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The Theory and Practice of the 12-Mile Fishery Limit

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I HAVE BEEN ASKED to speak on the "Theory and Practice of the 12-Mile Fishery Limit" in international law. I shall discuss its origin, recent developments respecting it, and how it will affect (or not affect) some of the principal international fishery problems.

In general one can say that the theory behind the 12-mile fishery limit is that its adoption will protect fish stocks from overfishing and give the fishermen of the adjacent coastal country a beneficial advantage in harvesting them. In practice, such a limit has little, if any, effect on protecting major fish stocks from overfishing and in few major fisheries of the world does it give a critical advantage to the coastal fishermen or do more than create a nuisance for the high-seas, long-range fishermen. As a tool for solving international disputes over fisheries its short-term utility is minor and transient; its long-term use will be substantially nil.

It is generally agreed that the navigable waters of the world fall into three categories: inland waters, the territorial sea, and the high seas.

The inland waters include all bodies of water within the land territory. Over these waters a nation exercises a complete sovereignty the same as it exercises over its land territory. This includes the right to exclude foreign vessels from the use of these waters. The outer limit of a nation's inland water is the inner limit of its territorial sea.

The territorial sea is a band of water lying between the outer boundary of the inland waters and the inner boundary of the high seas which also forms a part of the national territory of the contiguous country, but foreign vessels have the right of innocent passage through it. This privilege is in the nature of a concession, and it may be conditioned by special regulations laid down by the coastal nation for particular purposes connected with the protection of navigation and the execution of laws of that country.

Seaward of the territorial sea are the high seas. Their essential quality is that they are not subject to the sovereignty of any one nation, but every nation has an equal right to use them. Freedom of navigation over, on, and under them, freedom of fishing in them, and freedom to lay cables and pipelines under them are the essential aspects of the high seas.

The chief arguments among nations in recent years in respect to these types of water has been the manner of delimiting the inner and outer boundary

of the territorial sea and the determination of its breadth.

The first of these questions was settled by the terms of the 1958 "Convention on the Territorial Sea and the Contiguous Zone". Its third article reads "Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low water line along the coast as marked on large scale charts officially recognized by the coastal State". Article 4 defines the exceptions permitted where the coastline is deeply indented or cut into, or if there is a fringe of islands along the coast in its immediate vicinity. Articles 7, 8, 9, 10, 11, 12, and 13 define the way in which drawing the baseline for the territorial sea may be affected by bays, permanent harbor works, roadsteads, islands, lowtide elevations, and river mouths, as well as between adjacent countries. Article 6 states "The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea." This convention requires 22 ratifications to come into force and is in the process of accumulating them. The United States ratified this convention in 1960 and it now lacks only one more ratification before it comes into force. It can be taken as present international law on this subject.

There is a considerable amount of enthusiasm among sea lawyers in our country as well as in others for the thesis that large sectors of the high seas can be incorporated into the national territorial sea simply by drawing lines between far distant headlands and measuring out from these "base-lines" the breadth of the territorial sea.

This is such sheer nonsense as to not justify using time to discuss it. Despite the fact that a "base-line" from the Alaskan peninsula to Cape Spencer looks fine to Alaskan small boat fishermen, from Cape Cod to Cape Hatteras looks good to menhaden people, and from Key West to Rio Grande looks fine to some American shrimpers, this issue has been examined in detail and has been settled in International Law by the International Court of Justice (Anglo-Norwegian Fisheries Case), the International Law Commission, and the community of Nations at the Law of the Sea Conference in 1958. Sea lawyers interested in the issue would do well to read the documents.

The breadth of the territorial sea has not been settled upon. There never has been general agreement upon it among nations. In the course of history the pendelum has swung from the Roman concept of *mare liberum,* to the claims of Spain and Portugal in the fourteenth and fifteenth centuries to sovereignty between them over the whole world ocean, and then back again to a 3-mile limit during the nineteenth century.

The 3-mile limit has never been agreed to among nations. It was imposed by the two prime naval powers, England and the United States, for a long period of time. It was agreed to in the first part of this century by countries whose ships carried upwards of 80% of the world's commerce. However when the League of Nations convened a conference at the Hague in 1930 to consider the codification of the Law of the Sea there was so much disagreement on what should be the breadth of the territorial sea that no single resolution proposing an appropriate breadth was even put to a vote. That conference was a failure from that cause.

Article 13 of the Charter of the United Nations requires the General Assembly to "initiate studies and make recommendations for the purpose of . . encouraging the progressive development of international law and its codifica-

tion". In 1947 the General Assembly established the International Law Commission composed of independent experts in international law charged with the codification and development of international law. The ILC began its study of the Law of the Sea at its first meeting in 1949, considered it at each meeting thereafter for the next seven years, and in 1956 presented its final report on this subject to the General Assembly in the form of 73 articles, each accompanied by a commentary, suitable for adoption as a convention among nations. It recommended that a conference of plenipotentiaries be called for that purpose.

The Commission, in its own sessions, had been unable to reach agreement as to the proper breadth for the territorial sea, although it did say that in its consideration international law did not permit an extension of the territorial sea beyond 12 miles. While it considered several proposals at its 1956 session, none of them received majority approval. The Commission's carefully worded conclusions on this point were:

"1. The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.

"2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.

"3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such breadth when that of their own territorial sea is less.

"4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference."

Pursuant to this recommendation the United Nations convened a conference of plenipotentiaries to consider the Law of the Sea in Geneva, Switzerland, in 1958. It was attended by the representatives of 86 sovereign nations. Four conventions emerged from this conference, and have since been the subject of ratification by nations. These were:

(1) Convention on the Territorial Sea and the Contiguous Zone,
(2) Convention on the High Seas,
(3) Convention on Fishing and the Conservation of the Living Resources of the High Seas,
(4) Convention on the Continental Shelf.

The fourth of these has already received more than the required number of ratifications and is in force. The first and second only require one more ratification before coming into force. The third requires about nine more ratifications before coming into force.

While the conference was able to reach agreement on nearly all aspects of the Law of the Sea, and codify them in these four conventions, two aspects defied all attempts at agreement. They were:

(1) The breadth of the territorial sea, and
(2) The jurisdiction by the coastal country over fisheries lying in the adjacent high seas.

To attempt to resolve these last two remaining points, the United Nations convened a second conference on the Law of the Sea at Geneva in 1960, to which the representatives of 88 countries came. The contest was between those who wished a 3-mile territorial sea, and those who wished a 12-mile territorial sea. The 3 milers were willing to compromise to a 6-mile territorial

sea plus fishery rights in an additional 6 miles. When, after six weeks of intensive debate and maneuver, the final vote come on the compromise proposal on April 26, it failed by one vote to gain the required two-thirds majority.

Accordingly there still is no agreed breadth for the territorial sea among nations.

Much clarification was gained, however, on this point during these years of study, debate, and conference. There remains no reasonable doubt that the proper breadth of the territorial sea in international law is between 3- and 12- marine miles. An interesting sidelight on this was illustrated by the vote brought forward during the 1958 conference on a proposal sponsored by Colombia. In brief it proposed that there be a 12-mile territorial sea plus a 12-mile zone of exclusive fishery jurisdiction. The only affirmative vote it got was that of the sponsor.

Also it was clear that a majority of nations favored a breadth of territorial sea less than 12 miles. This appeared more distinctly at the second conference even than at the first. The final vote on the U.S.-Canadian proposal for a 6-mile territorial sea plus 6 miles of additional fishery jurisdiction was 54 nations in favor, 28 against, and five abstentions—out of 87 nations voting. This was nine more affirmative votes than the United States proposal received at the first conference. By contrast, the proposal of the 12 milers received only 32 affirmative votes at the Second Conference as against 39 negative votes and 17 abstentions, or well less than a simple majority.

I am unaware of any special concept of a 12-mile fishery zone, considered separately from the breadth of the territorial sea, existing before the International Law Commission began its studies. To the best of my knowledge this concept arose as a special entity during these two conferences as a compromise to gain votes for a narrower than 12-mile territorial sea, rather than arising from any pre-existing fishery problem or concept. Prior to this time, where a nation claimed exclusive rights to fishing within 12 miles of its coast, this was because it claimed a 12-mile territorial sea. These countries were few in number.

A study of the history of these two conferences shows two things quite clearly:

(1) There was always a clear *simple* majority in favor of a 3- or 4- marine mile breadth for the territorial sea (one marine league interpreted both Anglo-Saxon and Scandinavian ways).

(2) There was never a two-thirds majority in favor of so narrow a breadth for the territorial sea. The wrangling of Canada, United States, and United Kingdom over the proper compromise of their own fishery problems (as between Canada and the United States among themselves) prevented these three prime exponents of the 3-mile limit from developing a compromise which would protect their fishing interests and military interests simultaneously while being capable of drawing two-thirds majority vote. The great, simple majority strength of the straight 3-mile limit was never tested at the vote because the wrangle over fisheries between Canada and the United States could not be settled by that. The compromise of 6 plus 6 they settled on between themselves also failed to win the necessary two-thirds majority, and pulled very few votes that a 3 plus 9 formula would not have won as well. In moving to the 6 plus 6 formula the Anglo-Saxons jeopardized the larger half

of their military interests in this issue, while gaining nothing substantive on their fishery interest in it.

The two conferences on the Law of the Sea occurred during that period of history when the contest for world military and diplomatic supremacy between the United States and Russia was on the ascendancy. The conferences bore squarely on the naval aspects of that struggle. Russia was the prime proponent of the 12-mile limit, the United States of the 3.

While there were several other important military aspects to this question, the prime one was its effect on free navigation through international straits. It was estimated that there were 116 important international straits under a 3-mile territorial sea that would fall subject to national sovereignty if a 12-mile territorial sea became international law. Fifty-two of these would be similarly affected if the 6-mile rule for the territorial sea were adopted.

The United States, being the chief maritime power in the world, and the strongest member of the Free World confederacy that was held together by the highways of the sea, could not tolerate this possible restriction on free navigation; Russia being the prime land power in a confederation of land powers, wished to see this restriction on naval power and world commerce capable of being applied. Although both nations are prime fishing nations the interests of their fisheries were quite subjugated to their military and diplomatic interests during these two conferences.

Two other rather adventitious issues compounded this major difficulty for the United States.

The Arab States had little interest in the fishery arguments at these conferences because none of them had much in the way of fisheries. They did not show much more interest in the above noted power struggle. They were combined vigorously in an attempted economic action against Israel. They conceived that an agreed 12-mile limit for the territorial sea would enable Saudi Arabia and the United Arab Republic legally to deny entry to the Gulf of Aqaba by Israeli shipping and thus cut off that nation's southern port of Elat from access to the high seas. Accordingly their 12 votes were added to the nine votes of the communist countries on this issue. There were about five countries having exaggerated claims to very wide territorial seas who could be depended upon to vote for any proposal which would yield them the broadest possible territorial sea. This amounted in total to about 25 or 26 reasonably certain votes that Russia could get for a 12-mile territorial sea proposal, if it left the outer boundary somewhat fuzzy (as it did in its proposals).

It was obvious at all times in both conferences that there was no possibility of a 12-mile proposal coming close to winning. But the rules of both conferences provided that any substantive issue required a two-thirds majority to win. There were 86 possible votes in the first conference and 88 in the second. Thus if Russia could get 29 votes in the first conference, or 30 votes in the second, it could certainly block the adoption into international law of a breadth of territorial sea less than 12 miles. It could then await the course of history to confirm or deny its contention that a 12-mile rule was proper. With the great number of new countries then due to gain their independence in the next few years it might even win a 12-mile vote at a later period, if it could prevent a successful vote for a narrower territorial sea at this time.

There was enough common sense in this Russian concept to give the United

States great concern, and it left no diplomatic stone unturned to win the necessary two-thirds votes for a narrow territorial sea. The drive within the United States government to grasp victory from defeat on this issue was so great that in the last moments of the second conference it was prepared to sacrifice completely the rights of its long-range fishermen and, as well, to accept a 6-mile breadth for the territorial sea which did material damage to its naval and mercantile interests in the issue.

It was unable, in the end, to succeed in this attempt because of the fisheries interests of its allies, particularly its NATO allies, who were unwilling to sacrifice their interests in access to what they considered to be vital food supplies for military objectives, as was the United States. These were two conferences in which the United States experienced no real trouble from its enemies, but in which it had the greatest difficulty in persuading its friends to its side.

Almost the total economy of Iceland is dependent upon fish, which provide over 90% of that small country's exports as well as its chief source of protein food. The continental shelf of Iceland has been fished by Western European fishermen in a major way for generations. After the end of World War II, as a result of which Iceland achieved independence as a sovereign nation, her statesmen conceived that their independence could be maintained only by securing this base of Iceland's economy within its sole jurisdiction. What Iceland wanted was plainly stated in its presentations to the General Assembly. It wanted exclusive fishery jurisdiction over the resources in the high seas over the Icelandic continental shelf, and it wished at the same time to retain access to markets for its fishery products in other countries. To its NATO allies it maintained clearly that it had no desire to a breadth of territorial sea greater than 3 miles. It did not wish to disturb military balances in any way, either by denial of its vital harbors or airfields to its allies or otherwise. It only wanted control over the fish its people must have, while remaining a loyal ally.

Icelandic statesmen shrewdly used every stratagem of diplomatic skill, compromise, association, international law, and personal persuasion for more than ten years to achieve this end. This was the solid rock against which United States policy at these two conferences foundered. Despite the development of numerous compromises no formula could be found upon which the Western European fishing nations and Iceland could be brought to agreement. In the end Iceland voted against its ally and friend, the United States, and its principal customers and allies in Western Europe. Since the Western European countries could count on about 18 votes on the fishery issue, the United States, with its much narrower working margin of votes, could not give in to Iceland any further than the Western European fishery interest would permit.

The second difficulty from which the United States suffered was the contentions of its friend, ally, and neighbor—Canada.

For a good many years a fishery labor union in British Columbia had been demanding that the Canadian Government adopt the strait baseline rule on the west coast of Canada plus a 12-mile territorial sea. This was for the plain, and only, purpose of excluding United States fishermen from Hecate Straits and adjacent fishing grounds. In those years no other foreign fishermen fished along that coast, or close to it.

On the east coast of Canada there was an internal fisheries problem which was just as vexatious to the Canadian Government. To protect the economic

welfare of its inshore, inefficient, small-boat fisheries it had, for many years, prohibited its own trawlers from fishing within 12 miles of the Nova Scotian coast. Since Canada was a 3-mile territorial sea country, and strict in its adherence to international law, it did not interfere with foreign trawlers fishing up to within 3 miles of the Nova Scotia coast. This contrasting treatment for foreign and domestic trawlers was a continuing political irritant in the Maritime Provinces.

Canada never attempted to rectify these internal problems by changing the breadth of the territorial sea and over the years, in fact, the fisheries relations between the United States and Canada were exemplary. There were a great many reasons for this. One of the larger ones was that the United States provided the chief market for Canadian fish production.

The first Geneva conference fell at a time when national elections were due to be held in Canada. The conservative party's margin was well known to be slight, if it existed at all. The vote in the Ridings of coastal British Columbia and the Maritime Provinces was likely to be controlling, and in the event this proved to be true.

Accordingly the Canadian Government adopted a policy which would rationalize these internal problems. As early as the 1955 Rome Conference on the Conservation of the Living Resources of the Sea, it became evident that the Canadian Government would not vote in favor of any motion which might restrict her ability to claim a 12-mile limit, at least for exclusive fishery jurisdiction. By the opening of the First Geneva Conference in 1958 the Canadian position had become plain, positive, and public. Its delegation introduced a proposal calling for a 3-mile rule for the territorial sea plus a 9-mile additional area for exclusive fishery jurisdiction. Thus the 12-mile fishery limit, as separated from the 12-mile rule for the territorial sea, was officially launched in the international field.

As it had a margin of only four or five votes it could lose, and required to maneuver between its ally Japan (that favored no fishery control beyond the 3-mile limit) and its ally Iceland (that wanted exclusive fishery jurisdiction over its entire continental shelf), the United States was caught in a pretty position. The leaders of its delegation were increasingly astounded that firm military allies would risk sacrificing the security of the free world over a mess of fish, which to them meant so little. But these hard facts they had to face, and their failure to rationalize these fishery disputes finally defeated their major objective.

The story of the desperate attempts to compromise these fishery and military issues during these two conferences is a fascinating one, but it is not the one that we are considering today.

The United States was certain that its failure to win at these conferences would result in a wild rush, particularly among the newly independent countries, for a 12-mile limit. There have been a few countries since who have so claimed that the rush never developed and the proportion today between countries which claim a broad territorial sea and those which claim a narrow territorial sea is not much different than it was in the 1940's when there were only half the independent nations in the world that there are now.

An odd thing has happened in the North Atlantic where the fight between Iceland and the other NATO powers over fishing rights was so severe during the 1950's. Directly after the 1960 conference followed the "cod fish war"

between Iceland and England. This ended in a compromise settlement which provided, in substance, for a 12-mile fishing limit around Iceland (not the whole continental shelf, as Iceland had wanted). At about the same time Norway moved toward a 12-mile fishery limit, as did Denmark in respect to Faroe and Greenland. One could reasonably have expected that the Western European fishing nations were all moving toward a 12-mile fishing limit.

But at this stage a wholly new force stepped in to modify this trend. The Rome treaty establishing the European Economic Community provided for common access to resources and markets among the signatories. The countries of Western Europe split up on this issue among the "inner 6" and the "outer 7" with the latter group seeking to join the former. Two factors related to this great move toward a United Europe interfered with the progress toward 12-mile fishery limits. The first of these was the lack of logic in barring one's neighbors from fishing in such an area by signing one document and then giving them permission to fish in it through signing another document. The second was the incontestable fact that market and production had to go together. The "inner 6" were the big users of North Atlantic fish and the "outer 7" were the large producers of it. It really would not do for one to antagonize the other too much on this straightforward fishery issue especially when they were firmly agreed on the military issue in respect of the narrow territorial sea.

These trade issues are still under contest in the European area and it still is not clear what sort of fishing limits are going to be settled upon in those waters. A strictly European conference will be held on this subject next month. No other considerable group of nations in the world is agitated presently over these issues, as was the case during the 1950's. There are a variety of reasons why this is so. One was illustrated this year in West Africa. Ghana pronounced its intention to extend its fishery limit, but Ivory Coast (next door) said that it would do likewise if that happened. This twin move would likely end up by hampering the fishermen of both countries more than it would protect them, so the decrees were deferred by both countries.

There still remains powerful agitation in Canada for the establishment of a 12-mile zone of exclusive fishery jurisdiction. The Government of that nation has declared its firm intention to take this step. In reaction, and in sympathy, there has grown up a strong sentiment in the northeast and northwest United States to have the United States become a 12-mile fishery limit country also. Senator Guening is the strong voice for this on behalf of Alaska; the Atlantic States Marine Fisheries Commission has recently declared in favor of such action on the east coast.

It is useful to examine what the practical effect of such actions by both countries would be on their fisheries positions vis-a-vis each other, and also vis-a-vis countries from Asia and Europe that are increasingly fishing off the coasts of both countries.

Keep in mind that there are two publicly claimed reasons for an extended zone of exclusive fishery jurisdiction:

(a) Conservation of the resources, and

(b) Protection of the small coastal fishermen from the rapacious big vessels of foreign marauders.

There is a third and principal reason which is most important politically, but is heard little of. That is the desire to perpetuate uneconomic practices

in a backward fishery that have arisen from custom, lethargy to change, or unwise legislation. There is a fourth very valid reason in the eyes of fishermen, which is paid little attention by statesmen. That is the excessive irritation aroused by physical interference between different types of gear fishing on the same grounds in the absence of any rules governing such activities in international law. A fifth reason for such extension is seldom mentioned, but it is a major force. That is to give the fishermen of one country a preferential position in the market place of another. Let us examine the United States-Canada fishing problems in the light of these reasons for a 12-mile fishery limit.

In Alaska the resources giving rise to fishery disputes are salmon, halibut, and king crab. Much larger internationally fished resources in the area which have not given rise to extended disputes as yet are ground fishes other than halibut, and sperm whales.

Research of the past ten years has shown conclusively that all five species of Pacific salmon migrate widely across the North Pacific during their years of feeding in the ocean. Salmon from American streams can be caught abundantly in the western Pacific near Asian shores; salmon from Asian streams migrate far into the Gulf of Alaska. I do not know any serious students of the problem in Alaska or elsewhere who contend that a 12-mile fishing limit, or a 200-mile fishing limit, would be of any more use in the conservation of the salmon resources of Alaska (or Canada) than would be a 3-mile fishing limit.

It has been known for thirty years that the halibut of the eastern North Pacific regularly undertake migrations of as much as 1,000 or 2,000 miles, those tagged off Canada being taken off Alaska, and vice-versa, and in the intervening high seas. If Canada and the United States both declared and enforced 12-mile fishery limits it would have no appreciable effect on the conservation of the halibut resources upon which both countries fish. Those resources could be quickly and thoroughly depleted through fishing outside a 12-mile fishery zone. This would still be true even if both countries adopted the straight-base-line method of establishing the outer boundary of their inland waters within the limits prescribed by international law.

The fishery for king crab has become important to Japan, Russia, and Alaska in the post-war years, but in this Canada has not yet been substantially involved. King crabs are available abundantly inside 12 miles of shore along the Alaskan Peninsula and off-lying islands. They are also commercialy available there outside the 12-mile limit. In eastern Bering Sea, where most king crabs are taken, substantially all the production is on the shelf outside 12 miles from any land.

Thus it is clear that a 12-mile rule would have no practical effect on the conservation of these three kinds of resources in the Northeast Pacific, despite the fact that these are the three sorts of resources about which most of the public controversy arises, and the fact that most of the controversy is publicly stated to be over the need for conservation.

A very great conservation problem exists in the area in respect of the other bottom fish resources such as ocean perch and flounder. But this is not much talked about and there is substantially no research being done on this problem except as it relates to the halibut. The reasons for this are interesting and not much in the public eye.

Russia and Japan have established trawl fisheries for this sort of resource

in the eastern Pacific during the past ten years which produce well over a million tons of fish per year, much more than the total production of salmon, halibut, and king crab in the whole North Pacific put together. During this period of time, Japan built a great fishery for yellow flounder in eastern Bering Sea and fished the resource out so thoroughly that the biggest company involved in the fishery went bankrupt with a crash last year. They appear to be working on the same theory as the logging companies did a generation ago—to harvest the resource as completely as possible, and then wait for a period of years for it to grow up to harvestable level again. This is contrary completely to conservation theory and practice in Canada and the United States, but no great cry has been raised.

The reasons for this are chiefly two—and both rather odd.

The first is that Canada and the United States (in the Pacific northwest) for upwards of thirty years have been steadily progressing in the direction of securing conservation of their offshore resources by decreasing the efficiency of their fishermen. This has been done by banning completely very efficient gear (such as salmon traps and seines), limiting the size of vessels, limiting the types of gear used for particular fisheries, prevention of gear from moving seasonally from fishery to fishery and barring electronic fish detecting aparatus.

This has been politically pleasing to the small fishermen and the industry of both countries, whose economies are substantially the same, whose companies are much intermixed as to ownership, and whose sea fishermen are in large part of the same racial extraction and much interrelated. Also it has worked quite satisfactorily for the inshore fishermen as long as no fishermen from another country, working under another set of economic rules, and using modern, efficient craft, engaged in these fisheries.

This situation has been changing in the last few years as the modernized fishing fleets of Russia and Japan moved into the eastern Bering Sea, then south of the Alaskan Peninsula, and then into the Gulf of Alaska, fishing on resources that Americans and Canadians were using slightly or not at all, and for which they had neither the modern high seas trawlers to take, or the markets in which to dispose of the catch at prices their inefficient small vessels required to make a profit.

But at this point international politics provided the other reason for no major complaint being raised. Politically the overwhelming fish issue in the Pacific northwest is salmon. Canada and the United States succeeded, before the occupation was concluded, in getting Japan to agree to refrain from taking salmon and halibut east of 175° West longitude for a period of ten years. This was under a complicated formula based on the resources presently being used to their maximum sustainable level already by Canada and the United States, this being accomplished by regulations adopted on the basis of scientific research.

From the salmon standpoint this deal was perfect for Canada, Washington, and Oregon because it turned out that few, if any, of their salmon went west of that line. For Alaska it was only partially satisfactory because major numbers of the very important Bristol Bay red salmon did move west of the 175° W. longitude line where they could be caught with ease by the Japanese, and were caught by them except in those years when the Alaskans could raise a sufficient political threat of trade embargo to scare off the Japanese.

While Canada has been able to adopt a more statesmanlike attitude on

these issues in the International Commission for the North Pacific Fisheries than has the United States, since its salmon could not be caught by Japanese under this treaty, both countries have been equally intent on keeping the treaty in force and thus keeping the Japanese out of the salmon and halibut fisheries in the eastern Pacific—in perpetuity if possible.

In consequence, both Canada and the United States unitedly, no matter what their other disputes, labored vigorously from 1955 through 1960 to get this so called "principle of abstention" incorporated into international law before the ten year period of the Tripartite Treaty expired. In this they were quite unsuccessful. During the 1958 conference, Russia said quite bluntly that it was poppycock to thus attempt to bar nations from high seas resources on purported conservation grounds that were exclusively economic and it would have no part of any such nonsense. Japan at that time clearly stated that under no consideration would it accept abstention as a general principle, or abide by it even in the North Pacific beyond the ten year period of the Tripartite Treaty. The other nations failed to give the principle the required majority to include it among the four conventions adopted. Canada and the United States have nevertheless continued, wistfully, to hope that the Japanese would be nice and continue to abide by this exclusion after the ten year initial period of the Tripartite Treaty in 1963.

Thus there has come about a complicated international fisheries political action in the North Pacific which includes these components, among others:

1. Russia has the same salmon problem in the western Pacific as have Canada and the United States in the eastern Pacific. Japan is able, in both instances, to overfish the salmon arising from both continents while its fishermen stay on the high seas, no matter whether the territorial sea is taken as being in breadth 3, 12, or 200 marine miles. Russia, however, has adopted a position vis-a-vis Japan much in accord with international law as developed at the 1955 Rome Conference, in the International Law Commission, and in the 1958 Convention on Fishing. It has a better case in international law vis-a-vis Japan than has Canada or the United States, whose "policy of abstention" failed to get adopted by the nations.

Nevertheless it is quite apparent that Russia desires to do nothing whatever to exacerbate the salmon problem in the North Pacific. It has a good position in the diplomatic activity over this issue at present and appears satisfied to stand unchanged for now. Accordingly, despite its frank statements that it will pay no attention whatever to the abstention nonsense, it has refrained from taking salmon in the eastern Pacific despite having great fleets in the area of the salmon approaches to the Alaskan streams each year.

This is a quite fortunate balance of strength as far as the United States and Canada are concerned because those countries have nothing in the fish line with which they can threaten retaliation against Russia, as they have with Japan, and all hands realize that when Russia decides it wants to catch salmon in eastern Bering Sea, the whole flimsy house of cards crashes.

2. The Russians do quite desperately require great additional sources of animal protein for the diet of their peoples, and with this objective in mind have undertaken a massive effort in the past ten years to expand their fish production on a world-wide basis on a scale unprecedented among nations.

Their pre-war explorations (during the 1930's) indicated great unused bottom fish resources in eastern Bering Sea, and as soon as they accumulated the strength they moved into these fisheries during the 1950's. In the last few years they have extended their fisheries gradually down the coast of the Americas—and earlier this year their exploratory vessels were as far south as southern California. Their vessels now work on a large commercial scale south of the Alaskan Peninsula and in the northeast Pacific, as well as in eastern Bering Sea.

The fishery politicians in the United States and Canada have as yet made no great issue of this for three main reasons:

(a) they have no leg to stand on in international law,

(b) they have no club with which to threaten Russia as they have vis-a-vis Japan, and

(c) above all, they do not wish to provoke Russia into catching salmon in the eastern Pacific, which would ruin their whole diplomatic approach to this issue.

3. The Japanese have played this part of the action cagily, and so far successfully. They moved into eastern Bering Sea into the ground fisheries with the Russians. This was quite correct, in accordance with the Tripartite Treaty, and besides the Russians provided for them a satisfactory shielding force. They have continued to move south of the Alaskan Peninsula and into the Gulf of Alaska, but rather quietly and always behind the Russians.

4. This penetration of Russian and Japanese trawlers, first into eastern Bering Sea, and then into the Gulf of Alaska, is gradually causing the whole abstention policy of Canada and the United States to come unstuck. The reason is halibut.

It is quite impossible to trawl for other bottom fish in the eastern North Pacific without catching a few halibut, even if you do not want to. There really are not very many halibut in the eastern North Pacific. The entire catch by Canada and the United States only amounts to about 35,000 tons per year. The trawl fishery by Japan and Russia in the area now amounts to more than 1,500,000 tons per year and seems certain to grow to a larger size than 2,000,000 tons per year shortly. If only 2% of the catches of these trawlers turns out to be halibut, the whole maximum sustainable yield of halibut in the area will be used up without the Canadian and American halibut fishermen getting any.

To an outsider it looks as if the jig is about up for the halibut, and it appears that this is the way it looks to the insiders too, because in recent negotiations concerning the extension of the Tripartite Treaty the Canadian and American negotiators appear to have practically abandoned halibut in favor of putting maximum force to saving the salmon issue, which is also getting shaky.

These are the major fishery problems in the Northeast Pacific among Canada, United States, Russia, and Japan. A 12-mile fishery limit established by both Canada and the United States would have no substantial or noticeable effect on these issues. Undoubtedly Russia would be delighted to recognize such a 12-mile rule at once, as supporting its stand that the proper breadth of the territorial sea is 12 miles in any event. Japan would also be pleased to trade that for the other major harassments it presently has. It would not

affect the total fish catch of either Russia or Japan by a decimal point.

On the American side of the Pacific the 12-mile fishing limit is a small, two-bit, side game being played by the small boat fishermen of Canada and the United States with each other. Since the amount of fish involved is not considerable, the odds are reasonably well balanced, and it is just a small game played within the family, nobody really cares much how it comes out.

There are three groups of Americans involved:

(a) those who trawl with small vessels in Hecate Straits and along the the coasts of Vancouver Island and the Queen Charlottes,

(b) those who troll for salmon (chiefly kings and silvers) in the same waters, and

(c) those who long-line for halibut in those waters.

The 12-mile fishing limit will severely damage the Americans in the first two groups, but they are not very vocal or active politically. Also they seem rather naively to feel that the Canadians will grant them "historic" rights in spite of the fact that it is just exactly them that the Canadians have been wanting to get rid of long before the Japanese and Russians showed up, and the further fact that one thing the Law of the Sea Conferences showed clearly is that the majority of nations do not consider the tenet of historic rights on the high seas to have any validity.

The third group, halibut men, feel that they have just about got a standoff because the Canadian halibut men will be, they reckon, about as much damaged by a 12-mile rule off southeast Alaska as the Seattle and Ketchikan halibut men will be by a 12-mile rule off British Columbia. I think they are being pretty naive too, and will take considerable damage, but I have stopped trying to advise grandmother how to knit.

To sum up the fishery picture on the Pacific Coast, it is clear that a 12-mile fishery limit will do the United States no good with respect to its major fishery problems in the area north of the Columbia River, and will damage its minor fishery interests somewhat, but perhaps in no critical fashion. The United States fishermen who will be hurt by it, at least, do not believe they will be hurt badly enough to be howling very loudly.

On the Atlantic side the answer one comes out with is precisely the same and is not so complicated.

Small New England vessels that now trawl for ocean perch in the area between 3 and 12 miles of Canada in the Bay of Fundy and along the Nova Scotia coast will be damaged somewhat because they will have to limit their fishing to the outside grounds. This will not do them any great harm because there are plenty of the same sort of fish on the outside grounds. For the same reason the conservation picture will not be materially altered because it does not make a whit of difference to a fish population if its members are caught inside or outside some imaginary line. They are equally dead.

Although there will be no critical damage to American East Coast fishermen from a 12-mile rule off Canada (according to their vocal members), there will be no compensating gain from a 12-mile rule off New England vis-a-vis Canada, for the simple reason that Canadians do not fish much that close to New England. Thus, again, the Canadians will gain a little advantage if both countries adopt 12-mile fishery limits, but perhaps not enough to cry much over.

What has excited the Atlantic coast fisherman to grasp suddenly for a

12-mile fishing limit, like a drowning man reaching for a straw, is the appearance of large fleets of Russian fishermen off their coast (where few foreigners had been before) with much better and more modern vessels, gear, and electronic fish detection apparatus than he had ever dreamed of.

Why the east coast fishermen grasp at the 12-mile rule for salvation completely mystifies me, as it must do the Russians, as well as given them a couple of hearty belly chuckles.

Russia is *the* prime 12-mile country. It will gladly negotiate with the United States any day of any week a treaty under which the vessels of both countries will keep 12 miles off the coasts of each other. From 1956 to 1960 it used every diplomatic device at its command to whip the United States on this issue. For this same reason you can bet your bottom dollar that the United States Department of State will cause the President to veto any legislation establishing any limit of exclusive jurisdiction by the United States over the adjacent sea of greater breadth than 3 marine miles.

Furthermore, a 12-mile rule off Canada and the United States would not materially affect the yield of the Russian fleets. There are plenty of the sorts of fish they want beyond the 12-mile limit. Although the Americans do not now fish heavily the outer continental shelf, or the offshore pelagic fisheries, the big Russian vessels can do so quite comfortably and effectively.

The menhaden people of the Middle Atlantic have also become enamored of the 12-mile rule as a means of salvation against the Slavic threat. With all due deference I point out that they do not seem to be very well acquainted with the Russians and their way of going about fishing in these last few years.

The menhaden fishermen apparently have come to this solution of their problem from the fact that their own fishery lies almost entirely within 12 miles of the beach. I point out that their fish disappear from these shallow inshore waters for a period each year and there isn't much place for them to go except out and down. The Russians are perfectly familiar with catching fish of this sort in large volumes in deep water. The *Sardinella* and *Ethmalosa* that they fish extensively off West Africa do not come to the surface for months during the warm season. I fancy that if the Russians take a liking to menhaden they will be able to catch all they want off the east coast of the United States more than 12 miles from the beach.

In the Gulf of Mexico there should be perfect compatibility between Russia and the Gulf States, who have long been restive under the Federal Government's strict adherence to the 3-mile rule. From a fishery standpoint I do not see that there would be any major loss or gain to American fishermen from the adoption of a 12-mile rule except to the Texas shrimpers who fish off adjacent Mexico. Everybody seems to have forgotten about them while viewing the salvation aspects of the 12-mile rule for the fish problems of the United States. I trust that one can depend upon it that the Texan Senators and coastal Congressmen, particularly the member from Brownsville, will not have forgotten the interests of Texas shrimpers when the issue comes to real life, if it ever does.

As will be noted from the above I am quite skeptical about the 12-mile fishing limit solving any major international fishing problem, not only for the United States and Canada, but for the rest of the world as well. In the case of the United States and Canada my suspicion is that five years after such a rule is adopted we would still be faced with the same threat of Russian

and Japanese fleets off our coasts that we now have, perhaps joined by those of other nations (for instance Spain), who are rather rapidly expanding their long range fishing efficiency and effectiveness.

To put it bluntly my suspicion is that all of the major fishery resources off our coast, and most of those in the world, are sufficiently available 12 miles from any land that the same problems of competition, and conservation, that we face under the 3-mile rule will continue with us, unabated, under a 12-mile rule. If so, we in the fishing industry would be accused again of having cried "wolf", lead our followers through a legislative effort of some magnitude incapable of successful issue, and of having again deceived our legislators with agitation that did not lead to the solution of our problems.

Since I am not sufficiently knowledgeable to be able to back up that skepticism with certain knowledge respecting all of the major aquatic resources off the coast of the United States I suggested that before the United States Congress is requested seriously to adopt such a drastic departure from historic practice of the United States respecting the Law of the Sea that it be asked to direct the United States Bureau of Commercial Fisheries to make a thorough examination of these matters and to recommend what would be the effect of a 12-mile limit for fisheries jurisdiction on the long range welfare of the United States fisheries.

I wish to point out that this is not a counsel of defeatism nor of gloom. The 1958 "Convention on Fishing and the Conservation of the Living Resources of the High Seas" provides a variety of mechanisms suitable to solving satisfactorily all the fishery conservation problems apparent in the high seas.

I have alluded to this convention earlier in this presentation and have here claimed that it will provide a variety of mechanisms suitable to solving satisfactorily all of the fishery *conservation* problems apparent in the high seas. It may be that sufficient publicity has not been given, nor sufficient awareness been developed with respect to the effects possible from this convention. It might be useful, therefore, to set forth once more what it purports to do.

Article 1 does two things:

(a) It defines what is meant by freedom of fishing on the high seas, and
(b) promises that all signatory nations will require their fishermen to conserve high seas resources.

Article 2 defines conservation as being "the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products."

Article 3 defines what a nation can do respecting conservation in a high seas fishery when only its nationals are involved.

Article 4 defines the same where two or more nations are involved.

Article 5 covers the application of such regulations to the fishermen of other countries not involved in the original agreements.

Article 6 defines the right of the "coastal State" to impose regulations in certain fisheries under certain conditions that would be binding upon fishermen of other countries.

Article 7 carefully defines the rights of other nations respecting regulations established under Article 6.

Article 8 defines the right of a non-fishing nation to request conservation regulations in a high-seas fishery.

Article 9 provides for a mechanism to be established to resolve disputes

arising out of articles 4, 5, 6, 7, and 8. Essentially this is an arbitral commission of neutral experts rendering decisions under carefully prescribed criteria.

Article 10 provides the criteria under which the arbitral committee will work.

Article 11 makes the decisions of the Commission binding upon the disputants.

Article 12 provides for new examination of problems when changes affect the factual situation in later years.

Article 13 provides for the situation of fisheries conducted by means of equipment embedded in the sea floor in the high seas.

Article 14 defines the term nationals.

All the other articles (15 through 22) are procedural in nature.

I assume that the problem really is that down deep in hearts very few in the fishing industry have much interest in conservation beyond using the word as an excuse for gaining a competitive advantage over others either on the fishing grounds or in the market. I further assume that the deep worry all in the industry really have is that if they concentrate upon the real issue of protection from competition, instead of using the shibboleth conservation as a false shield, they will be unable to expect the required assistance from the Department of State.

I suggest that the sooner we address ourselves to the rectification of the real problems at issue the sooner they will be brought to solution.

I point out that the real problems we will face in ocean fisheries off the United States and in the world will rise in these fields, with or without a 12-mile rule:

1. Ignorance of the relationships between the ocean, the fish, and the fishery so that we will not know when an overfishing problem is developing or what to do about it when it does develop.
2. A division of the profits of conservation among the affected nations. Our successful experience in this field to date on a world-wide basis is pretty well limited to that of the fur seal in Bering Sea and the salmon fisheries of the Fraser River. It is noted that the whale resources of the Antartic are being killed off by the nations failing to deal directly with that problem.
3. A lack of any internationally recognized "Rules of the Road" to cover the conduct of fishermen on a ground using different types of gear. Although faint voices have been voicing this alarm for the past fifteen years no one seems to wish to tackle this knotty problem seriously.

I point out that the world fisheries have doubled in their production in the past ten years and that their rate of increase is growing rather than diminishing. Another doubling of production from the high seas fisheries in the next ten years, which I confidently expect, will more than quadruple the intensity of these problems in international competition on the high seas.

I suggest that we might better use our energies in working toward solution of the real problems we have before us, rather than burying our heads in the sands of the 12-mile limit and hoping that the problems will go away.