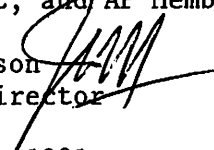


M E M O R A N D U M

TO: Council, SSC, and AP Members

FROM: Jim H. Branson
Executive Director 

DATE: November 27, 1981

SUBJECT: Review of Model Draft GIFA

ACTION REQUIRED

Review "model" GIFA; make recommendations or comments on the text for transmission to the State Department by the State Department Representative at this meeting.

BACKGROUND

The accompanying "model" GIFA [Agenda D-3(a)] puts a much heavier emphasis on tariff or non-tariff barriers on importation or other restrictions on market access of United States fish, and general cooperation of such nations with the United States in the advancement of existing and new opportunities for fisheries trade (page 7, Article IV) than have previous GIFAs. The extent to which fishing vessels of other nations have traditionally engaged in fishing in the U.S. FCZ is much further down the list of factors governing allocations than previously.

I can find very few things to fault with the text. I would suggest that on page 1, Article I, second line, the words "optimum yield" be dropped so that the sentence reads: "The purpose of this agreement is to insure effective conservation and rational management" Any requirement that optimum yield be achieved is dangerous and open to argument. If we can insure effective conservation and rational management, reference to optimum yield seems redundant.

On page 2 I would suggest the removal of the conjunction "and" between "recreational" and "economic", replacing it with "or". The way it now reads implies that recreational and economic characteristics are indissolvably mixed and that all five of the characteristics listed, that is, "geographical, scientific, technical, recreational and economic" must be present before a stock of fish can be treated as a unit.

Otherwise I have no recommendations to make for changes or additions to the document.

DRAFT

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF
CONCERNING FISHERIES OFF THE COASTS
OF THE UNITED STATES

November 5, 1981

The Government of the United States of America and
the Government of

Considering their common concern for the rational management *and*
conservation [and achievement of optimum yield] of fish stocks
off the coasts of the United States;

Recognizing that the United States has established
a fishery conservation zone within 200 nautical miles of its
coasts within which the United States exercises exclusive fishery
management authority over all fish and that the United States
also exercises such authority over the living resources of
the continental shelf appertaining to the United States
and to anadromous species of fish of United States origin;
and

Desirous of establishing reasonable terms and condi-
tions pertaining to fisheries of mutual concern over which the
United States exercises exclusive fishery management authority;

Have agreed as follows:

ARTICLE I

The purpose of this Agreement is to insure effective
conservation, [optimum yield] and rational management
of the fisheries of mutual interest off the coasts of the
United States and to establish a common understanding of
the principles and procedures under which fishing may be

conducted by nationals and vessels of _____ for the living resources over which the United States exercises exclusive fishery management authority as provided by United States law.

ARTICLE II

As used in this Agreement, the term

1. "living resources over which the United States exercises exclusive fishery management authority" means all fish within the fishery conservation zone of the United States, (except highly migratory species), all anadromous species of fish that spawn in the fresh or estuarine waters of the United States and migrate to ocean waters while present in the United States fishery conservation zone and in areas beyond national fisheries jurisdictions recognized by the United States and all living resources of the continental shelf appertaining to the United States;

2. "fish" means all finfish, molluscs, crustaceans, and other forms of marine animal and plant life, other than marine mammals, birds and highly migratory species;

3. "fishery" means

a. one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

b. any fishing for such stocks;

4. "fishery conservation zone" means a zone contiguous to the territorial sea of the United States, the seaward boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea of the United States is measured;

5. "fishing" means

- a. the catching, taking or harvesting of fish;
- b. the attempted catching, taking or harvesting of fish;
- c. any other activity that can reasonably be expected to result in the catching, taking or harvesting of fish;
- d. any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs a. through c. above, provided that such term does not include other legitimate uses of the high seas, including any scientific research activity;

6. "fishing vessel" means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for

- a. fishing; or
- b. aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including preparation, supply, storage, refrigeration, transportation or processing;

7. "highly migratory species" means species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean;

8. "marine mammal" means any mammal that is morphologically adapted to the marine environment, including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea, or primarily inhabits the marine environment such as polar bears.

ARTICLE III

1. The Government of the United States is willing to allow access for foreign fishing vessels to harvest, in accordance with terms and conditions to be established in permits issued under Article VII, that portion of the total allowable catch for a specific fishery that will not be harvested by United States fishing vessels and is determined to be available to foreign fishing vessels in accordance with United States law.

2. The Government of the United States shall determine each year, subject to such adjustments as may be necessitated by unforeseen circumstances affecting the stocks, and in accordance with United States law,

- a. the total allowable catch for each fishery based on optimum yield, taking into account the best available scientific evidence, and social, economic and other relevant factors;
- b. the harvesting capacity of United States fishing vessels in respect of each fishery;
- c. the portion of the total allowable catch for a specific fishery to which access will be provided, on an annual basis, to foreign fishing vessels; and
- d. the allocation of such portion that may be made available to qualifying fishing vessels of

3. In implementation of paragraph 2.d. of this Article, the United States shall determine each year the measures necessary to prevent overfishing while achieving, on a

continuing basis, the optimum yield from each fishery in accordance with United States law. Such measures may include, inter alia:

- a. designated areas where, and periods when, fishing shall be permitted, limited, or conducted only by specified types of fishing vessels or with specified types and quantities of fishing gear;
- b. limitations on the catch of fish based on area, species, size, number, weight, sex, incidental catch, total biomass or other factors;
- c. limitations on the number and types of fishing vessels that may engage in fishing and/or on the number of days each vessel of the total fleet may engage in a designated area for a specified fishery;
- d. requirements as to the types of gear that may, or may not, be employed; and
- e. requirements designed to facilitate enforcement of such conditions and restrictions, including the maintenance of appropriate position-fixing and identification equipment.

4. The Government of the United States shall notify the Government of _____ of the determinations provided for by this Article on a timely basis.

ARTICLE IV

In determining the portion of the surplus that may be made available to vessels of each country, including the Government of the United States will decide on the basis of the factors identified in United States law including:

1. whether, and to what extent, such nations impose tariff barriers or nontariff barriers on the importation, or otherwise restrict the market access, of United States fish or fishery products;
2. whether, and to what extent such nations are cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;
3. whether, and to what extent, such nations and the fishing fleets of such nations have cooperated with the United States in the enforcement of United States fishing regulations;
4. whether, and to what extent, such nations require the fish harvested from the fishery conservation zone for their domestic consumption;
5. whether, and to what extent, such nations otherwise contribute to, or foster the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

6. whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

7. whether, and to what extent, such nations are cooperating with the United States in, and making substantial contributions to fishery research and the identification of fishery resources; and

8. such other matters as the United States deems appropriate.

ARTICLE V

The Government of _____ shall cooperate with and assist the United States in the development of the United States fishing industry and the increase of United States fishery exports by taking such measures as reducing or removing impediments to the importation and sale of United States fishery products, providing information concerning technical and administrative requirements for access of United States fishery products into _____, providing economic data, sharing expertise, transferring harvesting or processing technology to the United States fishing industry, facilitating appropriate joint venture and other arrangements, informing its industry of trade and joint venture opportunities with the United States, and taking such other actions as may be appropriate.

ARTICLE VI

The Government of _____ shall take all necessary measures to insure:

1. that nationals and vessels of _____ refrain from fishing for living resources over which the United States exercises fishery management authority except as authorized pursuant to this Agreement;
2. that all such vessels so authorized comply with the provisions of permits issued pursuant to this Agreement and applicable laws of the United States; and
3. that the total allocation referred to in Article III, paragraph 2.d. of this Agreement is not exceeded for any fishery.

ARTICLE VII

The Government of _____ may submit an application to the Government of the United States for a permit for each fishing vessel of _____ that wishes to engage in fishing in the fishery conservation zone pursuant to this Agreement. Such application shall be prepared and processed in accordance with the Annex, which constitutes an integral part of this Agreement. The Government of the United States may

require the payment of fees for such permits and for fishing in the United States fisheries zone. The Government of undertakes to keep the number of applications to the minimum required, in order to aid in the efficient administration of the permit program.

ARTICLE VIII

The Government of _____ shall ensure that nationals and vessels of _____ refrain from harassing, hunting, capturing or killing, or attempting to harass, hunt, capture or kill, any marine mammal within the United States fishery conservation zone, except as may be otherwise provided by an international agreement respecting marine mammals to which the United States is a party, or in accordance with specific authorization for and controls on incidental taking of marine mammals established by the Government of the United States.

ARTICLE IX

The Government of _____ shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each vessel of _____ is prominently displayed in the wheelhouse of such vessel;
2. appropriate position-fixing and identification equipment, as determined by the Government of the United States, is installed and maintained in working order on each vessel;
3. designated United States observers are permitted to board, upon request, any such fishing vessel, and shall

be accorded the courtesies and accommodations provided to ship's officers while aboard such vessel, and owners, operators and crews of such vessel shall cooperate with observers in the conduct of their official duties, and, further, the Government of the United States shall be reimbursed for the costs incurred in the utilization of observers;

4. agents are appointed and maintained within the United States possessing the authority to receive and respond to any legal process issued in the United States with respect to an owner or operator of a vessel of _____ for any cause arising out of the conduct of fishing activities for the living resources over which the United States exercises exclusive fishery management authority; and

5. all necessary measures are taken to minimize fishing gear conflicts and to ensure the prompt and adequate compensation of United States citizens for any loss, or damage to, their fishing vessels, fishing gear or catch that is caused by any fishing vessel of _____ as determined by applicable United States procedures.

ARTICLE X

The Government of _____ shall take all appropriate measures to assist the United States in the enforcement of its laws pertaining to fishing in the fishery conservation zone and to ensure that each vessel of _____ that engages in fishing for living resources subject to the exclusive fishery management authority of the United States, shall allow and assist the boarding and inspection of such vessel by any duly authorized

enforcement officer of the United States, and shall cooperate in such enforcement action as may be undertaken pursuant to the laws of the United States.

ARTICLE XI

1. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on vessels of _____ or their owners or operators, that violate the requirements of this Agreement or of any permit issued hereunder.

2. Arrested vessels and their crews shall be promptly released, subject to such reasonable bond or other security as may be determined by the court.

3. The representatives of the United States will recommend to the court in any case arising out of fishing activities under this Agreement that the penalty for violation of fishery regulations not include imprisonment or any other form of corporal punishment except in the case of enforcement related offenses such as assault on an enforcement officer or refusal to permit boarding and inspection.

4. In cases of seizure and arrest of a vessel of _____ by the authorities of the Government of the United States, notification shall be given promptly through diplomatic channels informing the Government of _____ of the action taken and of any penalties subsequently imposed.

ARTICLE XII

1. The Governments of the United States and shall cooperate in the conduct of scientific research required for the purpose of managing and conserving living resources subject to the exclusive fishery management authority of the United States, including the compilation of the best available scientific information for management and conservation of stocks of mutual interest.

2. The competent agencies of the two Governments shall cooperate in the development of a periodic research plan on stocks of mutual concern through correspondence or meetings as appropriate, and may modify it from time to time by agreement. The agreed research plans may include, but are not limited to, the exchange of information and scientists, regularly scheduled meetings between scientists to prepare research plans and review progress, and jointly conducted research projects.

3. The conduct of agreed research during regular commercial fishing operations on board a fishing vessel of in the United States fishery conservation zone shall not be deemed to change the character of the vessel's activities from fishing to scientific research. Therefore, it will still be necessary to obtain a permit for the vessel in accordance with article VII.

4. The Government of _____ shall cooperate with the Government of the United States in the implementation of procedures for collecting and reporting biostatistical information and fisheries data, including catch and effort statistics, in accordance with procedures which will be stipulated by the United States. The Government of _____ shall similarly provide such economic data as may be requested by the United States.

ARTICLE XIII

The Government of the United States and the Government of _____ shall carry out periodic bilateral consultations regarding the implementation of this Agreement and the development of further cooperation in the field of fisheries of mutual concern, including the establishment of appropriate multilateral organizations for the collection and analysis of scientific data respecting such fisheries.

ARTICLE XIV

Should the Government of the United States indicate to the Government of _____ that nationals and vessels of the United States wish to engage in fishing in the fishery conservation zone of _____, or its equivalent, the Government of _____ will allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with this Agreement.

ARTICLE XV

Nothing contained in the present Agreement shall prejudice the views of either Government with respect to the existing territorial or other jurisdiction of the coastal State for all purposes other than the conservation and management of fisheries.

ARTICLE XVI

1. This Agreement shall enter into force on a date to be agreed upon by exchange of notes, following the completion of internal procedures of both Governments, and shall remain in force until July 1, 1987, unless extended by exchange of notes between the Parties. Notwithstanding the foregoing, either Party may terminate this Agreement after giving notice of such termination six months in advance.

2. This Agreement shall be subject to review by the two Governments two years after its entry into force at the request of either, or upon the conclusion of a multilateral treaty resulting from the Third United Nations Conference on the Law of the Sea.

IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Agreement.

DONE at Washington, _____, in the English
and _____ languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF _____ :

ANNEX

Application and Permit Procedures

The following procedures shall govern the application for and issuance of annual permits authorizing vessels of _____ to engage in fishing for living resources over which the United States exercises exclusive fishery management authority:

1. The Government of _____ may submit an application to the competent authorities of the United States for each fishing vessel of _____ that wishes to engage in fishing pursuant to this Agreement. Such application shall be made on forms provided by the Government of the United States for that purpose.

2. Any such application shall specify

- a. the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner and operator thereof;
- b. the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other information relating to the fishing characteristics of the vessel as may be requested;
- c. a specification of each fishery in which each vessel wishes to fish;

- d. the amount of fish or tonnage of catch by species contemplated for each vessel during the time such permit is in force;
- e. the ocean area in which, and the season or period during which, such fishing would be conducted; and
- f. such other relevant information as may be requested, including desired transshipping areas.

3. The Government of the United States shall review each application, shall determine what conditions and restrictions may be needed, and what fee will be required. The Government of the United States shall inform the Government of _____ of such determinations.

4. The Government of _____ shall thereupon notify the Government of the United States of its acceptance or rejection of such conditions and restrictions and, in the case of a rejection, of its objections thereto.

5. Upon acceptance of the conditions and restrictions by the Government of _____ and the payment of any fees, the Government of the United States shall approve the application and issue a permit for each _____ fishing vessel, which fishing vessel shall thereupon be authorized to fish in accordance with this Agreement and the terms and conditions set forth in the permit. Such permits shall be issued for a specific vessel and shall not be transferred.

6. In the event the Government of _____ notifies the Government of the United States of its objections to specific conditions and restrictions, the two sides may consult with respect thereto and the Government of _____ may thereupon submit a revised application.

7. The procedures in this Annex may be amended by agreement through an exchange of notes between the two Governments.

ARTICLE _____

The Government of the United States undertakes to authorize fisheries research vessels and fishing vessels of _____ allowed to fish pursuant to this Agreement to enter designated ports in accordance with United States laws for such purposes as may be authorized in accordance with applicable rules and regulations.

NOTE: For inclusion in Soviet-bloc GIFAs

PROCEDURES RELATING TO UNITED STATES PORT
CALLS FOR EASTERN-BLOC COUNTRIES

(Note: Such procedures are necessary for Soviet-bloc port access, either in the form of an Annex or a letter from the United States.)

Article ____ of the Agreement provides for the entry of certain vessels of _____ into designated ports of the United States in accordance with United States law for certain purposes. This Annex designates the ports and purposes authorized and describes the procedures which govern port entries.

1. _____ fisheries research vessels and fishing vessels (including support vessels) which have been issued permits or have been authorized to receive permits pursuant to the Agreement are authorized to enter the ports of _____ pursuant to the following procedures. _____ fisheries research vessels may also similarly enter the ports of _____.

2. The vessels referred to in paragraph 1 above may enter the ports specified above for the purpose of scientific planning and discussion, to exchange scientific data, equipment, and personnel, and to replenish ship's stores or fresh water, obtain bunkers, provide rest for or make changes in their crews, and to obtain other services normally provided in these ports, and, as necessary, to receive permits. These vessels may obtain minor repairs required to correct breakdowns or damage suffered during the voyage, but such repairs must be completed within ____ days.

3. Entry shall be permitted subject to notice to the United States Coast Guard Headquarters (GWPE), forwarded so as to be received 4 days in advance of the port entry, in accordance with standard procedures using telex (892427), teletype communication "TWX" (710-822-1959), or Western Union. All such entries are subject to the applicable laws and regulations of the United States and of state and local authorities in the areas wherein they have jurisdiction. Any vessel entering under this Agreement will be subject to inspection by authorized personnel of the United States Coast Guard and other appropriate Federal agencies.

4. The Government of the United States of America at the consular sections of its diplomatic missions will accept crew lists in application for visas valid for a period of 6 months for multiple entry into the specified United States ports. Such a crew list shall be submitted at least 7 days prior to the first entry of a vessel into a port of the United States. Submission of an amended (supplemental) crew list subsequent to departure of a vessel from a port of _____ will also be subject to the provisions of this paragraph, provided that visas thereunder shall only be valid for 6 months from the date of issuance of the original crew list visa. Notification of entry shall specify if shore leave is requested under such multiple entry visa.

5. In cases where a seaman of _____ is evacuated from his vessel to the United States for the purpose of emergency medical treatment, authorities of _____ will ensure that the

seaman departs from the United States within 14 days after his release from the hospital. During the period that the seaman is in the United States, representatives of _____ will be responsible for him.

6. [The exchange of crews of vessels of _____ in the specified ports shall be permitted subject to submission to the consular section of U.S. diplomatic missions of applications for individual transit visas and crewman visas for replacement crewmen. Applications shall be submitted 7 days in advance of the date of the arrival of the crewmen in the United States and shall indicate the names, dates, and places of birth, the purpose of the visit, the vessel to which assigned, and the modes and dates of arrival of all replacement crewmen. Individual passports or seamen's documents shall accompany each application. Subject to United States laws and regulations, the United States mission will affix transit and crewman visas to each passport or seaman's document before it is returned. In addition to the requirements above, the name of the vessel and date of its expected arrival, a list of names, dates, and places of birth for those crewmen who shall be admitted to the United States under the responsibility of _____ representatives for repatriation to _____ and the dates and manner of their departure from the United States shall be submitted to the Department of State 7 days in advance of arrival.]

7. In addition, special provisions shall be made as necessary regarding the entry to other ports of the United States of fisheries

research vessels of _____ which are engaged in a mutually agreed research program in accordance with the terms of Article XII of the Agreement. Requests for entry of fisheries research vessels should be forwarded to the United States Department of State, Washington, D.C. through diplomatic channels.

8. The provisions of this Annex may be amended by agreement through an exchange of notes between the two Governments.