977.

Senator Stevens indicated that Senator Magnuson has pledged his support to hold this date in conference. The final vote in the Senate is not expected until next week, probably on Tuesday, and Senator Stevens indicates that they could keep the bill in conference for possibly 90 days.

It appears that the proponents now have about 60 votes in favor of passage.

The letter from Defense, State and Commerce requesting a 90-day recommitment is now being delivered to the Senate leadership and jurisdictional Committees.

bcc: Jack Marsh
Dick Cheney
General Scowcroft



Cong
Relations

March 5, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF
FROM: JACK MARSH

In reference to the 200 Mile Limit Bill, do you think we could prevail upon the Leadership to delay sending the bill down for signature with the hope of avoiding an adverse impact on the Law of the Sea Conference?

Let's discuss.

Many thanks.

JOM/dl



March 17, 1976

Dear Van:

This is a follow-up to my other letter in response to your communication of January 28 concerning the 200-mile interim fisheries legislation.

The President was pleased to learn that the conferees agreed this morning to the March 1, 1977 date, and has indicated that he probably will not veto an extended limits bill if it contained a delayed implementation date in the legislation.

As you know, the President has decided that the United States will seek in the United Nations Law of the Sea Conference, which resumed this month, to settle all the problems of the sea, including fishing rights. Since the implementation date has been set for March 1, 1977, an acceptable agreement hopefully can be reached in the Law of the Sea Conference.

Let me assure you that the President appreciates having your views on this important issue.

With kindest personal regards, I remain

Sincerely,

John O. Marsh, Jr.
Counsellor to the President

The Honorable Lionel Van Deerlin
House of Representatives
Washington, D. C. 20515

JOM:GWH:MLF:NK:nk



APR 8 1976

April 7, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: MAX FRIEDERSDORF

SUBJECT: Rep. Pete McCloskey (R-Calif)/ 200 Mile Limit Bill

Pete McCloskey called from the Law of Sea Conference in New York today with the request he meet with the President on Thursday afternoon.

McCloskey is essentially going to recommend that the President veto the 200 Mile Limit Bill now at the White House.

McCloskey believes that if the President signs the bill it will have an adverse affect on the primaries in Texas and California because of their distant fleet fishing interests.

McCloskey will also make the point that the President could include in his veto statement the promise to sign a bill later if the Law of Sea Conference this year is not successful.

Because of the President's crowded schedule I recommend the President call McCloskey in New York rather than schedule a meeting.

McCloskey can be reached at code 212-826-4528.

bcc: Jack Marsh
Dick Cheney
General Scowcroft



April 24, 1976

MEMORANDUM FOR:

ROBERT HARTMANN
DOUG SMITH

FROM:

JACK MARSH

Attached is a photocopy of a round robin letter signed by Senator Tower urging the President to veto the 200 mile limit.

I call to your attention the last paragraph of the first page.



TERRAR, JR.
ADMINISTRATIVE ASSISTANT

Congress of the United States

House of Representatives

2307 Rayburn Building
Washington, D.C. 20515

SAN DIEGO OFFICE:
SUITE E285
123 CAMINO DE LA REINA
SAN DIEGO, CALIFORNIA 92108
TEL.: 714-299-2444

April 9, 1976

hand delivered
APR 9 1976

Dear Mr. President:

We are writing with regard to the 200-mile bill, (H.R. 200, Marine Fisheries Conservation Act of 1975) passed in March by the House and Senate, and now before you for your action.

Because of the increasingly destructive effect the passage of H. R. 200 is having on the United Nations Law of the Sea Conference and other international negotiations, we strongly urge you to veto the bill in its present form.

Problems are arising at the Law of the Sea Conference on issues concerning the limits of national jurisdiction over international activities conducted within the 200-mile economic zone. Nations favoring a territorial sea are hardening their positions urging sovereign coastal state control over these activities. These nations base their argument on the reasoning that, by passage of the 200-mile bill, the U.S. has extended national jurisdiction over interests important to itself without regard for the interests of other nations, thereby leading the way for other countries to do likewise. Pending deep seabed legislation further supports this reasoning.

Negotiations currently jeopardized by passage of H. R. 200 concern dispute settlement in the 200-mile economic zone and regional tuna fisheries management agreements. Coastal state jurisdiction over these and other international activities will result in a de facto territorial sea, a situation totally unacceptable to the United States.

Passage of H. R. 200 has led to the exclusion of the U.S. tuna, shrimp, and red snapper fishermen from the coast of Mexico by Mexico's unilateral extension of its jurisdiction over resources 200 miles from its shore, a direct response to H. R. 200. Negotiations concerning our fishing rights within Mexico's 200-mile zone are encountering serious difficulties which will be worsened by enactment of H. R. 200.

Baker Cable
Charles W. Wheeler, Jr.

John Tower

The Honorable Gerald Ford
The White House
Washington, D. C.