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## The Evolution of International Fisheries Management in the North Pacific Ocean and Prospects for the Future

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THE EVOLUTION OF INTERNATIONAL FISHERIES MANAGEMENT

IN THE NORTH PACIFIC OCEAN

AND PROSPECTS FOR THE FUTURE

BY

PAUL AUGUSTUS FLYNN

A MAJOR PAPER SUBMITTED IN PARTIAL FULFILLMENT OF THE

REQUIREMENTS FOR THE DEGREE OF

MASTER OF MARINE AFFAIRS

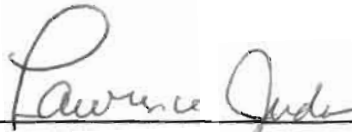
UNIVERSITY OF RHODE ISLAND

1996

MASTER OF MARINE AFFAIRS MAJOR PAPER  
OF  
PAUL AUGUSTUS FLYNN

APPROVED:

Major Professor



A handwritten signature in cursive script, reading "Lawrence Juda", is written over a horizontal line. The signature is enclosed in a light gray rectangular box.

Prof. Lawrence Juda

UNIVERSITY OF RHODE ISLAND

1996

## **Abstract**

The abundant resources of the North Pacific Ocean have been the subject of international disputes and negotiations through the 20th century. The management of species which range throughout this vast area, are not under the jurisdiction of a single state. That fact has required the establishment of a framework in which allocation and conservation measures can be researched and agreed upon. This has been accomplished through various multilateral and bilateral agreements. From the voluntary Japanese suspension of a directed salmon fishery off the coast of Alaska in 1938 to recently completed multilateral treaties, significant advances have been made in Pacific fisheries management. How have the events of the last 60 years influenced current trends in international fisheries treaties? How will the structure of future agreements reflect these emerging trends?

This study will describe four periods which have fostered the evolution of fisheries management in the North Pacific. It will examine two treaties which represent this evolution, the 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean and the 1994 Convention for the Conservation and Management of Pollock Resources in the Central Bering Sea. It will explore the development and implementation of these agreements, as well as their strengths and weaknesses, within the context of domestic pressures and existing norms of international ocean law. It will identify trends in high seas fisheries management, and consider the likelihood of the emergence of a more holistic arrangement for managing the living marine resources of the North Pacific Ocean.

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## I. Introduction

The abundant resources of the North Pacific Ocean have been the subject of international disputes and negotiations through the 20th century. Many commercially valuable species range within this vast area (See Figure 1) which is not subject to the authority of one single state.<sup>1</sup> The diversity of the region's living marine resources includes 90% of the world's anadromous fish stocks and significant sources of pollock, squid and pelagics such as herring and sardine. Marine mammals and seabirds are also an integral part of this ecosystem and play a prominent role in fisheries management. Commercial harvests in the North Pacific account for approximately one-third of the world fish catch.<sup>2</sup>

The competition to exploit these resources is significant. Several nations have developed extensive high seas fishing fleets which can harvest enormous amounts of fish. States which have an immediate interest in the North Pacific include all of the coastal states and a limited number of distant water fishing nations. The expansion of high seas catch capacity has intensified the pressure placed on limited resources.<sup>3</sup> A series of bilateral and multilateral treaties have emerged in response to the need for a framework in which allocation and management decisions can be made. These agreements have generally been directed towards the conservation of single species by a limited number of nations. As a result, the impacts of variable and disproportionate

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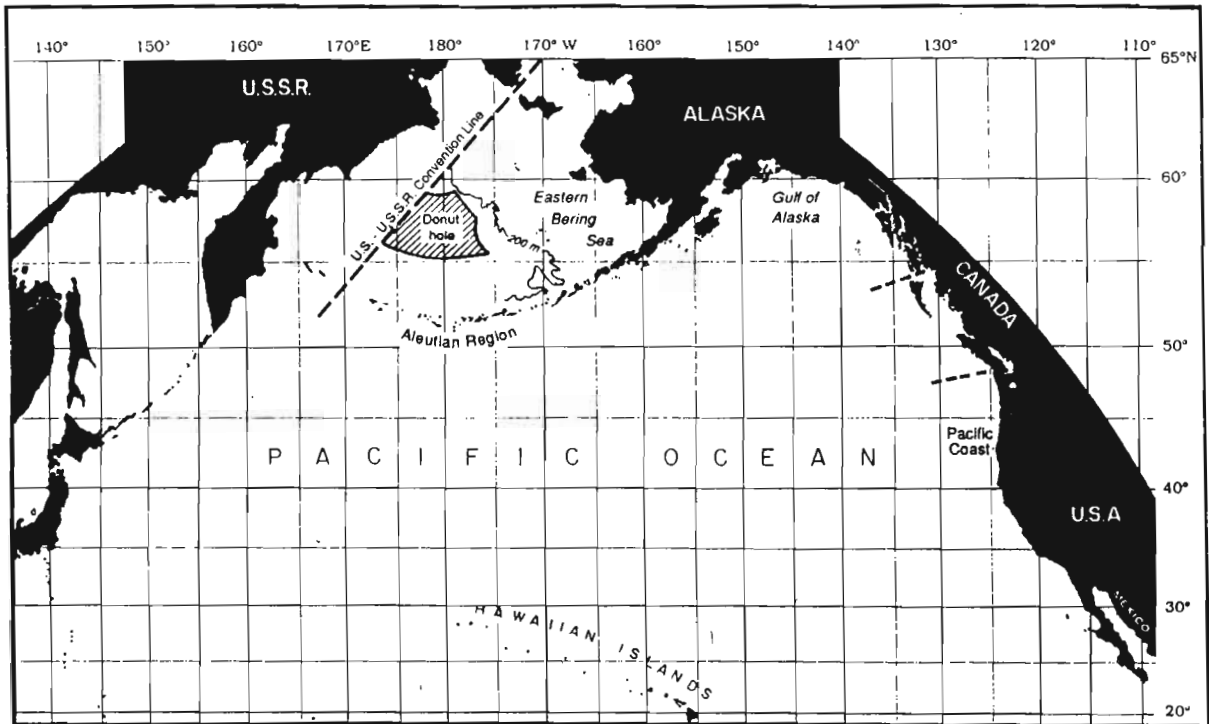
<sup>1</sup> Natalia S. Mirovitskaya and J. Christopher Haney, "Fisheries exploitation as a threat to environmental security," *Marine Policy* 16 (July 1992): 243.

<sup>2</sup> *Ibid.*, 245.

<sup>3</sup> David Freestone, "The Effective Conservation and Management of High Seas Living Resources: Towards a New Regime?," *Canterbury Law Review* 5, no. 5 (1994): 343.

Figure 1.

The North Pacific Ocean



Source: Department of Commerce, *Our Living Oceans: Report on the Status of U.S. Living Marine Resources, 1993*, NOAA Tech. Memo. NMFS-F/SPO-15 (December 1993): 104.

exploitation rates on interdependent species have been neglected.<sup>4</sup> Recent developments in international fisheries management, including the entry into force of the 1982 United Nations Convention on the Law of the Sea (Law of the Sea Treaty)<sup>5</sup> and the completion of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Straddling Stocks Convention),<sup>6</sup> signal an awareness of these shortcomings, and provide measures which can be pursued to resolve them. The U.N. Food and Agriculture Organization Agreement to Promote Compliance With International Conservation and Management Measures by Fishing Vessels on the High Seas (F.A.O. Flagging Agreement) was completed on 24 November 1993.<sup>7</sup> This instrument attempts to address the problems posed by reflagged fishing vessels, which seek to avoid conservation regulations by registering with states that are not parties to management organizations.<sup>8</sup> The implementing legislation to allow the U.S. to

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<sup>4</sup> Martin H. Belsky, "Management of Large Marine Ecosystems: Developing a New Rule of Customary International Law," *San Diego Law Review* 22, no. 4 (1985): 742.

<sup>5</sup> United Nations Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, 21 I.L.M. 1261-1354 (1982) [hereafter UNCLOS].

<sup>6</sup> Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, U.N. Doc. A/CONF.164/37, 34 I.L.M. 1547-1580 (1995), [hereafter Straddling Stocks Convention].

<sup>7</sup> U.N. Food and Agriculture Organization Agreement to Promote Compliance With International Conservation and Management Measures by Fishing Vessels on the High Seas, 33 I.L.M. 968-980 (1994) [hereafter F.A.O. Flagging Agreement].

<sup>8</sup> Congress, Senate, Committee on Commerce, Science and Transportation, *International Fisheries: Hearing Before the Committee on Commerce, Science and Transportation*, 103d Cong., 2d sess., 21 July 1994, 15 [hereafter Hearing 103-721].



accept this agreement was passed as part of the Fisheries Act of 1995.<sup>9</sup>

International regimes which have been established to manage particular fisheries are the product of existing economic, political and strategic conditions. Fisheries treaties are not ideal; rather, they are representative of focused efforts to more equitably and profitably exploit coveted, exhaustible resources. Periodically, fisheries treaties must be adjusted or replaced in order to respond to the changing interests and objectives of concerned states. The current arrangements which have been negotiated to conduct research and recommend various management measures in the North Pacific reflect the impact of historical developments in fisheries exploitation in this region. Four distinct periods have fostered the evolution of fisheries management in the North Pacific and signal trends which will influence future regimes.

First, the introduction of a Japanese mother-ship fleet into the Bristol Bay salmon fishery in 1936 was the initial clash of trans-Pacific fishing interests.<sup>10</sup> The events surrounding this episode "bequeathed a manifold legacy to Japanese - North American relations - and, by extension, to the development of modern international ocean law."<sup>11</sup> Second, the reemergence of Japanese fishing fleets on the high seas following World War II signaled Japan's desire to rebuild its economy and reestablish its presence

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<sup>9</sup> The Fisheries Act of 1995, P.L. 104-43, title I (1995).

<sup>10</sup> Lawrence Juda, *International Law and Ocean Use Management* (London: Routledge, 1996), 74.

<sup>11</sup> Harry N. Scheiber, "Origins of the Abstention Doctrine in Ocean Law: Japanese-U.S. Relations and the Pacific Fisheries, 1937-1958," *Ecology Law Quarterly* 16 (1989): 31.

as a sovereign nation within the world community. This transformation was both opposed and supported by significant forces within the U.S. government. The resulting debate had significant ramifications on the U.S. position with respect to international ocean law and high seas fisheries.

A third event which has had an enormous impact on fisheries management has been the acceptance of expanded zones of national jurisdiction over resources in the form of the Exclusive Economic Zone (EEZ). Fourth, cooperation on fisheries issues between Russia and the U.S. since the late 1980s has made possible the completion of unprecedented research and management initiatives in the North Pacific region. This final development also provides an opportunity to resolve remaining conflicts and negotiate more advanced and effective treaties.<sup>12</sup>

Two recently completed treaties signify the emergence and acceptance of new trends in international fisheries management. The Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean,<sup>13</sup> completed on 11 February 1992, replaced the 1952 International Convention for the High Seas Fisheries of the North Pacific Ocean.<sup>14</sup> The new treaty will improve the coordination and effectiveness of research and conservation efforts directed at anadromous species.<sup>15</sup> The 1994 Convention on the Conservation and Management of Pollock Resources in the

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<sup>12</sup> Jeffrey L. Canfield, "Recent Developments in Bering Seas Fisheries Conservation and Management," *Ocean Development and International Law* 24 (1993): 275-76.

<sup>13</sup> Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, T.I.A.S. (1992), [hereafter 1992 Salmon Convention].

<sup>14</sup> International Convention for the High Seas Fisheries of the North Pacific Ocean, 4 U.S.T. 380, T.I.A.S. 2786, [hereafter 1952 Convention].

<sup>15</sup> U.S. Department of State, "North Pacific Salmon Convention," *U.S. Department of State Dispatch* 3, no. 7 (1992): 110.

Central Bering Sea<sup>16</sup> establishes a single species management regime for the high seas area of the Bering Sea. These agreements address distinctly different issues; however, each incorporates advanced provisions on ecosystem and enforcement concerns.

Continued cooperation among nations interested in the sustainable exploitation of the living marine resources of the North Pacific Ocean will ensure that these two regimes succeed at conserving salmon and pollock. In addition, it may lead to the negotiation of a single fisheries treaty which would establish an organization dedicated to managing all living marine resources within the North Pacific ecosystem. This study will examine the historical context of North Pacific fisheries management. It will describe the development of the most recent agreements, and evaluate their strengths and weaknesses. Finally, it will address the likelihood of the emergence of a more holistic arrangement for managing the high seas resources of the North Pacific Ocean.

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<sup>16</sup> Convention for the Conservation and Management of Pollock Resources in the Central Bering Sea, 34 I.L.M. 67-77 (1995), [hereafter Donut Hole Agreement].

## II. Background

An understanding of the nature of North Pacific fisheries management must begin with an analysis of the history of the disputes and resolutions which have evolved in the region.

### 1. Bristol Bay Dispute

In 1935 the Japanese government authorized a salmon research expedition to determine the feasibility of establishing a high seas salmon fishery.<sup>17</sup> The arrival of foreign fishing vessels in Bristol Bay off the coast of Alaska in 1936 and 1937 outraged U.S. fishermen in the Pacific northwest. Until that time Alaskan salmon had been harvested exclusively by American fishermen. Regulations and investments to conserve and manage this valuable resource were significant factors in maintaining the health of successive salmon runs. The presence of a fleet which could intercept the fish before they returned to spawn would reduce the accuracy to which stock harvests could be predicted, and would threaten the capital and infrastructure investments made by the American government and industry.<sup>18</sup>

Fishing activities in Bristol Bay were immediately identified as a "Japanese invasion of the Alaskan salmon fishery."<sup>19</sup> Industry officials "had long been concerned that ... the regional economic structure of the fishery could be undone virtually overnight - with the salmon stocks becoming severely depleted - by the 'destructive method' of mother-ship operations that Japan had perfected."<sup>20</sup> The presence of these vessels was a catalyst for

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<sup>17</sup> Philip C. Jessup, "The Pacific Coast Fisheries," *The American Journal of International Law* 33 (1939): 132.

<sup>18</sup> Juda, *International Law*, 74.

<sup>19</sup> Jessup, "Pacific Coast," 133.

<sup>20</sup> Scheiber, "Abstention Doctrine," 31-32.

fishing interests to make their concerns a significant diplomatic issue. On 5 June 1937 Secretary of State Cordell Hull advised Ambassador Joseph Grew in Japan of the "growing insistence on the part of American fishery interests upon governmental action in the direction of conserving for their benefit the salmon resources of Alaskan waters."<sup>21</sup> The Secretary realized the momentum this issue could gather and expressed his preference to resolve the issue through direct negotiations.<sup>22</sup>

Congressional activity was quickly directed towards various attempts to exclude Japan from the lucrative North Pacific salmon fishery.<sup>23</sup> Initiatives to extend U.S. coastal jurisdiction beyond the historic three mile limit were suggested as a means to ensure the Alaskan salmon fishery was preserved for American fishermen. Delegate Dimond (AK) introduced a bill in November 1937 which would have protected Alaskan salmon by establishing a property right in the fish which originated in Alaskan rivers and streams.<sup>24</sup> Senate Bill 3744 passed in 1938, but was not acted upon by the House of Representatives. It would have asserted jurisdiction over the waters which Japan wanted to fish on the basis of an extension of the continental shelf of Alaska into the Bering Sea.<sup>25</sup> The State Department advised the Chairman of the Senate Committee on Commerce and the Chairman of the House Committee on Merchant Marine and Fisheries that if the Congress were to enact legislation extending jurisdiction "this Government would find it

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<sup>21</sup> *Foreign Relations of the United States, 1937*, vol. IV (Washington: Government Printing Office, 1954), 740.

<sup>22</sup> *Ibid.*

<sup>23</sup> Jessup, "Pacific Coast," 132-33.

<sup>24</sup> Juda, *International Law*, 75.

<sup>25</sup> Jessup, "Pacific Coast," 129.

difficult to object to the application of the principle against our own nationals."<sup>26</sup> The implications of such claims and subsequent international developments ensured that neither bill became law.

In November 1937 the State Department prepared a memorandum for presentation to the Japanese Minister of Foreign Affairs.<sup>27</sup> This was in response to the pressing need for an interim resolution of the salmon dispute. In his instructions on delivering the memorandum, Secretary Hull advised Ambassador Grew that American public opinion was strongly in favor of the Alaskan salmon industry. The State Department would be unable to prevent boycotts of Japanese goods nor would the Congress long resist pressures to take unilateral measures to protect the resource. Prolonged delays by the Japanese Government in responding to the issue would significantly complicate the prospects for an agreeable resolution.<sup>28</sup> The memorandum outlined the history of American conservation efforts and the importance of the Alaskan salmon industry. It pointed to the danger which unregulated Japanese fishing activities posed to the sustainability of the resource. The memorandum does not mention extended jurisdiction. It bases the U.S. position for exclusive control of salmon fisheries on the "conditions of their development and perpetuation" as well as "the comity of the nations concerned."<sup>29</sup>

Efforts by the State Department succeeded in achieving a temporary cessation of the Japanese fishery for North American

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<sup>26</sup> *Foreign Relations of the United States, 1937*, 756.

<sup>27</sup> *Ibid.*, 763-768.

<sup>28</sup> *Ibid.*, 762.

<sup>29</sup> *Ibid.*, 763.

salmon. Japan agreed to bring the fishery to an end before the 1938 season.<sup>30</sup> This was accomplished through a "gentleman's agreement" as opposed to a distinct recognition of the primacy of U.S. interests in the preservation and exploitation of anadromous fish.<sup>31</sup> Japan did reserve its right to fish the high seas in accordance with customary international law, and did not commit to a specific period in which the salmon fishery would be suspended. The search for a permanent end to the conflict would continue.

## **2. Postwar Conflicts and Negotiations**

The conclusion of World War II renewed the determination of U.S. west coast fishing interests to permanently end the threat of a Japanese reentry into commercial fisheries. They sought to achieve this goal through the peace treaty process. However, conflicts with other industry groups, the military and the State Department limited the role that salmon groups would have in negotiations. Postwar domestic politics and emerging global interests, including the law of the sea, demanded that fisheries disputes with Japan be resolved separate from defense, economic and peace concerns. This approach would not ensure that west coast interests were completely satisfied. However, it did provide a means for achieving more strategic priorities.

The role of distant water fisheries for Japan during the occupation period was central to the successful reestablishment of Japanese sovereignty, a major U.S. objective. Policies pursued by General Douglas MacArthur, Supreme Commander Allied Powers (SCAP),

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<sup>30</sup> Jessup, "Pacific Coast," 133.

<sup>31</sup> Kelly R. Bryan, "Swimming Upstream: Trying To Enforce the 1992 North Pacific Salmon Treaty," *Cornell International Law Journal* 28 (1995): 245.

were crucial to this program.<sup>32</sup> The policies, however, did not receive approval from all sectors of the U.S. government, particularly fisheries officials in the State Department and Congressional delegations from California, the Gulf Coast and New England.<sup>33</sup> The resolution of these conflicts has had a lasting impact on fisheries management in the North Pacific.

General MacArthur was instrumental in the resurgence of the Japanese fishing industry. His orders ensured that the reconstruction of a deep ocean fleet was given top priority, and that access to fishing areas was slowly expanded throughout the Pacific Ocean until it was equal to that enjoyed by all other nations. Fishing was a primary manner in which MacArthur pursued the broader American objectives to rebuild Japan economically, democratize the political system and restore Japan's sovereignty.<sup>34</sup>

A March 1947 State Department memorandum outlines the importance of economic rehabilitation in Japan to the overall success of U.S. objectives in the Pacific region. First, a substantial recovery would reduce the level of expenditures needed to sustain the Japanese people. Second, a healthy economy would encourage the development of a democratic and peaceful Japan. Additionally, Japanese economic growth would spur recoveries in other struggling Asian economies.<sup>35</sup>

General MacArthur discusses his considerations of the

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<sup>32</sup> Scheiber, "Abstention Doctrine," 40-41.

<sup>33</sup> William C. Herrington, "In The Realm of Diplomacy and Fish: Some Reflections on the International Convention on High Seas Fisheries in the North Pacific Ocean and the Law of the Sea Negotiations," *Ecology Law Quarterly* 16 (1989): 102.

<sup>34</sup> Scheiber, "Abstention Doctrine," 37-40.

<sup>35</sup> *Foreign Relations of the United States, 1947*, vol. VI (Washington: Government Printing Office, 1954), 184.



importance of sovereignty in a memorandum issued on 21 March 1947.<sup>36</sup> He was concerned that the U.S. and allied nations would impose on Japan a peace treaty with an unreasonable number of conditions that would restrict the normal exercise of sovereign powers and rights. He stated that "it is only under conditions of peace, with a maximum freedom to seek its own economic salvation, that Japan may have hope to revive its internal economy to the point that will reasonably permit of its self-sufficiency."<sup>37</sup> Linking the key issues of sovereignty and economic recovery, MacArthur continued to expand Japanese access to high seas fishing grounds. Although the move was consistent with the U.S. position on freedom of the seas, it ran counter to the interests of several Pacific states and domestic constituencies.

The ensuing battle between MacArthur and the political forces sympathetic to the U.S. fishing industry determined the course which fisheries management would take until the international acceptance of the concept of the exclusive economic zone (EEZ). U.S. policy would be driven by a desire to balance the competing interests of coastal fishermen and the distant water fleets which needed access to overseas resources.<sup>38</sup>

In 1948, General MacArthur announced plans to extend the area in which Japan was authorized to conduct fisheries operations to the South Pacific region. The Interior, Navy and State Departments all objected to this plan. One reason was the influence of powerful American tuna interests. From the beginning of this debate, bureaucrats such as Wilbert Chapman, Special

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<sup>36</sup> Ibid., 454-56.

<sup>37</sup> Ibid., 455.

<sup>38</sup> Herrington, "Diplomacy and Fish," 102-03.

Assistant for Fisheries and Wildlife to the Under Secretary of State, were committed to linking Japanese sovereignty and reentry into fishing areas with an exclusion from the North American salmon fishery. MacArthur, however, placed all of his influence behind the initiative to rebuild the Japanese fishery through full and equal access to all ocean resources. He based his position on U.S. commitments to the freedom of the seas and the repercussions which would emerge if the U.S. were "vulnerable to the charge of regulating her adherence to international commitments in accordance with the special interests of private American business groups." <sup>39</sup>

Efforts by Chapman to link concessions by the Japanese government with respect to salmon and other northeast Pacific fisheries to access rights in other regions were not successful. The Acting Political Advisor in Japan, William Sebald, expressed his views on Japan, sovereignty and the policy of containment in Asia. It was his opinion that Japan, was at that time, the "weak link in containment."<sup>40</sup> In order to attain the objective of making Japan the focal point of U.S. objectives to resist the Communist advance in East Asia, Japanese sovereignty was essential. Sebald noted the economic aspect of this issue stating that it was a "necessity for Japan to have all restrictions on industry lifted in order to completely recover."<sup>41</sup> Sebald contended that if sovereignty was reestablished Japan would indeed turn towards the democratic west and be a strong element of the containment policy.

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<sup>39</sup> Scheiber, "Abstention Doctrine," 46.

<sup>40</sup> *Foreign Relations of the United States, 1949*, vol. VII (Washington: Government Printing Office, 1954), 835.

<sup>41</sup> *Ibid.*

As a result of the developments which preceded the signature of the general peace treaty with Japan, salmon interests were forced to abandon their hopes that Japan would accept a permanent exclusion from the salmon fishery, or that the U.S. would insist on such a concession as a condition for sovereignty. It became the strategy of the State Department and John Foster Dulles, the special negotiator with Japan, to separate the fisheries questions from the general treaty. In response to suggestions to address fisheries issues in the peace treaty, Dulles stated that "to attempt that would almost surely postpone indefinitely both the conclusion of peace and the obtaining of the results which are desired."<sup>42</sup> The new concept of abstention began to gain momentum as a means of satisfying the varied interests of West Coast fishers.<sup>43</sup> Coastal and distant water fishers were appeased, through American advocacy of abstention, and the U.S. was able to reaffirm its commitment to a three mile territorial sea. Japanese sovereignty was reestablished. Strategic, military and political objectives had been accomplished. These developments laid the foundation for the 1952 International Convention for the High Seas Fisheries of the North Pacific Ocean (1952 Convention).

### **3. Expansion of Coastal State Jurisdiction**

A third development which has influenced fisheries management in the North Pacific is the extension of coastal state

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<sup>42</sup> John Foster Dulles, "Essentials of a Peace Treaty With Japan," *The Department of State Bulletin* 24, no. 614 (1951): 579.

<sup>43</sup> Abstention allowed the coastal state or state of origin to receive "the full economic benefit of fish resources that thrived as a result of their research and regulation," *supra* note 31, 245. The geographic limits of abstention were ineffective because the migratory ranges of salmon were greater than the U.S. had envisioned. The concept did not become a permanent element of international fisheries management, and was eventually abandoned by the U.S., *supra* note 11, 90-94.

jurisdiction. The Truman Proclamation on Fisheries,<sup>44</sup> issued in September 1945, was intended to protect the interests of American coastal fishermen and preserve access to overseas resources for American high seas fishermen.<sup>45</sup> Chapman notes that "the proclamation made no mention of extension of sovereignty beyond territorial waters or of exclusion of fishermen of any nationality from any fishery. The purpose of the proclamation was to provide new means, under law, to protect fishery resources lying in international waters from overexploitation."<sup>46</sup> What ensued, however, was a series of counterclaims which "were more extensive than those asserted in the Truman Proclamation and set the stage for confrontations."<sup>47</sup>

Several Latin American states made claims to exclusive jurisdiction over resources within 200 miles of the shore.<sup>48</sup> These claims did not acknowledge the rights of the U.S. fishing fleet which had developed significant fisheries within the zones prior to the declaration. The U.S. and many other distant water fishing nations protested the claims. Regardless, claims to expanded fisheries jurisdiction continued over the next several decades. From 1960 to 1971, the number of states claiming a 12 mile fishery conservation zone expanded from 19 to 70.<sup>49</sup> In 1976, the U.S.

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<sup>44</sup> Truman Proclamation on Fisheries, Presidential Proclamation 2668, 10 F.R. 12304 (1945).

<sup>45</sup> Juda, *International Law*, 112

<sup>46</sup> Walter M. Chapman, "United States Policy on High Seas Fisheries," *The Department of State Bulletin* 20, no. 498 (1949): 71.

<sup>47</sup> Juda, *International Law*, 113

<sup>48</sup> William T. Burke, *The New International Law of Fisheries* (Oxford: Clarendon Press, 1994), 8.

<sup>49</sup> *Ibid.*, 15

enacted the Fisheries Conservation and Management Act.<sup>50</sup> This legislation established a fishery conservation zone, out to 200 miles from the baselines used to measure the territorial seas, in which the U.S. had sole responsibility for the conservation and management of fish resources.<sup>51</sup> The rising number of claims was acknowledged by the Third U.N. Conference on the Law of the Sea, and by "1977 it was plain that customary international law recognized that coastal state sovereign or exclusive rights extended over living resources within 200 miles of the coastal state."<sup>52</sup>

The 1982 Law of the Sea Treaty clarified the extent of these rights in the codification of the concept of the EEZ.<sup>53</sup> It outlines the rights and obligations of coastal and distant water states with respect to the conservation of, inter alia, anadromous species,<sup>54</sup> fish stocks within the EEZ,<sup>55</sup> and fish stocks on the high seas.<sup>56</sup> As foreign fishing was gradually eliminated from coastal areas, distant water fleets began to search for new regions to concentrate efforts to harvest fish. In many cases these efforts were adjacent to the 200 mile limit, and were targeted on the same stocks of fish which were under increasing pressure from the coastal state. Straddling stocks are those fish stocks which occur within the EEZ and in adjacent areas of the

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<sup>50</sup> Fishery Conservation and Management Act of 1976, P.L. 94-265 (1976).

<sup>51</sup> Ibid., sec. 101.

<sup>52</sup> Burke, *Law of Fisheries*, 23.

<sup>53</sup> UNCLOS, supra note 5, pt. V.

<sup>54</sup> Ibid., art. 66

<sup>55</sup> Ibid., arts. 61-63.

<sup>56</sup> Ibid., pt. VII, sec. 2.

high seas.<sup>57</sup>

States which fish for straddling stocks are required to "seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent areas."<sup>58</sup> The Law of the Sea Treaty does not provide mechanisms to resolve situations where such an agreement is not achievable. Coastal states are not authorized to enforce conservation measures, and high seas states are not obliged to refrain from fishing.<sup>59</sup> This shortcoming in the extension of coastal state jurisdiction and management responsibilities led to unilateral claims of additional enforcement authority.<sup>60</sup>

In response to the deteriorating stability of straddling stocks management, the U.N. convened a conference to interpret applicable sections of the Law of the Sea Treaty.<sup>61</sup> The Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks concluded two years of negotiations in August 1995, producing the Straddling Stocks Convention. It stresses the importance of ecosystem impacts, including bycatch considerations,<sup>62</sup> and outlines

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<sup>57</sup> Evelyne Meltzer, "Global Overview of Straddling and Highly Migratory Fish Stocks: The Nonsustainable Nature of High Seas Fisheries," *Ocean Development and International Law* 20 (1989): 257.

<sup>58</sup> UNCLOS, art. 63.

<sup>59</sup> Meltzer, "Global Overview," 257.

<sup>60</sup> See Meltzer, *supra* note 57 for a discussion of various regions in which these disputes have been most acute, including the Southeast Pacific and Northwest Atlantic Oceans.

<sup>61</sup> U.N. General Assembly Resolution 47/192, (22 December 1992).

<sup>62</sup> The Straddling Stocks Convention outlines various principles for coastal and non-coastal states to consider in developing an assessment of ecosystem impacts, management of non-target stocks, elimination of fishing fleet overcapacity and broad utilization of current scientific data, *supra* note 6, art. 5.

the manner in which states should apply the precautionary approach.<sup>63</sup> Furthermore, it elaborates on the importance of enforcement and how it should be conducted.<sup>64</sup> The situations to which this agreement is focused are at the center of current international and regional disputes.

#### **4. U.S. - Soviet/Russian Cooperation**

The hostile relationship between the Soviet Union and the U.S. contributed to the foundations of the original North Pacific fisheries management regimes. The 1952 Convention was encouraged and maintained as a means of preserving Japan's alliance with the democratic West.<sup>65</sup> The presence of Soviet and Eastern European factory trawler ships off the coast of New England were influential factors leading to the passage of the 1976 Fisheries Conservation and Management Act. Those conditions did not foster cooperation in resource conservation and management. As distant water fleets were displaced to high seas enclaves, however, the Soviet Union and the U.S. found mutual benefit in establishing a common framework to deal with emerging high seas fisheries issues.

In May 1988 the U.S. and U.S.S.R. signed the Agreement on Mutual Fisheries Relations.<sup>66</sup> It established the Intergovernmental Consultative Committee (ICC) to discuss and explore measures which might be pursued as a means to resolve fisheries conservation

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<sup>63</sup> The most significant element of the precautionary approach is the requirement to develop a series of reference points to be used in specifying stock levels at which certain conservation measures must be taken. This approach includes protection for non-target species and fisheries habitats, supra note 6, art. 6 and Annex II.

<sup>64</sup> Straddling Stocks Convention, supra note 6, pt. VI.

<sup>65</sup> Canfield, "Recent Developments," 275-76.

<sup>66</sup> Agreement on Mutual Fisheries Relations, 28 I.L.M. 1598, T.I.A.S. 11442 (1988).

disputes in the North Pacific region.<sup>67</sup> The first meeting of the ICC in February 1989 considered "the legal, scientific and technical aspects of available means for addressing"<sup>68</sup> the conservation of North Pacific anadromous species and Bering Sea pollock stocks. High seas fisheries enforcement was a sensitive matter, yet a critical requirement for effective management measures to preserve the fisheries. As early as this initial exchange of proposals and views, the elements of the eventual conventions were being framed.<sup>69</sup>

The enormity and remoteness of this area dictated the need for a coordinated approach to monitoring activities. This would assist in measuring the level of fishing effort and detecting illegal operations being staged from the high seas into either EEZ. Efforts of the ICC were essential to the success of conservation measures which had been developed for fisheries activities outside the EEZs of the North Pacific region. The sustainability of domestic fisheries is dependent on an effective scheme to regulate high seas fisheries.

Ambassador Edward E. Wolfe, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, considered this breakthrough an "unprecedented form of cooperation between [the US and USSR], particularly on oceans issues."<sup>70</sup> The

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<sup>67</sup> Canfield, "Recent Developments," 268.

<sup>68</sup> *Minutes of the First Meeting of the U.S.-U.S.S.R. Intergovernmental Consultative Committee on Fisheries*, 10 February 1989, 2.

<sup>69</sup> *Ibid.*

<sup>70</sup> Congress, Senate, Committee on Commerce, Science and Transportation, *Fishery Management and Enforcement in the Bering Sea: Hearing Before the National Ocean Policy Study of the Committee on Commerce, Science and Transportation*, 100th Cong., 2d sess., 16 March 1988, 21 [hereafter *Hearing 100-712*].



cooperative efforts allowed the dominant coastal states to present a unified front when persuading the distant water fishing states to negotiate more responsive conservation regimes. As a result the U.S. was able to achieve a level of protection for salmon that it had sought since 1937.<sup>71</sup> The rapid demise of pollock stocks in the Bering Sea catalyzed the initiative to join diplomatic, enforcement and scientific resources. This led to the implementation of a temporary moratorium on fishing in the central Bering Sea, or Donut Hole. Finally, the negotiation of an international management regime concluded efforts that had begun as early as 1988.<sup>72</sup>

The importance attached to this cooperation and its role in bringing about otherwise impossible achievements in fisheries management are highlighted by the attention it received at the highest levels of government. Summit meetings stressed the importance of ongoing fisheries negotiations. The May 1988 Reagan - Gorbachev meeting produced the agreement on fisheries relations.<sup>73</sup> Presidents Bush and Gorbachev issued a joint appeal to all interested states to cooperate in accordance with international law towards the achievement of fisheries goals. By the end of 1990, the U.S. and the U.S.S.R. were prepared to host a conference, to which all concerned states were invited, "to consider arrangements for the conservation of the living marine resources of the central Bering Sea."<sup>74</sup> The Clinton - Yeltsin

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<sup>71</sup> U.S. Department of State, "North Pacific," 110.

<sup>72</sup> Canfield, "Recent Developments," 271.

<sup>73</sup> Ibid., 268-69.

<sup>74</sup> Congress, House, Committee on Merchant Marine and Fisheries, *International Straddling Fisheries Stocks: Hearing Before the Subcommittee on Fisheries Management of the Committee on Merchant Marine and Fisheries*, 103d Cong., 1st sess., 22 September 1993, 25 [hereafter Hearing 103-59].

summit in April 1993 encouraged the successful conclusion of the conference and signaled new initiatives in "bilateral cooperation in fisheries in the Bering Sea, the North Pacific, and the Sea of Okhotsk, including for the purpose of preservation and reproduction of living marine resources and of monitoring the ecosystem in the North Pacific."<sup>75</sup>

The emergence of a new framework in which Pacific Rim issues are resolved will continue to ally the U.S. and Russia against other coastal and non-coastal states. Trade and fisheries have replaced strategic objectives as the primary concern in bilateral and multilateral relations. The changed relationship between the U.S. and Russia has altered the paradigm through which fisheries issues are considered and resolved.<sup>76</sup>

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<sup>75</sup> Ibid., 28.

<sup>76</sup> Canfield, "Recent Developments," 276.

### **III. North Pacific Salmon Treaties**

The most contentious and persistent fisheries issue in the North Pacific region has been that revolving around the rational management of anadromous fish. Japan had long prosecuted a fishery for the species which originated throughout Asia, particularly Siberia.<sup>77</sup> Japan then began to develop a fishery for North American species on the eve of World War II. The effects of Bristol Bay on U.S. ocean policy and American fisherman were long lasting. A resolution to the developing conflict was essential to establishing a regime to ensure that the resource was sustainably managed. The current Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean (hereafter 1992 Salmon Convention) is the culmination of a series of agreements which were established within the context of the historical developments described earlier. A discussion of the 1952 International Convention for the High Seas Fisheries of the North Pacific Ocean (hereafter 1952 Convention) and the development of the 1992 Salmon Convention illustrates the importance of these agreements. The provisions of the current treaty reflect the management achievements which have been made in this region and represent future elements of international fisheries management.

#### **1. The 1952 Convention**

As World War II came to an end, the U.S. salmon industry was hopeful that the eventual peace treaty would contain provisions to permanently exclude Japan from North American fisheries. However, broader strategic and economic concerns and political limitations necessitated that the North Pacific fisheries issue be resolved under a separate treaty. The primary drawback to that approach

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<sup>77</sup> Bryan, "Swimming Upstream," 246.

was that negotiations would be conducted with a sovereign Japanese government. Imposing conditions which denied a basic freedom of the high seas would have been contradictory to U.S. postwar objectives.

The 1952 Convention established the International North Pacific Fisheries Commission (INPFC), a forum for encouraging international cooperation towards conserving and managing resources on the high seas. It was also the primary treaty in which the U.S. pressed forward with initiatives to establish the "abstention principle" as a means of high seas fisheries management. Although this principle did not gain acceptance as customary international law, it did provide a stable framework for the progress of conservation efforts in the North Pacific.<sup>78</sup>

Once it was determined that fisheries questions would be negotiated separate from the general peace treaty, negotiating positions were developed. William Herrington and Wilbert Chapman were the primary forces in laying the groundwork for the convention before the peace treaty was signed. Herrington, the chief SCAP fisheries officer, assisted the government of Japan in formulating the basis of its strategy to achieve access to all high seas fishing grounds.<sup>79</sup> Chapman, in close coordination with West Coast fishing industry leaders, pursued an agenda which sought to exclude Japanese fleets from fisheries fully exploited by American fishermen.<sup>80</sup> The most important underlying factor in the negotiations was the degree to which distant water fishing had

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<sup>78</sup> Shannon C. Swanstrom, "The Trend Toward Ecosystem-Based Management in the North Pacific Anadromous Fisheries," *Colorado Journal of International Environmental Law and Policy* 6 (1995): 227-229.

<sup>79</sup> Scheiber, "Abstention Doctrine," 53-54.

<sup>80</sup> *Ibid*, 55-57.

quickly become a primary source of the Japanese economic and political recovery.

The initial step in addressing the fisheries issue was agreeing on a timetable for negotiations and the conditions under which they would be conducted. This was completed through an exchange of letters, in January 1951, between the Japanese Prime Minister, Yoshida Shigeru, and John Foster Dulles, U.S. Ambassador for the peace negotiations. The letters outlined various commitments by the two governments with respect to fisheries. The U.S. and Japan agreed to pursue negotiations as soon as possible following the restoration of Japanese sovereignty. The agreement provided for a temporary provision that Japan would abstain from fully exploited fisheries that were protected by U.S. government regulations.<sup>81</sup> As a result of the agreement, the primary goal of securing a rapid conclusion and ratification to the general peace treaty was ensured.<sup>82</sup>

Two final achievements by Chapman set the stage for the 1952 North Pacific Fisheries Convention. First, he established a role for the west coast fishing industry within the State Department as advisors for fisheries issues. Second, his advocacy of fisheries issues was important in incorporating a provision in the general peace treaty that would commit Japan to the formally negotiated "gentlemen's agreement" on fisheries.<sup>83</sup> Chapman resigned from the State Department in June 1951 and assumed the role of research director for the American Tunaboat Association. He was succeeded

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<sup>81</sup> Department of State, "Japanese Request for Post-Treaty Fisheries Negotiation," *The Department of State Bulletin* 24, no. 608 (1951): 351.

<sup>82</sup> Dulles, "Essentials of Peace," 579.

<sup>83</sup> Scheiber, "Abstention Doctrine," 72.

by William Herrington, the former chief SCAP fisheries officer who had been instrumental in reestablishing the Japanese reentry into distant water fishing.<sup>84</sup>

When the 1952 North Pacific Fisheries Conference began, the most contested issues revolved around the manner and extent to which Japan's access to west coast fisheries would be restricted. These issues were debated not only between the Canada, Japan and the U.S., but within the U.S. government. The need to balance the demands of various international and domestic interests was influential in the negotiation of compromises on abstention and enforcement provisions.

The abstention principle, which held that if a fish stock was being conserved and managed through close government regulation of the industry, other states would refrain from activities directed at that fishery,<sup>85</sup> was a new approach towards managing high seas fisheries and extending coastal state influence beyond the three mile limit. Early U.S. positions advocated the idea of a 150 mile buffer zone contiguous to the U.S. coastline, within which Japan would refrain from fishing. This proposal was eventually abandoned because it "would provide a dangerous precedent for fencing off areas of the high seas."<sup>86</sup> In its place, Herrington proposed the concept of a "voluntary waiver of rights" or abstention. Application of this would be based on scientific evidence that a specific fishery was already fully utilized, and would become overfished with additional pressure.

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<sup>84</sup> Ibid., 72-73.

<sup>85</sup> Herrington, "Diplomacy and Fish," 103.

<sup>86</sup> William C. Herrington, "Problems Affecting North Pacific Fisheries," *The Department of State Bulletin* 26, no. 662 (1952): 341.

An additional development which occurred during the negotiation phase was the demand of the tuna industry that tuna be removed from the list of species to which the treaty would apply. This was the result of emerging evidence on the abundance of tuna resources in the eastern tropical Pacific. Industry officials did not want Japan to exploit the abstention doctrine in this rich fishery. Furthermore, the abstention principle might possibly have been used against the U.S. by the coastal states of Central and South America.<sup>87</sup>

The prospect of setting precedents was also a key concern for Japan. Industry officials feared that acceptance of abstention, particularly the abstention line, beyond which Japan would agree to refrain from salmon fishing, would inhibit their ability to secure access rights and negotiate peace treaties with the nations of Asia and the South Pacific. These areas were of critical importance to the continued expansion of Japan's export market and the ability to meet the domestic demand for fish products. The U.S. was mainly concerned with conservation and management, while Japan was focused on access and freedom of the high seas. The final convention combined these varied interests in a manner which met domestic political challenges while pursuing broader strategic and economic objectives.<sup>88</sup>

The central element of the abstention principle was agreement by the Japanese government to not allow salmon harvests in the North Pacific east of 175° West longitude.<sup>89</sup> Agreement on the abundance and fully exploited nature of the halibut and herring

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<sup>87</sup> Scheiber, "Abstention Doctrine," 78-79.

<sup>88</sup> Herrington, "Problems," 342.

<sup>89</sup> Canfield, "Recent Developments," 265.

fisheries was less contested and easily resolved. Determining how to prevent the Japanese from fishing on North American salmon was not a simple matter. The extent of Japanese knowledge on this subject was far superior to that of the U.S. Herrington was unaware of the extent to which salmon of Asian and North American origin intermingled, and presumed that 180° longitude was most likely the farthest west that American salmon might be found. Certainly seeking to maximize its potential returns, the Japanese delegation proposed that the separation line be drawn at 165° West, several hundred miles closer to the American shore. In order to break the stalemate which had developed, Japan accepted a compromise of 175° West.<sup>90</sup> Abstention was accepted by Prime Minister Yoshida as a necessary concession to achieve "the paramount goal [which] had to be restoration of de jure sovereignty in the community of nations, something that would be advanced by signing a fisheries treaty as expeditiously as possible."<sup>91</sup>

This compromise was not without conditions. The parties agreed that the definition of the line would be subject to review and revision pending the completion of more studies on the extent of migration habits of Asian and North American salmon. Subsequent research established conclusively that North American salmon ranged far west of the abstention line and were susceptible to capture in significant numbers by Japanese fishing vessels. Differing interpretations of the treaty were held by the U.S. and Japan with respect to the conditions under which a revision of the location of the abstention line would be warranted. American

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<sup>90</sup> Scheiber, "Abstention Doctrine," 87-88.

<sup>91</sup> Ibid., 84.



diplomats stated that the phrase "more equitably divide" was intended to ensure that no American origin salmon would be exposed to high seas harvest by Japanese vessels. Japan, however, insisted that the phrase aimed to establish a line which left equal numbers of Asian and American salmon on opposite sides of the line.

This dispute was not resolved by the INPFC. The commission requested that an interpretation of the treaty be provided by the party States so that appropriate conservation recommendations could be proposed. Agreement on the interpretation was not provided; therefore, what existed was a "tacit agreement to let the situation sit as it is."<sup>92</sup> Even though, as of 1963, adherence to the treaty could be terminated with a one year notice, it was more advantageous to all parties that the status quo be maintained. Abrogation by the Japanese would endanger Japanese access to other stocks as well as risk the arrangements they had for fishing salmon which originated in the Soviet Union. The U.S. and Canada were unwilling to disestablish the Convention as it did provide some measure of protection for salmon and other coastal fisheries.<sup>93</sup>

The INPFC was an important element of fisheries management in the region. It encouraged cooperation in the research and development of various fish stocks. The work of the commission provided information for the proper management of commercial fisheries which were subject to exploitation by more than one

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<sup>92</sup> Congress, House, Committee on Merchant Marine and Fisheries, *Fish and Wildlife Legislation Part 4: Hearing Before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries*, 92d Cong., 2d sess., 25 February 1972, 97. [hereafter Hearing 92-19].

<sup>93</sup> Ralph W. Johnson, "The Japan - United States Salmon Conflict," *Washington Law Review* 43, no. 1 (1967): 1-4.

nation.<sup>94</sup> Most significant was the impartial nature of the commission. It was not used as a tool to maintain exclusion of the Japanese fleet from west coast fisheries. In 1959, herring was removed from the abstention list, and in 1962 certain halibut stocks off the coast of Alaska were opened to harvest by the Japanese.<sup>95</sup> These developments were the result of the relative stability which had been fostered by the INPFC.<sup>96</sup>

Douglas M. Johnston sums up the challenges which were faced by the INPFC in attempting to address management disputes over resources of the high seas. "In few areas of international law is the challenge to our reason and imagination so acute; and seldom do jurists so obviously require the services of the natural sciences."<sup>97</sup> Furthermore, "to add to the difficulties of international fishery use, the development of the classical international law of the sea was almost entirely irrelevant to the modern objective of a fully rational use of the sea."<sup>98</sup> These comments anticipated the emergence of the current Law of the Sea Treaty regime which provides the means for nations to improve fisheries management through the EEZ concept.

By the mid-1970s it was apparent that extended coastal state jurisdiction was essential to the preservation of valuable fisheries. The U.S. responded with passage of the Fisheries Conservation and Management Act which proclaimed a fishery conservation zone out to 200 miles. The 1978 Protocol Amending

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<sup>94</sup> Swanstrom, "The Trend Toward," 227-28.

<sup>95</sup> Johnson, "Salmon Conflict," 6.

<sup>96</sup> Hearing 92-19, 100.

<sup>97</sup> Douglas M. Johnston, "New Uses of International Law in the North Pacific," *Washington Law Review* 43, no. 1 (1967): 79.

<sup>98</sup> *Ibid.*, 80.

the International Convention for the High Seas Fisheries of the North Pacific Ocean was negotiated to adjust the abstention line to correspond with conservation zones declared by the U.S. and Canada.<sup>99</sup> Although abstention had not gained international acceptance or application, it did act as "a catalyst in the political process that led to ocean enclosure, culminating in the EEZ concept."<sup>100</sup> These changes improved the prospects for better management by placing a significant portion of fish stocks under the control of coastal states.

The 1982 Law of the Sea Treaty incorporates the U.S. position on the conservation of anadromous fish stocks that states of origin "shall have the primary interest in and responsibility for such stocks."<sup>101</sup> One exception is provided to the prohibition on the high seas harvest of salmon. If ending a fishery seaward of the EEZ "would result in economic dislocation for a State other than the State of origin"<sup>102</sup> the fishery may continue. The States are called upon to negotiate appropriate arrangements for management and enforcement measures with regard to such fisheries.<sup>103</sup> The dislocation provision was included specifically for the Japanese industry to conduct a gradual elimination of the salmon fishery. By 1991 the Japanese high seas salmon fishery no longer existed.<sup>104</sup> This development was facilitated through negotiations for Japan to incrementally withdraw its salmon fleets

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<sup>99</sup> Protocol Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean, 30 U.S.T. 1095, T.I.A.S. 9242 (1978).

<sup>100</sup> Scheiber, "Abstention Doctrine," 94.

<sup>101</sup> UNCLOS, *supra* note 5, art. 66.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> Bryan, "Swimming Upstream," 251.

from the Bering Sea and other areas of the North Pacific.<sup>105</sup>

## **2. High Seas Driftnets**

The emergence of large scale pelagic driftnets on the high seas is a related issue which had a severe impact on North Pacific salmon conservation efforts. Although the fishery was directed at squid, it resulted in the bycatch of significant numbers of salmon.<sup>106</sup> Conservationist groups concerned with ecosystem stability and fishermen's groups interested in preserving exploitable resources became alarmed and outraged at the expansion of driftnet fisheries. This prompted aggressive actions aimed at bringing an end to these fishing operations. By 1993, the use of driftnets on the high seas had been all but permanently prohibited. The U.S. Congress, in support of United Nations (U.N.) resolutions,<sup>107</sup> passed a series of laws which would encourage the elimination of driftnets.<sup>108</sup>

The North Pacific squid driftnet fishery was the main focus of the U.S. and U.N. efforts to implement a global moratorium. The fishery was prosecuted by vessels from Japan, Korea and Taiwan throughout the 1980s. In 1980 the number of squid driftnet vessels totaled only 14 because Korea was the only active fishing interest. Japan entered the fishery in 1981, and Taiwan began driftnet operations in 1983, bringing to 743 the total number of vessels operating with squid driftnets. The fleet size peaked at 776 vessels in 1988 and was down to 646 in 1990 before being

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<sup>105</sup> Canfield, "Recent Developments," 266.

<sup>106</sup> Bryan, "Swimming Upstream," 255.

<sup>107</sup> See U.N. General Assembly Resolutions 44/225 (22 December 1989), 45/197 (21 December 1990) and 46/215 (20 December 1991).

<sup>108</sup> See Driftnet Impact Monitoring, Assessment, and Control Act of 1987, P.L. 100-220 (1987), Driftnet Act Amendments of 1990, P.L. 101-627 (1990), and High Seas Driftnet Fisheries Enforcement Act, P.L. 102-582, (1992).

disestablished after the 1992 season. Each vessel could deploy nets up to 50 miles in length and 45 feet high. Japan was by far the most significant participant, but had steadily decreased the number of vessels they allowed to operate in the region with driftnets.<sup>109</sup>

The geographic distribution of effort varied with each fishery. Strict regulations on the bounds of the Japanese driftnet fleet had been implemented by the Government of Japan in order to minimize interactions with migrating salmon, and to avoid conflicts with other Japanese squid fishery gear groups. The fleet was confined to areas east of 170°E longitude and south of latitudes ranging from 42°N to 46°N, depending on the water temperatures. The Korean and Taiwanese fleets, however, were not as restricted. During August and later months, when these fleets conducted a significant portion of their operations, the ships moved up to 800 miles west of the Japanese fleet. The total area fished by the combined fleets in 1990 ranged from 140°E to 140°W and from 36°N to 46°N.<sup>110</sup>

The perception among northwest U.S. fishermen and environmental groups that driftnet fishing was incredibly destructive and wasteful, brought together two constituencies that had previously been in constant opposition. The coordination of their lobbying efforts led to relatively quick Congressional action to investigate the negative impacts of this fishery. On 29 December 1987, the Driftnet Impact, Monitoring, Assessment and

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<sup>109</sup> William T. Burke, Mark Freeburg and Edward L. Miles, "United Nations Resolutions on Driftnet Fishing: An Unsustainable Precedent for High Seas and Coastal Fisheries Management," *Ocean Development and International Law* 25 (1994): 133.

<sup>110</sup> *Ibid.*, 156-57.

Control Act of 1987 was signed into law. This initial legislative effort focused on addressing the incidental catch of marine resources of the U.S., specifically salmon and seabirds. In order to accomplish this, the Secretary of State was required to negotiate monitoring agreements with nations which authorized driftnet operations in order to facilitate the collection and analysis of reliable fishery data. Furthermore, the Administration would be required to negotiate agreements which would ensure the effective enforcement of fisheries regulations on driftnet vessels, and provide assurances that appropriate penalties were imposed on violators. The most significant element of the Driftnet Impact Act is the requirement that the Secretary of Commerce should certify, under the Fisherman's Protective Act of 1967 (FPA), any nation which would not enter into appropriate agreements. The use of such trade sanctions would become a main element in the effective end of driftnet fishing in the North Pacific.<sup>111</sup>

Congressional hearings held during the 101st Congress illustrate increasing concern with the impacts of driftnet fishing. A joint hearing before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment and the Subcommittee on Trade on 26 October 1989 brought together administration officials, public interest groups, and key Congressional leaders to discuss the development of further driftnet legislation. Representatives Unsoeld (WA) and John Miller (WA) both expressed a critical need to expand the Pelly Amendment sanctions of the FPA to cover any products, as opposed

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<sup>111</sup> Driftnet Impact Monitoring, Assessment, and Control Act of 1987, P.L. 100-220, secs. 4004-06 (1987).

to just fish products, from a certified nation. Further, the sanctions should be mandatory, rather than exercised at the discretion of the President. This change would be necessary to make the negotiating position of the U.S. more powerful and to force the executive branch to take action against nations which would continue to authorize driftnet operations.<sup>112</sup>

Congressional action also led to the introduction, by the U.S., of a resolution to the U.N. General Assembly which would address the use of driftnets throughout the high seas. The resolution, unanimously accepted on 22 December 1989, calls for interested nations to collect and review appropriate scientific data and impose an international moratorium on the use of driftnets until adequate regulatory conservation and management measures could be agreed upon by concerned nations.<sup>113</sup>

On 28 November 1990, the Driftnet Act Amendments of 1990 was signed into law. The findings reemphasize the destructive nature of driftnets and the need for more effective efforts to control the use of such fishing practices. The amendments required the Secretary of State to negotiate agreements which would require satellite tracking devices and statistically significant observer coverage. It would also require area restrictions to avoid interactions with migrating salmon and the right for U.S. officials to board and inspect driftnet vessels for applicable violations. Most significantly, the legislation states the policy of the Congress that the U.S. should support U.N. Resolution

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<sup>112</sup> Congress, House, Committee on Merchant Marine and Fisheries, *Joint Hearing Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries and the Subcommittee on Trade of the Committee on Ways and Means*, 101st Cong., 1st sess., 26 October 1989, 5-6. [hereafter Hearing 101-60].

<sup>113</sup> U.N. General Assembly Resolution 44/225 (22 December 1989): para. 4.

44/225, and secure a permanent ban on the use of driftnets. The amendments did not, however, expand the scope of trade sanctions or alter the procedures under which they would be imposed.<sup>114</sup>

The demands of constituent groups from the northwest US would continue to encourage the Congress to pursue more aggressive legislation to effectively deal with the continuation of driftnet operations in the North Pacific. A hearing held at Seattle, Washington in August 1991 by the House Subcommittee on Fisheries and Wildlife Conservation and the Environment is particularly illustrative of the outrage and frustration felt by powerful Congressmen and influential public interests. Representatives Studds (MA), Unsoeld (WA) and Abercrombie (HA) clearly describe their intention to pursue an effective, permanent end to the use of driftnets through "tough laws, skilled diplomacy and aggressive law enforcement."<sup>115</sup> Senator Adams (WA) suggests that the U.S. "use all means available to ensure that these driftnets vessels which illegally rob our fishing grounds in the North Pacific are stopped."<sup>116</sup>

Despite an equivalent degree of concern over driftnets, State Department officials urged the Congress to exercise caution in exerting pressures to eliminate driftnets through unilateral trade sanctions. By working within the framework outlined by the U.N. resolutions, the Administration would be able to maintain an international consensus in pursuit of conservation and marine

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<sup>114</sup> Driftnet Act Amendments of 1990, P.L. 101-627, sec. 107 (1990).

<sup>115</sup> Congress, House, Committee on Merchant Marine and Fisheries, *High Seas Driftnet Fishing: Hearing Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries*, 102d Cong., 1st sess., 06 August 1991, 1-2.

<sup>116</sup> *Ibid.*, 7.



resource protection goals. The U.S. policy towards the U.N. resolutions on driftnet fishing was that "unless joint assessment by all concerned members of the international community of sound scientific data from a specific large-scale pelagic driftnet fishery concludes that there are no unacceptable impacts by the fishery, the conditions for relief from the moratorium recommended in U.N. Resolution 44/225 are not met."<sup>117</sup>

The struggle over the extent and discretion with which sanctions might be imposed was temporarily settled in the passage of the High Seas Driftnet Enforcement Act on 2 November 1992. The Act supports the goals of U.N. Resolutions 44/225, 45/197 and 46/215 which called for the moratorium to become effective on 31 December 1992. It also brought attention to the U.N. request for nations to act to ensure the moratorium is implemented, and reiterates the policy of the U.S. to secure a permanent ban on the use of large-scale driftnets.<sup>118</sup> The apparent permanent end to the Pacific large-scale driftnet fishery has been a significant achievement in salmon management and international cooperation, although somewhat reluctant, in ecosystem conservation.

### **3. The 1992 Anadromous Stocks Convention**

The culmination of years of efforts to protect salmon resources from high seas harvesting was achieved in 1992 with the signing of the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean. The treaty is a direct result of the evolution of fisheries management in the region. Particularly important were changes in Japanese and Russian

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<sup>117</sup> Ibid., 52-53.

<sup>118</sup> High Seas Driftnet Fisheries Enforcement Act, P.L. 102-582, secs. 1-2 (1992).

domestic priorities. Specific changes and improvements from the 1952 Convention represent current trends in international fisheries agreements that might more economically and effectively manage the problems associated with the direct or incidental catch of salmon on the high seas.

The initial thrust for a new regime to replace the INPFC was made in 1988 when the U.S. and U.S.S.R. established the ICC to consider fisheries issues in the North Pacific. As the major salmon producers, each state had a mutual interest in addressing the harvest of fish in which they invested significant resources to preserve and maintain stocks. With cold war tensions waning and cooperation on fisheries becoming a more critical element of American-Soviet relations, the main high seas salmon fishing states could no longer capitalize on security issues as a means of maintaining an irrational fishery.

In 1989, the Soviet Union decided to reduce Japan's quota for Asian-origin salmon to zero by 1992.<sup>119</sup> In addition, the Soviet Union proposed that a new treaty be negotiated to address high seas salmon issues. The treaty would replace the INPFC and add the Soviets to a new, single regulatory regime for managing North Pacific salmon fisheries. The Soviet government proposed a draft convention, and worked with the U.S. to develop a text which was provided to Canada and Japan. Several conferences over a period of two years produced a final convention text. During this time, the Soviet Union was replaced by the Russian Federation. The convention was not significantly altered by this event, and was

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<sup>119</sup> Following World War II, the U.S.S.R. and Japan negotiated a treaty authorizing a Japanese high seas fishery for Asian salmon. This reflected Soviet claims to control over these stocks, supra note 31, 246.

signed by all four parties in Moscow on 11 February 1992. The treaty entered into force on 21 February 1993.

The changing political balance between the U.S. and the U.S.S.R. was not the only factor which contributed to the prospect for success of these negotiations. The perspective of the Japanese government was beginning to adjust as a result of international and domestic events. First, the 1982 Law of the Sea Treaty signaled acceptance, as customary international law, the prohibition on salmon harvests by States other than the State of origin. The extent to which Japan could legitimately claim dislocation was beginning to lose credibility. Second, Japan was once again becoming a major source of origin for wild salmon. As a result, it began to see the effect that fishing by Korea, Taiwan or other states might have on the prospects for a complete recovery of this fishery.<sup>120</sup> The government began to acknowledge and support the same arguments the U.S. had used for decades to restrict high seas salmon fishing by non-origin states. Finally, Japan found it increasingly difficult to counter U.S.-Russian cooperation on salmon issues. Further resistance would likely yield negative consequences in other more important issues.<sup>121</sup>

The Convention aims to resolve the concerns of the states of origin for protecting their resources through several measures. First, the states agree to prohibit their nationals from conducting a high seas fishery for salmon.<sup>122</sup> Second, the

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<sup>120</sup> Bryan, "Swimming Upstream," 250-51.

<sup>121</sup> Congress, Senate, Committee on Foreign Relations, *Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean: Hearing Before the Committee on Foreign Relations*, 102d Cong., 2d sess., 17 June 1992, 5. [hereinafter Hearing 102-781].

<sup>122</sup> 1992 Salmon Convention, *supra* note 13, art. III.

convention outlines provisions to prevent trafficking in illegal salmon, including the initiation of a certificate of origin program.<sup>123</sup> Finally, the Convention establishes the North Pacific Anadromous Fish Commission (NPAFC). This organization will be responsible for researching the extent of salmon bycatch in other fisheries and recommending appropriate management measures.<sup>124</sup>

This process will not only apply to current fisheries, but those which might emerge. This could prevent another high seas driftnet issue similar to that of the late 1980's from developing and disrupting the stable management regime which currently exists. Furthermore, the NPAFC is authorized to conduct research which would protect species other than salmon.<sup>125</sup> This provision encourages states to become more ecosystem-oriented rather than species-oriented.

The enforcement provisions, as well, are a significant improvement from the 1952 Convention. Each party has "clear authority" to board fishing vessels of other States party to the convention which are suspected of having salmon on board. This authority ranges across the high seas region of the North Pacific which is seaward of the EEZ of any state and north of 33°N latitude. If the inspection reveals any salmon which have been illegally retained, that vessel may be seized and taken to the nearest port of the enforcing state until the flag state assumes direct control of the vessel. The NPAFC is charged with developing a common penalty scheme to ensure that penalties imposed on violators are equitable. The convention also provides

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid., arts. VIII-IX.

<sup>125</sup> Ibid., art. IX.

measures to prevent fishing vessels from reflagging in an effort to avoid the new prohibitions. States party to the Convention are required to encourage non-party States to either join the Convention or follow the conservation measures recommended by the NPAFC.<sup>126</sup>

Ratification of the convention and the establishment of the NPAFC were the culmination of over 50 years of persistent efforts by the U.S. to receive the "fullest possible social, economic and recreational benefits from Pacific salmon produced in U.S. waters."<sup>127</sup> Closer coordination of enforcement and research efforts to promote the conservation of salmon and ecologically related species marks the beginning of a new era in high seas fisheries management.

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<sup>126</sup> Ibid., arts. IV-V.

<sup>127</sup> U.S. Department of State, "North Pacific," 110.

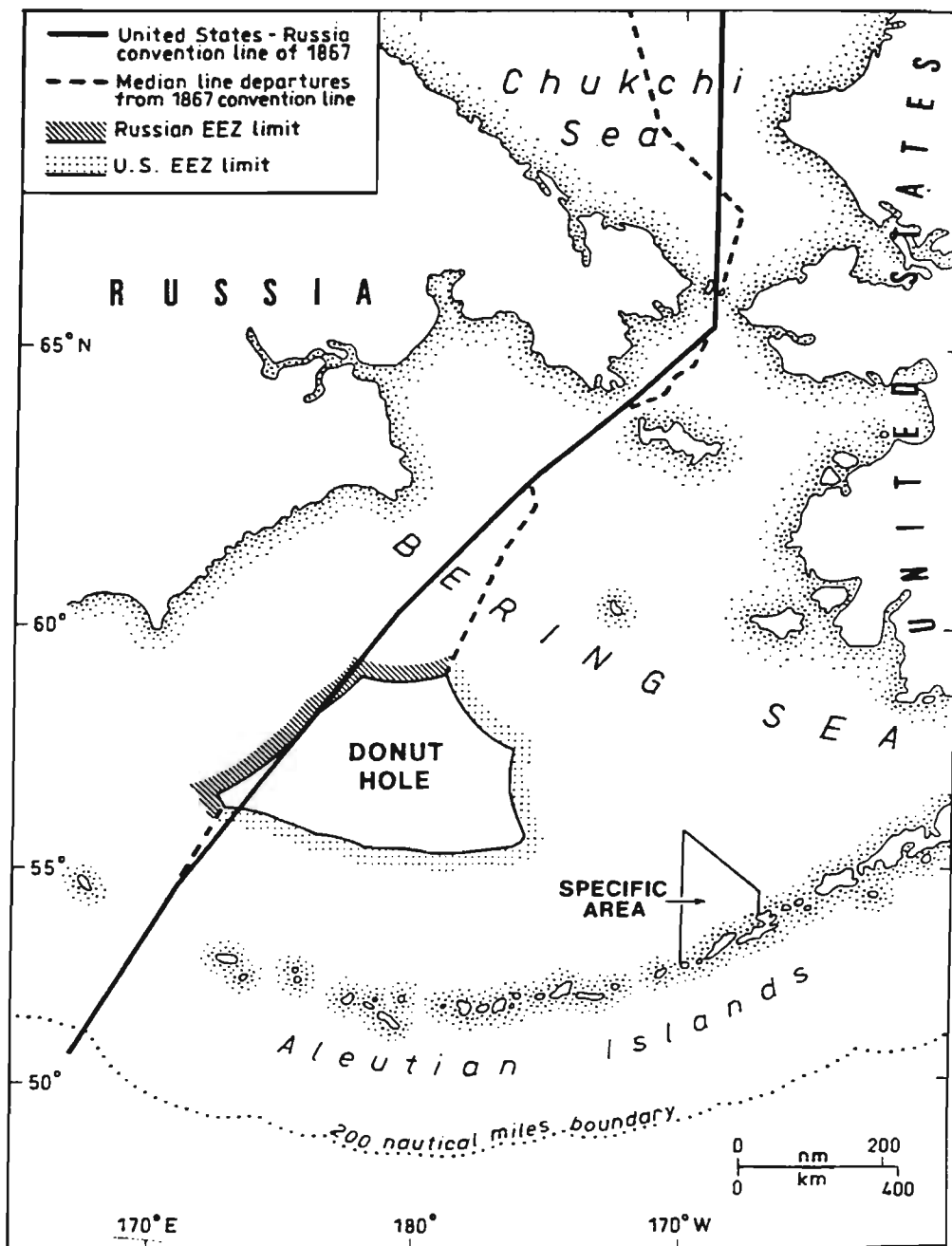
#### **IV. The Bering Sea Donut Hole Agreement**

Since the 17th century, freedom of navigation on the high seas has been one of the most fundamental rights of all nations under international law. The freedom to fish, or overfish, was an element of the freedom of the seas. Waters outside the territorial sea were considered international waters. All nations had a right to fish in this area without regard to the policies of other nations. Various extensions of jurisdiction over areas of the high seas have increased during the last fifty years, culminating in the 1982 United Nations Convention on the Law of the Sea. The treaty outlines the duties and responsibilities of nations fishing on the high seas. Management of the resources in productive high seas regions, however, was not adequately addressed. The recent over-exploitation of pollock in the central Bering Sea demonstrates that effective high seas fisheries management is a necessity. The development of the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (hereafter Donut Hole Agreement) highlights the difficulties involved in ensuring that effective enforcement and management provisions are included in such efforts. Implementation of this multilateral agreement will preserve an invaluable resource, and become the foundation for new initiatives in regional fisheries agreements.

The gradual exclusion of distant water fishing fleets from the U.S. and Soviet EEZs in the North Pacific, forced foreign vessels to seek alternative grounds with similar productivity. Japanese vessels turned to a high seas pocket of the central Bering Sea, known as the Donut Hole (See Figure 2), in search of

Figure 2.

The Bering Sea Donut Hole



Source: David Freestone, "The Effective Conservation and Management of High Seas Living Resources: Towards a New Regime?," *Canterbury Law Review* 5, no. 5 (1994): 348.

new fish stocks. The region had been relatively unexploited, and little was known about the extent of resources within the Donut Hole. The total catch of Alaskan pollock in 1980 was only 15,000 metric tons. However, the movement of foreign fishing vessel fleets into this area resulted in the discovery of an abundant pollock population of unknown origin. The 1986 total catch was one million metric tons.<sup>128</sup> The catch reported by Japanese vessels alone increased from 4,100 metric tons in 1983 to 802,600 metric tons in 1987.<sup>129</sup>

Throughout the late 1980s, as domestic and foreign landings of pollock rapidly increased, debate continued over the relationship of the donut hole pollock population to stocks throughout the Bering Sea. Several scientists proposed that the stock was independent of other stocks found in the Soviet and U.S. EEZs, while others supported the theory that all the populations were interconnected.<sup>130</sup> By 1994, Japanese and American scientists agreed that the donut hole stock is part of the Aleutian Basin stock. This particular fish population spawns and matures near Bogolsof Island, AK. The mature adults then migrate into the Donut Hole before returning to U.S. waters to spawn.<sup>131</sup>

The adverse relationship between the Donut Hole and American EEZ pollock catches was compounded by a 1986 domestic fishing fleet landing of nearly 1.2 million metric tons of pollock from

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<sup>128</sup> Lourene Miovski, "Solutions in the Convention on the Law of the Sea to the Problem of Overfishing in the Central Bering Sea: Analysis of the Convention, Highlighting the Provisions Concerning Fisheries and Enclosed and Semi-Enclosed Seas," *San Diego Law Review* 26 (1989): 527-28.

<sup>129</sup> Edward L. Miles and David L. Fluharty, "U.S. Interests in the North Pacific," *Ocean Development and International Law* 22 (1991): 322.

<sup>130</sup> Mirovitskaya, "Fisheries exploitation," 244-46.

<sup>131</sup> Meltzer, "Global Overview," 284-85.



the U.S. EEZ. Whereas, in 1980, 976,000 metric tons of pollock had been taken from the Donut Hole and U.S. EEZ, combined. In addition to the domestic catch, foreign vessels took 1.04 million metric tons of pollock from the Donut Hole in 1986, compared to 18,000 metric tons in 1980.<sup>132</sup> Figure 3 illustrates the increasing domestic and foreign fishing fleet landings in the Bering Sea.

As pollock landings continued to increase, the economic importance of fisheries in the North Pacific as a whole took on greater importance. In the early 1970s, the U.S. and Canada received 20% of their total domestic fish catch from the North Pacific. By the late 1980's over 80% of the total domestic catch was coming from this region. Concern for the Bering Sea ecosystem began to take on increased significance as the total (foreign and domestic) catch of pollock in the entire Bering Sea consistently exceeded the maximum sustainable yield that had been determined for the U.S. domestic fleet.<sup>133</sup> Furthermore, the Japanese were becoming increasingly dependent on the Donut Hole as a source for 20%-30% of its annual pollock catch and 3,300 jobs.<sup>134</sup>

An additional early problem with the foreign exploitation of donut hole resources was the possibility of foreign vessels using the area as a staging ground for poaching within the U.S. EEZ. Officials of the National Marine Fisheries Service and North Pacific Fisheries Management Council had stated that extensive catches reported to have been made in the Donut Hole actually took

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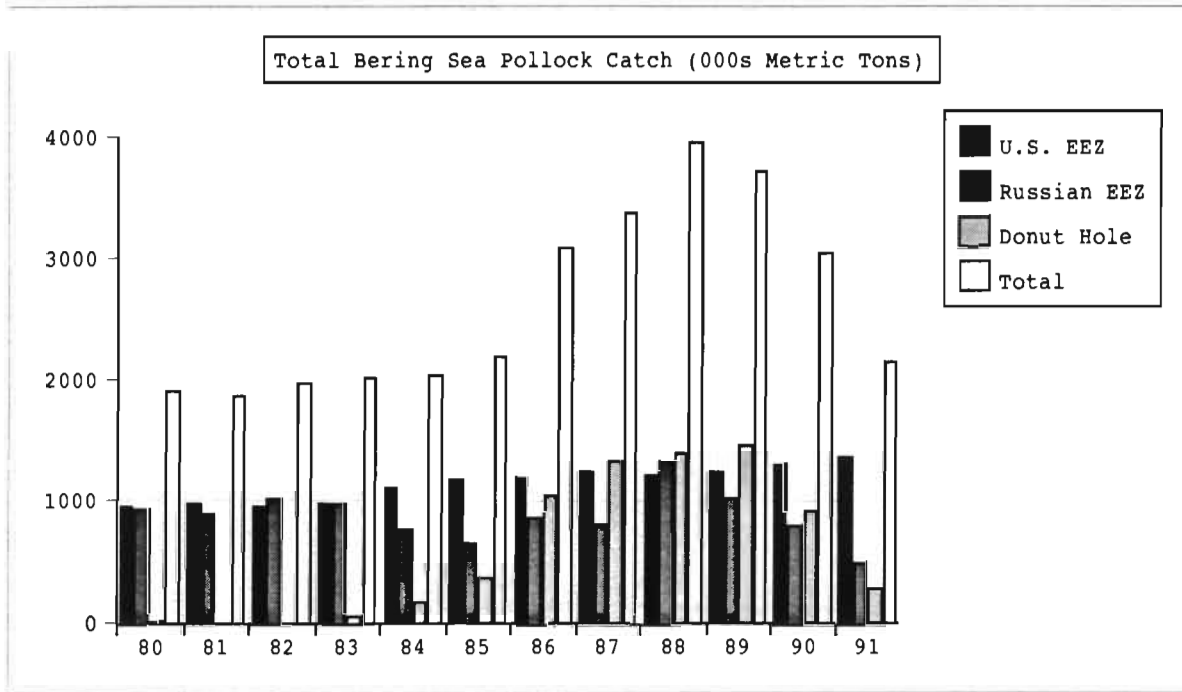
<sup>132</sup> Ibid., 286.

<sup>133</sup> Mirovitskaya, "Fisheries Exploitation," 246-47.

<sup>134</sup> Canfield, "Recent Developments," 264.

Figure 3.

Total Bering Sea Pollock Catches



Source: Evelyne Meltzer, "Global Overview of Straddling and Highly Migratory Fish Stocks: The Nonsustainable Nature of Global High Seas Fisheries," *Ocean Development and International Law* 25 (1994): 286-87.

place in U.S. waters.<sup>135</sup>

As a result of the imminent collapse of the domestic fishery for the Aleutian Basin pollock stock, industry leaders asked the State Department to take action to limit or end foreign fishing in the Donut Hole. In October 1987 the North Pacific Fisheries Management Council requested that the State Department begin negotiations with all countries fishing in the Donut Hole to create an international management regime. In addition, Senator Ted Stevens (AK) proposed that the Senate pass a non-binding resolution calling for an immediate moratorium on donut hole fishing by all nations, penalties for non-compliance with the moratorium, and continuance of the moratorium until an agreement for pollock conservation in the high seas area could be reached.<sup>136</sup>

Despite the overwhelming evidence of a need to take action for preserving the pollock stocks of the Aleutian Basin, the Defense and State departments were concerned with the precedent that unilateral action would have on future similar disputes. Aggressive claims by coastal states could have adverse military and strategic consequences.<sup>137</sup> However, industry leaders wanted the American government to claim jurisdiction over the Donut Hole either unilaterally or with the Soviet Union. The 1982 Law of the Sea Treaty, most of which had been recognized by the U.S. as customary international law, provided the State Department with various options for leading the development and implementation of a multilateral agreement among the donut hole fishing nations.

Article 63 describes the duty of concerned states to initiate

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<sup>135</sup> Meltzer, "Global Overview," 288.

<sup>136</sup> Hearing 100-712, 4-6.

<sup>137</sup> Mirovitskaya, "Fisheries exploitation," 248.

negotiations to preserve the pollock resource as a straddling stock. Paragraph 2 of the article compels the coastal state and foreign fishing nations, "either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks."<sup>138</sup> The coastal state has a right to manage stocks within its EEZ and a duty to preserve those stocks. The non-coastal states, notwithstanding their freedom to fish on the high seas, have a duty to not compromise the coastal state's efforts to protect various fish populations.<sup>139</sup> Articles 116 (b) and 117 provide the basis for a coastal state to protest any actions which do not contribute to the conservation and management of straddling stocks. These articles take on added significance because the convention does not outline any rights of the coastal state to enforce actions deemed necessary for various conservation measures. The coastal state is limited to diplomatic protests and various forms of economic sanctions including denial of port access, financial aid and withholding agreements on other issues.<sup>140</sup>

Declaring the Bering Sea an enclosed sea, as defined by Article 122, would have allowed the U.S. to extend greater influence over Donut Hole resources. This declaration would have to have been made by both the Russian and American governments. Article 123(a) directs the littoral states to work together in "the management, conservation, exploration and exploitation of the

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<sup>138</sup> UNCLOS, *supra* note 5, art. 63.

<sup>139</sup> Miovski, "Solutions," 537.

<sup>140</sup> Edward L. Miles and William T. Burke, "Pressures on the United Nations Convention on the Law of the Sea of 1982 Arising From New Fisheries Conflicts: The Problem of Straddling Stocks," *Ocean Development and International Law* 20 (1989): 350.

living resources of the sea."<sup>141</sup> However, the status of enclosed sea does not grant enforcement powers to the coastal states to ensure foreign compliance with conservation measures. In addition, the coastal states are not entitled to claim any degree of jurisdiction over the high seas area of an enclosed sea. Other than merely recognizing the unique concerns that a coastal state may have in an enclosed sea, the treaty charges the American and Russian governments with forging a multilateral agreement for conserving central Bering Sea resources.<sup>142</sup>

Increased cooperation on fisheries conservation between the Russian and American governments has been evident since the late 1980s. The Gorbachev regime was instrumental in changing the Soviet attitude towards resource management. The Agreement on Mutual Fisheries Relations<sup>143</sup> allowed U.S. fishing vessels access to the Soviet EEZ and established the groundwork for future economic and scientific cooperative efforts. The following year, a settlement of the joint maritime boundary dispute was achieved, placing nearly 70% of the Bering Sea under American jurisdiction. Dissolution of the Soviet Union in 1991 did not alter the effectiveness of bilateral initiatives in the Bering Sea. Joint operations between the U.S. Coast Guard and Russian Maritime Border Guards have increased, enhancing mutual efforts to monitor the level of fishing in the Bering Sea. The significance of this cooperation is the increased credibility the American and Russian governments have in convincing non-littoral states to participate

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<sup>141</sup> UNCLOS, *supra* note 5, arts. 122-123.

<sup>142</sup> Mioviski, "Solutions," 560-62.

<sup>143</sup> Agreement on Mutual Fisheries Relations, *supra* note 66.

in a multilateral management regime for fishery resources.<sup>144</sup>

Articles 117, 118 and 119 of the Law of the Sea Treaty call for all nations to protect and conserve the living marine resources of the high seas.<sup>145</sup> Although states do have a right to fish on the high seas, they also have the responsibility "to independently and jointly devise conservation measures for living resources of the high seas."<sup>146</sup> States fishing for the same resource are to develop regional or sub-regional organizations to develop and enforce various management measures that do not discriminate among the fishing states. The U.S. and Russian governments can use the high seas conservation requirements as justification for demanding that the Bering Sea fishing states work within a particular framework to conserve pollock stocks in the central Bering Sea.<sup>147</sup>

Despite various provisions within the 1982 Law of the Sea Treaty for dispute settlement through peaceful means, including compulsory conciliation, enforcement of any agreement is one of the most contentious issues. Numerous rights and obligations are specified for fishing; however, no provisions endorse unilateral enforcement of any conservation measures. The only way that enforcement would be effective and legal is through the development of a multilateral agreement among nations fishing in a particular region. Multilateral initiatives are essential to provide adequate measures to ensure effective management. A unilateral or bilateral assertion of coastal states rights over

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<sup>144</sup> Canfield, "Recent Developments," 266-69.

<sup>145</sup> Belsky, "Large Marine Ecosystems," 755.

<sup>146</sup> Mioviski, "Solutions," 534.

<sup>147</sup> Ibid., 535-37.

resources in the high seas would jeopardize U.S. interests throughout the world, as settlement of this issue would set a precedent for various other regional resource disputes.<sup>148</sup>

As a result of increasing diplomatic pressure and concern for the health of pollock stocks, the non-coastal Bering Sea fishing nations joined the United States and Russia at the First Conference on the Conservation and Management of the Living Marine Resources of the Central Bering Sea at Washington, D.C. in February 1991. Delegations from China, Japan, Korea and Poland were present at the conference. This conference was arranged in light of the decline of the donut hole pollock catch from over 1.4 million metric tons in 1989 to 917,000 tons in 1990. The dramatic decrease followed nearly a decade of increasing annual catches.<sup>149</sup> Although the nations did agree on the need for conservation measures for the overexploited pollock fishery, a strong division between the coastal and non-coastal States was obvious. The American delegation proposed the development of a regime which would stress the rights of the coastal nations.<sup>150</sup> A final resolution was developed which expressed the intent of each state to:

- 1) collect and report catch data,
- 2) take no anadromous species,
- 3) halt the expansion of the Donut Hole fishing fleet,
- 4) cooperate in scientific research, and
- 5) discuss observation and enforcement programs.<sup>151</sup>

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<sup>148</sup> Miles, "Pressures," 348-52.

<sup>149</sup> Meltzer, "Global Overview," 286-88.

<sup>150</sup> Canfield, "Recent Developments," 269.

<sup>151</sup> Ibid.

A second conference in August 1991 at Tokyo, Japan did not result in further progress towards an agreement to manage the pollock resource. The distant water fishing nations rejected proposals for observer programs and a 1992 fishing moratorium.<sup>152</sup> By the time of the third conference in November, the 1991 donut hole pollock catch was projected to reach only 293,000 metric tons.<sup>153</sup> All six nations reaffirmed the need for conservation measures, and the U.S. and Russian governments agreed to restrict pollock fishing within their respective EEZs. A proposed moratorium of fishing in the Donut Hole was again rejected by the non-coastal states; however, they did agree to restrict the catch, allow shipboard observers, install satellite location transponders and engage in an exchange of scientific information.<sup>154</sup>

Significant progress was made at the fourth conference in preparing and reviewing a draft negotiating text. The nations also approved an observer program which included provisions for the study of haul characteristics, fishing effort and biological sampling of primary and incidental catch.<sup>155</sup> In response to continued requests by the American delegation for a voluntary cessation of fishing in the Donut Hole, Japan and Korea agreed to decrease the size of their fishing fleets. Japan imposed a 120,000 metric ton ceiling on their catch until April 1993. By August 1992, however, the total donut hole pollock catch had reached only 11,000 metric tons. In light of the severity of stock depletion, all six nations agreed to a voluntary, temporary

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<sup>152</sup> Hearing 103-59, 25.

<sup>153</sup> Canfield, "Recent Developments," 270.

<sup>154</sup> Hearing 103-59, 26.

<sup>155</sup> Meltzer, "Global Overview," 288.



suspension of pollock fishing in the high seas area of the Bering Sea.<sup>156</sup> The suspension would remain in effect until a multilateral management regime was in place for making conservation decisions. In addition, the nations agreed on a resource monitoring program, providing for the conduct of scientific surveys, controlled trial fishing, and the development of stock assessment models.

As a result of the fifth conference, President Bush signed the Central Bering Sea Fisheries Act of 1992<sup>157</sup> in November. This law prohibited U.S. fishing in the Donut Hole until a conservation and management treaty, which included Russia, could be signed by the United States. In addition, the law restricted foreign fishing vessel access to U.S. ports and the activities of foreign owned processing plants with vessels fishing in the Bering Sea.<sup>158</sup>

Later conferences reiterated concern over the fate of the pollock stock and the successful development of a regime to make future decisions for preserving the fishery. Issues which were discussed included the basis of the determination of the total allowable catch (TAC), division of the TAC into individual national quotas, and observer coverage levels. Each of these problems underwent intense negotiations in developing an effective and enforceable agreement.<sup>159</sup>

The demise of the Bering Sea pollock fishery and the subsequent suspension of fishing had severe domestic impacts in Japan. In addition to pollock, the Japanese catch of anadromous

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<sup>156</sup> Hearing 103-59, 26-27.

<sup>157</sup> Central Bering Sea Fisheries Enforcement Act of 1992, P.L. 102-582 (1992).

<sup>158</sup> Ibid., secs. 302-305.

<sup>159</sup> Hearing 103-59, 27-28.

fish was being severely restricted, and the use of high seas drift nets by Japanese fleets was under extreme criticism. From 1980-1990 Japanese high seas fishing jobs were reduced by 50%, and one-third of the Japanese demand for fish was met with imports. The attempt to develop a conservation regime was perceived by much of Japan as trade protection. Given these domestic pressures, Japan's continued participation in the conferences highlighted the importance of international negotiations as a manner of conserving the resources of the high seas.<sup>160</sup>

A three year, ten conference negotiating process culminated on June 16, 1994, when the United States, Russia, China and Korea signed the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea. Poland and Japan signed the convention soon thereafter, establishing the foundation for a unique system of resource protection. The U.S. deposited its instrument of ratification of the treaty on 8 November 1995, bringing the agreement into force on 8 December 1995.

The treaty outlines the manner in which the fishery will be monitored and utilized among the six party States. An annual conference will be held to determine the allowable harvest level (AHL) and the individual national quota (INQ) for each state for the succeeding year. Action will be taken to resolve alleged violations, and discuss the effectiveness of enforcement and observer programs.<sup>161</sup> AHLs and INQs, determined by consensus, are based on data presented by the Scientific and Technical Committee (composed of one representative from each country), one American

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<sup>160</sup> Canfield, "Recent Developments," 271.

<sup>161</sup> Donut Hole Agreement, *supra* note 16, art. IV.

institution and one Russian institution.<sup>162</sup> If a sufficient amount of data for such determination is unavailable, the American estimate of the biomass in the area around Bogolsof Island (See Figure 2, Specific Area) will represent 60% of the pollock biomass. If the biomass is determined to be less than 1.67 million metric tons, the AHL will be zero. As the biomass increases above this level AHL is determined on a graduated scale by the conference members.<sup>163</sup> The INQs are determined in accordance with the AHL. These levels are based on the catch capacity of each State, and are not transferable to States within or outside the convention regime.<sup>164</sup>

The responsibilities of each state under the convention include ensuring that its vessels comply with the provisions of the agreement and that any violation of the treaty is considered an offense under appropriate national legislation. All fishing vessels are required to carry a satellite position-fixing transmitter and provide to all parties 48 hour advance notification of the intent to commence fishing operations within the Donut Hole. In addition, transshipment of catch within the Donut Hole requires 24 hour advance notice. The information received from satellite data and catch statistics are to be shared among the various party States. The treaty also specifies that each fishing vessel shall accept one observer from a party other than the vessel's flag State. Observers are allowed to monitor fishing activities, location, incidental catch and gear

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<sup>162</sup> Ibid., arts. VII-IX.

<sup>163</sup> Ibid., Annex, pt. 1.

<sup>164</sup> Ibid., Annex, pt. 2.

characteristics.<sup>165</sup>

The critical element for the success of any conservation and resource management regime is the ability to enforce the treaty provisions. Article XI outlines the responsibilities of each State in enforcing the agreement. Authorized agents of each party are entitled to conduct boardings of fishing vessels of all party States in order to monitor compliance with the convention. The boardings include inspection of the catch, gear and logbooks. The boarding officers of each nation shall follow the procedures outlined in a manual to be developed by the annual conference.<sup>166</sup>

When a boarding results in the discovery of a violation of the convention, the flag State is notified. The fishing vessel is required to cease fishing operations and leave the convention area. Only the flag State may try alleged offenses or impose penalties for violations. The boarding party may remain on board until the flag State takes effective control of the vessel if one of the following violations have been committed:

1. Fishing is conducted when the AHL is zero or the INQ has already been filled.
2. The vessel was not authorized by the flag state to fish in the area, or
3. No observer or real-time satellite position-fixing transmitter is on board.<sup>167</sup>

Other potential problems which are dealt with include admission of new States to the agreement, dealing with non-party

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<sup>165</sup> Ibid., art. XI.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

States that engage in fishing in the convention area,<sup>168</sup> disputes between party States,<sup>169</sup> and amending the treaty.<sup>170</sup> All nations will be entitled to withdraw from the convention three years after entry into force, and twelve months after it has notified the other parties of its intention to withdraw.<sup>171</sup>

Although some success has been achieved through the NPAFC, and previously the INPFC, no high seas fisheries management efforts have been undertaken to the degree envisioned under the Donut Hole Agreement.<sup>172</sup> This new regime represents advances in international fisheries conservation, and will serve as an outline for the development of future regional organizations.

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168 Ibid., art. XII.

169 Ibid., art. XIII.

170 Ibid., art. XIV.

171 Ibid., art. XVIII.

172 Mioviski, "Solutions," 567.

## **V. Evaluation**

The 1992 Salmon Convention and the 1995 Donut Hole Agreement are representative of the most recent advances in international fisheries management. The arrangements which have been negotiated to resolve two of the most contentious issues in high seas fisheries, salmon and straddling stocks, will be successful in managing valuable resources for sustainable exploitation. Various characteristics of these treaties illustrate the reasons for their prominence, despite several inherent shortcomings.

### **1. Strengths of the North Pacific Treaties**

First, both treaties bind states which have direct interests in conservation efforts. This includes the primary custodians or producers of the resources and significant harvesters of the resources. Particularly impressive, is the ability of the coastal and distant water states to come together in developing a ground breaking agreement to manage the valuable pollock resource in an effective and profitable manner which balances the interests of both groups. Coastal state fishermen are ensured that conservation measures which they adhere to will not be undercut by unregulated fishing on the high seas. Distant water states are assured that the resource will be sustained, and that coastal states will not take actions to exclude their vessels from the Donut Hole.

The Donut Hole Agreement has been negotiated to address the needs of all six states with an historic interest in Bering Sea pollock stocks. Cooperation between the states with an established, legitimate fishery in this region will ensure that operations by non-party States are actively discouraged. If the

fishing fleets are adhering to conservation measures and the party States have conceded to allow foreign officials to board and inspect their vessels, it is likely that non-party States will be subject to significant diplomatic repercussions. Article IV of the 1992 Salmon Convention and Article XII of the Donut Hole Agreement require party States to take action which would encourage non-party States to adhere to appropriate conservation measures.

Second, provisions which prohibit or restrict certain practices for harvesting salmon or pollock provide clear guidelines and objectives for conservation and management organizations. The 1992 Salmon Convention prohibits any party from authorizing or conducting a fishery directed at the harvest of salmon beyond the EEZ of any state north of 33°N latitude in the waters of the North Pacific Ocean and adjacent seas. This is the central element of the convention, but is enhanced with provisions to prevent trafficking in illegally caught salmon.<sup>173</sup>

The Donut Hole Agreement includes conditions for establishing and maintaining a moratorium on operations within the Donut Hole. In addition, a formula for establishing a TAC for each party State has been agreed upon. It will be based on the best scientific and technical evidence available, with due regard to the precautionary approach.<sup>174</sup> Both treaties address vessel reflagging, which has been a hindrance to the effectiveness of all international fisheries agreements. Reflagging of fishing vessels to States which are not party to management regimes is prohibited. Parties are required to prevent their nationals from conducting such

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<sup>173</sup> Bryan, "Swimming Upstream," 260.

<sup>174</sup> Donut Hole Agreement, *supra* note 16, Annex, pt. 1.

practices.

Third, substantial enforcement provisions have been incorporated into both treaties. The 1992 Salmon Convention allows for authorized officials of any party State to conduct inspections of the fishing vessels of any other party State "which can be reasonably believed to be engaged in directed fishing for or incidental taking of anadromous fish."<sup>175</sup> If salmon have been retained, the enforcing State may seize the vessel and turn it over to the flag State, or escort it to a port of the enforcing State until the flag State can assume direct control over the vessel. Further, the flag State is required to try and prosecute the alleged offense. Any punishment should be issued in accordance with a common penalty scheme established by the NPAFC. Donut Hole Agreement provisions are similar; however, the number of party States and the areas to be patrolled are much different. A smaller area and satellite tracking mechanisms allow for cheaper, less resource intensive surveillance operations.

One of the more innovative and hopeful developments is the aim to establish a certificate of origin program. In order to discourage and detect illegal harvests of salmon, each party to the 1992 Salmon Convention is required to "take appropriate measures, individually and collectively, to prevent trafficking in anadromous fish, taken in violation of ... this Convention."<sup>176</sup> Computer analysis and identification of fish scales allows for rapid and accurate determination of the state of origin of a particular product. Effective implementation of this land-based enforcement component of the treaty could become a significant

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<sup>175</sup> 1992 Salmon Convention, *supra* note 13, art. V.

<sup>176</sup> *Ibid.*, art. III.



development in fisheries enforcement.<sup>177</sup> Also significant about the enforcement provisions is their improvement over older arrangements. The 1992 Salmon Convention essentially adds the resources of two more Pacific coastal states to enforcement patrols. In the past, the U.S.S.R. did not cooperate with the U.S. and Canada in conducting surveillance of Japanese vessels. Furthermore, the Japanese have now joined other states of origin in detecting violators. Patrols are now conducted to locate the vessels of non-party States engaged in illegal harvests. Previously, most efforts were aimed at detecting and tracking legal Japanese operations to ensure they did not violate established boundaries or other management measures.

A fourth positive aspect of the current treaty regimes is the potential for ecosystem impacts to receive consideration in management decisions. The 1992 Salmon Convention authorizes the NPAFC to conduct research on species which are "ecologically-related" to Pacific anadromous resources. These include marine mammals, seabirds and non-anadromous fish. The treaty also provides for the NPAFC to make recommendations to party States regarding fisheries which have a significant bycatch of salmon which could undermine conservation efforts by fishermen of the state of origin.<sup>178</sup> Although the Donut Hole Agreement is directed at the high seas conservation and management of one species, it provides for the Scientific and Technical Committee to consider conservation measures for other species within the Bering Sea ecosystem.<sup>179</sup>

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<sup>177</sup> Bryan, "Swimming Upstream," 260-62.

<sup>178</sup> 1992 Salmon Convention, *supra* note 13, art. VIII.

<sup>179</sup> Donut Hole Agreement, *supra* note 16, art. X.

A final aspect of the potential for these two regimes to significantly alter and influence the future of North Pacific fisheries management is their adherence to the provisions of the 1982 Law of the Sea Treaty and the Straddling Stocks Convention. These two global conventions outline the duties and requirements of all states with respect to the conservation and management of living marine resources on the high seas. Although they have not been ratified by all states, the 1982 Law of the Sea Treaty is viewed by many as customary international law.<sup>180</sup>

Anadromous fisheries were clearly placed under the authority of the state of origin in the 1982 Law of the Sea Treaty. Any State not party to the NPAFC could still be expected to observe the high seas prohibition outlined in Article 66, whether or not the state has ratified the Law of the Sea Treaty. If the fishing State is party to the Law of the Sea Treaty, it is subject to the mandatory dispute settlement provisions which would likely decide any such dispute in favor of the state of origin. The only high seas operations which currently exist are forced to sell their catch by "laundering" the fish. As sea and shore-based enforcement measures are pursued in accordance with the Law of the Sea Treaty, the economics of conducting such operations should eliminate any significant future disputes.<sup>181</sup>

The relationship between the Straddling Stocks Convention and the conclusion of the Donut Hole Agreement is very significant. The central point in the negotiation of both treaties was the extent to which coastal states could control distant water fishing in areas contiguous to the EEZ. The Donut Hole Agreement granted

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<sup>180</sup> Freestone, "Effective Conservation," 341.

<sup>181</sup> Bryan, "Swimming Upstream," 262.

considerable weight to coastal state interests, basing the TAC almost exclusively on data provided by the coastal states. As four major distant water fishing nations are party to this treaty, it is obvious that coastal states had clearly established their primary responsibility in fisheries management decisions. With the Donut Hole Agreement in hand, the U.S. became a driving force in the successful conclusion of the Straddling Stocks Convention. Throughout the negotiations, the Donut Hole Agreement was held up as an example of the type of regime which can balance the interests and needs of coastal states and distant water fishing nations.<sup>182</sup>

## **2. Weaknesses of the North Pacific Treaties**

Despite the remarkable achievements that these treaties represent, when examined in the context of the history of North Pacific fisheries management, a comprehensive regime remains absent. The most prominent shortcoming of the 1992 Salmon Convention and Donut Hole Agreement is the lack of direct control over non-party States. In order to encourage compliance with established conservation regulations, party States are restricted to diplomatic and economic measures. If the offending State is party to the Law of the Sea Treaty, dispute resolution is an additional and perhaps preferable alternative. Regardless, without enforcement authority and a willingness by the flag State to prosecute violators, illegal activities are likely to continue.<sup>183</sup>

Although the at-sea enforcement measures which are outlined

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<sup>182</sup> Congress, Senate, Committee on Foreign Relations, *Current Status of the Convention on the Law of the Sea: Hearing Before the Committee on Foreign Relations*, 103d Cong., 2d sess., 11 August 1994, 57.

<sup>183</sup> Bryan, "Swimming Upstream," 259.

in the treaties are ground-breaking and substantial, the practical reality is that the North Pacific Ocean is an enormous area to be monitored for illegal activities. The Donut Hole alone covers over 48,000 square miles, yet is only 10% of the Bering Sea.<sup>184</sup> The distances which must be traveled to extend a credible deterrent force are difficult to overcome. The U.S. Coast Guard has a limited number of high endurance cutters and long-range aircraft which can meet U.S. responsibilities for conducting surveillance and law enforcement boardings.

The shore-side enforcement provisions of the 1992 Salmon Convention are a new element of international fisheries law enforcement. The ability for these measures to significantly curtail or detect illegal activity is limited. The measures can not prevent salmon caught on the high seas from being imported and utilized by non-party States. The measures are useful in controlling exports by party States, but not for controlling or influencing the origin of products which are imported by States not party to the salmon convention. Also problematic will be continued laundering schemes operated by dealers within party States who may purchase illegally caught salmon, certify it as being harvested by the state of origin, then sell it on the world market as a legitimate product.<sup>185</sup> This may become a less significant problem as cheaper, farm-raised salmon gain a larger share of the market demand for fish products. No similar provisions exist for the pollock fishery; however, both regimes prohibit vessels from reflagging.<sup>186</sup> Reflagging issues have

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<sup>184</sup> Canfield, "Recent Developments," 259.

<sup>185</sup> Bryan, "Swimming Upstream," 261-62.

<sup>186</sup> Ibid., 260.

received more attention at the global level;<sup>187</sup> however, parties will have little success in preventing non-parties from issuing flags of convenience.<sup>188</sup>

A third weakness of the North Pacific treaties is their focus on single species management. Both regimes are charged with considering the impacts of conservation efforts on other species and outline the possibility of including other fisheries under their authority. However, this has not been pursued, and will likely be ignored until a crisis situation arises. Ecosystem management has become more prominent as a principle of successful fisheries management yet has not assumed an important role in the execution of the 1992 Salmon Convention or the Donut Hole Agreement.<sup>189</sup>

How will economic and environmental considerations be decided within the regimes? One of the forces behind the U.S. initiative to prohibit fishing for salmon on the high seas was its economic inefficiency. The different values of the pollock fishery to distant water fishing nations and coastal states was an influential element in the Bering Sea negotiations. U.S. fishermen prosecuted the fishery in order to harvest pollock roe and distant water fleets conducted operations to recover flesh.<sup>190</sup> As market preferences change so too will management measures. To what extent will the regimes be able to negotiate and manipulate the exploitation of interdependent species by using a series of

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<sup>187</sup> FAO Flagging Agreement, *supra* note 7.

<sup>188</sup> Bryan, "Swimming Upstream," 259-60.

<sup>189</sup> Kelly R. Smith, "United States Practice and the Bering Sea: Is It Consistent With A Norm of Ecosystem Management?," *Ocean and Coastal Law Journal* 1 (1995): 184-86.

<sup>190</sup> Hearing 100-712, 30.

single species management regimes? Marine mammals and seabirds have also become factors in management decisions. Their destruction was largely responsible for the international driftnet moratorium. However, the cultural, economic and biological value of these species as contributors to the ecosystem will remain disputed. The ability of management regimes to anticipate and resolve these conflicting value systems will contribute to their success or failure. Without specific agreement on the manner in which states will resolve these imminent disputes, the current structure will prove insufficient.

### **3. Trends in North Pacific Fisheries Management**

Given the strengths and weaknesses of these two treaty systems, three trends are evident in fisheries management in the North Pacific region. First, the importance of examining ecosystem impacts in making management decisions has taken a place which was not even considered in the wake of Bristol Bay and World War II. The need to research, monitor and evaluate the changing environmental conditions of the North Pacific is gaining importance among fisheries managers.<sup>191</sup>

Second, the precautionary approach is assuming a dominant role in decisions related to catch levels and the sustainability of various fishing gears and practices. The acceptance of this principle can be seen in the success of the driftnet moratorium in the North Pacific, and the burden of proof which has been placed on states intending to conduct or expand fishing activity. The driftnet issue emerged because of the apparent devastating impact of large scale pelagic driftnets on various components of the ecosystem including squid, salmon, pomfret, turtles, marine

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<sup>191</sup> Smith, "United States Practice," 141-142.

mammals and seabirds.<sup>192</sup> The resolutions which were drafted by the U.S. and unanimously adopted by the U.N. General Assembly called for an end to the use of that technology unless "management measures [could] be taken ... to prevent unacceptable impacts of such fishing practices on that region."<sup>193</sup> The difficulty in meeting this standard was insurmountable and the practice was eventually brought to an end.<sup>194</sup>

The burden of proof under the INPFC was on the conservation-minded party to prove that an intended action would lead to overfishing of that species. If the evidence presented by the state desiring greater restraint was insufficient, the fishing state could continue operations. Now, the treaties demand that questionable activities be suspended until it can be established that their resumption is advisable. Insufficient scientific data is no longer an acceptable excuse for avoiding restrictive measures, rather it is a signal that effort must be controlled until proof exists that expansion will not damage the ecosystem or species of concern. The Donut Hole Agreement "endorses a precautionary approach to fishery conservation in that no fishing will be allowed unless Aleutian Basin pollock biomass is determined to exceed 1.67 million metric tonnes."<sup>195</sup>

The 1992 Salmon Convention requires that "incidental taking of anadromous fish shall be minimized to the maximum extent practicable in accordance with Part II of the Annex."<sup>196</sup> Part II

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<sup>192</sup> Burke, "Driftnet Fishing," 128.

<sup>193</sup> U.N. General Assembly Resolution 44/225 (22 December 1989): para. 4.

<sup>194</sup> Burke, "Driftnet Fishing," 141-42.

<sup>195</sup> Freestone, "Effective Conservation," 349.

<sup>196</sup> 1992 Salmon Convention, art. IV.

of the Annex further requires that non-anadromous fisheries which are conducted by party States "shall be conducted in such times, areas and manners as to minimize"<sup>197</sup> salmon bycatch. It further requires that the "party whose nationals or vessels are conducting the fishery in question shall be responsible for demonstrating that the fishery is not being conducted contrary to this Annex. If the Commission decides that a satisfactory demonstration has not been made, the fishery shall be suspended until it is demonstrated that the fishery will be conducted consistent with this Annex."<sup>198</sup> This change in focus is perhaps the single most significant and forward looking development in high seas fisheries management.

A final trend is the importance of regional organizations as a means of peacefully and effectively resolving resource conflicts and managing interdependent species. These two treaties bring together, in active cooperation, all of the nations which have a direct interest in regional fishing activities. The broad impacts of fishing efforts on intermingling Asian and North American salmon were unable to be accounted for because of the separate INPFC and Japanese-Soviet regimes. By combining the efforts of the four nations, research, management and enforcement can be conducted in a more effective, economically efficient and environmentally sensitive manner.<sup>199</sup> The Donut Hole Agreement preceded the conclusion of the Straddling Stocks Convention and substantially influenced the degree to which it stresses the importance of regional organizations as a means for resolving

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<sup>197</sup> Ibid., Annex, pt. II.

<sup>198</sup> Ibid.

<sup>199</sup> Hearing 102-781, 6-7.



disputes.<sup>200</sup> These two regimes represent the importance of regional organizations, which although limited in scope and participation, can effectively manage various resources and consider the multiplicity of political and biological interests which must be balanced.

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<sup>200</sup> Hearing 103-721, 24-25.

## VI. Conclusions

Given the history of fisheries management in the North Pacific Ocean and its influence on the current trends which are evident in the 1992 Salmon Convention and Donut Hole Agreement, what developments might likely occur in future negotiations? How will the evolution continue to meet changing needs and respond to a more sophisticated understanding of the ocean environment? The similarities and close relationship of these two treaties point to the possibility that a single management regime may emerge which would be responsible for the conservation and management of all fisheries in the high seas of the North Pacific Ocean.

Ecosystem concerns are alluded to in each treaty. Provisions are included to allow for the future consideration of management measures for "ecologically-related species" or "living marine resources other than pollock." The Bering Sea trawl fisheries are a source of salmon bycatch that negatively impacts the ability of states of origin to recover all the benefits of harvesting anadromous fish.<sup>201</sup> The 1992 Salmon Convention outlines the measures to be taken in the event that fisheries operations of one state are resulting in a negative impact on salmon migration and harvests. In fact, the convention requires parties to contribute observer data and scientific information on the extent of bycatch of anadromous species to the NPAFC.<sup>202</sup> These requirements have no bearing on Korea or Poland who participate in the central Bering Sea pollock fishery but are not party to the 1992 Salmon Convention. Combining the two regimes together would ensure that measures taken to maximize the catch of one species will not

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<sup>201</sup> Hearing 102-781, 62-64.

<sup>202</sup> 1992 Salmon Convention, *supra* note 13, art. VII.

unfairly compromise efforts which are pursued to conserve other fish stocks.

Negotiations to establish an international regime to conserve and manage all fisheries of the North Pacific region would bring current and future operations under the influence and scrutiny of one organization. Such an organization could ensure that fisheries not covered by treaties such as the Donut Hole Agreement would be preserved for future generations and not damage other elements of the ecosystem. A North Pacific Fisheries Organization would provide the appropriate forum for establishing a legally binding and scientifically supported moratorium or closely regulated resumption of the large scale squid driftnet fishery. The current situation is tenuous at best and relies almost exclusively on incomplete scientific data and the threat of U.S. economic sanctions.<sup>203</sup> A broad regional organization would be the most appropriate means of resolving the many resource, user-group and gear conflicts which exist and will certainly increase.

An additional advantage to an expanded regional organization and a reason for its potential to succeed, is the enormous leverage that close cooperation between Canada, Japan, the U.S. and Russia can provide. The resources which these states can dedicate to fisheries is substantial. These governments have an inherent interest in high seas fisheries and domestic constituencies to ensure that those interests are pursued. The strengths of this coalition would be apparent in several forms.

First, the capacity for the U.S. and Japan to conduct oceanographic research throughout the Pacific is unparalleled. The data received during such operations would benefit not only

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<sup>203</sup> Burke, "Driftnet Fishing," 179.

fisheries, but other scientific disciplines. The North Pacific region is a unique ocean basin, and will demand extensive joint research expeditions for the acquisition of a comprehensive understanding of the conditions which effect sustainable yield levels.

Second, the need for nations dependent on the resources of the North Pacific to adequately patrol such an enormous region can only be met through extensive cooperation. By combining aerial, satellite and surface assets, enforcement officials can establish a credible deterrent. The authority to board a greater number of vessels will expand the ability of managers to detect violations. By including all fisheries and eventually each of the limited number of states which authorize fisheries in the region, the ability to monitor fishing activities and detect illegal operations would be greatly enhanced. The need for this authority will become more critical as the technology to harvest large quantities of fish is expanded, and as this technology is acquired by developing countries.

Third, the ability for the major coastal states to apply a substantial amount of diplomatic pressure would be influential in bringing China, North and South Korea and Taiwan into the regime. Cooperation from these states in adhering to and enforcing the driftnet moratorium is evidence of the potential for their participation in a broad regional organization. The cooperation of these states in current salmon and other fisheries management efforts would be a significant advance. Subjecting their vessels to inspection by foreign officials and a commitment to prosecuting violations would end a substantial portion of illegal fishing

activities. In addition to the political alternatives available for party States to encourage participation is the recently completed Straddling Stocks Convention. This convention grants significant powers to coastal states and regional organizations in resolving fisheries disputes. Article XXI provides that States party to the Convention and a regional organization may board the fishing vessels of any State which is also party to the Convention, whether or not it is also a member of the regional regime.<sup>204</sup>

These advantages are not all inclusive; however, they do represent a significant improvement over the gaps which currently exist. Differing interpretations of treaty provisions will inevitably lead to disputes over enforcement authority or the fairness of allocation procedures. Non-party States will pose problems to the effectiveness of conservation measures. Potential new members in the organization will present difficulties in dividing the TAC available for each party.

The high degree of cooperation on conservation issues which has evolved in the Pacific region has laid the foundation for a broad and extensive management regime encompassing all the fisheries of the North Pacific Ocean. Existing regimes for pollock and salmon incorporate advanced measures for resolving disputes and effectively managing living marine resources. The need to more accurately account for bycatch and ecosystem concerns may lead to the development of a single fisheries treaty and a regional organization which will be responsible for ensuring the sustainable conservation of all fisheries in the high seas area of the North Pacific Ocean.

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<sup>204</sup> Straddling Stocks Convention, *supra* note 6, art. XXI.

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