

**INTERDEPENDENCE, STATE COMPETITION, AND NATIONAL POLICY: REGULATING THE  
BRITISH COLUMBIA AND WASHINGTON PACIFIC SALMON FISHERIES, 1957-1984**

**By**

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### Abstract

**This study explores the politics of regulating the British Columbia and Washington commercial salmon fisheries between 1957 and 1984. The principal focus of this comparative-historical study is upon one particularly striking exception to the tendency of regulators to tighten commercial salmon fishing restrictions over time - the persistence of liberal offshore trolling regulations. The dissertation argues that the anomalous treatment of the offshore troll fishery during this period may be ascribed to the competition between states for the right to harvest salmon - a common property resource.**

**In making this claim, the study questions the adequacy of the interest-group driven explanations of policy which figure prominently in the literature on regulation. Two pillars of interest group theory, the tendencies to explain national policy only through reference to domestic politics and to reduce state behaviour to little more than the product of the demands of private sector interests, are challenged in this comparative case study.**

**The challenge to the first tendency of interest group theory is sustained by examining the relations between national regulatory preferences and the foreign fishery policy goals of Canada and the United States. The pursuit of two goals - Asian exclusion and North American equity - in bilateral and multilateral negotiations demanded the adoption of particular regulatory profiles. Liberal offshore troll regulations may be explained according to the legitimacy and bargaining advantages they lent to Canadian and American efforts to incorporate these two goals into modifications to the traditional fishery regime.**

**The study also suggests that, in a setting characterized by intergovernmental competition, regulatory policies may not always be equated with the preferences of interested private parties. In this setting the state's ability or willingness to respond to even the most influential private sector interests may be**

limited by the state's evaluation of its bargaining resources and requirements. State competition created a context where government attitudes towards offshore salmon fishing could be understood in terms of state preferences, preferences derived from officials' perceptions of the legitimacy of various national regulatory policies in the context of valued international institutions.

While state competition is the centrepiece of the explanation of national fishery policy developed in this study its explanatory power is mediated by two intervening institutional variables - the capacities of states to formulate and implement policies and the structure of the international regime itself. The level of knowledge regarding the salmon resource played an instrumental role in the formulation of regime goals and of pertinent national policies. The extent to which state management in offshore waters was fragmented between different bureaus affected the ability of officials to adopt national policies which suited their international purposes. The redistribution of the American state's fishery management capacity in the 1970s was a catalyst for the severe restrictions visited upon Washington trollers at that time.

A second institutional factor, the structure of the international fishery regime, also mediated the competition between states. The series of reciprocal fishing privileges agreements between Canada and the United States was particularly important in maintaining established offshore regulatory preferences during the 1970s when the clash between American and Canadian salmon fishery perspectives was intensifying.



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## **Chapter I: Regulating the Salmon Fishery: Rationales, Patterns, and Anomalies**

For nearly a century Canadian and American governments have regulated man's exploitation of one of nature's more paradoxical wonders - the Pacific salmon. The paradoxical quality of this creature springs from the combination of mystery and predictability in salmonid behaviour. Despite continued biological debate over subjects such as the migratory routes taken by salmon or the attributes responsible for their seemingly unfailing instinct to return to the freshwater systems of their birth, the timing of the salmon's return to propagate the next generation is nearly as predictable as their death after the completion of the spawning ritual. It was the predictability of the salmon's return, when combined with the ruthless determination and escalating catching power of its human predators, that established the original necessity for state regulation of the commercial fishery. The subsequent efforts of the state to regulate this economic activity have been criticized on numerous occasions and for numerous reasons. In large part, these criticisms point to an anomaly in the regulation of the fishery, the tendency for management to skirt or undervalue the management objectives stressed in the literatures of fishery biology and fishery economics. This failing of practical salmon management to approximate the optimal management prescriptions of either literature is then laid at the doorstep of politics.

This is an investigation into the politics of commercial salmon fishery regulation in British Columbia and Washington. It endeavours to interpret one of the more striking anomalies of commercial fisheries regulation, the liberal treatment of the offshore/ high-seas trolling fleets for much of the 1957-1984 period, in terms of the competition between states which transpired in a general environment of resource

interdependence.<sup>1</sup> Placing the subject of the differential regulatory treatment accorded offshore and inshore fishermen in the context of interdependence will underline the very significant impact the foreign policy goals of states may have upon the character of national policy. In doing so, this study challenges a conventional understanding of regulatory politics, namely, that policy is the product of an interest-group dominated process conducted without reference to international affairs. This perspective is not necessarily satisfactory when considering national regulation of common property resources shared with other nations.<sup>2</sup> The alternative developed here recommends that the goals pursued by states in international resource regimes and the resulting regime structures have an important impact upon the national policies of regime members.

This comparative study of national regulatory policy focusses upon the fishing opportunities, as measured by the lengths of fishing seasons, granted to the three primary gear groups in the commercial salmon fisheries - trollers, seiners, and gillnetters. I will illustrate that, over three distinct periods of time stretching from the amendment in 1957 of a Canada-United States treaty on the exploitation and rehabilitation of salmon stocks in the Fraser River to the eve of the signing of the

<sup>1</sup> The terms offshore and high seas are used interchangeably throughout this dissertation. They are used in reference to those fishing activities conducted or contemplated three miles or more from the baselines used to measure the breadth of the territorial sea. Up until 1970, both Canada and the United States claimed territorial seas of three miles. In 1970 Canada widened its territorial sea to twelve miles. Consequently, the use of the terms offshore and high seas in this dissertation modifies slightly the general tendency to define the high seas as non-territorial waters. For examples of this tendency see Myres S. McDougal and William T. Burke, The Public Order of the Oceans: A Contemporary International Law of the Sea, (New Haven: Yale University Press, 1962), pp. 42-46, 64-86; Francis T. Christy Jr. and Anthony Scott, The Commonwealth in Ocean Fisheries, (Baltimore: John Hopkins Press, 1965), p. 160; Richard Van Cleve and Ralph W. Johnson, Management of the High Seas Fisheries of the Northeastern Pacific, (Seattle: University of Washington, 1963), pp. 5-12; Oran R. Young, Resource Regimes: Natural Resources and Social Institutions, (Berkeley: University of California Press, 1982), p. 138.

<sup>2</sup> Common property refers to resources where property rights do not exist. Consequently, these resources may be exploited simultaneously by more than one individual. Christy and Scott, The Commonwealth in Ocean Fisheries, p. 6.

Pacific Salmon Treaty in 1984, the regulatory predispositions of government were molded by the goals Canada and the United States sought to incorporate in the international fishery regime and the capacities of the Canadian and American states to pursue them.

This chapter begins this task by introducing the reader to the many dimensions of the salmon fishery. Our first purpose is to offer some needed background information on this fishery, describing the various species, harvesting techniques, and trends in the distribution of the salmon catches between the three primary types of commercial gear. From there we consider the needs for regulation inherent in common property and the specific objectives for fishery management identified in the optimal management literatures authored by economists and biologists. Then we turn to examine the detail of the actual regulatory pattern between 1957 and 1984. Finally, we suggest that the liberal offshore trolling regulations found throughout much of this period stand out as an anomaly which warrants further study.

#### The Salmon Fishery: Species, Migrations, and Harvests

For some of those who may consult this work the salmon is undoubtedly an esoteric topic, one that, until now, only may have been encountered in a tin on a grocer's shelf or on the grill of a neighbour's barbeque. Since the following pages abound with references to the various species of anadromous fish which are part of the Pacific salmon genus and the various fishing techniques used to pursue them some basic descriptions are owed to the uninitiated. Of the six species constituting the Pacific salmon genus five are targets for the North American fishing industry: chinook (*Oncorhynchus tshawytscha*), coho (*O. kisutch*), sockeye (*O. nerka*), pink (*O. gorbuscha*), and chum (*O. keta*).<sup>3</sup> Although these species may be readily distinguished

<sup>3</sup> The sixth species belonging to *Oncorhynchus* is the Japanese cherry or masu salmon (*O. masou*). This salmon is only found in the Japanese islands and the nearby Asian mainland. R. J. Childerhose and Marj Trim, Pacific Salmon, (Vancouver: Douglas and McIntyre, 1981), pp. 25-26.



according to a number of physical characteristics their anadromous nature unites them - all begin life in fresh water and migrate to the ocean to grow and mature before returning to the natal stream to spawn. Generally speaking, sockeye reside the longest in fresh water. After hatching from the protective gravel of the stream bed sockeye fry travel to a nearby lake where they feed on plankton for anywhere from one to three years. Coho also may remain in fresh water for up to three years and migrate to salt water in the spring. The other three species spend far less time in the fresh water environment. Chinook generally spend less than three months in fresh water while chum and pink salmon fry tend to migrate directly to the sea after emerging from the gravel.<sup>4</sup>

These species also vary in average weight and age of maturity. Pink salmon is the smallest Pacific salmon species, averaging two kilograms (kgs) in weight and maturing at two years of age. Chinook, by contrast, are the largest salmon. Their average weight is between 14 and 18 kgs and they reach maturity at anytime from three to seven years. Sockeye salmon average 3 kgs and mature after four to six years. Coho may weigh between 4.5 and 6.5 kgs on the eve of spawning in their third or fourth year. Chum also mature in their third or fourth year and weigh on average between 3.5 and 4.5 kgs.<sup>5</sup>

Between leaving the estuary of their natal fresh water system and returning to that site to struggle upstream to the spawning grounds salmon roam the vast expanse of the Northeast Pacific. Appendix A offers a pictorial approximation of the ocean migrations of British Columbia and Washington salmon. Although there are exceptions to the migration pattern offered there it is generally the case that juvenile salmon from these two territories journey first in a northerly direction, remaining quite close to the coastline. Once in the Gulf of Alaska the migrants sweep westward

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<sup>4</sup> For a brief, non-technical introduction to salmon biology see Childerhose and Trim, Pacific Salmon, pp. 31-45.

<sup>5</sup> Ibid., pp. 12-20.

along the Aleutian Islands only to turn south to arrive at their mid-Pacific feeding grounds, hundreds of miles from shore.<sup>6</sup>

Historically, the North American salmon species may be differentiated according to their susceptibility to different types of commercial fishing gear. Sockeye, pink, and chum salmon have been the historic backbone of the net fisheries while chinook and coho salmon have been the mainstay of the Pacific troll fishery. Due to its oiliness and deep red flesh colour the sockeye has been the preferred product of the canning industry throughout this century. So popular was the sockeye that, in the late 1800s, chinook, chum, and pink salmon were discarded by cannery operators. Thrown through the offal holes in the cannery floors these dead fish combined with the sockeye carcasses to create serious health hazards. In 1877, an outbreak of typhoid fever was attributed to the wastes from Fraser River salmon canneries.<sup>7</sup> The commercial popularity of chinook and coho salmon grew rapidly after World War II. Troll-caught chinook and coho, when cleaned and iced immediately, have been the traditional source of supply for the fresh and frozen salmon market, a market which has grown in importance in recent years.

Regarding the fishing techniques used in the Pacific fishery three predominated during the years under study here: seining, gillnetting, and trolling. The purse seine, as its name implies, is a net which when deployed resembles a purse or pouch. Its objective is to entrap schools of fish. To accomplish this the seine is set generally to approximate a circle or loop. When the two ends of the seine are joined, completing the circle, and the purse line running along the bottom of the net's webbing is drawn, the fish are surrounded by net. The purse seine is a very efficient and quite labour intensive technique, as Browning's anthropomorphic description conveys: "The seine is big, awkward, clumsy and wonderfully efficient in the hands of

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<sup>6</sup> Ibid., pp. 43-44.

<sup>7</sup> Ibid., p. 11.

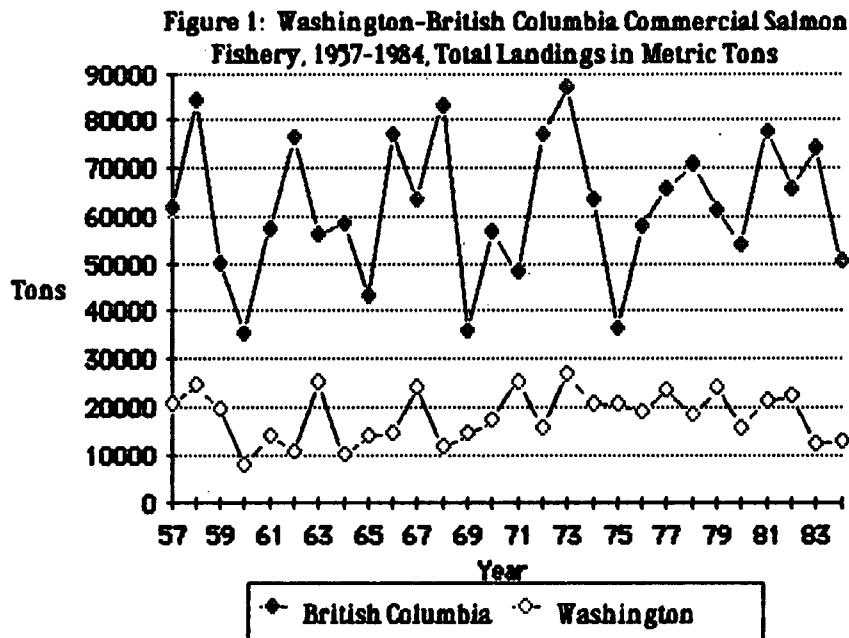
a crew who know it, anticipate its moods and do not trust it too far."<sup>8</sup> The same claims of efficiency and complexity may not be made for the gillnet. Like the seine, the gillnet has both a cork line for buoyancy and a lead line for sinking the net, thereby increasing the area of water covered by the gear. It does not, however, capture salmon by the pursing of the net. Instead, it accomplishes this end by capturing salmon by their gills (gilling) as they attempt to pass through the wall of webbing. Its reputation as a less efficient net fishing method is due, in part, to what fisheries biologists call the dropout rate. A salmon well-gilled by the net will drown very quickly. Since a gillnet set may last for hours, wave and current action may cause some fish to fall from the net. Fish may also drop out when the net is hauled in. Trolling, referred to by some as more of an art than either of the two major netfishing methods, is a hook and line technique.<sup>9</sup> Artificial lures or natural bait such as herring strips are dragged through the water at various depths on a number of lines in the hope of stimulating a strike. Since the troller's offerings may be as appealing to immature as mature salmon trolling has been often criticized on both biological and efficiency grounds, a point we will return to later in this chapter.

These techniques also may be compared according to their relative importance to the commercial fisheries of Washington and British Columbia over the time period of interest here. As the data presented in Figure 1 make very clear, the commercial harvests of these two regions were of vastly different sizes throughout the 1957-1984 period. In every year, the total number of salmon landed in Washington State was dwarfed by the British Columbia total. When we compare the respective

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<sup>8</sup> Robert J. Browning, Fisheries of the North Pacific: History, Species, Gear and Processes (2nd edition), (Anchorage: Alaska Northwest Publishing Co., 1983), p. 143.

<sup>9</sup> Ibid., p. 217.



contributions made to these harvests by gillnet, seine, and troll gear interesting contrasts emerge. Figures 2, 3, and 4 discount the yearly variations in the size of the British Columbia and Washington salmon harvests by recording the percentage share of the catch claimed by gillnet, seine, and troll gear from 1957 to 1984. In Figure 2 the relative contribution of gillnet gear to the commercial fisheries of British Columbia and Washington is documented. There we observe two quite different trends. In British Columbia the percentage of salmon landed by gillnetters tended to dwindle over time while in Washington the gillnet fishery grew ever more prominent.

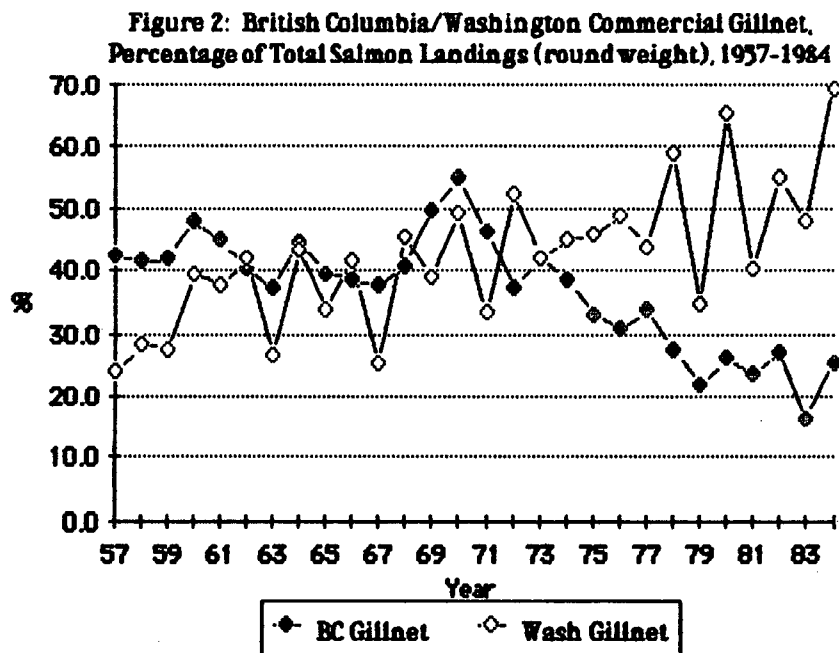
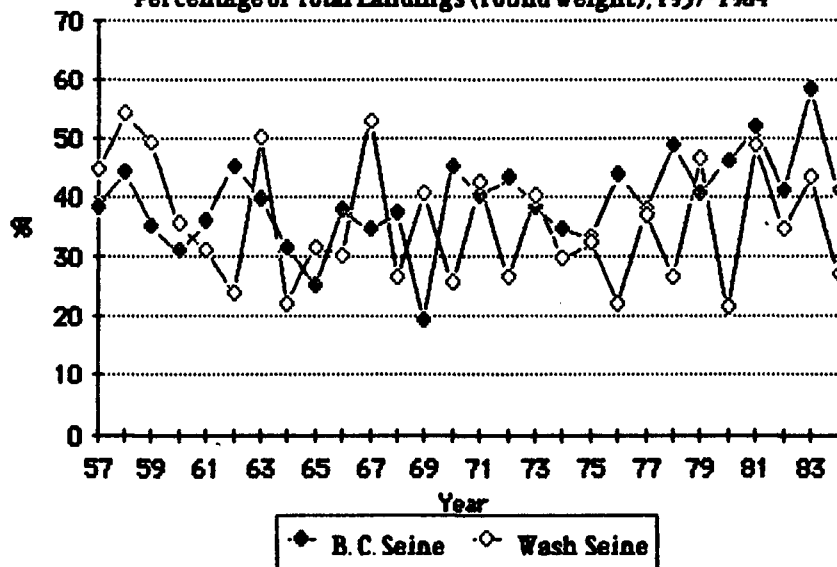


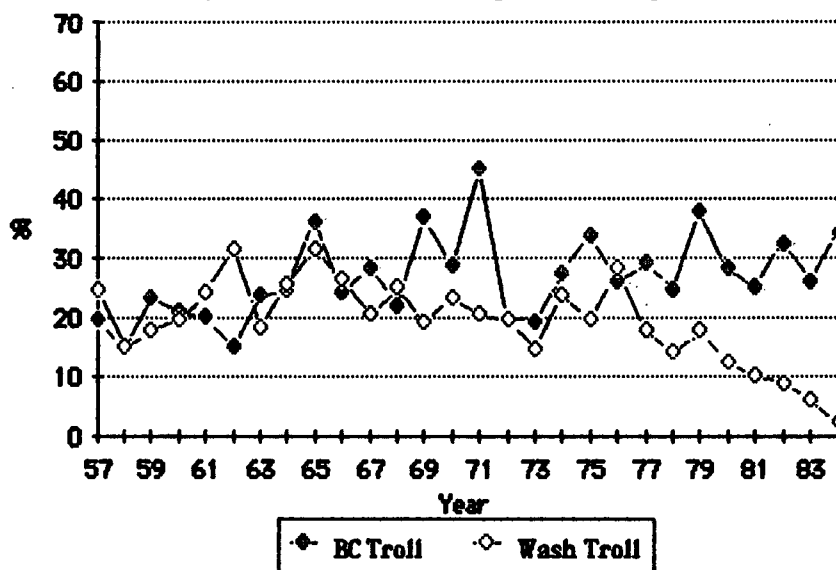
Figure 3 offers a similar comparison of the relative contribution of seiners to the total landings of salmon in Washington and British Columbia. Here, no sharp trends appear over the period as a whole. However, if we recognize that significant numbers of pinks only appear in odd-numbered years, we are really dealing with a fishery that cannot be compared on a year-to-year basis. Therefore, a clear short-term trend may be identified in the odd-year pink fisheries since 1975. The seine share of the total catch has risen modestly in both locales during the years of a significant Fraser pink fishery.

**Figure 3: British Columbia/Washington Commercial Seine.  
Percentage of Total Landings (round weight), 1957-1984**



In Figure 4, the performance of the two troll sectors is compared. The inverse relationship noted in the Washington/British Columbia gillnet comparison appears again in regards to trolling with one significant difference. In the troll sector, it is the Washington fleet which suffered catch declines while the British Columbia fleet prospered over time.

Figure 4: British Columbia/Washington Commercial Troll,  
Percentage of Total Salmon Landings (round weight), 1957-1984



To summarize, the most interesting point of contrast between the harvests taken with the different commercial fishing gears used in Washington and British Columbia appears in the comparison of the gillnet and troll fisheries. There we noted the emergence of two quite different trends. In Washington, the gillnet catch rose while the troll catch sank after 1976. In British Columbia, trollers tended to operate with more success over time while gillnetters saw their share of the total catch erode.

#### Common Property: the Necessity and Objectives of Salmon Fishery Regulation

The introduction to this chapter inferred that salmon, like water or air, is a common property resource.<sup>10</sup> Its status as common property demands regulatory action from the state. In the words of Scott and Neher:

Regulation and control spring up naturally when economic activity involves common property. When people can exploit a resource together, when they cannot

<sup>10</sup> Dales supplies us with the following definition of common property: "The term covers all property that is both owned in common (or unowned as in the case of oceans) and used in common. . . ." Examples of common property given by Dales are the high seas and their animal inhabitants, roads, water, air, and public parks. J. H. Dales, Pollution, property and prices, (Toronto: University of Toronto Press, 1968), p. 61.

enforce contracts against third parties, then the resource is prone to abuse.<sup>11</sup>

Where property rights do not exist the potential wealth of the resource is bound to be dissipated through crowding, overuse, and a failure to husband the resource.<sup>12</sup> A primary rationale then for regulating the salmon fishery is to mitigate these adverse characteristics of common property.

As a mitigative agent, fishery regulation possesses an unmistakable normative purpose. This dimension of the study of regulation has been promoted most articulately in those portions of the larger literatures on fishery biology and economics devoted to optimal management issues. Before the mid-1950s the counsel of biologists dominated the literature on optimal fishery management.

The biological perspective, as applied to the salmon fishery, begins from a non-controversial point. The primary objective of management is to ensure that adequate numbers of adult spawners (escapement) return to their natal streams.<sup>13</sup> As Larkin pointed out, this notion of adequacy is defined in both qualitative and

<sup>11</sup> Anthony Scott and Philip A. Neher (ed.), The Public Regulation of Commercial Fisheries in Canada, (Ottawa: Minister of Supply and Services Canada, 1981), p. 1. Scott has also suggested that compulsion may be justified because the abundance of fish stocks is a public good. Self-imposed restraint by individual fishermen is irrational in this circumstance since other individuals will capitalize on this behaviour by continuing to exploit the resource, thereby maximizing their immediate return from the fishery. See Anthony Scott, "Fisheries, Pollution, and Canadian-American Transnational Relations," in Annette Baker Fox, Alfred O. Hero, Jr., and Joseph S. Nye, Jr., (ed.), Canada and the United States: Transnational and Transgovernmental Relations, (New York: Columbia University Press, 1976); Anthony Scott, "Development of Economic Theory on Fisheries Regulation," Journal of the Fisheries Research Board of Canada, Vol. 36 (1979), p. 728. On the general subject of public goods see Mancur Olson, The Logic of Collective Action: Public Goods and the Theory of Groups, (Cambridge: Harvard University Press, 1971).

<sup>12</sup> Scott and Neher, The Public Regulation of Commercial Fisheries in Canada, pp. 2-7.

<sup>13</sup> This point is made throughout the literature. See, for example, Sam Wright "Contemporary Pacific Salmon Fisheries Management," North American Journal of Fisheries Management, vol. 1 (1981), p. 30; J. Douglas MacDonald, Regulating Pacific Salmon - The Alternatives Reviewed, (Ottawa: Economic Council of Canada, 1982), p. 32; Environmental and Social Systems Analysts Ltd., An Assessment of Stocks and Management Problems of the Commercial Fisheries of Canada's Pacific Coast, (Vancouver: Commission on Pacific Fisheries Policy, 1982), p. 82.



quantitative terms.<sup>14</sup> The qualitative dimension of an adequate escapement rests upon the foundation of the stock concept. The Pacific salmon fishery is composed of thousands of genetically-unique salmon stocks of various sizes. In British Columbia, this fact was recognized as early as the 1880s.<sup>15</sup> Efforts to measure catches and escapements when supplemented with research into stock identification and age at maturity reinforced "... in the minds of biologists and fishery managers, the stock concept as a sound basis for management, and led to the operative principle that the stocks of each river must be fished at a rate commensurate with their levels of abundance and reproductive rates."<sup>16</sup>

The fishing rate referred to by McDonald pierced the quantitative dimension of escapement adequacy - maximum sustained yield (MSY). According to the theory of MSY, each fishery produces an amount of fish surplus to the total number of spawners needed to perpetuate the stock at its maximum physical yield over time. Biological management of this harvestable surplus thus was defined in terms of maximum sustained weight yields.<sup>17</sup> The attractiveness since World War Two of MSY as a management philosophy is captured in Larkin's observation that:

The basic idea was enshrined in national policy documents, incorporated in international treaties, and, in

<sup>14</sup> P. A. Larkin, "Maybe You Can't Get There From Here: A Foreshortened History of Research in Relation to Management of Pacific Salmon," Journal of the Fisheries Research Board of Canada, vol. 36 (1979), p. 105.

<sup>15</sup> In British Columbia these stocks return to over 1,200 spawning streams. See J. McDonald, "The Stock Concept and its Application to British Columbia Salmon Fisheries," Canadian Journal of Fisheries and Aquatic Sciences, vol. 38 (1981), p. 1638.

<sup>16</sup> Ibid., p. 1639. See also P. A. Larkin, "A Perspective on Population Genetics and Salmon Management," Canadian Journal of Fisheries and Aquatic Sciences, vol. 38 (1981), p. 1469.

<sup>17</sup> Wright "Contemporary Pacific Salmon Fisheries Management," p. 30. Bevan wrote that the aim of fisheries regulation is to maximize physical yield in terms of weight. See Donald E. Bevan, "Methods of Fishery Regulation," in James A. Crutchfield (ed.), The Fisheries: Problems in Resource Management, (Seattle: University of Washington Press, 1965), p. 27. Crutchfield, the noted fisheries economist, himself remarked: "From the standpoint of protection of the salmon stocks, the major concern is to regulate fishing so that maximum physical productivity is maintained." See William F. Royce et al, Salmon Gear Limitation in Northern Washington Waters, (Seattle: University of Washington, 1963), p. 37.

effect, became synonymous in most people's minds with sound management.<sup>18</sup>

As with the stock concept, MSY was regarded as an important objective of fishery management; in the extreme, the salmon themselves were distinguished as the primary clients of fishery managers.<sup>19</sup>

With the publication of H. Scott Gordon's seminal article, "The Economic Theory of a Common Property Resource: The Fishery," an economics perspective joined the biological outlook on the fishery management stage.<sup>20</sup> If some of those trained in the biological sciences emphasize the importance of the supply of salmon to the hierarchy of management priorities those disciplined in economics offer quite a different, although not inherently incompatible, point of view.<sup>21</sup> In what remains the classic statement on the responsibility of a fishery's common property nature for both the income plight of individual fishermen and the general economic inefficiency of fisheries production Gordon underlined the limits of a strictly biological approach to the management challenges facing government regulators. The fault with the predispositions of biologists, he argued, rested with their habit of advocating regulations based solely on production goals without considering the cost side of the fishery. To Gordon and his successors, the problem with a common property fishery was that it cost too much to take the harvest. The normative response of the economist to this circumstance was summed up by Gordon:

<sup>18</sup> P. A. Larkin, "An Epitaph for the Concept of Maximum Sustained Yield," Transactions of the American Fisheries Society, vol. 106, no. 1 (January 1977), p. 2.

<sup>19</sup> Larkin, "Maybe You Can't Get There From Here: A Foreshortened History of Research in Relation to Management of Pacific Salmon," p. 105; Wright "Contemporary Pacific Salmon Fisheries Management," p. 38.

<sup>20</sup> H. Scott Gordon, "The Economic Theory of a Common Property Resource: The Fishery," Journal of Political Economy, Vol. 62 (1954).

<sup>21</sup> The inherent incompatibility of biological and economic management objectives is rejected by Christy and Scott. See Christy and Scott, The Commonwealth in Ocean Fisheries, p. 216. Chapter Twelve therein offers a discussion of management objectives - specifically, the maximization of economic rent and the maximization of physical product.

We can define the optimum degree of utilization of any particular fishing ground as that which maximizes the net economic yield, the difference between total cost, on the one hand, and total receipts (or total value production), on the other.<sup>22</sup>

The ideal strategy for resolving this problem called for social controls establishing property rights in what historically had been an open-entry fishery.<sup>23</sup>

Although these two normative outlooks are quite prominent in the literature on fishery management it has been suggested that other objectives may inspire decision makers, objectives which may compromise efforts to maximize physical or economic yields.<sup>24</sup> One such regulatory motive is to redistribute the resource or to protect particular groups in the fishery.<sup>25</sup> Despite the desire of regulators to act fairly their actual decisions are bound to affect adversely some of the many constituencies found in the fishery:

<sup>22</sup> Ibid., p. 129. Over the years the importance of maximizing net economic yield has proliferated in the salmon fishery literature. See for example, Royce et al, Salmon Gear Limitation in Northern Washington Waters, p. 37; James A. Crutchfield and Giulio Pontecorvo, The Pacific Salmon Fisheries: A Study of Irrational Conservation, (Baltimore: John Hopkins University Press, 1969), pp. 6-7; James A. Crutchfield, "Economic and Political Objectives in Fishery Management," Transactions of the American Fisheries Society, vol. 102 (1973); James A. Crutchfield, "Economic Objectives of Fishery Management," in Crutchfield (ed.), The Fisheries: Problems in Resource Management, pp. 44-45. There Crutchfield argues that the biologists' preoccupation with maximizing physical yield magnified the economic problems.

<sup>23</sup> Another strategy to achieve economic efficiency was to reduce the number of producers. See Christy and Scott, The Commonwealth in Ocean Fisheries, pp. 15-16. Larkin suggests that licence limitation represented the reconciliation between the precepts of MSY and maximizing net economic yield. See Larkin, "An Epitaph for the Concept of Maximum Sustained Yield," p. 7. Licence limitation in the British Columbia salmon fishery, while reducing the size of the fleet, did not reduce the capitalization of the fleet since it did not attack the incentive for fishermen to over-invest in harvesting capacity. See Brian Hayward, "The B. C. Salmon Fishery: A Consideration of the Effects of Licensing," B. C. Studies, no. 50 (Summer 1981); Canada, Commission on Pacific Fisheries Policy, Turning the Tide: A New Policy for Canada's Pacific Fisheries, (Ottawa: Minister of Supply and Services Canada, 1982), p. 79.

<sup>24</sup> A wide range of regulatory objectives or purposes is outlined in Scott, "Development of Economic Theory on Fisheries Regulation," pp. 727-730 and Anthony Scott, "Regulation and the Location of Jurisdictional Powers: The Fishery," Osgoode Hall Law Journal, Vol. 20, no. 4 (1982), pp. 793-795.

<sup>25</sup> "This protective goal," wrote Scott, "obviously conflicts with any efficiency goal and, I will argue, is probably the more powerful." Scott, "Development of Economic Theory on Fisheries Regulation," p. 729.

The regulator, in Canada, cannot separate these individual, protective or distributive aspects of his decisions from those aspects in which he is the expert: fish reproduction, migration and growth. It is commonplace that fisheries public policy is more concerned with distribution than with allocation. This is what one would expect when individuals discuss the use of common property.<sup>26</sup>

#### A History of Commercial Salmon Fishing Seasons: 1957-1984

When we turn to consider the pattern of fishing seasons from 1957 to 1984 we discover certain circumstantial evidence which suggests that the distributional motive has compromised the pursuit of both the biological and economic management objectives. Before examining the actual pattern of openings over these twenty-seven years several explanations are owed about the time frame over which the pattern is evaluated, the reason for focusing on fishing seasons as opposed to other types of regulation, and the selection of several sections of the Washington and British Columbia coasts for study.

The years 1957 to 1984 were selected for their blend of continuity and change. In 1957 a very significant modification was made to the Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries in the Fraser River System, adding the responsibility for managing Fraser pink salmon stocks to the jurisdiction of the International Pacific Salmon Fisheries Commission. This arrangement remained unchanged until the signing of the Pacific Salmon Fisheries Treaty in 1985. The year 1957 also saw the conclusion of two important regulatory understandings between Canada and the United States, the adoption of uniform trolling regulations and the prohibition of netfishing in offshore waters. Since our primary interest will be to evaluate the relationship between national goals in the international fishery regime and the regulatory preferences of domestic regulators the selection of

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<sup>26</sup> Scott, "Regulation and the Location of Jurisdictional Powers: The Fishery," p. 794.

this era is also appropriate since it overlaps the Law of the Sea debate and that debate's controversy over the extension of fisheries jurisdiction.

If this helps to explain the focus upon the 1957-1984, why concentrate upon fishing seasons as opposed to other methods of regulation such as gear or area regulations? Also, why focus upon the regulatory pattern rather than specific decisions to open and close a fishery? The second question is perhaps answerable in the shortest length. The focus upon the literally hundreds of individual decisions which are made in each regulatory season over a twenty-seven year period would be an overwhelming task. Secondly, this alternative research strategy would face the difficulty of trying to identify the criteria needed to select those decisions which would fairly reflect the range of relevant decision-making considerations.

Our attention is fixed upon fishing seasons for several reasons. Access to the resource may be controlled through means other than the days open for fishing. Limiting the entry of fishermen or vessels into a commercial fishery, restricting the areas in which commercial gear may be operated, and restricting the gear to be used in the fishery are three other means of controlling access to the salmon resource. Of these four methods, altering the length of fishing seasons was the major tool used by the managers of the salmon fishery throughout the 1957-1984 period. This reason alone justifies its place as the centrepiece of this investigation.<sup>27</sup>

This dissertation does not offer a coastwide study of fishery regulation in Washington and British Columbia. It examines the patterns of fishing seasons for only the following areas of British Columbia: Johnstone Strait (Areas 12 and 13), Georgia Strait (Areas 14-18), Juan de Fuca Strait (Areas 19-20), the Fraser River (Area 29), and the west coast of Vancouver Island (Areas 121, 123-127). In Washington the seasons for

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<sup>27</sup> The patterns exhibited by alternative forms of regulation, specifically area and gear restrictions, are in general harmony with the fishing season pattern to be detailed here. The area and gear restrictions applied to gillnetters and seiners tended to be more severe than those applied to trollers.

the Strait of Juan de Fuca (Areas 4B, 5, 6C), Puget Sound (Areas 6-13), and offshore (Areas 1-4) are examined.<sup>28</sup> These areas were selected in the belief that the challenges faced by fishery managers and the users of the resource in these areas are representative of the challenges addressed by their counterparts along other parts of the two regions. It should also be noted that the aggregate days open figures in the following tables include the periods when the International Pacific Salmon Fisheries Commission controlled the Fraser sockeye and pink salmon runs. This fact does not, I maintain, compromise our interest in explaining the patterns of domestic regulations since the IPSFC regulations were approved by the national delegations of both nations.

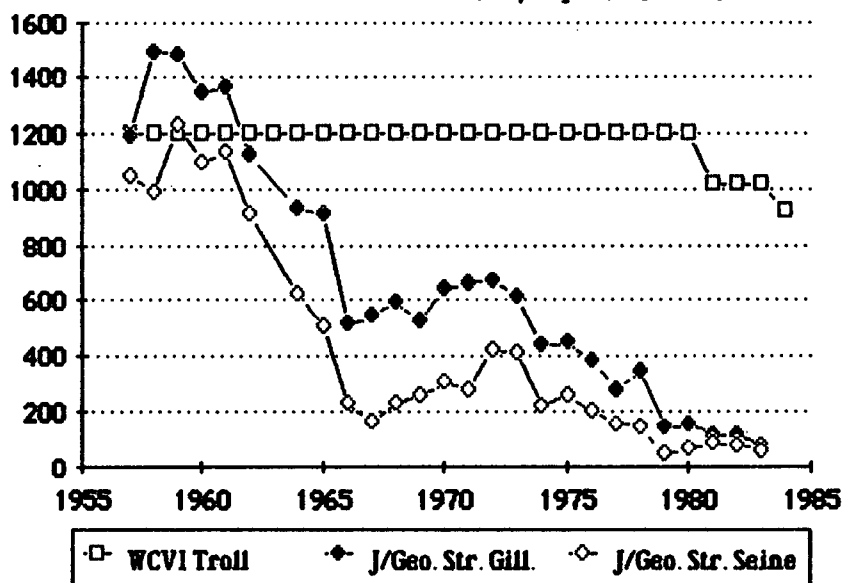
With these justifications and qualifications behind us, let us consider the pattern of fishing seasons presented in Figures 5 through 8<sup>29</sup>. Regardless of the measure used or the expanse of the coast considered, the detail of the message remains the same. From 1957 to 1975 the seasonal restrictions imposed upon offshore troll fisheries in British Columbia and Washington tended to be quite mild in comparison to those levied against netfishermen. As Figures 5 and 6 indicate, offshore trollers escaped both the yearly fluctuations in fishing time and the overall erosion of opportunities typical of the net gear histories.

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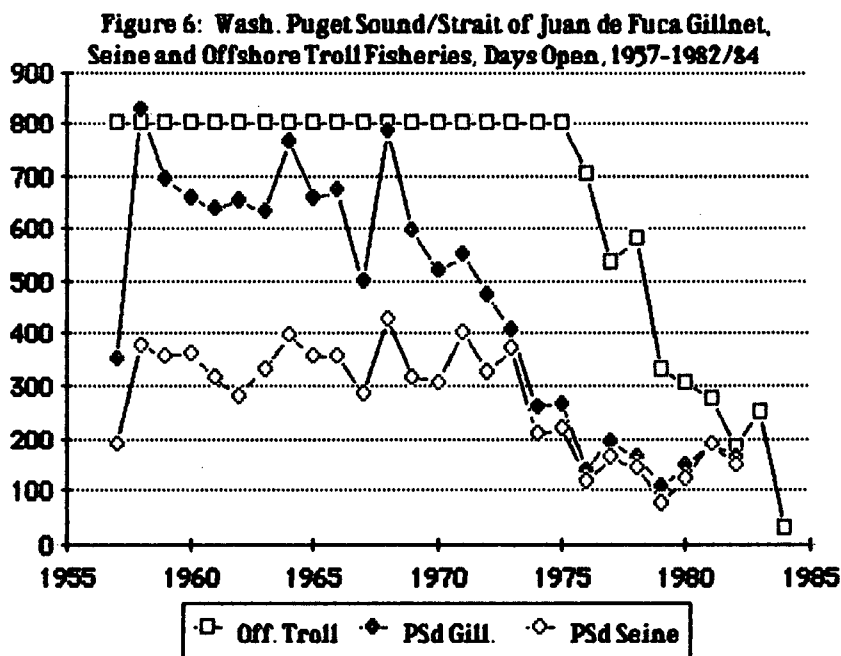
<sup>28</sup> See Appendix B.

<sup>29</sup> The annual number of fishing days allowed in Washington and British Columbia was calculated as follows: the data reflect total days fishing, not days fishing by species; if part of a single management area was open, the entire area was treated as being open. The data on British Columbia seine and gillnet openings was supplied by Dr. Neil Guppy of the University of British Columbia's Department of Sociology and Anthropology. He and Brian Hayward gathered these data for the Fish and Ships Research Project conducted by that department. Data on British Columbia troll openings were taken from several secondary sources and various editions of the British Columbia Commercial Fishing Guide. Washington seine and gillnet openings were taken from Washington (State), Department of Fisheries, Harvest Management Division, In-Season Management Report for the Commercial Net Salmon Fisheries in Puget Sound, 1982, (Progress Report No. 205), Appendix Table 7, p. 21. Washington troll openings were taken from a variety of Pacific Fishery Management Council publications.

**Figure 3: B. C. Johnstone/Georgia Straits Gillnet, Seine and West Coast Vancouver Island Troll Fisheries, Days Open, 1957-1983/84.**



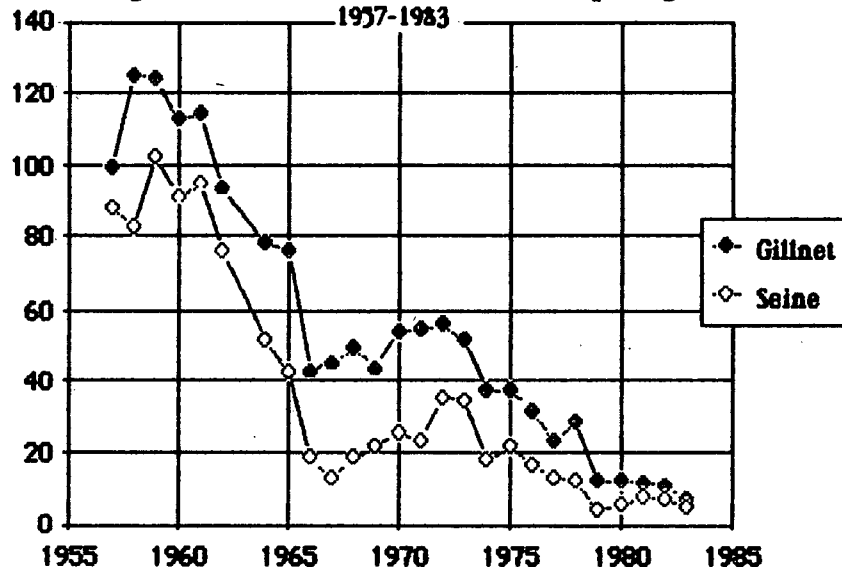
The year 1976 stands out as something of a watershed for it marks the disjunction of the Washington and British Columbia patterns. The length of the offshore troll season in British Columbia remained untouched until 1981 when it was reduced marginally. Coincidentally, Washington's offshore season fell to a mere fraction of its former self.



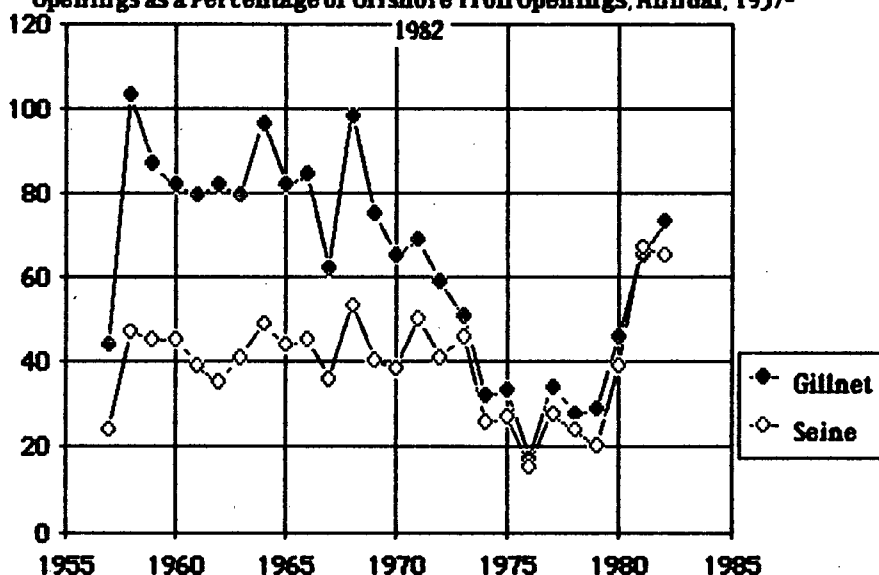
These features affected more than the lengths of the trolling season; they shifted trolling opportunities relative to those given netfishermen. Figure 7 illustrates the dramatic shrinkage of British Columbia net fishing opportunities relative to trolling. By 1984, the British Columbia net season as a percentage of the offshore troll season was at or near a historic low. In Washington, a totally different pattern emerged. Figure 8 shows that, after 1976, the violent fall in offshore trolling opportunities served to increase netfishing opportunities in Puget Sound/ Strait of Juan de Fuca waters relative to those offered to offshore trolling.



**Figure 7: B.C. Johnstone/Georgia Straits Gillnet and Seine Openings as a Percentage of West Coast Vancouver Island Troll Openings, Annual, 1957-1983**



**Figure 8: Wash. Puget Sd./Strait of Juan de Fuca Gillnet and Seine Openings as a Percentage of Offshore Troll Openings, Annual, 1957-1982**



### The Anomaly of the Pattern of Offshore Troll Regulation

One of the most striking features of this particular regulatory history is the extent to which the apportionment of the regulatory burden compromised the biological and economic objectives articulated by the optimal fishery management

literature. In this final section of this chapter we will underline the anomalous character of the pattern of offshore troll regulation.

Two of the biological imperatives of fishery management - the stock concept and MSY - have been frustrated to some degree by regulatory practices. "The large number of stocks involved, together with intensive fishing on mixed stocks," concluded McDonald, "has largely precluded the development of useful stock-recruitment relationships as a basis for forecasting abundance and for setting escapement goals."<sup>30</sup> Accordingly, the prime element of a strategy to better apply the stock concept is a drastic reduction of fishing effort where extensive mixing of salmon stocks occurs.<sup>31</sup>

Although all commercial fishermen may prey upon mixed stocks, trollers are regarded generally as the most flagrant violators of this management principle. We thus find a marked antipathy within the biological literature towards the ocean troll fishery. Ricker tentatively estimated that the combination of a halt in the ocean troll fishery for Columbia River chinook and increased river fishing would produce an increase of between 63 and 98% in the weight of the total catch.<sup>32</sup> "Since it is difficult and expensive to even partially differentiate stocks in the trolling areas," concluded Crutchfield and Pontecorvo, "biological management of any stock heavily exploited by

<sup>30</sup> Ibid., p. 1663. See also Environmental and Social Systems Analysts Ltd., An Assessment of Stocks and Management Problems of the Commercial Fisheries of Canada's Pacific Coast, pp. 84-85; Fred Yuen Churk Wong, "Analysis of Stock-Recruitment Dynamics of British Columbia Salmon," (University of British Columbia, Department of Zoology, M. Sc. Thesis, July 1982). The effort to forecast abundance and set escapement targets has been compromised further by common measurement errors made in escapement estimates. These errors tend to bias the stock-recruitment relationship in a way promoting severe overexploitation. See Carl J. Walters and Donald Ludwig, "Effects of Measurement Errors on the Assessment of Stock-Recruitment Relationships," Canadian Journal of Fisheries and Aquatic Sciences, vol. 38 (1981); Donald Ludwig and Carl J. Walters, "Measurement Errors and Uncertainty in Parameter Estimates for Stock and Recruitment," Canadian Journal of Fisheries and Aquatic Sciences, vol. 38 (1981).

<sup>31</sup> McDonald, "The Stock Concept,"

<sup>32</sup> W. E. Ricker, "Review of the Rate of Growth and Mortality of Pacific Salmon in Salt Water and Noncatch Mortality Caused by Fishing," Journal of the Fisheries Research Board of Canada, vol. 33 (1976).

the troll fishery is extraordinarily difficult."<sup>33</sup> Not only do trollers exploit mixed stocks but they also derive a significant portion of their catch from the ranks of immature salmon. This introduces a certain amount of non-catch mortality into the population of "shakers", sub-legal size salmon which are released<sup>34</sup> and leads to the characterization of trolling as "a highly destructive fishing method."<sup>35</sup> A ban on trolling therefore figures highly among regulatory prescriptions aimed at improving the salmon fishery:

... concentrating fishing in so-called "terminal" areas close to river mouths and permitting fishing for only 1 d a week for all kinds of commercial gear (except trollers, which should be banned) on a coastwide and season length basis, would probably do a better job of regulation in lean years than at present, with much more convenience in enforcement and much less need for manipulation of statistics.<sup>36</sup>

The liberal regulatory treatment of offshore trollers in Canada throughout the 1957-1984 period and in Washington State until 1976 belied then one of the more accepted biological principles of salmon fishery management.

This is not to suggest that biological support for offshore trolling could not be raised. While some biologists criticized trolling for its blatant violation of the stock concept, the qualitative component of escapement adequacy, others constructed a more sympathetic view of offshore fisheries on the grounds that the inefficiency of trolling made it a less serious threat to the quantitative goals of escapement than terminal net fisheries. Since salmon were more dispersed in the ocean than in inshore waters an offshore unit of fishing effort, from this perspective, was less destructive to individual stocks than terminal area fishing effort. The greater inefficiency of ocean fisheries

<sup>33</sup> Crutchfield and Pontecorvo, The Pacific Salmon Fisheries, p. 38.

<sup>34</sup> Sam Wright, "A Review of the Subject of Hooking Mortalities in Pacific Salmon," in Pacific Marine Fisheries Commission, Annual Report, 1970.

<sup>35</sup> Crutchfield and Pontecorvo, The Pacific Salmon Fisheries, p. 38.

<sup>36</sup> Larkin, "A Perspective on Population Genetics and Salmon Management," Canadian Journal of Fisheries and Aquatic Sciences, vol. 38 (1981), p. 1470, my emphasis. A greater emphasis of terminal fisheries was one of the regulatory alternatives considered in Environmental and Social Systems Analysts Ltd., An Assessment of Stocks and Management Problems of the Commercial Fisheries of Canada's Pacific Coast.

outweighed the problems attending mixed stock fisheries. For instance, the Washington Department of Fisheries, while admitting that ocean trolling departed from a managerial utopia where salmon were harvested in terminal, river-mouth fisheries, supported it nonetheless on inefficiency grounds:

On the plus side, the very nature of the fishery itself in terms of coastal expanse, dependence on feeding migratory fish, weather limitations, and relative inefficiency of gear, make it virtually impossible to "overfish" any of the multitude of specific chinook and coho stocks available.<sup>37</sup>

This biological concern with reducing fishing rates in order to prevent overfishing also has been cited as an animator of regulatory predispositions in British Columbia. One managerial response to the increased fishing power of the commercial fleets was to shift effort to areas where salmon were less concentrated.<sup>38</sup> The desire to limit fishing efficiency and reduce fishing rates offered some early justification for offshore trolling. Trollers, although the most serious violators of the stock concept, posed a less serious threat to the quantitative goals of salmon management.

On the whole, ocean trolling is also not conducive to maximizing the economic yield of the salmon fishery. The offshore roaming of trollers in pursuit of fish destined to return to inshore waters violated the fundamental economic principle that fish should be harvested at the lowest possible cost. As Crutchfield argued, reducing the size of the troll catch made sound economic sense:

Reduction in the Pacific coast salmon troll catches would result in significant increases in both tonnage and gross value of total landings, since the trollers take a large number of immature fish which would provide growth in excess of natural mortality if harvested later.<sup>39</sup>

<sup>37</sup> Washington (State), Department of Fisheries, A brief history of the Washington troll fishery, (November 1971).

<sup>38</sup> McDonald, "The Stock Concept," pp. 1661, 1663.

<sup>39</sup> Crutchfield, "Economic and Social Implications of the Main Policy Alternatives for Controlling Fishing Effort," p. 747.

Elsewhere, Crutchfield wrote that: "The basic theory of a high seas fishery, whether exploited by single nation or by more than one nation, suggests a bleak economic existence, to say the least."<sup>40</sup> Although written in regards to ocean fisheries generally, this conclusion seems to apply with equal force to the offshore troll fishery. His criticism that marine fisheries waste labour and capital also seems relevant to the evaluation of an ocean troll fishery. In light of these critiques, the economic defence of trolling relied heavily upon considerations of product quality and availability. The elimination of trolling would reduce the nearly year round fresh/frozen chinook and coho markets to one seasonal market dependent upon the arrival of the spawning runs.<sup>41</sup> Yet this possible advantage was not enough to stem harsh criticisms of trolling based on its inefficiency.<sup>42</sup>

### Conclusion

This introductory chapter has been devoted to fulfilling several objectives. A brief overview of the resource and the patterns of its exploitation was provided for those who are unacquainted with the salmon fishery. The remainder of the chapter was devoted to identifying the inherent need for common property resource regulation, outlining the objectives of fishery management, and suggesting that the 1957-1984 pattern of fishing season regulations compromised the pursuit of both biological and economic management objectives. The pattern was one which offered distributional benefits to Washington and British Columbia offshore troll fishermen until 1976, and only to British Columbia trollers thereafter. The chapter stopped short

<sup>40</sup> James A. Crutchfield, "The Marine Fisheries: A Problem in International Cooperation," American Economic Review, vol. 54, no. 3 (May 1964), p. 212.

<sup>41</sup> This was part of the defence of offshore trolling made by the American section of the Informal Committee on Chinook and Coho. See Informal Committee on Chinook and Coho, Reports by the United States and Canada on the Status, Ocean Migrations and Exploitation of Northeast Pacific Stocks of Chinook and Coho Salmon, to 1964, Volume I: Report by the United States Section, (1969), pp. 35-36. As Crutchfield and Pontecorvo pointed out, fish handling techniques could be, and now have been, improved so that net fishermen could provide troll-quality salmon. See Crutchfield and Pontecorvo, The Pacific Salmon Fisheries, p. 38.

<sup>42</sup> See Crutchfield and Pontecorvo, The Pacific Salmon Fisheries, pp. 37-38.

of offering an explanation for the anomaly represented by the disparity in the regulatory treatment accorded offshore trollers and inshore net fishermen.

The task of explaining this disparity begins in the next chapter where the theoretical perspective of the dissertation is outlined. There we question the utility of the conventional interest group explanations of regulatory policy which abound in the literature on regulation. The chapter will argue that efforts to account for the anomaly introduced here, the liberal regulatory treatment of the offshore troll fishery, will benefit more from a focus upon state competition in the international fishery regime than from the acceptance of the power and competitive relationships inherent in interest group driven explanations of policy.

Chapters III to VI will draw our attention to the relationship between regime politics, state capacities, and national regulatory policy. The third chapter details the inheritance of regime goals and regulatory attitudes which formed the basis for the subsequent behaviour of states. Between 1930 and 1956 the orientations of Canada and the United States towards the portion of the international fishery regime inhabited by the salmon fishery revolved around two distributional norms - Asian exclusion and North American equity. The pursuit of these two goals, in the context of the nature of the Japanese high seas fishery and the knowledge possessed by the states involved, shaped the attitudes towards offshore and inshore fishery regulation.

The fourth chapter, examining the years from 1957 to 1970, discusses how complementary regime interests helped to place the offshore troll fishery in both Washington and British Columbia on a less-regulated platform than that occupied by most net fisheries. Throughout these years national regulatory policy in both Canada and the United States was dominated by the principle of Asian exclusion; both countries perceived state competition within the regime as revolving around a North America/Asia axis. The consensus on this issue co-existed, however, with a developing difference of opinion regarding the base upon which North American parity should

rest. Canadians sought to reformulate the notion of equity into the territorial language used theretofore only in reference to the Japanese. Their arguments that salmon bred in Canadian streams should only be exploited by Canadians clashed with the United States' satisfaction with the historical understanding of equity which spawned the bilateral agreements concluded at the dawn of this era.

The fifth and sixth chapters focus upon the sharpening of this divergence in outlook between Canada and the United States. Chapter five identifies the circumstances between 1971 and 1976 which maintained the offshore regulatory status quo despite the intensifying conflict over the governing norms of Canadian/American salmon allocation. The complicated interplay between the knowledge of salmon interceptions, the multispecies character of Canada/United States reciprocal fishing privileges, and the strategic character of the Canadian troll fishery sustained liberal approaches in both jurisdictions towards the regulation of trollers.

The sixth chapter investigates the breakdown of this regulatory consensus after 1976. The Canadian pattern remained largely untouched because of an indissoluble bond between offshore trolling and bilateral fishery negotiations. As long as Canadian trollers intercepted significant amounts of American salmon and negotiations dragged on the offshore troll fishery would operate with few restrictions. In Washington, regulatory laxity was replaced by duress. This dramatic reversal of fortunes is linked to changes in the American political system. The litigation of treaty Indian fishing rights realigned domestic fishing interests and reoriented Washington fishery management priorities. Contemporaneously, the extension of federal fisheries jurisdiction to two hundred miles introduced important institutional changes to the United States fishery management system. The redistribution of policy making between Congress, Regional Fishery Councils, and the State Department which accompanied this addition to the formal capacity of the American state undermined the security Washington trollers had derived from American foreign fishery policy goals.

## **Chapter II: Explaining Regulation: Interdependence, State Competition, and the Distribution of National Regulatory Burdens**

Commercial salmon fishing shares at least one characteristic with virtually all other types of economic endeavour - the tendency for its history to be typified by a progressively heavier burden of regulation. A look at the Canadian history makes this point rather well. In 1889, salmon fishing regulations were outlined by two sections of the Fishery Regulations for the Province of British Columbia - regulations which totalled a mere three sections and consumed only two pages. In the 1980s, two pages were needed just to define subjects relevant to an exercise which had sprawled to engulf three separate sets of fishery regulations, dozens of pages, and well over one hundred sections, subsections, and schedules. Despite such a quantitative difference, fishery regulations separated by nearly a century bear a noteworthy qualitative resemblance: season lengths, gear restrictions, and entry into the fishery were objects of regulatory attention then as now.

The first chapter was marked by the suggestion that the salmon fishery's common property nature demands government regulation as well as by the observation that offshore trollers tended to benefit more from state intervention than did netfishermen. The fishery's common property stature, while sufficient to explain the appearance of regulation, is less compelling as an explanation for the distribution of the regulatory burden among the commercial fishing fraternity. The central purpose of this chapter is to explore, in varying detail, several theoretical explanations for the types of distributive biases recorded already. Ultimately, this explanation becomes justificatory - arguing that common property resource interdependence merits a focus upon interpreting national regulatory patterns in terms of the costs and benefits particular national regulatory options offer to states engaged in competition over access to the salmon resource. Before this point is reached we outline and critique by far the most popular perspective on regulation - interest group theory.



**Regulation: The Product of Domestic Interest Group Competition**

With few exceptions, the customary perspective on the regulatory process exhibits a distinct interest group flavour. Born of pluralist parentage, explorations of this subject invariably explain most of its facets according to the influence wielded by non-governmental interests. These explorations generally do not discover the egalitarian pluralism associated with Truman where all groups seeking to influence government are effective demand groups, but find in its place the less idealistic strain described in the works of McConnell and Lindblom where only well-organized, well-financed, narrow interest groups may claim success.<sup>1</sup> Gone as well for the most part is the belief that regulators exercise authority on behalf of the "public interest". Identified as "naive" in one recent overview of regulatory principles, the public interest theory risks intellectual extinction.<sup>2</sup>

The classic studies of regulation identified in this section share more than the preference to explain policy patterns in terms of interest group demands. They also imply that regulatory politics are domestic politics, politics where one pressure group in the country competes with other groups in that territory for the favours of the state. This interest group competition is closed in the sense that the resources used, the reference groups in dispute, and the goals pursued by participating groups arise from the domestic political setting. In no sense does this competition transcend national political boundaries. Skowronek, in his review of the literature on United States railroad regulation, makes this point rather well:

The rise of a truly national railway network locked geographic regions and property interests together in a new system of economic interdependence. At once, this exposed the inadequacies of state-based regulation and defied the laws of the free market to restore order and

<sup>1</sup> David B. Truman, The Governmental Process, (New York: Alfred Knopf, 1952); Grant McConnell, Private Power and American Democracy, (New York: Alfred Knopf, 1967); Charles E. Lindblom, Politics and Markets, (New York: Harper and Row, 1980).

<sup>2</sup> Robert D. Cairns, Rationales for Regulation, (Ottawa: Economic Council of Canada, 1980).

confidence at the national level. Conflicts among factions of capital each seeking its own immediate interests in a national market and competition among localities hitherto separated by enormous distances made a reversal of the federal government's long-established tradition of noninterference imperative.<sup>3</sup>

There, as in many other traditional accounts of national regulatory development, the dynamic of explanation rested in national politics - international factors mattered little.

The strength of the domestic interest group perspective on the regulatory process is drawn from a variety of sources. The public interest theory's fall from favour began with the criticisms of Bernstein, who used the colourful metaphors of "life-cycles" and "capture" to develop his argument that regulatory commissions, despite being created to quell industry abuses arising from market failures, unfailingly adopt a protective attitude towards those they are meant to control. As a regulatory agency moves, in Bernstein's language, from gestation and youth to maturity and old age the capability and will to behave as the uncompromising defender of the common good evaporates. Subjugation to the whims of the regulated is the inevitable outcome.<sup>4</sup>

Even more sweeping critiques of the public interest rationale began to appear regularly in the 1970s. Led by Stigler's formulation of an economic theory of regulation, a string of regulatory studies rejected the shred of the public interest perspective Bernstein allowed, namely, that newborn regulatory commissions strive aggressively to achieve independence from regulated groups. To Stigler, the demand for regulation arose not from any sense of duty to the public but from concentrated producer interests who, driven by an intense preoccupation with profit maximization, were very concerned with aspects of policy impinging upon their goals. Government's

<sup>3</sup> Stephen Skowronek, Building a New American State: The Expansion of National Administrative Capacities, 1877-1920, (Cambridge: Cambridge University Press, 1982), p. 123.

<sup>4</sup> Marver H. Bernstein, Regulating Business By Independent Commission, (Princeton: Princeton University Press, 1955), p. 90.

status as an instrument for the use of politically-powerful corporations was confirmed at the outset of Stigler's essay:

Regulation may be actively sought by an industry, or it may be thrust upon it. A central thesis of this paper is that, as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit.<sup>5</sup>

The only concern of regulators, according to this argument and a later essay by Peltzman, was maximizing political, defined narrowly as electoral, support.<sup>6</sup>

The persuasiveness of the interest group perspective is not confined to American academia. To the extent that regulation is found on the menu of political study in Canada it is often interpreted in terms familiar to those mentioned above.<sup>7</sup> While some express skepticism over the relevance of the capture concept in Canada because of Canada's different institutional setting others suggest that this setting, rather than making capture an unprofitable strategy for regulated interests to pursue, merely gives capture a different face than it shows in the United States. In Canada, regulatory capture requires the capture of the key minister and the relevant department, as well as the commission itself.<sup>8</sup> Referring to the works of Pratt and

<sup>5</sup> George J. Stigler, "The theory of economic regulation," The Bell Journal of Economics and Management Science, Vol. 2, no. 1 (Spring 1971), p. 3.

<sup>6</sup> Sam Peltzman, "Toward a More General Theory of Regulation," Journal of Law and Economics, Vol. 19, (1976). This radical simplification of the nature of regulatory politics drew this criticism from Hirshleifer: "This assumption precludes analysis of the substantially different roles played by the various classes of actors in the political drama." See Jack Hirshleifer, "Comment," Journal of Law and Economics, Vol. 19, (1976), p. 242. The powerful influence of producers is also claimed in: Roger G. Noll, "The Behavior of Regulatory Agencies," Review of Social Economy, Vol. 29, (1971); Richard A. Posner, "Theories of economic regulation," The Bell Journal of Economics and Management Science, Vol. 5, no. 2, (Autumn 1974); and Charles Wolf Jr., "A Theory of Nonmarket Failure: Framework for Implementation Analysis," Journal of Law and Economics, Vol. 22, (1979).

<sup>7</sup> Richard Schultz has pointed out the very limited impact the subject of regulation has made upon the agendas of political science and public administration. See Richard Schultz, "Regulation and public administration," in Kenneth Kernaghan (ed.), Canadian Public Administration: Discipline and Profession, (Toronto: Butterworths, 1983), p. 196.

<sup>8</sup> This opinion ignores the possibility of departmental, as opposed to, commission regulation.

Richards, Nelles, and Felske, Cairns argues that capture of a type has occurred in Canada.<sup>9</sup>

Denials of the capture theory's relevance in Canada do not deny, necessarily, the central assumption of this theory - producer dominance. Hartle, for example, does not challenge the basic relationship between producer interests and the state implied by the theory he finds inappropriate. He criticizes those who assert clientele capture of an agency for their failure to recognize the point that "one cannot capture that which has already been surrendered."<sup>10</sup> Since regulation generally precludes rather than anticipates more severe policy alternatives such as public ownership or a 100% taxation rate on whatever the state determines are excess profits Hartle does not regard regulation as an inherently hostile policy option for the groups it affects.

In one of his several studies of regulation, Schultz repeatedly uses a three-fold "policing, promoting, planning" typology of regulatory behaviour borrowed from the work of Landis. When a regulatory agency performs a promotional function it assumes a reactive posture - responding in a curative fashion to threats to the development of the regulated industry. He explains:

Over time, the policing function was supplemented by a promotional responsibility in that regulators were given a responsibility for the 'good health' of their charges. The traditional means by which he is expected to accomplish such an objective is through controlling entry into the particular activity.<sup>11</sup>

The privileged position of the producer in the regulatory process is acknowledged elsewhere. Trebilcock, in an essay on the need to improve the

<sup>9</sup> Cairns, Rationales for Regulation, p. 18. For studies questioning the blanket acceptance of the idea of regulatory capture see G. Bruce Doern, "Introduction: The Regulatory Process in Canada," in G. Bruce Doern (ed.), The Regulatory Process in Canada, (Toronto: Macmillan, 1978); Douglas G. Hartle, Public Policy Decision Making and Regulation, (Montreal: Institute for Research on Public Policy, 1979); Richard Schultz, "The Impact of Regulation: Panel Discussion," Canadian Public Policy, Vol. V, no. 4, (Autumn 1979).

<sup>10</sup> Hartle, Public Policy Decision Making and Regulation, p. 89.

<sup>11</sup> Schultz, "The Impact of Regulation: Panel Discussion," p. 489.

representation of consumer interests in regulation, speaks of the myth that major regulatory initiatives are thrust upon reluctant producers by hostile non-producers. His assertion that regulations are often sought by producer groups might just as easily have appeared in a discussion of regulation in the United States.<sup>12</sup> Perhaps the most significant assessment of all in this debate is that made by the Economic Council of Canada after its exhaustive study of regulation. In its final report, Reforming Regulation, the Council concluded:

The evidence indicates that, while many factors explain the growth of regulation in Canada, the perception of the public interest that has provided the basis for much of the regulatory legislation has been strongly influenced by the views of specific groups in society.<sup>13</sup>

In Canada as in the United States, narrowly based groups with an important interest in the outcomes of regulatory decision making are judged to exert a substantial influence over the conduct and outcomes of regulatory politics.

#### Interest Group Theory and Fishery Regulation

Moving from the general level of theory to the specifics of fishery legislation and regulation we again note a tendency to explain government behaviour as the product of interest group politics. Politicians and their bureaucracies have contended over the years that the intent of their policies is nothing less than the promotion of the interests of participants in the fishery. In 1966, the United States Congress witnessed Secretary of the Interior Udall's declaration that the primary objective of the prohibitions against fishing by foreign vessels in United States coastal waters incorporated into the Bartlett Act of 1964 was the promotion of the economic interests of American fishermen.<sup>14</sup> Ten years later Canada's Fisheries and Marine

<sup>12</sup> Michael Trebilcock, "The Consumer Interest and Regulatory Reform," in G. Bruce Doern (ed.), The Regulatory Process in Canada.

<sup>13</sup> Economic Council of Canada, Reforming Regulation, (Ottawa: Minister of Supply and Services Canada, 1981), p. 5.

<sup>14</sup> Eugene R. Fidell, "Ten Years Under the Bartlett Act: A Status Report on the Prohibition on Foreign Fishing," Boston University Law Review, Vol. 54, (1974), p. 708.

Service pledged its responsiveness to the needs of industry participants. More public participation was promised in policy making than earlier "fish-oriented" policies had allowed. Under the new order advertised by the Fisheries Service, government intervention would be accompanied by direct participation of the regulated in policy formulation:

In other words, fishing has been regulated in the interest of the fish. In the future it is to be regulated in the interest of the people who depend on the fishing industry. Implicit in the new orientation is more direct intervention by government in controlling the use of fishery resources, from the water to the table, and also more direct participation by the people affected in the formulation and implementation of fishery policy.<sup>15</sup>

While some doubt whether Ottawa actually implemented these changes,<sup>16</sup> some claim that much of bureaucratic politics is client-oriented and regulators of Canada's maritime resources defend and promote the clientele groups they are supposed to be regulating.<sup>17</sup>

Crutchfield also offers the influence of pressure groups as the key to understanding the general pattern of fishery management. "No one familiar with the history of fishery management," he wrote, "needs to be told that more policy is determined by the pressure of well organized groups of winners than by the criteria of maintaining a sound condition of the stocks or of yielding greater net economic benefits to society."<sup>18</sup> Larkin tenders something of a variation on this theme, implying that the strategic importance of the fishermen vote is a likely animator of the policy

<sup>15</sup> Canada, Environment Canada, Fisheries and Marine Service, Policy for Canada's Commercial Fisheries, (Ottawa: Fisheries and Marine Service, 1976), p. 5.

<sup>16</sup> Susan McCorquodale, "The Management of a Common Property Resource: Fisheries Policy in Atlantic Canada," in Michael M. Atkinson and Marsha A. Chandler (eds.), The Politics of Canadian Public Policy, (Toronto: University of Toronto Press, 1983), p. 166.

<sup>17</sup> Barbara Johnson, "Governing Canada's economic zone," Canadian Public Administration, Vol. 20, (1977), p. 172.

<sup>18</sup> Crutchfield, "Economic and Political Objectives in Fishery Management," p. 483.

offerings of politicians.<sup>19</sup> A concern for gaining political office then becomes part of the rationale for the distributive biases common to fishery management.

Turning to the Pacific salmon fishery this tendency to explain the policy process in terms of interest group influence remains in the foreground. Wright's account of salmon management echoes the strains of regulatory capture. Usually fishery managers become reduced to lobbyists supporting a particular clientele of fishermen.<sup>20</sup> Cooley, in a history of the pre-statehood salmon fishery in Alaska, noted how the federal regulators frequently were obliged to use the scientific findings of regulated interests as they established policy.<sup>21</sup> Early attempts at licence limitation in British Columbia came and went according to the whims of the fishing industry. In 1892, the first attempt to limit fishing effort on the Fraser River by this method was stopped, apparently in response to the protests of the canning industry.<sup>22</sup> Hilborn and Peterman argued that between approximately 1920 and 1950 the regulatory process responded to political pressures from commercial fishing interests, thereby compromising the biologists' concern with escapements.<sup>23</sup> Campbell made a similar assessment. "Over the past 70 years," he wrote, "specific area and gear regulations have been promulgated initially in the guise of conservation, but ended up as providing special protection for particular groups of salmon fishermen."<sup>24</sup>

Reviews of more recent practices cite similar biases in the regulation of the fishery. The British Columbia Select Standing Committee on Agriculture, in its

<sup>19</sup> Larkin, "An Epitaph for the Concept of Maximum Sustained Yield," p. 6.

<sup>20</sup> Wright, "Contemporary Pacific Salmon Fisheries Management," p. 38.

<sup>21</sup> Richard A. Cooley, Politics and Conservation: The Decline of the Alaska Salmon, (New York: Harper and Row, 1963), p. 163.

<sup>22</sup> Brian Hayward, "The Development of Relations of Production in the British Columbia Salmon Fishery," (University of British Columbia: Unpublished M. A. Thesis, Anthropology and Sociology, September 1981), p. 35.

<sup>23</sup> Ray Hilborn and Randall M. Peterman, "Changing Management Objectives," in Derek V. Ellis (ed.), Pacific Salmon Management for People, (Victoria: University of Victoria, 1977), p. 74.

<sup>24</sup> Blake A. Campbell, Limited Entry in the Salmon Fishery: the British Columbia Experience, (Vancouver: U. B. C. Centre for Continuing Education, 1972), p. 12.

research report on the province's salmon industry, claimed that the federal government has been preoccupied with meeting the "rights and needs" of commercial fishery participants.<sup>25</sup> In the United States, some used the claim that State management agencies are "politically and industrially-dominated" to support the demand that responsibility for the management of the fishery should be entrusted to a semi-independent national agency.<sup>26</sup>

The chief negotiators who presided over several years of the lengthy negotiations leading to the United States-Canada Pacific Salmon Treaty of 1985 have given indications that vested interests prevented the two nations from reaching agreement earlier. Michael Shepard, a former Canadian chief negotiator, viewed the 1960s as a decade when vested interests in the commercial fisheries prevented governments from taking action to preserve chinook salmon stocks. Dayton L. Alverson, Shepard's American diplomatic adversary, similarly attributed at least part of the scuttling of a 1982 United States-Canada tentative agreement to the hostility of American commercial fishermen, particularly Alaskan trollers, to the distributional implications of the agreement.<sup>27</sup>

More recent licence limitation initiatives also have been explained according to the dynamic of group interests. The Canadian federal government's reluctance to implement the licence limitation proposal made by federal commissioner Dr. Sol Sinclair was explained with reference to the diversity of opinion among Pacific

<sup>25</sup> British Columbia, British Columbia Legislative Assembly, Select Standing Committee on Agriculture, The Salmon Industries in British Columbia: Phase III Research Report, (Victoria: Queen's Printer, 1979), p. 233.

<sup>26</sup> Robert J. Browning, Fisheries of the North Pacific: History, Species, Gear and Process, (Anchorage: Alaska Northwest Publishing Company, 1974), p. 339.

<sup>27</sup> Their comments were made during the course of an Ocean Studies Seminar held at the University of British Columbia in March 1984. Stephen Greene and Thomas Keating reached a similar conclusion concerning the United States-Canada bilateral fisheries negotiations on the Atlantic coast. Domestic interests were able to exercise substantial influence over the course of these negotiations. See Stephen Greene and Thomas Keating, "Domestic Factors and Canada-United States Fisheries Relations," Canadian Journal of Political Science, Vol. XIII, no. 4, (December 1980).



fishery interests.<sup>28</sup> In 1966, the government advanced a licence limitation proposal, only to withdraw it a scant one week later in the face of opposition from all parts of the salmon industry. Two years later, both primary and secondary groups in the industry requested the introduction of licence control. The federal government obliged this change of heart.<sup>29</sup> The reluctance of Washington State to introduce licence limitation in its salmon fishery is also attributed to the hostility of the fishing industry.<sup>30</sup>

Finally, regulations pertaining to gear restrictions and time/area closures also have been seen commonly as responses to the demands of particular groups in the salmon fishery. In the 1950s the Pacific Marine Fisheries Commission, a tri-state compact, urged its member states to ignore overtures to introduce an ocean gill-net fishery off the American west coast since this new fishery would threaten the catches of existing salmon fisheries.<sup>31</sup> The prohibition of commercial fish traps in British Columbia was also explained through reference to the political pressure of the mobile fleets.<sup>32</sup>

Throughout these vignettes of the regulatory process the prevalent tendency is to explain policy in terms of the requests made by the societal interests dependent upon access to the resource. Why particular interests may fare better than others is a question seldom discussed at length, leaving intact the suspicion that regulatory favouritism is little more than the result of a more skillful lobbying campaign on the part of the victors. The hesitancy to address this type of question is a failing Posner attributed to political scientists who use the capture theory. Those who

<sup>28</sup> G. Alex Fraser, License Limitation in the British Columbia Salmon Fishery, (Environment Canada, Fisheries and Marine Service, 1977), p. 21.

<sup>29</sup> Campbell, Limited Entry in the Salmon Fishery: the British Columbia Experience, p. 2.

<sup>30</sup> R. Bruce Rettig and Jay J. C. Ginter, Limited Entry as a Fishery Management Tool, (Seattle: University of Washington Press, 1978).

<sup>31</sup> Pacific Marine Fisheries Commission, Ninth Annual Report (1956).

<sup>32</sup> Marvin Shaffer, An Economic Study of the Structure of the British Columbia Salmon Industry, (Prepared under contract to the Salmonid Enhancement Program, April 1979), p. 112.

rely on this type of explanation of agency behaviour "do not tell us why some interests are effectively represented in the political process and others not, or under what conditions interest groups succeed or fail in obtaining favorable legislation."<sup>33</sup>

The popularity of the interest group driven explanation tempts one to assign it the leading role in any account of the fishing season pattern depicted in the last chapter. Yet, when one examines the structure of the fishing industry certain doubts arise about the veracity of the conclusion that troller self-interest alone may explain the regulatory favours bestowed to offshore fishermen. In Canada, for instance, trollers remained unorganized until July 1956 when the Pacific Trollers Association (PTA) was formed. As we will see in Chapter IV, in the late 1950s the PTA was unable to persuade the government to adopt the offshore fishing season preferred by its membership. Partially for this type of reason, the distinction of being the most well-organized fishermen's group during the period considered here is conceded generally to the United Fishermen and Allied Workers' Union, a trade union dominated by netfishermen and the shoreworkers of the canning industry. The UFAWU's membership would not seem then to be a natural supporter of liberal troll regulations. While the notion of the strategic utility of the fishermen vote could be questioned on several levels the fact that Canadian netfishermen outnumbered trollers would appear to confound its use in explaining the differential regulatory treatment of troll and net gear. The logic of a simple interest group explanation for the regulatory pattern observed also is frustrated by looking beyond the harvesting sector to the immediate economic interests of the dominant corporations in the processing sector. Historically, processors have had a much more important ownership stake in the net fleet than in the troll fleet. Although licence limitation restricted the processing companies ownership share of the overall salmon fleet to twelve percent, a 1979 study placed twenty-six percent of the seine fleet and fifteen percent of the gillnet fleet in the

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<sup>33</sup> Richard A. Posner, "Theories of economic regulation," p. 341.

hands of processing companies. By contrast, processors owned only one-half percent of the troll vessels.<sup>34</sup> Moreover, processor profit margins are higher on net purchases than on troll purchases.<sup>35</sup>

Common Property, Interdependence, and Regulation: Regime Politics as an Influence on National Policy

This dissertation is offered as a corrective to the conventional interest group interpretation of salmon fishery regulation. It is written in the belief that the closed, interest group explanation of regulation is too limiting in several respects when it is applied to the case of offshore/ inshore fishing opportunities. One such limitation is the tendency for this theory to explain domestic policy only in terms of national politics. This limitation arises from the complications attending the status of Pacific salmon as a common property resource available to fishermen of several nations. This circumstance establishes a measure of reciprocity between international goals or negotiations and national regulations. The common property character of the resource adds a strategic dimension to the act of selecting from among various national

<sup>34</sup> Shaffer, An Economic Study of the Structure of the British Columbia Salmon Industry, p. 45.

<sup>35</sup> *Ibid.*, pp. 11, 77. The pattern of fishing seasons also contradicts certain expectations raised by Mancur Olson's classic study, The Logic of Collective Action. There, Olson's primary concern was to outline the conditions needed for rational individuals to organize into groups. He also offered, however, a commentary about the relationship between group size and lobbying success. The political power wielded by business interests was attributed to the characteristic that most industries are only composed of a quite small number of firms. Olson remarked that: "*The high degree of organization of business interests, and the power of these business interests, must be due in large part to the fact that the business community is divided into a series of (generally oligopolistic) 'industries', each of which contains only a fairly small number of firms.*" Because the number of firms in each industry is often no more than would comprise a 'privileged' group, and seldom more than would comprise an 'intermediate' group, it follows that these industries will normally be small enough to organize voluntarily to provide themselves with an active lobby - with the political power that 'naturally and necessarily' flows to those that control the business and property of the country." Mancur Olson, The Logic of Collective Action, (Cambridge: Harvard University Press, 1965), p. 143. Emphasis in original. In the Canadian salmon industry then, one might expect a regulatory pattern which would conform closely to the immediate economic interests of the Fisheries Association of British Columbia, the processors' organization. This, as we have seen, was not the case.

regulatory options. National policy may be influenced by the benefits particular regulatory profiles offer to the states competing over resource access.

It is a truism to note that interdependence is a prominent feature of economic and political life. The reactions of Canadian and American governments to the deteriorating water quality of the Great Lakes and to the acid rain phenomenon in Canada and the United States underline the extent to which interdependence is inherent in traditional examples of common property, water and air.<sup>36</sup> While these two examples highlight the possible costs of interdependence benefits also may arise. The salmon fishery offers us both alternatives. Ignorant of mankind's attachment to political boundaries, salmon regard the North Pacific as a seamless biosphere, journeying thousands of miles through waters for which American and Canadian governments have laid contiguous, occasionally overlapping, claims. These migrations expose species which spawn in one country to possible interception by fishermen from another nation and have led to the development of important interception fisheries: Japan's high seas net fishery for North American salmon, Alaska's Noyes Island fishery for sockeye and pink salmon from Canada's Skeena River, Washington's Juan de Fuca fishery for Fraser River system destined sockeye, pink, and chum salmon stocks, and British Columbia's west coast of Vancouver Island fishery for chinook and coho salmon originating from the inland waters of the Pacific Northwest.

The interdependent, common property character of these fisheries does more than sustain one nation's exploitation of another's salmon stocks. It inspires two not necessarily complementary management goals - conservation and allocation. The renewable potential of the fishery, in combination with the conventional opinion that unrestricted fishing of a common property fishery will produce stock depletion or

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<sup>36</sup> Keohane and Nye define interdependence as follows: "Interdependence in world politics refers to situations characterized by reciprocal effects among countries or among actors in different countries." Robert O. Keohane and Joseph S. Nye, Power and Interdependence: World Politics in Transition, (Boston: Little, Brown, and Company Inc., 1977), p. 8.

extinction, imposes a husbandry or conservation obligation upon the regulator.<sup>37</sup> But faced with the reality of interception the regulator has an obvious incentive to try to obtain the cooperation of neighbouring states in respecting this conservation imperative. Failure to secure a complementary package of regulations from the intercepting nation may frustrate the intent of conservation measures taken by the state in which returning salmon are destined to spawn, thus denying the promise of strong future runs of salmon.<sup>38</sup> As this discussion implies, the salmon fishery's distinction as international common property also inspires allocational ambitions. Stocks destined for a neighbour's streams are a tempting prize since their capture may not jeopardize the return of salmon to your own spawning grounds. When the logic of common property exploitation unfolds in this international context pressure builds to harvest fish native to another jurisdiction before they return to their place of origin.

Historically, this distributional competition between states has been addressed through an international institution - the fishery regime. The understanding attached here to the concept of international regime borrows most heavily from the interpretations authored by Krasner and Stein. "International regimes," says Krasner, "are defined as principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area."<sup>39</sup> A regime serves a coordinative purpose, influencing the behaviour of states in a policy area characterized by interdependence.<sup>40</sup>

<sup>37</sup> Not all early biological theories of fish population dynamics posited man's use of these resources as a threat to their propagation. See Gordon, "The Economic Theory of a Common Property Resource," pp. 124-128.

<sup>38</sup> This point is made generally in regards to common property resources in Scott, "Fisheries, Pollution, and Canadian-American Transnational Relations," p. 235.

<sup>39</sup> Stephen D. Krasner, "Structural causes and regime consequences: regimes as intervening variables," *International Organization*, Vol. 36, no. 2 (Spring 1982), p. 185.

<sup>40</sup> *Ibid.*, p. 191. There does not appear to be a numerical threshold for the existence of a regime. Keohane and Nye argue that an implicit regime is the Canadian-American postwar relationship. Keohane and Nye, *Power and Interdependence*, p. 20

The development and transformation of international regimes are explained customarily in terms of the constellation formed by interdependence and other precipitating factors such as self-interest, political power, norms and principles, habit/custom, and knowledge.<sup>41</sup> Of these latter factors, self-interest assumes primary importance. Stein, for example, contends that regimes arise when it is in the self-interest of actors to forego independent decision making because jointly accessible outcomes are more preferable.<sup>42</sup> Several structural factors, particularly the distribution of power, the amount of knowledge, and the state of technology, also affect the decision of states to surrender a measure of their authority and participate in regimes. Finally, internal national characteristics - the nature of dominant economic interests being one - also may influence the preferences of states.

The relevance of the regime concept to the study of the salmon fishery is highlighted by recognizing that common property presents, in Stein's language, a dilemma of common interests, a dilemma where all parties prefer one given outcome over the equilibrium outcome. In situations where a number of actors exploit a common resource Stein ranks four possible outcomes in terms of the preferences of participants: sole use, joint restraint during mutual use, joint unrestrained use leading to resource depletion, and self-restraint in the light of unrestrained behaviour by a competitor. According to Stein's logic each participant shares a common interest in

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<sup>41</sup> Krasner, "Structural causes and regime consequences."

<sup>42</sup> Stein, "Coordination and collaboration," p. 311. Later Stein expands on this point: "This conceptualization of regimes is interest-based. It suggests that the same forces of autonomously calculated self-interest that lie at the root of the anarchic international system also lay the foundation for international regimes as a form of international order. The same forces that lead individuals to bind themselves together to escape the state of nature also lead states to coordinate their actions, even to collaborate with one another. Quite simply, there are times when rational self-interested calculation leads actors to abandon independent decision making in favor of joint decision making." *Ibid.*, p. 316.

developing a regime in order to move from the third alternative to the second outcome (mutual restraint).<sup>43</sup>

To this point international regimes have been introduced as dependent variables, as the objects of government attention which are erected, modified, or disassembled according to the particular configuration of state interests existing at the relevant point in time. In the minds of some writers, however, regimes transcend this dependent variable status and become intervening, if not independent, variables capable of shaping the behaviour of actors.<sup>44</sup> Stein argues as much when he suggests that it is not necessarily the case that shifting perceptions of self-interest will change the nature of the regime. Costs of continual interest recalculation, uncertainty about the permanence or direction of interest shifts, the sustaining power of tradition and legitimacy, and the institutionalization of coordination and collaboration all may serve to forestall or at least delay the transformation of regimes.<sup>45</sup> These factors taken collectively or individually may create a gulf between the prescriptions of the regime and participants' current definitions of self-interest, between state behaviour and solemn public declarations of policy objectives.

What I hope to demonstrate in this dissertation is that the regulatory treatment of trollers by Canadian and American governments was shaped by regime

<sup>43</sup> Kasahara uses this logic implicitly in his discussion of international fishery disputes. See Hiroshi Kasahara, "International Fishery Disputes," in Brian J. Rothschild (ed.), World Fisheries Policy: Multidisciplinary Views, (Seattle: University of Washington Press, 1972), p. 23. It also appears in Underdal's discussion of international fisheries management in the Northeast Atlantic. Arild Underdal, The Politics of International Fisheries Management: The Case of the Northeast Atlantic, (Oslo: Universitetsforlaget, 1980), pp. 18-20.

<sup>44</sup> Keohane and Nye write: "International regimes are intermediate factors between the power structure of an international system and the political and economic bargaining that takes place within it. The structure of the system (the distribution of power resources among states) profoundly affects the nature of the regime (the more or less loose set of formal and informal norms, rules, and procedures relevant to the system). The regime, in turn, affects and to some extent governs the political bargaining and daily decision-making that occurs within the system." Keohane and Nye, Power and Interdependence, p. 21.

<sup>45</sup> Stein, "Coordination and collaboration," pp. 322-323.

politics. The intent is to build on the suggestion that the institutional configuration of international regimes may affect the domestic, as well as the international, behaviour of actors touched by a regime's principles or rules. Keohane and Nye argue generally that in the politics of interdependence domestic and foreign policy become closely linked.<sup>46</sup> Lipson has made this argument in the context of American trade policy debates. The established liberal international trade regime constituted a persuasive context for the framing of domestic trade practices and laws. Pressure to harmonize domestic practices with those of fellow regime members was particularly powerful when those practices conflicted with regime rules;<sup>47</sup> proponents of liberal policies reminded the Congressional targets of protectionist pressures of the international obligations flowing from United States membership in the General Agreement on Trade and Tariffs. Additionally, we probe the possibility that predispositions towards common property resource regulation may be contingent upon the contribution specific types of fishing activities make towards a government's pursuit of regime change. Here, liberal offshore trolling seasons would be sustained in recognition of the bargaining advantages they bestowed.

### The Evolution of the Salmon Fishery Regime

The international fishery regime has not been a static phenomenon; rather, it has evolved over time. Much of this evolution was accomplished through the grafting of regional agreements and unilateral claims to the global component of the regime, adjustments necessitated by the frustration of United Nations' efforts to overhaul comprehensively the law of the sea. Although it is left to subsequent chapters to examine the types of regime modifications sought by Canada and the United States and trace their consequences for national regulations we pause here to offer a series of snapshots detailing the nature of regime change over time.

<sup>46</sup> Keohane and Nye, Power and Interdependence, p. 8.

<sup>47</sup> Charles Lipson, "The transformation of trade: the sources and effects of regime change," International Organization, Vol. 36, no. 2, (Spring 1982), p. 447.



In the Northeast Pacific of the 1920s the regime pertaining to the salmon fishery corresponded well with the notion of the traditional fishery regime articulated by Young and others.<sup>48</sup> The first regional modification to this traditional regime was species-specific. The Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries in the Fraser River System, signed by Canada and the United States in 1930 and ratified in 1937, modified the rights of the signatories to regulate the sockeye salmon fishery within a portion of their territorial/internal waters.<sup>49</sup> The convention established a bilateral commission, the International Pacific Salmon Fisheries Commission, and entrusted the IPSFC with two primary purposes: rehabilitate the Fraser River sockeye salmon runs and divide the Fraser sockeye harvest taken in convention waters equally between American and Canadian fishermen.<sup>50</sup>

A series of major regional modifications to the salmon fishery regime occurred during the 1950s. The first of these changes awaited the conclusion of a peace treaty with Japan. In 1952, Canada, the United States, and Japan signed the International North Pacific Fisheries Convention. The convention's introduction of the abstention principle placed an important restraint upon the rights of Japan to fish for any species of salmon on the high seas. In direct contravention of the global principle of unrestricted access to living resources found on the high seas the convention prohibited Japanese exploitation of salmon east of a provisional abstention line drawn

<sup>48</sup> Young defines the traditional fishery regime as follows: "The traditional regime for the marine fisheries consisted of an unrestricted or open-to-entry common property system coupled with a procedural device known as the law of capture. . . Every actor was free to engage in the harvesting of fish at times and places of his own choosing except within the narrow confines of the territorial sea." Oran R. Young, Resource Regimes: Natural Resources and Social Institutions, (Berkeley: University of California Press, 1982), p. 138. A similar definition is found in Edward Miles, Stephen Gibbs, David Fluharty, Christine Dawson, and David Teeter, The Management of Marine Regions: The North Pacific, (Berkeley: University of California Press, 1982), p. 5, also Chapter Three.

<sup>49</sup> The approximate boundaries of the convention area are sketched out in Appendix C.

<sup>50</sup> For information on this convention see W. A. Carrothers, The British Columbia Fisheries, (Toronto: University of Toronto Press, 1941); Thomas F. Keating, "Nongovernmental Participation in Foreign Policy Decisions Affecting Canada's Fisheries Relations with the United States," (Dalhousie University: Unpublished PhD Thesis, 1982); Edward Miles et al, The Management of Marine Regions, pp. 63-75.

along 175° West Longitude.<sup>51</sup> As the International Law Commission drafted articles for consideration at the 1958 United Nations Law of the Sea Conference two other regional modifications were made to the regime. In 1956, Canada and the United States signed a protocol extending the terms of the Sockeye Salmon Convention to Fraser River pink salmon. In 1957, these two countries further modified the salmon regime through an agreement on the coordination of salmon fishing regulations. The primary features of this agreement were a limitation on the scope of the ocean open to netfishermen and the introduction of uniform offshore trolling regulations.

The inability of either the 1958 or 1960 United Nations Conference on the Law of the Sea to accommodate the demands of a growing number of coastal states for extended oceanic jurisdictions did not defuse the demands for change. The 1960s and 1970s may be remembered as decades when unilateral claims to wider territorial seas and to extended economic zones proliferated. Both Canada and the United States participated in this movement to extend coastal state jurisdiction. In 1964, Canada passed the Territorial Sea and Fishing Zones Act, a measure which extended Canadian fisheries jurisdiction to twelve miles.<sup>52</sup> Two years later the United States also extended exclusive American fisheries jurisdiction to twelve miles. In 1970, Canada claimed a territorial sea of twelve miles. In each instance of coastal state expansion bilateral understandings exempted Canadian and American fishermen from the exclusion imposed on fishermen from other nations. Canadians and Americans continued to enjoy the privilege of fishing off their neighbours' shores. These understandings

<sup>51</sup> The intent of this measure was to eliminate the possibility that the Japanese high seas gillnet fleet would prey upon North American salmon. According to the terms of the convention related to salmon fishing Canada also agreed to abstain from fishing for salmon in a portion of the Bering Sea. No such Canadian fishery existed or was contemplated at the time the INPFC was negotiated.

<sup>52</sup> A three mile territorial sea was retained and a contiguous nine mile fishing zone was added. One source for a description of Canada's evolving fisheries policy is Barbara Johnson, "Canadian Foreign Policy and Fisheries," in Barbara Johnson and Mark W. Zacher (ed.), Canadian Foreign Policy and the Law of the Sea, (Vancouver: University of British Columbia Press, 1977).

were institutionalized in 1970 in a reciprocal fishing privileges agreement, an agreement which lasted until shortly after the last great seaward push of Canada-United States coastal claims.

These claims, made in 1977 for a two hundred mile fisheries jurisdiction, were encouraged by intensified foreign fishing beyond the twelve mile barrier and the failure of the Third Law of the Sea Conference to resolve quickly the terms and boundaries of coastal state jurisdiction.<sup>53</sup> Canada, drawing on the executive authority already granted by the Territorial Sea and Fishing Zones Act, and the United States, through the passage of the Fishery Conservation and Management Act (the Magnuson Act), thus significantly extended coastal state authority and public administration into previously unregulated expanses of the oceans. In the case of the United States the extension of state authority also redistributed that authority among government bureaus and organizations. Regional fishery management councils, created by the Magnuson Act, were entrusted with policy responsibilities that theretofore had rested with the State Department. As our forthcoming argument in Chapter Six emphasizes, this redistribution of state capacities had a profound impact upon the pattern of the American state's regulatory policy.

#### Explaining Regulation: The Role of State Interests and Capacities

An illustration of the argument that governmental attitudes towards offshore salmon fisheries regulation was contingent upon regime politics will modify, but not necessarily repudiate, the expectations of interest group theory. To argue that government based certain regulatory decisions upon their utility in the competition between states is not to say that the regime goals and/or their supporting regulatory initiatives were not inspired by the demands or interests of private groups. A more

<sup>53</sup> The Third Law of the Sea Conference concluded in 1982. The Canadian and American claims for two hundred mile zones reflected the consensus of the conference that two hundred mile exclusive economic zones could be established seaward from the shores of coastal states. This consensus was articulated in the revised single negotiating text published in May 1976.

thorough critique of the closed, interest group policy perspective demands evidence that regulations were influenced by factors unrelated to the demands of fishermen. The interests and capacities of the state are two such factors. Until recently few questioned the conclusion that the interests of states and societies, or at least dominant societal interests, were synonymous. The development of a nascent, heterogeneous statist perspective, produced by the revival of interest in the state, questions the extent to which state behaviour may be reduced to the demands of social groups.<sup>54</sup> In contrast to the fundamental logic of the interest group approach sketched earlier, the statist view argues in part that policy selection is often governed by the goals of states, goals which do not reflect the demands or interests of social groups or classes.<sup>55</sup> The overall purpose of this venture then is to investigate more than just the relationship between international goals and national policy. As well, we wish to weigh the merits of the statist interpretation. May evidence be gathered to support the view that the state's regulations were inspired by goals distinct from those held by the groups in the salmon fishery?<sup>56</sup>

A complete exploration of the statist interpretation's value requires that attention also be paid to the possible role played by the structure or the organization of

<sup>54</sup> A survey of this revival is offered in Theda Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research," in Peter B. Evans, Dietrich Rueschemeyer, Theda Skocpol (ed.), Bringing the State Back In, (Cambridge: Cambridge University Press, 1985).

<sup>55</sup> Part of the heterogeneity of the statist perspective may be traced to a difference of opinion regarding what constitutes evidence of a state acting autonomously. For Krasner and Skocpol, state autonomy is defined in terms of the state acting against the preferences of established interests. Nordlinger, on the other hand, asserts that state autonomy exists whenever state officials follow their own policy preferences rather than those of social groups irrespective of whether these preferences are divergent or identical. See Stephen D. Krasner, Defending the National Interest: Raw Materials Investment and U. S. Foreign Policy, (Princeton: Princeton University Press, 1978); Theda Skocpol, States and Social Revolutions: A Comparative Analysis of France, Russia, and China, (Cambridge: Cambridge University Press, 1979); Eric Nordlinger, On the Autonomy of the Democratic State, (Cambridge: Cambridge University Press, 1981).

<sup>56</sup> A very abbreviated exploration of this theme in regards to the survival of the dragger fleet in north-west Newfoundland is offered in Peter R. Sinclair, "The survival of small capital," Marine Policy, Vol. 10, 1986.

the state itself in the conduct of regime politics. Generally, this relationship is ignored in the literature on international regimes. Stein's acknowledgment, for example, that national characteristics of states may underpin state preferences is not extended to the organization of the state itself.<sup>57</sup>

A second strand of the statist literature makes this connection through the suggestion that state capacities are vital to the formulation and prosecution of state interests. In an essay on the renewal of interest in the relationship between the state and society Skocpol raises the issue of whether states possess the capacities needed to implement their policies. Since states may pursue goals which either may be beyond their reach or may produce unintended as well as intended consequences she suggests that "... the capacities of states to implement strategies and policies deserve close analysis in their own right."<sup>58</sup>

Such an analysis was represented in Skocpol and Finegold's study of economic intervention in the United States at the outset of the New Deal.<sup>59</sup> There, the collapse of the National Industrial Recovery Act's objectives and the parallel success of those of the Agricultural Adjustment Act (AAA) were related to differences in the state's capacity for economic intervention. In the case of the AAA the knowledge and governmental organization at that time were sufficient to accomplish its

<sup>57</sup> Stein, "Coordination and collaboration," p. 321. Krasner's work is an exception to this observation. One of his first major works, Defending the National Interest: Raw Materials Investments and U. S. Foreign Policy, argued persuasively that the ability of a state to implement its foreign policy preferences depended upon its domestic political structure. The ability of state actors to carry out their aims is related to the decision making arena. When central decision makers were forced to open decision making to Congress, frustration or compromise of the executive's goals resulted. In his latest work on North-South relations he has argued that the preference of Third World states for regimes legitimating authoritative, rather than market, allocation is in part motivated by the weakness of their domestic political institutions. Stephen D. Krasner, Structural Conflict: The Third World Against Global Liberalism, (Berkeley: University of California Press, 1985).

<sup>58</sup> Theda Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research," in Peter B. Evans, Dietrich Rueschmeyer, and Theda Skocpol (ed.), Bringing the State Back In, (Cambridge: Cambridge University Press, 1985), p. 16.

<sup>59</sup> Theda Skocpol and Kenneth Finegold, "State Capacity and Economic Intervention in the Early New Deal," Political Science Quarterly, Vol. 97, no. 2 (Summer 1982).

interventionist program. The Agricultural Adjustment Administration drew upon an impressive collection of agricultural statistics already compiled by the Bureau of Agricultural Economics, a collection regarded as a crucial policy making resource.<sup>60</sup> In addition to an impressive knowledge base, the success of the AAA was attributed to the ability of the Secretary of Agriculture to coordinate the special agency's work with that of established United States Department of Agricultural programs. The AAA succeeded in part because of its fit into a coherent, overall agricultural program.<sup>61</sup>

These same two dimensions of state capacities, knowledge and the fragmentation of authority and purpose, also figure in our explanation of the relationship between fishery regime politics and national regulatory policies. Both the formulation of the regime goals identified as crucial to the comprehension of national regulatory policy and the vigour with which these goals were pursued will be traced to these dimensions of state capacities.<sup>62</sup>

#### An Unexplored Alternative: Regulation as Organizational Routine

Allison, in his study of the Cuban missile crisis, made the fundamental point that a policy analyst's observations may be as much a function of the investigation's conceptual lenses as of the evidence gathered. In language which is especially fitting given the subject matter of this study he wrote:

Conceptual models not only fix the mesh of the nets that the analyst drags through the material in order to explain a particular action; they also direct him to cast his nets in

<sup>60</sup> Perkins wrote that, without access to these statistical records, "... it would have been impossible to determine base production, allotments, and benefits." Van L. Perkins, Crisis in Agriculture: The Agricultural Adjustment Administration and the New Deal, Berkeley: University of California Press, 1969), p. 97. Cited in Skocpol and Finegold, "State Capacity and Economic Intervention in the Early New Deal," p. 271.

<sup>61</sup> Ibid., p. 271.

<sup>62</sup> Underdal links knowledge to the management frustrations experienced by the North East Atlantic Fisheries Commission. The efforts of the Commission to stiffen regulations were impeded by the lack of a firm scientific base. Underdal, The Politics of International Fisheries Management, pp. 52-53. Scott has suggested, in a similar vein, that agreement over knowledge is essential to the acceptance and implementation of international management by treaty organizations.

select ponds, at certain depths, in order to catch the fish  
he is after.<sup>63</sup>

This study is framed consciously as an attempt to illustrate the fruitfulness of stepping beyond the limits of the interest group perspective to incorporate the importance of international goals and institutions in the construction of explanations of national regulatory policy. The identification of these two causal candidates, however, by no means exhausts the repertoire of explanatory candidates. Regime politics are stressed here because of their perceived importance to understanding the conduct of fisheries where resource interdependence is a dominant characteristic.

By channelling our attention in this direction I may be charged with committing several sins of omission, the most damaging of which may be the failure to explore alternative conceptual frameworks. One such framework is offered by an organizational process model, a model where regulatory behaviour may be understood "... less as deliberate choices and more as *outputs* of large organizations functioning according to standard patterns of behavior."<sup>64</sup> Organizations practice, in Simon's phrase, "satisficing" rather than maximizing or optimizing. Content to adhere to preestablished routines or standard operating procedures organizations exhibit very stable behavioural patterns. This is not to suggest that organizational behavioural patterns are immutable. Incremental, possibly dramatic, change may follow an organization's acquisition of new information. Dramatic change, in the model articulated by Allison, is more likely to be stimulated by budgetary feasts, prolonged budgetary famine, and dramatic performance failures.<sup>65</sup>

Although this perspective is not the methodological star of this study, this conceptual lens may be particularly pertinent to understanding regulatory edicts in salmon fisheries where resource interdependence is a less prominent feature. One

<sup>63</sup> Graham T. Allison, Essence of Decision: Explaining the Cuban Missile Crisis, (Boston: Little, Brown and Co., 1971),

<sup>64</sup> Ibid., p. 67.

<sup>65</sup> Ibid., p. 85.

such fishery is the Strait of Georgia troll fishery, a fishery that although more strictly regulated than the offshore troll fishery from 1965 to 1981, still thrived relative to most Georgia Strait net fisheries.<sup>66</sup> If our understanding of offshore regulatory policy may be understood through reference to state competition in the international fishery regime our understanding of a very similar regulatory pattern in the Georgia Strait fishery may benefit through use of this alternative perspective.

Certain fragmentary evidence suggests the promise of this particular approach to analyzing the Georgia Strait troll fishery. The restrictions imposed on the inside troll fishery in 1965 seem clearly to have been the product of organizational learning. Prior to the early 1960s the Department of Fisheries gave few indications that there was any need for concern over the status of Georgia Strait chinook and coho stocks. The longevity of the troll season reflected this lack of concern, an attitude shown by the omission of any mention of chinook or coho salmon from the department's annual estimation of salmon run expectations prior to 1964. Proposed to industry in November 1964, the 1965 regulatory changes were the product of a two year study of Georgia Strait chinook and coho populations. The investigation concluded that troll regulations had to be tightened in order to attain maximum utilization of chinook and coho stocks.<sup>67</sup>

<sup>66</sup> From 1957 to 1964 the Georgia Strait troll fishery actually was regulated less than the outside fishery. From 1965 to 1983 the Georgia Strait chinook season stretched from April 15th to September 30th; in 1984 this season was slashed to run only during the months of July and August.

<sup>67</sup> For a summary of the study's findings and the regulatory proposals see "Letter from W. R. Hourston, November 17, 1964, concerning Proposed Regulation Changes re: Chinook and Coho Salmon Stocks in Gulf of Georgia and Adjacent Waters," University of British Columbia, The Library, Special Collections Division, United Fishermen and Allied Workers' Union Collection, Box 207, file: "Government British Columbia Fishery Regulations." Examples of industry opposition to the regulatory direction adopted by the Department of Fisheries may be found in "Letter to W. R. Hourston from Homer Stevens, Secretary-Treasurer, United Fishermen and Allied Workers' Union, December 23, 1964," UFAWU Collection, Vol. 141, file: 141-2; "Letter to W. R. Hourston from C. B. Shannon, National Fisheries Ltd., December 9, 1964," UFAWU Collection, Vol. 134, file: 134-6.



The failure to modify this season again until the 1980s may be attributed at least in part to departmental management routine. Historically, the department did little to insure that it possessed the management capabilities needed for precise monitoring of the health of these populations. Although spawner abundance had been recorded since 1934 a research study prepared for the Commission on Pacific Fisheries Policy concluded that the methodology used to produce escapement estimates exhibited serious flaws. Regarding escapement surveys, fishery officers - whether making stream appraisals from the air or ground - were not required to obey a standardized counting or sampling method. Hence, changes in the personnel estimating spawner abundance increased the likelihood that subsequent estimating procedures and conclusions would vary.<sup>68</sup> Another serious shortcoming inherent in departmental operating procedures arose from the method of recording and analyzing statistics. Escapement statistics were placed into twelve increasingly broad categories, prompting the suspicion that counting errors perhaps averaging as much as plus or minus 30 percent plague historical spawning data.<sup>69</sup> The authors of the Commission study were left to lament:

It is a sad fact that despite the very considerable effort invested in monitoring B. C. salmon catches and escapements since 1950, we will never be able to accurately reconstruct what has happened to most stocks. This result should be a lesson to those biologists who have argued that occasional tagging trips and intuitive escapement evaluations by field staff should be adequate to provide a sound basis for salmon management in the long term. Today we do not have thirty years of accumulated experience, we have thirty years of poor data that no statistical wizardry in going to untangle.<sup>70</sup>

<sup>68</sup> Environmental and Social Systems Analysts Ltd., An Assessment of Stocks and Management Problems of the Commercial Fisheries of Canada's Pacific Coast, (Vancouver: Commission on Pacific Fisheries Policy, 1982), pp. 26-27.

<sup>69</sup> The twelve categories and their ranges were: A: 1-50; B: 50-100; C: 100-300; D: 300-500; E: 500-1,000; F: 1,000-2,000; G: 2,000-5,000; H: 5,000-10,000; K: 10,000-20,000; L: 20,000-50,000; M: 50,000-100,000; N: 100,000 +. Environmental and Social Systems Analysts Ltd., An Assessment of Stocks and Management Problems of the Commercial Fisheries of Canada's Pacific Coast, p. 27.

<sup>70</sup> Ibid., p. 29.

Poor data contributed to managerial complacency and impotency; alternatively, they may have encouraged managerial satisfaction with the regulatory status quo since firm evidence of stock decline was not appearing while denying the quality information needed by managers suspicious of the conclusion that recruitments (the sum of catch and escapement) were independent of spawning stock size. Further regulatory changes to the Georgia Strait troll fishery awaited evidence of crisis and acceptance of evidence that measurement errors in escapement estimates could lead to the appearance that recruitment was independent of spawning stock even in cases where the stock was severely overexploited.

This digression is not meant to imply that organizational routine was the sole factor responsible for the maintenance of the regulatory status quo in the Georgia Strait fishery. Fraidenburg and Lincoln suggest that this pattern may also be understood according to several additional factors which reside in the two other explanatory models sketched in this chapter - interest group politics and international treaty negotiations. They attribute considerable influence over the Georgia Strait regulatory pattern to both the lobbying campaigns of Georgia Strait sports/commercial troll fishermen and to the United States/Canada salmon treaty negotiations. Regarding this last factor, restrictions on the Georgia Strait fishery were linked to the implementation of a United States-Canada agreement which called for a coastwide chinook harvest reduction of 25 percent. The failure to implement this agreement in 1983 prevented the introduction of planned Georgia Strait restrictions.<sup>71</sup>

### Conclusion

This chapter has outlined the dissertation's primary theoretical challenges and premises. The politics of public policy is a subject dominated historically by interest group theory. Outlooks on the regulatory process, either generally or in

<sup>71</sup> Michael E. Fraidenburg and Richard H. Lincoln, "Wild Chinook Salmon Management: An International Conservation Challenge," North American Journal of Fisheries Management, Vol. 5, no. 3A (1985), pp. 314-317.

regards to fisheries, tend to remain faithful to this predisposition. Two foundations of interest group theory - its tendencies to minimize the contribution international factors may make to national policy and to dismiss the relevance of state interests and capacities to policy making - are challenged by the alternative outlook on the determinants of regulatory policy articulated here. This outlook recommends that national regulations may be influenced significantly by the competition between states within the international fishery regime, a recommendation inspired by the common property character of the resource studied here. According to this viewpoint national regulatory patterns are shaped by the contribution alternative modes of fishermen behaviour make towards either the perpetuation or change of the regime.

### **Chapter III: The Regulatory Inheritance - Regime Goals, State Capacities, and National Regulations: 1930-1956**

The regulatory policies studied here were neither conceived in a vacuum nor composed on an unmarked slate. While the year 1957 is treated in this work as a beginning, a broader historical view would identify it as something of an intermediate point on the historical continuum of regulatory policy stretching from the late 19th Century to the present. The initiatives of 1957 and subsequent years were developed then in the context of a regulatory inheritance, to adapt Heclo's phrase, accumulated from earlier years and the interests and objectives incorporated therein. In his classic study of social politics in Britain and Sweden Heclo identified a glaring myopia in the policy studies he was familiar with - a failure to appreciate the importance of inherited policy as an independent variable in the policy process.<sup>1</sup> Throughout his analysis Heclo discovered that social policy either continued, amended, or repudiated its policy inheritance; it never escaped it.

This argument is persuaded by Heclo's observations. Here I attempt to identify and articulate the policy inheritance constructed from the signing of the Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries (Sockeye Salmon Convention) in 1930 to its amendment through the Pink Salmon Protocol in 1956. One portion of this heritage, the international fishery regime goals pursued by Canada and the United States, receives special attention since these goals figure prominently in our later explanation of national regulatory policy between 1957 and 1970. After outlining these norms in the first section of the chapter we proceed to consider what national regulatory implications attended the efforts to realize them. The third section introduces the idea that the pursuit of one regime goal, North American equity, sometimes tempted governments to regard national regulations

<sup>1</sup> Hugh Heclo, Modern Social Politics in Britain and Sweden: From Relief to Income Maintenance, (New Haven: Yale University Press, 1974).

in a strategic light and modify them in order to maximize bargaining leverage in bilateral negotiations. The chapter concludes by examining the influence of fishing technologies and one dimension of state capacity, knowledge, upon the definition of regime goals. Attitudes towards the regulation of troll and net gear expressed from 1957 to 1970 were affected by the pre-1957 impacts these types of gear had upon the most commercially significant species of salmon and consequently, upon the manner in which Canada and the United States formulated their fishery regime goals. Post-1956 regime goals and national regulations also could not escape the influence of the organizational capacity developed by the regulatory authorities during this earlier period. The management preoccupations and the knowledge of individual stocks acquired by regulators from 1930 to 1956 predisposed management to include certain stocks but not others within the jurisdictional boundaries of intergovernmental agreements and to pursue particular regulatory options.

#### Asian Exclusion and North American Equity as Goals of Canadian-American International Fishery Policy

The period from 1930 to 1956 was one where Canadian and American attitudes towards the structure of the international regime crystallized. The negotiation of the two agreements mentioned above as well as the International Convention for the High Seas Fisheries of the North Pacific Ocean of 1952 (North Pacific Fisheries Convention) institutionalized attitudes and goals that, when carried into the next era, influenced national regulatory predispositions. Each of these three agreements illustrated the importance of the goals of conservation and allocation in international negotiations over modifications to the traditional fishery regime.

To a substantial degree, each accord sprang from a perception of an imminent conservation danger. In the case of sockeye salmon, the preferred product of the North American canning industry throughout this century, joint control of the Fraser River sockeye fishery had been proposed first by a United States - Canada Commission in 1896 but was not enacted since a conservation crisis did not exist in the

Fraser at the time.<sup>2</sup> Amid later signs of strain on the Fraser's salmon resources Canada and the United States negotiated and proclaimed the Bryce-Root Treaty in 1908. This treaty established a joint regulatory commission with extensive authority to regulate all waters contiguous to both nations. However, its promise of joint control of the Fraser River stocks was denied by the opposition of the Washington State Legislature and the treaty lapsed in 1914. "Politics and petty sectionalism," Carrothers noted disdainfully, "had triumphed over broader considerations."<sup>3</sup> Even Washington's concerns over state sovereignty in territorial waters began to soften in the face of the failure of the dominant sockeye salmon run in 1917, a failure caused by a landslide four years earlier at Hell's Gate which blocked the Fraser to the passage of returning salmon thereby damaging severely the salmon production of the upstream spawning grounds. Subsequent sustained fishing pressure on these weakened Fraser stocks led to resource depletion. Canada and the United States, recognizing their joint interest in improving the depleted state of stocks upon which the fishing industries of both nations depended heavily, addressed this conservation crisis by turning the responsibility for rehabilitating the sockeye runs over to a bilateral commission, the International Pacific Salmon Fisheries Commission (IPSFC) in 1937.

By the late 1940s, as American and Canadian fleets increased in size and grew in efficiency, Fraser pink salmon stocks came under increasing pressure. Canadians were particularly incensed about the health of this fishery since they alone suffered closures in order to get pinks to the spawning grounds. Homer Stevens, the Secretary-Treasurer of the United Fishermen and Allied Workers' Union (UFAWU), in a letter to Minister of Fisheries Mayhew, condemned the lack of restraint upon Americans exploiting these Canadian fish and urged the federal government to pursue a joint conservation program with the state of Washington. "In 1947 as in 1949," he

<sup>2</sup> W. A. Carrothers, The British Columbia Fisheries (Toronto: University of Toronto Press, 1941), pp. 64-66.

<sup>3</sup> Ibid., p. 75.

wrote, "the U. S. fishing was not curtailed in any way until the pink runs had passed through United States waters . . . It is the opinion of the Canadian fishermen that we are conserving this fishery whilst the Americans are exploiting it to the maximum."<sup>4</sup> In 1956, the Sockeye Salmon Convention was amended to include Fraser pinks.

Conservation was also trumpeted as the motive for the signing of the North Pacific Fisheries Convention by Canada, Japan, and the United States.<sup>5</sup> Canada's senior fisheries official applauded the outcome of the Tripartite Fisheries Conference held in 1951 for its extension of the conservation ethic onto the high seas. Under the terms of the convention Japan was required to abstain from fishing salmon, halibut, and herring east of 175° west longitude on the grounds that newcomers to these already fully-exploited fisheries would make their continued conservation by Canada and the United States impossible.<sup>6</sup> William Herrington, the leader of the American delegation to the Tokyo Fisheries Conference, also praised the North Pacific Convention on similar grounds. It acknowledged United States conservation programs and principles dating from the 1920s.<sup>7</sup>

It was along the allocation dimension where these three agreements articulated emphatically the commitment of Canada and the United States to the regime norms of Asian exclusion and North American equity - two starkly different norms for

<sup>4</sup> "Letter to R. W. Mayhew, Minister of Fisheries from Homer Stevens, Secretary-Treasurer of the United Fishermen and Allied Workers' Union, September 20, 1951." University of British Columbia, The Library, Special Collections Division, United Fishermen and Allied Workers' Union Collection, Volume 246, file: Pink Treaty, 1956. Hereafter cited as the United Fishermen and Allied Workers' Union Collection.

<sup>5</sup> For a discussion of the negotiations leading up to this Convention see Frank Langdon, The Politics of Canadian-Japanese Economic Relations, 1952-1983, (Vancouver: University of British Columbia Press, 1983), "Chapter 4: Restraining Competition from Japanese Fishermen"; Hiroshi Kasahara, "Japanese Distant-Water Fisheries: A Review," Fishery Bulletin, Vol. 70, no. 2 (April 1972), pp. 245-247.

<sup>6</sup> "The High Seas and the British Columbia Fishing Industry," an address prepared by Stewart Bates, Deputy Minister of Fisheries, for delivery before the Fifth British Columbia Natural Resources Conference, Victoria, B. C., February 27-29, 1952, p. 12. United Fishermen and Allied Workers' Union Collection, Volume 83, file: International Law - High Seas.

<sup>7</sup> Ann L. Hollick, U. S. Foreign Policy and the Law of the Sea, (Princeton: Princeton University Press, 1981), p. 98.

resource distribution between nations exploiting salmon in the Northeast Pacific Ocean. In defiance of the traditional doctrine of the freedom of the high seas North American salmon were viewed as the exclusive property of North Americans regardless of their location in the oceans. As such salmon was a resource which was to be denied entirely to fishermen from another continent but divided equally between Canadians and Americans where they both historically exploited them. The North Pacific Fisheries Convention stressed emphatically the norm of Asian exclusion, for much of its rationale was to soothe longstanding North American complaints about the possible post-war resumption by Japan of a high seas net fishery in the offshore waters of Bristol Bay, Alaska. This fishery, conducted as it was in the often storm-swept waters of the North Pacific, was of a much different character than North American fishing operations. The Japanese high seas fleet was of the size and sophistication needed to withstand the rigours of fishing in the open ocean for months at a time. Motherships served as giant floating canneries, supplying as the term implies shelter and logistical support to catchers and scouting boats. Like the Hull doctrine of 1937 and the Truman Proclamation of 1945, the North Pacific Fisheries Convention was designed to protect, at the very least, the salmon resources of Alaska from the power of this economically efficient, indiscriminate Japanese fishery.<sup>8</sup> Through the introduction of the abstention principle this treaty went beyond the conservation mandate highlighted in the preamble; the prohibition of Japanese fishing east of the provisional abstention

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<sup>8</sup> Hollick, *U. S. Foreign Policy and the Law of the Sea*, "Chapter 2: The Truman Proclamations, 1935-1945". The Hull doctrine of 1937 claimed extraterritorial rights to salmon destined to spawn in American streams. It succeeded in securing the withdrawal of the Japanese fleet from Bristol Bay but the Japanese never conceded Hull's claim of extraterritorial rights.



line of 175° west longitude was intended to destroy the ability of Japan's high seas fleet to capture sockeye salmon destined to return to Bristol Bay.<sup>9</sup>

The most obvious expressions of the second norm, North American equity, were found in the Sockeye Convention and the Pink Protocol. The Sockeye and Pink Treaty then not only gave the International Pacific Salmon Fisheries Commission authority to rehabilitate the sockeye and pink runs returning to the Fraser River System but also obliged the Commission to divide equally these harvests between American and Canadian fishermen.<sup>10</sup> The North Pacific Fisheries Convention, however, also may be regarded as expressing the spirit of this second norm. During the summer preceding the November 1951 Tripartite Fisheries Conference Canada and the United States consulted about the substance of the treaty they would present to the Japanese. Canada was unhappy with details of the American draft of the treaty for they seemed to prevent Canadians from fishing on traditional grounds off the American coast. "You also know," Fisheries Minister Mayhew reminded the UFAWU, "that a Fisheries Agreement has been prepared and agreed upon as far as our approach to Japan is concerned, but on account of the clauses in it that excluded us from fishing in certain areas in North America, we have objected and are trying to have that

<sup>9</sup> Canada, Treaty Series 1953, no. 3, International Convention for the High Seas Fisheries of the North Pacific Ocean, Annex, (Ottawa: Queen's Printer, 1954). The treaty contained a research provision, the intent of which was to confirm the validity of the 175° west longitude abstention line. According to Langdon the Japanese were quite satisfied with the terms of the treaty. The Convention formally asserted the freedom of the seas and its "conservation" limitations were quite tentative and restricted. Japan could now fish for salmon west of 175° west longitude (it had been barred from doing so), could resume crab fishing in the Bering Sea, and could pursue an unfettered tuna fishery. Since it had not fished off the North American coast south of Alaska before the war, the treaty limited future expansion rather than curtailing pre-war operations. See Langdon, The Politics of Canadian-Japanese Economic Relations, 1952-1983, p. 61. Kasahara suggests that the Japanese were shocked at the idea of abstention, less for its substantive impact on the salmon fishery than for the precedent it could establish for fishery negotiations with other countries. See Kasahara, "Japanese Distant-Water Fisheries: A Review," p. 246.

<sup>10</sup> Canada, Treaty Series no. 21, Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fisheries in the Fraser River System, (Ottawa: Queen's Printer, 1957), article VII.

difference of opinion resolved between ourselves and the United States."<sup>11</sup> These objections were consonant with two exceptions to the general application of the abstention principle contained in the Treaty. The first was where a nation had an historical interest in a particular fishery; the second, claimed the Canadian Fisheries Minister, existed "between Canada and the United States in the waters of the Pacific coasts of the United States and Canada from the Gulf of Alaska southward. Because of the intermingling of stocks in this region and because of the intermingling of the fishing operations of these two countries no recommendation for abstention can be made to either of these parties."<sup>12</sup> The attachment of the Canadian government to the principle of North American equity as a cornerstone among the overall norms of the regime pertaining to salmon found some expression then in the North Pacific Fisheries Convention and modified the scope of the abstention principle.

This last point suggests that, prior to 1957, the principle of North American equity began to be applied to more than the allocation of salmon between Canada and the United States. It was approximating a principle of regulatory parity. Prior to the signing of the North Pacific Fisheries Convention this development had surfaced in President Truman's Proclamation on American coastal fisheries on the high seas. This proclamation, one which the governments of Canada and Newfoundland had contributed to materially,<sup>13</sup> declared that, where the nationals of the United States and other countries had legitimately developed and maintained fishing operations, conservation zones could be negotiated between the nations involved and all fishing activities in such zones would be regulated according to the terms of the joint

<sup>11</sup> "Letter from R. W. Mayhew, Minister of Fisheries to Homer Stevens, Secretary-Treasurer, United Fishermen and Allied Workers' Union," September 25, 1951. United Fishermen and Allied Workers' Union Collection, Volume 84, file: "Japanese Peace Treaty and Fisheries Treaty 1951 - Correspondence."

<sup>12</sup> "Statement by Honourable R. W. Mayhew, Minister of Fisheries. Re: International Convention for the High Seas Fisheries of the North Pacific Ocean." November 1951, United Fishermen and Allied Workers' Union Collection, Volume 84, file: "Japanese Peace Treaty and Fisheries Treaty 1951 - Correspondence."

<sup>13</sup> Hollick, pp. 42-43.

agreement.<sup>14</sup> Therefore, in all waters south of the Gulf of Alaska, mutual consent - if not parity itself - would govern the regulations developed by Canada and the United States for high seas fishing operations conducted in the waters adjacent to their territorial seas.

Support for the the regime goal of Asian exclusion was widespread throughout North American industry and government. Fishing interests from the Pacific Northwest and Alaska urged their federal government to make Japan's agreement to stay out of the fisheries of the Northeast Pacific a precondition for concluding a Peace Treaty.<sup>15</sup> The same sentiment prevailed in British Columbia. In May 1951, after consulting with the Chief Supervisor of Fisheries in the Pacific, a broad spectrum of the British Columbia fishing industry urged the Canadian government to press for inclusion in the Peace Treaty or some other document signed concurrently with the Treaty of a provision barring Japanese fleets from waters adjacent to the Canadian coast.<sup>16</sup> As noted in Hollick, this demand was unacceptable to the United States

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<sup>14</sup> United States, Office of the President, Proclamation 2668, "Policy of the United States With Respect to Coastal Fisheries in Certain Areas of the High Seas," September 28, 1945, 10 Federal Register, p. 12304.

<sup>15</sup> Hollick, p. 98.

<sup>16</sup> The groups comprising this coalition were: the Salmon Cannery Owners' Operating Committee, the Fishing Vessel Owners' Association of British Columbia, the Native Brotherhood of British Columbia, the Fishermen's Co-operative Federation, and the United Fishermen and Allied Workers' Union. See "Re: Japanese Treaty and North-East Pacific Fisheries," May 11, 1951, United Fishermen and Allied Workers' Union Collection, Volume 84.

for it clashed with the nation's overall international policies.<sup>17</sup> This is not to say though that the governments of Canada and the United States were reluctant to use their position as victors to impose the same aim in a separate treaty. Since the 1930s the United States had expressed its concern over the ocean fishing activities of the Japanese. The Canadian government had also made it clear in commentary on the Truman Proclamation that it would use a victory in the war against Japan to control the post-conflict fishing operations of its foe.<sup>18</sup> It should surprise no-one then that the proposal for an agreement on fishing in the Northeast Pacific was not the inspiration of the Japanese, as correspondence between the UFAWU and the Canadian Department of External Affairs points out: "The negotiation of this convention," Stevens was told, "arose out of discussions between the Governments of Canada and the United States with respect to the Treaty of Peace with Japan."<sup>19</sup>

The signing of the North Pacific Convention did not silence the concern of North American fishermen over the possible impact of Japanese fishing west of the

<sup>17</sup> Hollick, p. 98. One very influential element within this set of policies was the strategic concern of the United States in the Far East. The United States did not want to adopt policies which could increase the potential for a communist-led insurrection. Three years after the North Pacific Convention was signed the State Department opposed Congressional efforts to limit imports of Japanese tuna on the grounds that the Congressional initiative violated United States GATT obligations and undermined American security interest. Senator Magnuson of Washington was advised that: "To ask Japan to restrict its exports would interfere with our efforts to help Japan establish a sound national economy and to get other countries to open their markets to Japanese goods and thus promote the security objectives of the United States in the Far East. Moreover, to ask Japan to limit its exports to the United States without a corresponding approach to other countries exporting tuna to the United States would lead to charges of discrimination and provide Japanese Communists and nationalistic politicians with another weapon to stir up Japanese public opinion against the United States and jeopardize our security interests in that country." United States, Senate, United States Senate Committee on Interstate and Foreign Commerce, Pacific Coast and Alaska Fisheries, Hearings Before the Committee on Interstate and Foreign Commerce, United States Senate, 84th congress, 2d Session, (Washington: United States Government Printing Office, 1956), p. 40.

<sup>18</sup> Hollick, p. 98.

<sup>19</sup> "Letter from William Stark for the UnderSecretary of State for External Affairs to Homer Stevens, Secretary-Treasurer, United Fishermen and Allied Workers' Union," August 24, 1951, United Fishermen and Allied Workers' Union Collection, Volume 84, file: "Japanese Peace Treaty and Fisheries Treaty 1951 - Correspondence."

abstention line on their salmon. Rapidly rising Japanese catches coupled with a continued decline in the Alaskan catch sparked demands for moving the abstention line westward or banning all mid-ocean fishing by Japan. The depth of the hostility towards Japan may be seen from a host of sources. In 1955, witness after witness before the United States Senate Committee on Interstate and Foreign Commerce blamed the Japanese for the plight of the North American salmon industry. Some spoke with wartime venom. "The Japanese are not to be trusted," Paul Martinis, Jr. of the Purse Seine Vessel Owners Association warned, "just as we found out on December 7, 1941. Our relatives and friends have shed their blood and lost their lives to defeat the very nation which is now helping to destroy one of the great natural resources of our country."<sup>20</sup> While others reminded the Senators that the Alaska decline was well-established before the arrival of the Japanese on the scene the Committee still identified Japanese encroachment as a serious matter and urged the government to increase its efforts to obtain international recognition of the principles of the Truman Proclamation.<sup>21</sup>

What is noteworthy about these continued protests is the frequency with which they were couched within a North America versus Japan perspective. When the Senate Interstate and Foreign Commerce Committee sought executive action to obtain international recognition of the Truman Proclamation they assumed this was an objective Canada would share. "In this connection," it reported, "the United States should seek the greatest possible degree of cooperation with other North American countries for the investigation and protection of adjacent fisheries."<sup>22</sup> At a 1955 conference of unions and fishermen's co-operatives from Canada and the United States

<sup>20</sup> United States, Senate, United States Senate Committee on Interstate and Foreign Commerce, Pacific Coast and Alaska Fisheries, Hearings Before the Committee on Interstate and Foreign Commerce, United States Senate, 84th Congress, 2d Session, (Washington: United States Government Printing Office, 1956), p. 638.

<sup>21</sup> United States, Senate, United States Senate Committee on Interstate and Foreign Commerce, Pacific Coast and Alaska Fisheries, Report of the United States Senate Committee on Interstate and Foreign Commerce, 84th Congress, 2d Session, (Washington: United States Government Printing Office, 1956), p. 28.

<sup>22</sup> Ibid., p. 28.

Canadian fishing organizations joined their American counterparts in asking government to press for a sharp and substantial reduction in the catch of Japan's mid-Pacific Ocean fishing fleet.<sup>23</sup>

Evidence also shows that part of the second norm, the idea of regulatory parity between North Americans exploiting the same stocks, was also very prominent in the thinking of Canadian and American fishing groups. The United Fishermen and Allied Workers' Union, for example, asked the Department of Fisheries in 1951 for a July 1st offshore trolling opening date for coho salmon. This opening date would conform to the resolution on this subject adopted by the Pacific Marine Fisheries Commission, the tri-state fisheries body. Also, the Union requested the adoption of the 28 inch overall size limit for chinook adopted by the PMFC.<sup>24</sup>

Where Canadians and Americans were in direct competition for the same stocks of salmon as in the Juan de Fuca Strait-Puget Sound-Georgia Strait area the idea emerged that gear restrictions should be modified to ensure that Canadian fishermen were not asked to fish with less efficient gear than that used by their southern competitors. For example, in the spring of 1956, Sinclair approved the use of salmon gillnets of up to 300 fathoms (1800 feet) long and of any depth in the western section of Juan de Fuca Strait. "This modification of the maximum length of 200 fathoms and maximum depth of 60 meshes . . .," explained the Chief Supervisor of Fisheries, "is to give Canadian fishermen opportunity of using gillnets of comparable length and depth to those used by United States fishermen in adjoining United States waters."<sup>25</sup>

<sup>23</sup> "Press Release," October 6th, 1955. United Fishermen and Allied Workers' Union Collection, Volume 132, file: 132-2.

<sup>24</sup> See "Letter to A. J. Whitmore, Chief Supervisor of Fisheries from Homer Stevens, Secretary-Treasurer, United Fishermen and Allied Workers' Union, November 10, 1951," United Fishermen and Allied Workers' Union Collection, Box 352, file: 352-8, "Standing Committee, fisheries".

<sup>25</sup> "Letter from A. J. Whitmore, Chief Supervisor of Fisheries," June 14, 1956. United Fishermen and Allied Workers' Union Collection, Volume 257, file: "Salmon Treaty Proposals, 1957".

The belief in bilateral regulatory equality was not confined to Canadian interests. Americans also incorporated the value of parity in several of their positions on regulatory changes. Prior to the October 1956 negotiations with the Canadians on the proposal to pass the responsibility for Fraser River pinks to the IPSFC the Governor of Washington State, Arthur Langlie, created the Pink Salmon Advisory Committee to counsel his administration on its approach to this issue. This committee, the 16 members of which were drawn from industry, labour, government, and academia, did not confine its deliberations only to the future of pink salmon management. Scientific investigations should be conducted for the coho, chinook, and chum salmon stocks which frequented convention waters since the recoveries of marked cohos and chinooks released in Puget Sound streams showed that Canadian fishermen were taking large numbers of these fish. "It is essential," concluded the Committee, "that a foundation be laid for a long-range conservation program which will be effective in providing for the proper management of these species in both Canadian and American waters and will apply equally to both Canadian and American fishermen."<sup>26</sup>

For the occasional group, the belief in parity or common interests between American and Canadian fishermen subordinated national interests and tempered allocational appetites. The International Longshoremen Workers' Union's decision to leak the recommendations of the Pink Salmon Advisory Committee to the United Fishermen and Allied Workers' Union is a case in point. Angered by the appearance of excerpts of the Advisory Committee deliberations in the trade journal Pacific Fisherman Joe Jurich, the ILWU representative on the committee, sent Homer Stevens documents relating to the committee's pre-negotiation meetings.<sup>27</sup> Stevens in turn

<sup>26</sup> "Appendix 1: Appendix to the Report and Recommendations of the Governor's Pink Salmon Advisory Committee," United Fishermen and Allied Workers' Union Collection, Volume 246, file: "Pink Treaty 1956". My emphasis.

<sup>27</sup> "Letter to Homer Stevens, Secretary-Treasurer, United Fishermen and Allied Workers' Union, from Joe Jurich, Secretary-Treasurer, Fishermen and Allied Workers' Division, Local #3, International Longshoremen Workers' Union, May 8, 1956." United Fishermen and Allied Workers' Union Collection, Volume 246, file: Pink Treaty 1956.

passed along these insights into the type of demands recommended by the Washington State committee to A. J. Whitmore, Canada's senior Pacific official. Going into the October negotiations the Canadians had a well-developed picture of the American objectives, a fortunate circumstance which could never have befallen Japanese negotiators with the United States. Canada's enjoyment of this favourable position was owed to the willingness of the American union to participate in a joint management venture for this particular stock of salmon.

At the November 1956 meeting of the Pacific Marine Fisheries Commission (PMFC) the demand arose for regulatory parity between American and Canadian trollers. Washington State troller organizations requested a return to the March 15th opening for chinook salmon. This opening had been pushed back to April 15th in 1956 in order to help rehabilitate the fall run of chinook salmon to the Columbia River. Bert Johnstone, a Washington member of the commission's advisory committee, argued that this closure had done nothing but divert chinook landings to Oregon, British Columbia, and California. "What troll salmon conservation needs today," he recommended, "is uniform all-coast program or control."<sup>28</sup> Harry McCool, vice-president of the 1,100 member Fishermen's Cooperative Association, also advocated troll season uniformity: "No closure of trolling which does not apply to Canadian fishermen will be effective for conservation."<sup>29</sup>

#### The National Regulatory Implications of Regime Goals

From the perspective of this study, this account of Canadian-American opinions on the content of the international fishery regime will prove instructive if these attitudes also shaped the perspectives adopted by industry and government towards the legitimacy of various national regulatory options. In the immediate post-North Pacific Fisheries Convention period the desire to preserve North American

<sup>28</sup> "Uniform Troll Season Controversy Brings Boundary Waters to a Boil," Pacific Fisherman, Vol. 55, no. 1 (January 1957), p. 21.

<sup>29</sup> Ibid., p. 21.



salmon stocks for the exclusive use of Americans and Canadians produced more than demands for the further oceanographical limitation of the Japanese high seas net fishery; it also fuelled demands that North American jurisdictions prohibit the operation of this type of fishery by their own nationals. On some occasions, this position was advanced explicitly in order to either legitimize regime objectives or to set the stage for demands for further retrenchment of the Japanese mid-Pacific fishery. George Johansen, the Secretary-Treasurer of the Alaska Fishermen's Union (AFU), supported a ban on offshore salmon fishing by North Americans on the grounds that if you wanted to get the Japanese to move on this issue you had to "clean your own house first."<sup>30</sup>

Perhaps the most compelling evidence that state goals in the international fishery regime affected national regulatory preferences was found at the 1956 annual meeting of the PMFC. This meeting discussed concerns raised by the IPSFC about the beginnings of a net fishery in the offshore waters west of Vancouver Island. This fishery, if allowed to grow, threatened to compromise the IPSFC's efforts to manage and rehabilitate the Fraser River sockeye runs. During the PMFC debate on this subject Warren Looney, an official of the United States State Department, related to the delegates the Canadian government's conviction that the legitimacy of the North American claim that the Japanese respect the abstention principle depended upon the diligent application of conservation measures. A high seas net fishery, inasmuch as it would reduce the effectiveness of conservation efforts, could threaten the legitimacy of the scientific foundation upon which the principle of abstention had been raised. The Departments of Fisheries in Washington, Oregon, and California concurred with the Canadian opinion that an intensive offshore net fishery would jeopardize conservation

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<sup>30</sup> United States, Senate, United States Senate Committee on Interstate and Foreign Commerce, Pacific Coast and Alaska Fisheries, Hearings Before the Committee on Interstate and Foreign Commerce, United States Senate, 84th Congress, 2d Session, (Washington: United States Government Printing Office, 1956), p. 276.

programs. Subsequently, the annual meeting recommended joint action by Canada, the United States, and the Pacific Coast states to prohibit ocean net fishing in the Northeastern Pacific Ocean.<sup>31</sup>

Since the Japanese fishery was attacked on conservation grounds the demand for action against offshore fishing by North Americans was often cloaked in this concern. Johansen, after blaming the Japanese for the dismal 1955 fishing season in Alaska, wrote to Stevens of a danger that some American fishermen would start to compete with the Japanese on the open ocean. Offshore fishing, since it could not discriminate between mature and immature sockeye, would "only hasten the destruction begun by the Japanese."<sup>32</sup> Johansen argued further that because of the fishery's importance as a world food source and employer of Alaskans, "we cannot afford to fail to work for proper safeguards to provide for a continuation of our future fisheries supply."<sup>33</sup> The safeguards inferred by Johansen consisted of a blanket North American ban on offshore netfishing. Speaking one week later to a conference of unions and fishermen's co-operatives held in White Rock, British Columbia, Johansen called for an agreement "between fishermen of the U. S. and Canada and between the two Governments which would prevent similar off-shore movement by the nationals of Canada and the United States."<sup>34</sup> This call for action, echoed by the other organizations in attendance, produced a conference recommendation that the governments of Canada and the United States take the necessary legislative action to ban net fishing on the high seas.

<sup>31</sup> Pacific Marine Fisheries Commission, "Minutes, Meeting - November 26, 27, and 28, 1956, San Francisco, California," pp. 8-12. United Fishermen and Allied Workers' Union Collection, Volume 132, file: 132-1.

<sup>32</sup> "Letter from George Johansen, Secretary-Treasurer, Alaska Fishermen's Union to Homer Stevens, Secretary-Treasurer, United Fishermen and Allied Workers' Union," September 27, 1955. United Fishermen and Allied Workers' Union Collection, Volume 131, file: 131-1.

<sup>33</sup> Ibid.

<sup>34</sup> "Press Release," October 6th, 1955. United Fishermen and Allied Workers' Union Collection, Volume 132, file: 132-2.

The Senate Committee hearings on the Pacific Coast and Alaska Fisheries were also used as a platform to lobby for the closure of offshore waters to American and Canadian fishermen. Representatives from the Copper River and Prince William Sound Cannery Workers Union, the Alaska Fisheries Board, the Petersburg Vessel Owners Association, the American section of the International North Pacific Fisheries Commission, the Southeast Alaska Seine Boat Owners Association, and the Purse Seine Vessel Owners Association all sought restrictions of this sort.<sup>35</sup> The Senate report urged governments to prohibit "certain wasteful and injurious fishing practices by citizens of the United States" such as high seas salmon fishing.<sup>36</sup>

Throughout 1956, criticisms of Japan's appetite for salmon of North American origin and the practice of net fishing on the high seas continued. The United Fishermen and Allied Workers' Union, in a policy statement delivered to two representatives of the General Council of Trade Unions of Japan, criticized offshore fishing on the grounds of its waste of immature salmon, expense, dangers, and threat to the efficacy of conservation measures. The statement declared that:

The United Fishermen and Allied Workers' Union is therefore in principle strongly opposed to any mid-ocean salmon fishery. We believe that such fisheries open the salmon runs of the Pacific to exploitation by all nations to the detriment of the nations which maintain the spawning streams.<sup>37</sup>

#### Regime Goals and the Strategic Use of Regulatory Policy

<sup>35</sup> United States, Senate, United States Senate Committee on Interstate and Foreign Commerce, Pacific Coast and Alaska Fisheries, Hearings Before the Committee on Interstate and Foreign Commerce, United States Senate, 84th Congress, 2d Session, (Washington: United States Government Printing Office, 1956), pp. 55, 183, 184, 262, 309, and 639.

<sup>36</sup> United States, Senate, United States Senate Committee on Interstate and Foreign Commerce, Pacific Coast and Alaska Fisheries, Report of the United States Senate Committee on Interstate and Foreign Commerce, 84th Congress, 2d Session, (Washington: United States Government Printing Office, 1956), p. 28.

<sup>37</sup> United Fishermen and Allied Workers' Union, "Policy Statement on North Pacific Fisheries," 1956. United Fishermen and Allied Workers' Union Collection, Volume 131, file: 131-1.

We have already seen that the belief in North American equity in the regime may be associated with preferences for regulatory parity. However, the pursuit of equity in the allocation of stocks exploited by both Canada and the United States invited on occasion, a second, quite different regulatory course of action. In the cause of attaining equity, national regulatory practices were manipulated to disrupt the allocational status quo when this balance tilted too far in favour of one nation. The two clearest examples of this circumstance are provided by the events preceding the ratification of the Sockeye Convention and the negotiation of the Pink Protocol to that convention. In both instances, the Canadian government used domestic regulations as a weapon in the bilateral bargaining process. In 1930 the Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries in the Fraser River System was signed by the governments of Canada and the United States but failed to win the ratification of the United States Senate. In light of this rejection, the British Columbia fishing industry urged the government to relax its regulations governing the use of purse seines near the mouth of the Fraser River. Despite opposition from Fraser River gillnetters the government began to allow the use of the larger, more efficient seines in the mouth of the Fraser in hopes of securing a larger percentage of the sockeye catch for Canadian fishermen. "The government, and particularly Found," wrote Keating, "were, however, insistent that the measure was necessary in order to show the Americans that unilateral measures could be implemented which would restore balance to the fishery."<sup>38</sup> Keating also recounted the explanation Found, Canada's senior fisheries officer on the West Coast, gave to a House of Commons Standing Committee: "If we do not do this, we shall not share to any reasonable extent

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<sup>38</sup> Thomas F. Keating, "Nongovernmental Participation in Foreign Policy Decisions Affecting Canada's Fisheries Relations with the United States," (Dalhousie University: Unpublished PhD Thesis, 1982), p. 228.

in the fishery, but shall be building up runs for the more or less exclusive use of our competition in the United States."<sup>39</sup>

A similar strategy was urged by the Canadian industry and used by the Canadian government in their efforts to force Washington and the United States into accepting the view that the pink fishery should be divided equally between the fishermen of the two nations. Despite the dangers to the goal of conservation which were likely to accompany a more intensive Canadian pink fishery industry interests were prepared to acquiesce in the hope that the Americans would agree to joint management of the fishery. In 1952, the United Fishermen and Allied Workers' Union suggested that it was departmental policy to allow the use of the most efficient gear on seines in the Straits of Juan de Fuca in order to prevent the Canadian percentage of the Fraser pink catch from shrinking. Given the imbalance in the size of the Canadian and American harvests of this run the Union did not urge the adoption of stricter regulations on the seines despite the fact that this departmental policy seemed to necessitate serious restrictions on the operations of an important component of the Union's membership, the Fraser River gillnetters. "We do not wish to suggest in this letter," the Union told the Fisheries Association of British Columbia, "any immediate restrictions against the Canadian seine fleet operating in the Juan de Fuca Straits unless similar measures are undertaken by the American authorities. At the same time, we are very strongly opposed to the type of "dog eat dog" competition which almost ignores entirely the real conservation need."<sup>40</sup> Unease over the impact of this particular regulatory attitude upon the health of the pink stocks was not enough to prompt a demand for tighter restrictions as long as American fishermen continued to reap what Canadians felt was an unfair share of the pink harvest.

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<sup>39</sup> *Ibid.* p. 228.

<sup>40</sup> "Letter to the Fisheries Association of British Columbia from Homer Stevens, Secretary-Treasurer of the United Fishermen and Allied Workers' Union," March 19, 1952. United Fishermen and Allied Workers' Union Collection, Volume 246, file: "Pink Treaty, 1936"

Canada's Minister of Fisheries between 1952 and 1957, James Sinclair, did not need coaxing to use his department's regulatory powers in order to accomplish the objectives of an equal division of the catch and a joint conservation program. Sinclair made this abundantly clear in his speech to the annual meeting of the United Fishermen and Allied Workers' Union in 1954. He emphasized to convention delegates that:

As Minister of Fisheries, I want now to state quite deliberately that I hope our Canadian fishing fleet goes out and catches a much greater number of pinks off the West Coast, for once we get the bulk of this run, I think we will find, as with the sockeye, that our American friends will realize the value of an international commission to conserve the fisheries, and divide the catch equally between the two nations.<sup>41</sup>

Gear restrictions also had a tactical dimension and could be manipulated to increase the likelihood of increasing the Canadian share of the pink resource. Sinclair promised to remove the gillnet size restrictions which required Canadians to fish with smaller nets than those used by Washington fishermen in Puget Sound waters. The strategic value given to this policy by Sinclair was evident from his statement that: "I feel sure that this program will help speed an agreement on joint measures for pink salmon."<sup>42</sup> Finally, Sinclair granted duty-free entry to 15 large U. S. vessels in the hope that their use in offshore waters to intercept Fraser stocks would place additional pressure on the United States to agree to joint management of the pink harvest.<sup>43</sup> Until United States agreement was obtained in 1956 the Department of Fisheries continued to let Canada's regime goal of equity in allocation shape its domestic regulations.

#### Technology, State Capacity, Regime Goals, and Regulatory Policy

<sup>41</sup> "Speech of Honourable James Sinclair, Minister of Fisheries, Annual Convention, United Fishermen and Allied Workers' Union, Vancouver, B. C., 2 p.m., March 22, 1954," p. 7. United Fishermen and Allied Workers' Union Collection, Volume 134, file: 134-2.

<sup>42</sup> Ibid., p. 7.

<sup>43</sup> "Sinclair Allows Duty-Free Import of 15 Big U. S. Vessels to Fish 'Deep-Sea', The Fisherman, May 4, 1954.

It is noteworthy that in all of these discussions about ocean fishing for salmon the phrase "high seas fishery" was synonymous with offshore net fishing but not trolling. During the 1955 Senate hearings calls for the abolishment of the high seas salmon fishery were careful to point out that this proposed ban should not be applied to trolling. At the October 1955 White Rock conference, United States representatives from the Fishermen's Marketing Association and the Fishermen's Co-operative Association, asked the conference to distinguish between offshore fishing by netfishermen and trollers. This request was respected in the recommendations of the conference, calling as they did for only the abolition of the offshore salmon net fishery.<sup>44</sup> The UFAWU's condemnation of "any mid-ocean salmon fishery" later became in the same document a demand to outlaw offshore net fishing by North Americans. Similarly, in 1956 the UFAWU, the IPSFC, and the governments of Canada, the United States, and the Pacific Coast states sought restrictions only on the operation of nets on the high seas.

This tendency to limit the discussion of what national regulatory repercussions were demanded by a preoccupation with the regime goal of Asian exclusion to offshore net fishing restrictions only may be attributed to factors pertaining to fishing technologies and the management capacities of state authorities. The decision to spare trollers the regulatory threats levelled against those contemplating a high seas net fishery grew in part out of the general relationship between the effectiveness of net and troll gear in taking the different species of salmon. At this point in the history of the fishery, trollers did not have the technological ability to capture a significant percentage of the primary species then perceived to be at risk to the Japanese - sockeye salmon. The troll catch of sockeye was so insignificant during this period that the IPSFC did not bother to keep records of the numbers of Fraser sockeye caught by trollers. Johansen stressed this theme in his

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<sup>44</sup> "Press Release," October 6th, 1955, pp. 2-3.

explanation to the Senate Committee of the White Rock conference's exemption of trollers from the proposed ban on high seas fishing:

I am happy to say to you that we agreed 100 percent in principle on instituting such control of our offshore waters on salmon, that is, we made one exception, we made an exception as to troll fishing. We have a big fresh market here and Canada has one, and we feel that the trollers, with their hooks and their lines, could not be damaging to our salmon runs even on a comparable scale or even close to the damage you could do with nets. Besides that, you wouldn't take any reds to amount to anything or pinks or chum on the troll, it would be mostly silvers and kings. So that exception was made and I think that was a step in the right direction.<sup>45</sup>

The nature of the Japanese ocean fishery also contributed to the good fortune of the troller. As we noted earlier, the Japanese fishery was strictly a net fishery. Since concern with Japanese operations was first and foremost a concern with net fishing the practical national regulatory consequences of pursuing the regime goal of Asian exclusion exempted the troll fishery; the offshore troll fishery escaped the regulatory attention now devoted to the net fishing habits of North Americans.

Shifting away from the influence of regime goals and technological conditions upon the legitimacy of various national regulatory practices, some mention should be made of the organizational capacities of fishery management agencies during the 1930 to 1956 period. Was this dimension of overall state capacities such as to predispose managers to focus their regulatory attentions on the net fleet rather than the troll fleet? Some grounds exist to support this possibility. For one thing, precious little systematic knowledge existed about the ocean phase of salmon. Early tagging studies conducted by Canada and California suggested little more than that stocks of chinook and coho salmon from various river systems were intermixed along coastal North America. In 1951, one biologist wondered at the lack of information on the troll fishery: "Considering the importance of the troll fishery, both in its direct economic

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<sup>45</sup> United States Senate Committee on Interstate and Foreign Commerce, Pacific Coast and Alaska Fisheries, p. 276.



value and its possible effect upon the other salmon fisheries, it is surprising what little research has been accomplished."<sup>46</sup> Washington did not conduct its first tagging experiment on chinook and coho salmon until 1948; the results did not suggest conclusively that the fish found in the tagging areas were predominantly American or Canadian fish.<sup>47</sup> Furthermore, the signing of the North Pacific Fisheries Convention did nothing to quicken the pace of research into the troll fishery; if anything the salmon tagging studies in the Northeast Pacific commissioned by the Canadian and American sections of the INPFC, undertaken to legitimize the claim that the provisional abstention line should be moved further westward, diverted attention away from less obviously threatened salmon resources and may have delayed comprehensive research efforts into the wanderings of chinook and coho salmon on the high seas. Artistry and conjecture rather than the scientific method ruled the state of knowledge about the impact of the troll fishery on chinook and coho stocks and the oceanic dispersal of these two species. Without better stock knowledge and/or evidence of a conservation crisis biologists had neither the information nor the rationale to increase their regulation of the troll fishery.

### Conclusion

In this chapter we have introduced key components of the regulatory inheritance from which regulations in the post-1956 period borrowed. Most of our attention has been devoted to the various regime goals articulated by governments and industry between 1930 and 1956. These goals, Asian exclusion and North American equity or parity, were shared to a great extent by industry and government. We cannot sustain therefore the claim that state interests, as they pertained to the fishery regime,

<sup>46</sup> Jack M. Van Hyning, "The Ocean Salmon Troll Fishery of Oregon," in Pacific Marine Fisheries Commission, Bulletin no. 2, (Portland: Pacific Marine Fisheries Commission, 1951), p. 47.

<sup>47</sup> Donald E. Kauffman, "Research Report on the Washington State Offshore Troll Fishery," in Pacific Marine Fisheries Commission, Bulletin no. 2, (Portland: Pacific Marine Fisheries Commission, 1951).

diverged sharply from private sector wishes. Nor are we able to weigh, on the basis of the documentary evidence consulted, the relative importance of private and public sector opinion to the development of regime goals. We may insist, however, that the expression of these fishery regime objectives was mediated by a second set of more purely statist concerns. These concerns centred on American security interests in Asia and the norms of interstate relations. In this chapter we have also seen that the aforementioned regime goals not only guided the international fishery relations of Canada and the United States in the North Pacific throughout these years but also shaped the opinions developed by industry and government towards the legitimacy of various national regulatory options. Our final point was that the laissez-faire attitude towards troll regulation on the eve of the 1957-1970 period was due, to some degree, to the relationship between fishing technologies/species exploitation and organizational capacities on the one hand and regime goals and national regulations on the other hand. Let us now turn to examine how national regulations from 1957 to 1970 were affected by this regulatory heritage.

**Chapter IV: A Symmetry of Interests: The Development and Institutionalization of Liberal Offshore Trolling Seasons, 1957-1970**

When looking back at the salmon fishing season patterns from 1957 to 1984 it appears that, for much of this period, nondecision-making governed the lives of offshore trollers while active decision-making prevailed in respect to those of inshore net fishermen.<sup>1</sup> Whatever uncertainties trollers may have faced about the strength of salmon runs or the moods of the weather they could rely upon the same amount of fishing time as in the previous season. For net fishermen, fishing opportunities were scarcely more predictable than the weather. For nineteen successive years in Washington and twenty-four years in British Columbia the length of the offshore trolling season remained untouched while net season lengths tended to shorten, a circumstance consistent with Bachrach and Baratz's second face of power, a face where one particular group - most logically here the offshore trollers - is able to limit the application of the political process to maintain a favourable status quo. This chapter probes for the causes of the development and institutionalization of liberal offshore trolling regulations from 1957 to 1970. Why did this favourable treatment of one segment of the commercial fisheries of Washington and British Columbia develop?

Rather than attribute this feature of the regulatory pattern to the agenda-setting powers of offshore trollers this chapter instead offers an account of this regulatory bias in terms of two other factors: the goals pursued by Canada and the United States in their efforts to modify the traditional fishery regime and the organizational capacities of management agencies. Throughout this period a symmetry of national and professional interests shaped Canadian and American formulations of the generic regime goals of conservation and allocation. These formulations, stressing

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<sup>1</sup> The concept of nondecision-making was introduced in Peter Bachrach and Morton S. Baratz, "Two Faces of Power," American Political Science Review, Vol. 56, no. 4 (December 1962).

the principles of Asian exclusion and North American parity, in turn were at the centre of the growing differential regulatory treatment of offshore troll and inshore net fisheries. A regulatory pattern which at first glance would appear to suggest regulatory capture will be interpreted instead as being due less to the lobbying efficacy of trollers than to the coincidence of troller self-interest with widespread approval of the regime goals of exclusion and parity. These goals or themes surfaced in a variety of policy positions and decisions articulated from 1957 to 1970. Particular attention will be given to the 1957 and 1959 Conferences on the Co-ordination of Fisheries Regulations Between Canada and the United States, the 1958/1960 Law of the Sea Conferences, the conferences of 1965 and 1966 called to examine the controversy over the location of the seaward limit of netfishing (the surfline), the extension of jurisdiction over fisheries to twelve miles in the mid-1960s, and the conclusion of a reciprocal fisheries agreement in 1970.

The last chapter concluded by linking the pre-1956 liberal attitude accorded trollers to the regime goals of Asian exclusion and North American equity. By the end of 1956 consensus prevailed among regulators and regulated alike about the need for the governments of Canada, the United States, and the Pacific coast states to modify domestic regulatory policy in ways respecting these norms. Support was widespread for the proposals to extend the principle of regulatory parity to the operations of offshore trollers and the Fraser pink fishery. A similar reaction greeted the call for the outright prohibition of ocean netfishing by Canadians and Americans, a call promising to use domestic regulations to reinforce the legitimacy of the principle of Asian exclusion. In 1957, these norms appeared in several regulatory changes. Management of the Fraser pink fishery was turned over to the IPSFC and the Conference on the Co-ordination of Fisheries Regulations addressed the issues of the

offshore troll fishery and ocean netfishing.<sup>2</sup> It was through this latter conference that disincentives to restrict the offshore troll fisheries became institutionalized within the overall regime governing Pacific salmon, disincentives which were not extended to the net fisheries.

Embracing Exclusion and Parity: The 1957 Conference on the Co-ordination of Fisheries Regulations

In February 1957, delegates from Canada and the United States, each supported by a legion of advisors, met in Seattle Washington and agreed to uniform trolling regulations and surfines, lines beyond which netfishing was prohibited.<sup>3</sup> The general proximity of the surfline to shore prevented net fishermen from venturing beyond inshore waters (the Strait of Georgia, Juan de Fuca Strait, and Puget Sound) and several bays and sounds on the exposed western coastlines. Although both nations agreed to the principle of a netfishing ban on the open ocean some differences of opinion arose about the actual location of the boundaries. The United States was not

<sup>2</sup> Enthusiasm for the signing of the Pink Salmon Protocol to the Sockeye Convention is expressed in the following sources: "UFAWU Hails Signing of Pink Salmon Pact," The Fisherman, January 8, 1957, p. 1; "Intelligence Seeks Pink Treaty for 1957 Run," Pacific Fisherman, January 1, 1957, p. 1; "Pink Salmon Treaty Wins Positive Backing of A. F. U.," Pacific Fisherman, January 1, 1957, pp. 18-19; "An Achievement in Human Problems of Conservation," Pacific Fisherman, March 1957, p. 1.

<sup>3</sup> The composition of the two delegations differed in several noteworthy respects. In part these differences reflected the different balance of jurisdictional responsibility for the handling of international fisheries issues. The four Canadian delegates were all members of the Department of Fisheries. The Department of External Affairs representative was listed as an advisor, as were industry/union officials, members of the Fisheries Research Board of Canada, and one representative from the Canadian section of the International North Pacific Salmon Fisheries Commission. The United States' delegates included federal representatives from the State Department and the Department of the Interior, state representatives from Washington, Oregon, and California, PMFC representatives, and industry officials from the Puget Sound Gillnetters Association, Fishermen's Packing Corporation, and Purse Seine Vessel Owners Association. Advisors were drawn from the legislatures of all three states, the PMFC, and a number of industry groups. For the complete list of delegates and advisors see: Conference on Co-ordination of Fisheries Regulations Between Canada and the United States, Summary of Proceedings, Seattle, Washington, February 27-28, 1957. Appendix 1. University of British Columbia, The Library, Special Collections Division, Fisheries Association of British Columbia Collection, Box 32, file: Conference on Coordination of Fisheries Regulations 1957 and 1959. (Hereafter referred to as the Fisheries Association of British Columbia Collection.)

satisfied with either the use of the Bonilla-Tatoosh line at the western entrance of Juan de Fuca Strait, preferring a more eastward boundary, or certain segments of the line on the west coast of Vancouver Island. After Canada agreed to move portions of the Vancouver Island line slightly shoreward the United States accepted it. The United States also agreed provisionally to the Bonilla-Tatoosh line on the condition that joint scientific studies be undertaken of the migratory movements of coho salmon on both sides of the line. Canada, although expressing reservations about the line proposed off southeastern Alaska, agreed nonetheless to the line described in the Alaska Fishery Regulations. The introduction of this boundary forestalled the development of net fisheries off the coastline of Vancouver Island and Washington State. If Canadian and American fishery managers allowed the harvest of salmon west of their respective coasts the consensus of both the industry and government participants at this conference bequeathed this responsibility to the troller.

The conference did not, however, agree to let trollers roam offshore at will. The United States delegation argued that the open seasons and size limits applied to the troll fishery were necessary for the conservation of salmon stocks and proposed uniform coastwide regulations.<sup>4</sup> From Alaska to Oregon an offshore chinook season of

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<sup>4</sup> Conference on Co-ordination of Fisheries Regulations Between Canada and the United States, Summary of Proceedings, Seattle, Washington, February 27-28, 1957, p. 5. Fisheries Association of British Columbia Collection, Box 32, file: Conference on Coordination of Fisheries Regulations 1957 and 1959. The call for uniformity was strengthened by the fact that most troll-caught chinook and coho were taken outside territorial waters. As Milne pointed out, the offshore waters off the southwestern part of Vancouver Island was a particularly important fishing location for both Canadian and American trollers. From 1935 to 1947 the American catch in these waters was approximately equal to the Canadian catch. From 1947 to 1962 the Canadian catch rose while that made by United States vessels remained more or less the same, creating a situation where Canadian trollers claimed approximately two-thirds of the catch in offshore waters. See D. J. Milne, The Chinook and Coho Salmon Fisheries of British Columbia, Fisheries Research Board of Canada Bulletin No. 142, (Ottawa: Queen's Printer, 1964), pp. 16-19. Since these trollers operated primarily outside territorial waters a uniform season was the only method capable of insuring that one nation's trollers could not capitalize on a closure imposed only upon the trollers of the second nation.

April 15 to October 31 was approved.<sup>5</sup> A minimum length of 26 inches (or the equivalent weight) for troll-caught chinooks was also adopted by the conference participants;<sup>6</sup> a uniform size limit for coho was not thought necessary.

The speed with which agreement was reached on these issues in Seattle was a sign of the depth of the consensus in Canada and the United States regarding the propriety of the proposed regulations. The preceding chapter has sampled already the widespread demand that arose in the 1950s for Canadian and American legislation against offshore net fishing. In October 1956, Canada proposed that both nations should forbid the operation of a high-seas net fishery before the commencement of the 1957 fishing season and the Pacific Marine Fisheries Commission (PMFC) called for concurrent action by Canadian and American regulators at its 1956 annual meeting.<sup>7</sup> The interest in a specific coastwide April 15 to October 31 offshore chinook season was less well-articulated prior to the conference although American fishermen in particular sought the security of regulatory parity with Canadian trollers. In 1956 the State of Washington introduced an April 15 to October 31 troll chinook season; the Canadian season stretched from February 1 to November 30. At the 1956 PMFC annual meeting dissatisfaction with this disparity surfaced. Several spokesmen for American

<sup>5</sup> California adopted a more restrictive May 1 - September 30 offshore chinook season. Prior to 1957 the Canadian troll season in both offshore and inside waters ran from February 1 to November 30; in 1965 the Georgia Strait chinook season was shortened to April 15 to September 30.

<sup>6</sup> The Sub-Committee on Troll Regulations was not convinced that the size limit was an essential conservation measure and seems to have supported its adoption more for practical, administrative reasons. See Conference on Co-ordination of Fisheries Regulations (1957), Summary of Proceedings, p. 11.

<sup>7</sup> Pacific Marine Fisheries Commission, Minutes of the 1956 Annual Meeting, in United Fishermen and Allied Workers' Union Collection, Volume 132, file: 132-1. Additional pre-conference endorsements of the need for an offshore net fishing boundary are found in Fishing Vessel Owners Association of British Columbia, Soundings, Volume III, no. 10 (November 1956), in United Fishermen and Allied Workers' Union Collection, Volume 257, file: Salmon Treaty Proposals 1957; United Fishermen and Allied Workers' Union Collection, "Minutes of Trollers Conference, Friday, December 14th, 1956," p. 2 in United Fishermen and Allied Workers' Union Collection, Volume 202, file: Fishery Regulations - Proposals 1957; UFAWU, "Minutes of Meeting, Standing Committee on Fishery Regulations held on Monday, February 11, 1957," in United Fishermen and Allied Workers' Union Collection, Volume 202, file: Fisheries Association.

trollers complained about the shorter troll season in United States waters and demanded regulatory equality. "We are, in conclusion," declared a member of the Washington State advisory committee, "requesting that the March 15 opening be re-established and that the high seas regulations be adopted in the future on a basis of equal regulation on all States and countries participating in the offshore fishery."<sup>8</sup> The Northwest Fisheries Association also sought regulatory parity but was prepared to accept its establishment over the shorter season. Failing the adoption in 1957 of uniform Canadian and American offshore trolling regulations, "... the Association cannot support a later troll salmon season opening such as was set by Washington in the spring of 1956 ...."<sup>9</sup> For its part Canada did not object to this reduction in the length of the offshore chinook fishery;<sup>10</sup> nor was this agreement greeted with indignation by troller organizations.<sup>11</sup> The UFAWU's acceptance of the shorter season is congruent with the position adopted at a trollers' conference held on the eve of the Seattle discussions. This conference agreed that the Canadian Department of Fisheries should bring forward "... any necessary regulations governing trollers and other types of salmon fishing which may be considered necessary to preserve these stocks at the highest possible levels."<sup>12</sup>

The introduction of the surfline boundary to the domestic salmon fishery regulations applied to the fishermen of Washington and British Columbia was linked explicitly to the regime goal of Asian exclusion. The movement of gillnetters or seiners

<sup>8</sup> Pacific Marine Fisheries Commission, 1956 Minutes, p. 7.

<sup>9</sup> Pacific Marine Fisheries Commission, 1956 Minutes, p. 8.

<sup>10</sup> The Summary of the 1957 Conference proceedings noted: "The Canadian delegation stated that the necessary action would be taken to have the Canadian season for the chinook or spring salmon troll fishery changed to April 15 to October 31 and that this would be put into effect before the coming season." Conference on Co-ordination of Fisheries Regulations, Summary of Proceedings, p. 5.

<sup>11</sup> "Thinking Finds a Way," Pacific Fisherman, April 1957, p. 10; "Offshore Salmon Net Fishing Ban Favored By Joint Conference," The Fisherman, March 5, 1957, p. 1; "Proposals Meet Union Approval," The Fisherman, March 5, 1957, p. 1.

<sup>12</sup> UFAWU, "Minutes of Meeting, Trollers Conference held Thursday, January 31st, 1957," United Fishermen and Allied Workers' Union Collection, Volume 202, file: Fisheries Association.



onto the high seas threatened an important premise of the Canadian/American argument for the abstention principle. As a condition for Japanese abstention from sending its high seas salmon fleet east of 175° west longitude Canada and the United States committed themselves to implementing necessary conservation measures.<sup>13</sup> Inasmuch as all the responsible fisheries departments condemned the high seas netting of salmon for its violation of the conservation imperative the prohibition of offshore net fishing was inevitable once a North American net fishing fleet appeared. This rationale for the surfline regulatory proposal is suggested by the remarks made by a State Department official to the PMFC:

In both the Sockeye Commission's letter and the note from Canada, reference was made to the Japanese abstention from fishing American stocks of salmon under the United States - Japanese Treaty of 1953. Under this Treaty, the Japanese have abstained from fishing these salmon stocks, but they do not do this for nothing. We are required to continue to carry out conservation measures on those stocks. The Canadians pointed out that we might have some difficulty with the abstention case should the high-seas net fishery make our salmon conservation programs ineffective.<sup>14</sup>

The subsequent 1956 PMFC resolution went on to speak of the need for uniform offshore net fishing controls in order to conserve and maintain salmon of United States and Canadian origin.<sup>15</sup> When George Clark, the chairman of the Canadian delegation addressed the 1957 Conference, he stressed this link between international objectives and national policy:

It is recognized by all concerned that if off-shore fishing for salmon, except by trolling gear is allowed to develop, the conservation measures of the two countries will be nullified. Moreover, it is the very strong conviction of the Canadian delegation that in other areas of the Pacific high seas salmon fishing, our case that we are giving

<sup>13</sup> See Article V, section 2.

<sup>14</sup> Pacific Marine Fisheries Commission, 1956 Minutes, p. 8. The introduction of the surfline was also explained in terms of the conditions of the North Pacific Convention in "Some Answers to Some Questions About Ocean Salmon Fishing," Pacific Fisherman, February 1957, p. 1.

<sup>15</sup> Pacific Marine Fisheries Commission, Ninth Annual Report (1956), pp. 6-7.

adequate and proper protection to the runs of salmon will be materially weakened if the nationals of Canada and the United States are permitted to take salmon in areas where runs are intermingled and there is no known technique or method to predetermine the various stocks and runs.<sup>16</sup>

The North American clash with the Japanese weighed heavily then in the decision to introduce a net fishing boundary.

To this point, we have noted the widespread consensus in both industry and governments about the desirability of these measures. It should be emphasized too that these measures furthered important state interests concerning the sanctity of the North Pacific Convention and the jurisdiction of the Pacific Coastal states over the fisheries launched from their shores. According to Article III. 1(a). of the North Pacific Convention no determination or recommendation regarding whether salmon, halibut, or herring stocks continued to qualify for abstention could be made until the Convention had been in force for five years (June 12, 1958). Faced for the first time with a requirement to justify abstention, the adoption of surfines was particularly auspicious. On the other hand, the willingness of the Pacific Coastal states to approve the offshore ban was due to more than the credence such a move lent to their campaign against the Japanese mid-Pacific fishery; it was inspired also by the fear that failure to act would lead to a federal incursion upon their traditional jurisdictional responsibilities. In January 1957, William C. Herrington, special assistant to the Undersecretary of State, informed representatives of the Pacific Northwest fishing industry that Congressional action would be needed if the States did not adopt appropriate measures by early April. "Definitive state action," concluded the Pacific Fisherman, "was stimulated by a thinly-veiled federal ultimatum."<sup>17</sup>

<sup>16</sup> This quotation is taken from "Statement of Canadian Delegation, May 18, 1966" in United Fishermen and Allied Workers' Union Collection, Volume 189, file: BC - SE Alaska Salmon Problems of Mutual Concern - 1966.

<sup>17</sup> "Thou Shalt Not Net," Pacific Fisherman, February 1957, p. 11. See also "Pacific States Face-to-Face With Ocean Fishing Deadline," Pacific Fisherman, March 1957, p. 1; "There are Lessons to be Learned," Pacific Fisherman, April 1957, p. 1.

Subsequent to the conclusion of the Seattle conference the Canadian-American ban against offshore net fishing was used to legitimate demands for further limitation of the mid-Pacific operations of the Japanese. In a prepared statement presented to a House of Representatives Subcommittee, Milo Moore, Washington's Director of Fisheries, first criticized the Japanese for their disregard of conservation and then applauded the offshore restrictions adopted by Canada and the United States.<sup>18</sup> Later, the Alaska Fish and Game Commission made a similar linkage:

West of this provisional line, the Japanese engage in virtually unrestricted high-seas salmon fishing with gill nets; east of it the United States and Canadian nationals, in the interest of conservation and to attain sustained yield, are forbidden by law to engage in ocean fishing with nets.<sup>19</sup>

At its 1957 annual meeting the PMFC relied upon the surfline regulation to buttress its support of the call by the American section of the INPFC for the establishment of a fishing cessation zone west of the established abstention line, an area where North American and Asian salmon stocks intermingled.<sup>20</sup> The introduction of the surfline then not only reflected the North American consensus about the desirability of excluding third parties, in this case Japan, from sharing in the bounties of the salmon resource; it also served a tactical purpose and fuelled a new series of demands that Japan stop intercepting North American stocks of salmon. National regulatory policy then was regarded as a strategic asset in the ongoing North America - Japan negotiations within the International North Pacific Fisheries Commission.

<sup>18</sup> Milo Moore, "The Confused State of International Fisheries," in United States, House of Representatives, Committee on Merchant Marine and Fisheries, Merchant Marine and Fisheries Problems - Alaska and Pacific Coast, Hearings before the Alaska Subcommittee of the Committee on Merchant Marine and Fisheries, 85th Congress, First Session, (Washington: U. S. Government Printing Office, 1958), pp. 40-41.

<sup>19</sup> United States, House of Representatives, Committee on Merchant Marine and Fisheries, Merchant Marine and Fisheries Problems - Alaska and Pacific Coast, Hearings before the Alaska Subcommittee of the Committee on Merchant Marine and Fisheries, 85th Congress, First Session, (Washington: U. S. Government Printing Office, 1958), p. 278.

<sup>20</sup> The resolution is reprinted as Appendix C.

The surfline agreement and the offshore troll regulations agreed to at the Seattle conference also revealed the powerful influence the norm of North American regulatory parity exerted upon the approaches taken to regulatory change. The 1956 PMFC resolution recommending uniform offshore controls cited Canada's willingness to restrict offshore net fishing provided that either the United States or the Pacific Coast states adopt similar measures.<sup>21</sup> Meeting in emergency session in January 1957 the PMFC approved legislation for Washington and Oregon to introduce that would prohibit this method of fishing offshore. According to this model bill, the law would take effect only when Canada had a similar regulation in place.<sup>22</sup> Regarding the troll fishery, we have noted already the reluctance of American fishermen to tolerate a shorter season unless such a restriction was applied coastwide.

The consensus of the Seattle conference on the propriety of trolling regulatory parity does not account adequately for the substance of the agreement. Why establish parity on the basis of an April 15 to October 31 season? Why not instead ban offshore trolling as well? To better understand why any offshore trolling at all was permitted let alone a season stretching from April 15 to October 31 other factors must be considered. First, we return to an argument encountered in the previous chapter. Although difficulties in the fishery were often subsumed under sweeping headings such as the "salmon crisis" or "salmon problems" the specific difficulties were not so generic. In the 1950s these phrases were used for the most part to describe the situation in the fisheries for sockeye, and to lesser extents, pink or chum salmon. Since the troll catch of these species was inconsequential, offshore trolling was not considered threatening. As the Pacific Fisherman editorialized, "... trolling takes only Chinook and Silver salmon, and none of the species with the conservation of which our

<sup>21</sup> Pacific Marine Fisheries Commission, 1956 Minutes, p. 11.

<sup>22</sup> "Thou Shalt Not Net," Pacific Fisherman, February 1957, p. 11.

international treaties are primarily concerned."<sup>23</sup> Furthermore, the argument appeared that trolling, although preying upon intermingled stocks, as would a high-seas fishery, was an historic method of fishing operating long before Canada, the United States, and Japan agreed in the North Pacific Convention to continue conservation on a rational, scientific basis.<sup>24</sup>

A third contributor to the treatment of the offshore trollers was, with hindsight, the optimistic belief of managers that these restrictions, particularly the shorter season, were consistent with the conservation of chinook and coho. For its part, the Seattle conference's sub-committee on troll regulations questioned whether managers had the stock knowledge needed to decide whether the twenty-six inch chinook size limit was required for conservation of the species. Regarding this size limit the sub-committee reported:

In making this regulation the committee recognizes that biological and practical considerations are both involved and that biological evidence to date from all areas does not indicate that this proposal is essential as a conservation measure. Consequently, the committee recommends further study of the problem.<sup>25</sup>

It reported further that no conservation need existed for minimum coho size limits. Regarding the shorter season, state fisheries officials were more definite about its contribution to conservation. They fended off the requests from trollers for a longer March 15 to October 31 chinook fishing period with, at times, quite glowing appraisals of the increased escapements of Columbia River fall chinooks they attributed to the regulatory changes. At the 1957 annual meeting of the PMFC, officials of the Oregon Fish Commission offered evaluations of whether the additional closure actually protected the depleted runs of Columbia River fall chinooks. "We are confident,"

<sup>23</sup> "Some Answers to Some Questions About Ocean Salmon Fishing," Pacific Fisherman, February 1957, p. 1.

<sup>24</sup> Ibid.

<sup>25</sup> Conference on Co-ordination of Regulations, Summary of Proceedings, Appendix 2: Report on the Sub-Committee on Troll Regulations, p. 11.

observed one official, "that the regulation was definitely a factor in maintaining the run and escapement at their present level and preventing even a further decline."<sup>26</sup>

A second official, after using the superlatives "better than", "excellent", and "tremendous" to describe the 1957 escapements to the lower river, mid-Columbia River hatchery, and upriver sites concluded:

The generally encouraging spawning escapement picture for the Columbia River fall chinook salmon is undoubtedly due to a number of factors. Among these must be included the troll fishery restriction, the closure of zone 6, the inundation of Celilo Falls, and the sport restriction on the Washington tributaries along the lower Columbia River.<sup>27</sup>

Demands for additional fishing time were blocked by the conclusion that the April 15 to October 31 season was vital to the health of the Columbia River fall chinooks.

Furthermore, the later opening could be justified in terms of the safety of fishermen and increases in the yield of the catch. The April opening prevented fishermen from rushing to the offshore during the stormiest months of the year and reduced the likelihood of fatalities at sea. The later opening also promised to increase the size of the fish taken by trollers, thereby increasing the yield of their catch.

Soon after the adjournment of the Seattle meetings it became apparent that the institutionalization of this season in an international understanding between a number of governments made further regulatory change to the offshore troll season difficult. Unlike some more formal international agreements (the North Pacific Convention for example) the results of the Seattle conference were not subject to regular annual reviews.<sup>28</sup> Governments could thus deflect calls for regulatory change by citing their international obligation to control the fishery according to a particular

<sup>26</sup> See statement by Jack Van Hyning in Pacific Marine Fisheries Commission, Minutes of the 1957 Annual Meeting, p. a11.

<sup>27</sup> Sigurd J. Westrheim, "Appendix D: Columbia River Fall Chinook," in Pacific Fisheries Marine Commission, Minutes of the 1957 Annual Meeting, p. a10.

<sup>28</sup> The participants did agree, however, to reconvene in 1959. They also agreed to maintain a close, ongoing relationship between the technical and administrative levels of the PMFC and the Canadian Department of Fisheries in order to review and co-ordinate regulations including salmon net gear regulations.

regulatory practice. A member of the Pacific Trollers Association, for example, spoke to the PMFC annual meeting about how the Canadian Department of Fisheries used the 1957 conference results to justify its refusal to authorize a longer offshore fishing season: "We are asking our Government to change the opening date to March 15th. They say that nothing can be done until we meet with the Americans in two years."<sup>29</sup> Structural change in the nature of the regime, while reflecting the then-current perspectives of its participants, injected inertia into the regulatory process; it made future changes to a limited range of regulation incumbent upon international agreement.

#### The Limits of Collegiality: the 1959 Surfline Controversy

The strength of the collegiality demonstrated in 1957 should not, however, be exaggerated. Collegiality evaporated when, instead of facing the presumed conservation threat posed by the Japanese fishery, Canada and the United States were confronted with the threats to their respective salmon stocks which arose from mutual interceptions of salmon. At the 1959 conference on the Co-ordination of Fisheries Regulations, held in Vancouver, this problem surfaced. The two national delegations voiced sharply disagreeing perspectives on the propriety of the Bonilla-Tatoosh line as the surfline in the Juan de Fuca Strait, the location of the Alaskan surfline, and Canadian interception in Johnstone Straits of Fraser River destined sockeye salmon. In each disagreement neither government was prepared to forego the interception of fish the other government claimed to suffer from overexploitation. Neither party was willing to alter the jurisdictional boundaries in a fashion which would reduce certain allocational benefits provided by the status quo. Earlier agreements on the structure of the fishery regime as it governed United States and Canadian behaviour were used tactically to defend against the demands of a neighbour.

<sup>29</sup> Statement by R. Stanton in Pacific Marine Fisheries Commission, Minutes of 1957 Annual Meeting, p. 21.

Regarding the Bonilla-Tatoosh line, the 1957 conference agreed to adopt it provisionally as the surfline pending joint scientific investigations of the composition and migratory movements of coho salmon on both sides of the line. A four member investigatory team composed of two members from Washington State and two from Canada studied this question in 1957 and 1958 but could not agree upon the line's impact on the capture of immature Puget Sound coho salmon. Canada's team, made up of Dr. Needler of the Fisheries Research Board and A. J. Whitmore of the Department of Fisheries, concluded that there was no scientific reason for moving the line in either the westward direction preferred by the Fishing Vessel Owners Association and the UFAWU or the eastward direction sought by Washington State.<sup>30</sup> Washington State officials argued differently, relating the catch and escapement of Puget Sound coho to the opening of the Canadian net fishery inside the B-T line.<sup>31</sup> The WDF wanted the net fishing boundary shifted eastward to the vicinity of Sooke Inlet. Canada's rejection of the Washington State view centred on the claim that the American position misrepresented the purpose of the line. The B-T line, Canada argued, was never designed as a coho conservation line but instead was intended to serve as the outer limit

<sup>30</sup> UFAWU, "Notes: Regarding Meeting with Dr. Sproules (sic) and other representatives of the Dept. of Fisheries and the Industry re Proposed Meeting with the Americans," February 2, 1959; the preferences of the FVOA and the UFAWU are found in: "Vessel Owners Ask Minister to Push Bonilla-Tatoosh Line Westward," Western Fisheries, October 1957, p. 13; "Letter to A. J. Whitmore, Director of Fisheries from Homer Stevens, Secretary-Treasurer, UFAWU, March 6, 1959," The Union was satisfied, however, with retention of the Bonilla-Tatoosh Line. The Fisheries Association of British Columbia withdrew their initial proposal to extend the B-T line westward to run from Carmanah Point to Umatilla Reef after the February 2nd meeting with the Director of Fisheries. See "Draft", January 26, 1959. Fisheries Association of British Columbia Collection, Box 32, file: Conference on Coordination of Fisheries Regulations 1957 and 1959 and "Letter to A. J. Whitmore, Director, Department of Fisheries from Hon. James Sinclair, President, Fisheries Association of British Columbia, February 6, 1959."

<sup>31</sup> Washington (State), Washington Department of Fisheries, Fisheries Volume Two: Contributions of Western States, Alaska and British Columbia to Salmon Fisheries of the North American Pacific Ocean, (Olympia: Washington State Printer, 1959), pp. 18-20.



of the net fishery.<sup>32</sup> Furthermore, Canada claimed that its management practices in the area of the disputed surfline were consonant with conservation needs. The Canadian refusal to alter the line's location stressed fidelity to the principle of scientific stock management and pointed to the modification of gear regulations in Juan de Fuca Strait in 1959. The reduction of the maximum gill net depth permitted in this area was characterized as an action offering some additional protection to Puget Sound coho. Dissatisfied with the Canadian intransigence the United States declared its right to change the location of the surfline in Juan de Fuca Strait in respect to American fishermen. If such a change was proposed the Americans would first consult with Canada.<sup>33</sup> Moreover, both nations agreed to an ongoing review of the issue:

"Arrangements were made to establish a committee composed of representatives of Canada and the United States to continue consideration of this problem."<sup>34</sup>

The American delegation felt aggrieved by a second feature of the already-established structure, namely, the fact that IPSFC regulation did not extend to the Johnstone Strait on the northeastern side of Vancouver Island. In 1958 a significant percentage of Fraser River sockeye stocks returned through Johnstone Strait rather than Juan de Fuca. W. C. Herrington, special assistant to the Undersecretary of State and head of the United States delegation, felt that the Canadian policy of intercepting Fraser stocks in Johnstone Strait was unfair to American fishermen. The northerly approach taken by these salmon deprived Americans from sharing in the harvest, despite the contributions made by the United States to the rehabilitation of the Fraser River sockeye population.<sup>35</sup> In reply, Canada pointed out that, since the protection of Fraser River sockeye salmon was covered by an international convention, a

<sup>32</sup> Conference on Co-ordination of Fisheries Regulations Between Canada and the United States, Summary of Proceedings, Vancouver, British Columbia, April 21-24, 1959, p. 5. Fisheries Association of British Columbia Collection, Box 32, file: Conference on Coordination of Fisheries Regulations 1957 and 1959.

<sup>33</sup> Ibid., p. 6.

<sup>34</sup> Ibid., Appendix No. 2: Press Release, p. 24.

<sup>35</sup> Ibid., p. 21.

conference on the co-ordination of fisheries regulations was not the appropriate forum to raise this topic. Canada did no more than note the American grievance, having none of its own to express "during this informal and unofficial discussion".

Dissatisfaction with some features of the regime affecting North American fishery practices was not confined to the United States; Canada had objections of her own about the North American surfline, specifically its location in Southeastern Alaska.<sup>36</sup> There, contrary to the point to point interpretation given to this boundary off the Washington, British Columbia, and Oregon coastlines, the surfline corresponded with the three mile boundary of the territorial sea. Prior to the opening of the 1959 conference major fishing organizations from British Columbia demanded that Canada insist upon the shoreward adjustment of this line, an adjustment which would have terminated a long-established, significant Alaskan net fishery conducted at Noyes Island. If Canada could not obtain this adjustment, the Fisheries Association of British Columbia and the UFAWU urged the government to retaliate by moving the British Columbia surfline three miles beyond the Canadian base line.<sup>37</sup> Such counsel was ignored by the Canadian delegation. Instead, Canada went no further than reserving the right to move its surfline.

These disagreements illustrate clearly that not all features of the regime satisfied Canada and the United States. Both the reactions of the delegations to claims for redress and the outcome of the disagreements tell us something about the relationship between the structure of the regime and national policy. Both countries used prior agreements for tactical purposes; established regime norms safeguarded

<sup>36</sup> Roderick MacKenzie Logan, "The Geography of Salmon Fishing Conflicts: The Case of Noyes Island," (University of British Columbia: Unpublished M. A. thesis, 1967); and Roderick MacKenzie Logan, "Geography and Salmon: The Noyes Island Conflict, 1957-1967," *The Journal of the West*, Vol. 8 (1969).

<sup>37</sup> "Letter to A. J. Whitmore, Director, Department of Fisheries, February 6, 1959," Fisheries Association of British Columbia Collection, Box 32, file: Conference on Coordination of Regulations 1957 and 1959; "Letter to A. J. Whitmore, Director of Fisheries, from Homer Stevens, Secretary Treasurer, UFAWU, March 6, 1959."

national regulatory practices questioned by the second party. The 1957 agreements as well as the Sockeye and Pink Salmon Convention were used to protect fishing patterns from which the fishermen of one nation or the other were perceived to receive disproportionate benefits. These strategic uses of the regime also illustrate the limits to the principle of North American parity. As the WDF observed: "... whichever side suffers in the fishery is the first to complain, and the side favored is slow to recognize the need for a correction of an unbalanced condition."<sup>38</sup> Fulfillment of the equity principle was unlikely where the parties lacked retaliatory weapons. The principle of the surfline, its importance to the policy of Asian exclusion, the satisfaction with the work of the IPSFC, and the vagaries of salmon migratory paths combined to limit the responses to the failure of both governments to compromise on the contested locations of the surfline and to Canada's refusal to discuss the diversion of Fraser stocks through Johnstone Strait. It bears emphasizing that the retaliatory options open to governments arose within a particular institutional context. Once that context was altered by the 1957 agreements retaliation through harvesting regulations became a less viable alternative.

Against this background of controversy, conference opinions regarding the national offshore trolling frameworks first agreed to in 1957 were distinguished by the depth of their agreement. This is not to suggest, however, that each delegation did not have specific interests it wished to further. The American delegation expressed concern over the Canadian policy of allowing an inside troll fishery for chinook from February 1 to November 30 and advocated the principle of establishing nursery areas for coho and chinook salmon during specific time periods. Canada raised the point that her regulations treated April 15th as a chinook fishing date whereas the Pacific Coastal states regarded the 15th as a landing date. In its report to the conference the ad hoc committee on trolling regulations did not recommend that the governments of any of

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<sup>38</sup> Washington Department of Fisheries, Fisheries Volume Two, p. 22.

the jurisdictions involved take any specific measures in light of these concerns. In 1958 and 1959 California, Washington, and Oregon had asked their fishermen to use April 15th as a fishing date and enforcement was intensified, reducing the abuse to "negligible proportions".<sup>39</sup> In part, the consensus regarding the troll fishery appears to have been based upon continued uncertainty about the movements of stocks and the possible merit of particular regulations in furthering conservation. The data available to the committee did not enable it to recommend any changes to the minimum size limit regulations. In fact, the committee underlined their doubts about whether the twenty-six inch limit served the interests of conservation:

The Committee concludes that under present circumstances the minimum size limits prevailing in outside waters should be continued in effect pending the development of data which demonstrates that these limits or other limits defeat the conservation objectives.<sup>40</sup>

The issue of nursery areas was left unresolved for a similar reason. No conclusive evidence could be gathered to show the possibility of identifying and establishing nursery areas.

#### The Law of the Sea: the 1958 and 1960 Conferences

As Canada and the United States entrenched the regime norms of Asian exclusion and North American equity into national regulatory policies on the Pacific coast, the ocean regime issue captured the attention of the United Nations. Here it is pertinent to consider whether these two principles also figured prominently in the Canadian and American proposals for the global revision of the law of the sea.<sup>41</sup> What place did these regime norms occupy in the approaches of the two national

<sup>39</sup> Conference on Co-ordination of Regulations, Summary of Proceedings (1959), p. 15.

<sup>40</sup> Ibid., p. 14.

<sup>41</sup> For overviews of the positions of Canada and the United States on the law of the sea consult: Ann L. Hollick, U. S. Foreign Policy and the Law of the Sea, (Princeton: Princeton University Press, 1981); A. E. Gotlieb, "Canadian Diplomatic Initiatives: The Law of the Sea," in Michael G. Fry (ed.), Freedom and Change: Essays in Honour of Lester B. Pearson, (Toronto: McClelland and Stewart, 1975); Barbara Johnson and Mark L. Zacher (ed.), Canadian Foreign Policy and the Law of the Sea, (Vancouver: University of British Columbia Press, 1977).

delegations? Most importantly, would they be respected in the national regulatory approaches of the post-conference worlds sought by these North American contingents?

Throughout the preparatory meetings for the first Law of the Sea conference held in 1958 (UNCLOS I) and the UNCLOS I fisheries committee deliberations Canada and the United States tried unsuccessfully to incorporate the instrument of Asian exclusion - the abstention principle - into the international fishery regime.<sup>42</sup> The 1958 conference, although it observed the last effort by Canada and the United States to include the language of abstention in global international law, did not witness the end of their attempts to see the spirit of abstention win some type of international respect. In 1960, at the UNCLOS II, Canada and the United States presented a joint proposal to the conference on the breadths of the territorial sea and of the contiguous fishing zone. The leaders of the American delegation made it clear that this proposal was not designed to overrule existing bilateral or multilateral fishing agreements.<sup>43</sup> If a new Law of the Sea would not grant official recognition to the abstention principle neither would it compromise the one treaty where North Americans had put it into place.

As mentioned above, Canada and the United States joined forces in Geneva in 1960 and made a joint proposal to the UNCLOS II, a proposal which fell only one vote short in plenary session of the required two-thirds majority. They urged the conference to accept a six-mile territorial sea and a six-mile fishing zone. In the latter

<sup>42</sup> International support for the abstention principle could not be secured at either the 1955 United Nations International Technical Conference on the Living Resources of the Sea or the 1956 sessions of the International Law Commission. The third attempt to win acceptance of this principle in the fisheries committee also failed. See Hollick, U.S. Foreign Policy and the Law of the Sea, pp. 101-102, 149-150; J. A. Yogis, "Canadian Fisheries and the International Law of the Sea," in R. St. J. Macdonald, Gerald L. Morris, and Douglas M. Johnston (ed.), Canadian Perspectives on International Law and Organization, (Toronto: University of Toronto Press, 1974).

<sup>43</sup> See "Statement of Ambassador Arthur H. Dean," April 8, 1960, reprinted in Milo Moore, Report on the United Nations' Conference on the Law of the Sea, (1960), p. 4.

area, nations which had fished in the zone of a second country for the five year period before 1958 could continue to do so for a period of ten years from October 31, 1960.<sup>44</sup>

From the vantage point of this study, this proposal is significant because it represented a compromise between sharply contrasting interpretations of the validity of historic fishing rights, a cornerstone of the idea of North American equity. Canada's first proposal at the UNCLOS II, like its final proposal at the UNCLOS I, called for a six-mile territorial sea plus a six-mile exclusive fishing zone.<sup>45</sup> Had the Canadian proposal either been accepted by the 1958 conference or implemented unilaterally thereafter the extent of the parity characteristic of North American waters would have shrunk. American salmon trollers and groundfish trawlers would have been banned from operating within twelve miles of Canadian shores. No longer would a North American identity alone have been sufficient to fish these waters. While unilateral action would not necessarily have stimulated a breakdown of the uniform trolling regulations on the Pacific coast established by the 1957 Conference on the Co-ordination of Regulations and reaffirmed in 1959 such action probably would have increased tensions and invited retaliation. The luxury of this speculation is owed to Canada's reluctance to proceed on its own, an attitude Gottlieb attributed to Canada's strong preference for an international approach to foreign policy goal attainment in this era.<sup>46</sup>

<sup>44</sup> Opinions regarding who was responsible for the development of this compromise sometimes vary with the nationality of the analyst. Citing archival sources Hollick argues that the United States had a fallback position where traditional fishing would only be allowed for a limited number of years. Gottlieb insinuates that, sensing the tide of world opinion moving against it, the United States moved to support the Canadian proposal. He also refers to the resulting compromise as the "Canadian formula".

<sup>45</sup> United Nations, Second United Nations Conference on the Law of the Sea, Official Records, Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, Document A/Conf. 19/C. 1/L. 4. In 1958, Canada first proposed a three-mile territorial sea and a nine-mile exclusive fishing zone. Advocacy in Canada for this change was most intense on the east coast. There, since 1911, Canadian trawlers had been banned from fishing within twelve miles in order to protect the inshore fishery. Foreign vessels were not subject to this restriction and could fish up to three miles from the shoreline, an oversight with dire implications for the efficacy of the Canadian regulation. See Gottlieb, "Canadian Diplomatic Initiatives," pp. 137-138.

<sup>46</sup> Gottlieb, "Canadian Diplomatic Initiatives," p. 142.

The opening United States proposal to the UNCLOS II also faithfully recreated the essence of its final proposal at the UNCLOS I, a six-mile territorial sea plus a six-mile fishing zone where traditional fishing rights would be respected in perpetuity.<sup>47</sup> This proviso regarding traditional rights was consistent with the established management practices on either coast. Two weeks after articulating their original UNCLOS II positions Canada and the United States withdrew them in favour of a joint, compromise proposal. In this compromise Canada respected the existence of traditional fishing rights while the United States succumbed to the demand that a time limit be placed upon the exercise of such rights. At the UNCLOS II then both Canada and the United States advocated a post-UNCLOS II world where the reciprocity which was integral to the principle of North American equity would be sustained over the medium term.

The restrained recognition of historic rights in the Canadian-American compromise did not satisfy a range of interests in the Pacific Northwest. Throughout the 1960 conference Washington Fisheries Director Moore, representing the States of Washington and Oregon and the United States Senate Committee on Interstate and Foreign Commerce, lobbied the American delegation to modify its proposals to improve the chances of securing the interest of the Pacific Northwest fishing industry in retaining access to the waters adjacent to Canada's three-mile territorial sea. Referring to Canada, Moore asked Ambassador Dean to modify the original American proposal to read, in part, that where historic fisheries or fisheries for migrating species existed "... international rule beyond three miles of contiguous seas shall continue the common right of cooperative interstate management. And that existing bilateral or unilateral fisheries agreements be strengthened when necessary and remain in force

<sup>47</sup> Unlike the 1958 version of the six-plus-six formula the 1960 United States proposal qualified these rights. They only would be granted to nations which had fished in another country's zone for the five years prior to 1958. Only the species fished during this base period could be caught subsequently and then not at a level exceeding the average annual fishing level over these five years. See United Nations, Second United Nations Conference on the Law of the Sea, Document A/Conf. 19/C. 1/L. 3, pp. 166-167.

unaltered by any action of this convention."<sup>48</sup> When Canada and the United States jointly sponsored the compromise proposal Moore again intervened in order to try to ensure that the principle of equity, vital as it was to Washington salmon trollers and groundfish trawlers, would be enshrined in the final settlement. Inclusion of the following memorandum would clarify the relationship Moore felt should exist between bilateral agreements and international law:

Where interstate, intermingling, migratory stocks of fish are of prime importance, it is not the intent of this convention to favor one state over another in the extension of territorial seas.

In such cases the natural laws along with equitable rights must be the determining factors in exchange through bilateral agreements, with any disputes being subject to settlement in accordance with the provisions of Articles 9-12 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva, April 27, 1958.

The same consideration must be given to the division, utilization and management of stocks of fish originating in and inhabiting the territorial and offshore waters of one or more states.<sup>49</sup>

Spokesmen for the Pacific Northwest fishing industry reacted with relief to the failure of the conference to endorse the Canadian-American formula. The failure of the Geneva Conference, although portrayed as something of a defeat for the United States, was regarded as a victory for the fishermen of Washington State. One industry representative concluded: "This has been a tremendous, though somewhat unexpected, victory for the Northwest trawl industry, which, with the salmon troll industry, had the most to lose."<sup>50</sup> Whether the fears of the Pacific Northwest industry about losing its access to historic fishing grounds off Canada by 1970, as had been proposed in the compromise formula, were justified is open to question. Canada apparently gave

<sup>48</sup> See "Letter and Memorandum to Ambassador Arthur H. Dean from Milo Moore, Director of Fisheries, State of Washington, April 6, 1960" reprinted in Moore, Report on United Nations' Conference on the Law of the Sea.

<sup>49</sup> Moore, Report on United Nations' Conference on the Law of the Sea.

<sup>50</sup> Stanton H. Patty, "Geneva Failure Viewed as U. S. Defeat, Northwest Victory," Seattle Times, April 27, 1960. Reprinted in Moore, Report on United Nations' Conference on the Law of the Sea.



indications to the American delegation that, under a Conservative government, it was prepared to extend the rights of Americans to fish in the six-mile Canadian fishing zone beyond the 1970 deadline. In his report to Governors Rosellini and Hatfield and Senator Magnuson of Washington Moore recounted a meeting he had with Dean shortly after the presentation of the Canadian-American proposal. There, the Ambassador offered his assurances that a satisfactory longer term arrangement could be negotiated with the Canadians:

Mr. Dean also informed me that he had previously had an understanding with Canadian Ambassador, Mr. Drew, that his country's people would sit down and work out cooperative fishing agreements with the United States and that, prior to the end of the 10-year phase-out period, Canada would renew agreements to extend such consideration.<sup>51</sup>

The final proposals submitted by Canada and the United States to the UNCLOS II as well as the reaction of the United States Pacific coastal fishing industry to the Geneva failure in 1960 all indicate, with varying degrees of enthusiasm, support for the continued recognition of the principle of North American equity in the national regulatory initiatives towards the salmon fishery. The longstanding habit of salmon trollers and groundfish trawlers to ply their craft where nature, rather than the state, dictated in the offshore waters of both nations was affirmed by the result of the UNCLOS II. Canadian and American perspectives on the global revision of the Law of the Sea sought to sustain the principle of North American equity in any new international order of the oceans.

#### The Surflines Controversy Resurfaces: the Conferences of 1965 and 1966

The 1959 Conference on the Co-ordination of Fisheries Regulations did not mark the end of the controversy over the surflines. Despite the declarations made there by both countries that they reserved the right to adjust their surflines where appropriate the threatened adjustments did not follow. Instead the issue was referred to

<sup>51</sup> Moore, Report on United Nations' Conference on the Law of the Sea, p. 10.

the bilateral Committee on Salmon Problems of Mutual Concern which did not report to the governments until late 1964. This report formed the basis for three meetings held between October 1965 and May 1966. In a number of consultative sessions with Pacific fishery organizations prior to these meetings the Canadian Department of Fisheries was urged to strike an aggressive posture vis a vis the Americans. If the Alaskan surfline was not moved inward to eliminate the interception of Canadian stocks by the Noyes Island fishery Canada should retaliate and push its surfline further out onto the high seas.

Prior to the October 1965 meeting representatives of six fishery organizations met with Deputy Minister Needler and officials of his department and the Fisheries Research Board to discuss the Southeast Alaska fishery and the Pink Salmon Protocol.<sup>52</sup> From the list of bargaining suggestions made at the August consultative session it is clear that unanimity characterized the industry's thoughts about what Canada's goals in the talks should be. The surfines of both countries should be moved inward in order to eliminate intercepting net fisheries. Alaska must agree to some sort of abstention; Canadian fish should be taken as much as possible by Canadians. Differing opinions were voiced about the tactics Canada should use in order to win this concession on the northern surfline. The Union, with the support of the Fisheries Association, the Vessel Owners, and the Native Brotherhood, advocated pushing the Canadian surfline seaward until Alaska agreed to a shoreward revision of its line. The Union calculated that if Robichaud modified Canada's domestic regulations in order to give Canadian fishermen the opportunity to outfish the Americans, as Sinclair had done in the mid-1950s, Alaskan concessions would soon follow. The Pacific Trollers and the Prince Rupert Fishermen's Cooperative doubted the wisdom of a seaward revision of

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<sup>52</sup> The organizations represented were: the Fisheries Association of British Columbia, the United Fishermen and Allied Workers' Union, the Fishing Vessel Owners Association, the Prince Rupert Fishermen's Cooperative Association, the Pacific Trollers Association, and the Native Brotherhood of British Columbia.

the surflines, an opinion reflecting their mutual concern about the effect this regulatory change would have upon northern trollers.<sup>53</sup> Needler apparently required little, if any, coaxing to recognize the possible utility of a threat to alter the Canadian surflines. A summary of the consultations prepared by the Fisheries Association noted:

Dr. Needler apparently intends to serve notice on the U. S. that if they do not adjust their Alaska surflines so as to preclude the interception of B. C. bound salmon, Canada will not be bound by her present surflines and would extend it to the three-mile limit.<sup>54</sup>

At the same time the meeting heard doubts expressed about the persuasiveness of this tactic and the opinion that Japan's obligation to abstain from fishing salmon east of 175° west was a more valuable bargaining currency: "Canada's bargaining position in this matter is not too strong because of the lack of ability to hurt the Americans by counter-action. Canada's best argument is abstention."<sup>55</sup>

At both the Washington conference of 1965 and the Ottawa conference of April 1966 the Canadian fishing industry and government negotiators stood as one - the United States must revise the surflines in Alaska. The principles of equity and effective resource management demanded this action.<sup>56</sup> To this end and to minimize interceptions in the Southeast Alaska/Northern British Columbia area Canada proposed to join Alaska in a shoreward adjustment of the northern surflines and to consider closures at times when salmon bound for the other country were likely to be

<sup>53</sup> Fisheries Association of British Columbia, "Notes of Meeting with Dr. A. W. H. Needler, Deputy Minister of Fisheries, regarding the American fishery off South-East Alaska and the Fraser River Pink Protocol, August 18, 1965," Fisheries Association of British Columbia Collection, Box 26, file: Surflines.

<sup>54</sup> Fisheries Association of British Columbia, "Meeting with Dr. A. W. H. Needler, Deputy Minister of Fisheries, on negotiations with U. S. on Southeast Alaska Fishery, August 18, 1965," Fisheries Association of British Columbia Collection, Box 26, file: Surflines.

<sup>55</sup> *Ibid.* Canada proposed to place its argument on the same footing as that used by the United States and Alaska in their objections to the Japanese mid-Pacific fishery.

<sup>56</sup> Dr. Needler, the Chairman of the Canadian delegation, informed the Ottawa conference that: "We have put forward the principle that it is desirable for good management and for equity to avoid the taking by one country of salmon bound for the other." See "Statement by the Chairman of the Canadian Delegation Tuesday Afternoon, April 5, 1966," United Fishermen and Allied Workers' Union Collection, Volume 189, file: BC - SE Alaska - Salmon Problems of Mutual Concern - 1966.

intercepted.<sup>57</sup> The United States delegation, for its part, could not agree with the Canadian insistence that each country harvest only the salmon bred in its streams. "The United States cannot agree to this position," said Herrington, the head of the United States delegation, "because it overlooks historic fisheries that has for many years fished mixed stocks of salmon (sic)."<sup>58</sup> This intransigence was followed by Canada's modification of the declarations made in 1959 and 1965 that it reserved the right to move these limits seaward. "We feel that to clarify the situation," Needler explained, "we should now state that the limits as now defined, no longer exist as an agreement between these two countries and, indeed, Canada cannot predict how long they might exist in their present form as a domestic regulation."<sup>59</sup>

The sources of the deadlock witnessed at the Ottawa conference were not confined to the American response to the Canadian requests. The United States had demands of its own at this conference. In southern waters the Americans sought adjustments to the Fraser River convention, asking that the West Beach, Discovery Bay, and Bellingham Bay areas be removed from the Convention area. They also reiterated their 1959 demand that the Bonilla-Tatoosh line be shifted eastward. To the latter, Canada argued the unacceptability of boundary changes which would affect the Canadian fishery more than the American one. The proposal to alter the Convention area was not rejected out-of-hand but was instead linked to a Canadian suggestion to adjust the percentage entitlements of the species under IPSFC jurisdiction. Although the Convention area proposal was consistent with the Canadian interest in minimizing the level of interceptions it invited Canada to press for a reduction in the percentage of

<sup>57</sup> This latter proposal had been made by the Fisheries Association. See Fisheries Association of British Columbia, "Memorandum re Southeast Alaska Fishery's Interception of Canadian-Bound Sockeye and Pinks, (sic) August 17, 1965," Fisheries Association of British Columbia Collection, Box 26, file: Surflines.

<sup>58</sup> "Discussions Between U. S. and Canada of Mutual Pacific Coast Salmon Problems, Statement by the Chairman of the U. S. Delegation," United Fishermen and Allied Workers' Union Collection, Volume 189, file: BC - SE Alaska - Salmon Problems of Mutual Concern - 1966.

<sup>59</sup> "Statement by the Chairman of the Canadian Delegation."

Fraser River stocks taken by Americans in the Strait of Juan de Fuca and Puget Sound areas.

The failure of the April conference to satisfy the Canadian demands fuelled the beliefs of industry that domestic restrictions should be relaxed for retaliatory purposes. On April 12th the General Executive Board of the UFAWU drafted a proposal calling for government endorsement of a policy of rapid, wide-scale, escalating retaliation in the event of an anticipated breakdown of the upcoming talks in Seattle.<sup>60</sup> Calling for a relaxed surfline, fewer gear restrictions, and a high seas net fishery beyond Alaskan territorial waters the Union proposed nothing less than an all-out fishing war. The Union requested these regulatory changes on the basis of their short-term tactical value rather than their long-term desirability. An April 19, 1966 letter to all union locals recalled the position taken in the UFAWU brief of February 20th:

Changes in the Canadian surf line would be made solely to put pressure on the Americans. Therefore, the regulation of net fisheries in these expanded areas would have to be designed for that purpose. If, as and when the Americans decide to cease their interception of Canadian salmon then Canada should cancel out the extension of the Canadian surf line.<sup>61</sup>

The Union, although clearly the most militant advocate of retaliation against the United States, was not the only interested party urging national regulatory changes in the wake of the April conference. The British Columbia government applauded the hard line Needler had taken at the Ottawa meetings. Three aspects of the Canadian position in particular were singled out for praise by British Columbia: support of the principle that both countries should harvest salmon as close as possible to their streams of birth, Canadian entitlement to more than fifty percent of the Fraser catch, and, if

<sup>60</sup> UFAWU, G. E. B. motions, April 12, 1966, United Fishermen and Allied Workers' Union Collection, Volume 189, file: BC - SE Alaska - Salmon Problems of Mutual Concern - 1966.

<sup>61</sup> "Confidential letter to all locals re: Canadian-U. S. A. Negotiations from Homer Stevens, Secretary-Treasurer, UFAWU, April 19, 1966," p. 4. United Fishermen and Allied Workers' Union Collection, Volume 189, file: BC - SE Alaska - Salmon Problems of Mutual Concern - 1966.

needed for retaliatory purposes, revision of the surfline. The British Columbia Minister responsible for fisheries suggested that, if the U. S. did not move their surfline, "... then I trust the Canadian Government will actively support Dr. Needler's intention to adjust the British Columbia surfline in a seaward direction."<sup>62</sup>

For its part, the Fisheries Association also favoured retaliation in the waters of the north coast. The Production Committee of the Association proposed the introduction of an "extensive fishery" in a six-mile belt from the Canadian boundary and the use of the seine nets and power skiffs permitted at this time only in the Strait of Juan de Fuca. The Association's opposition to an early fishery on the grounds that it would take only salmon from Canada's Nass River underscores clearly the intent of these measures - increase Canadian interception of Alaskan stocks.<sup>63</sup>

Going into the May 1966 meetings Canada presented a united front to the United States. Industry, labour, and government were all insistent upon revision of the Alaska net fishing boundary. In the event American intransigence continued, the Canadian industry demanded and the government threatened to establish a regulatory framework possessing a retaliatory potential. The United States delegation, for its part, shelved its concerns regarding the boundaries of the IPSFC and agreed to devote the entire round of talks to the search for a resolution of the northern boundary problem. Before assigning the task of redrawing the surfline to a conference committee both sides reiterated their positions on the question. The opening statement from the United States delegation asserted that the original purpose of the net fishing lines encouraged by the IPSFC in 1956 was to prevent the development of new offshore net fisheries. In

<sup>62</sup> "Letter to H. J. Robichaud, Minister of Fisheries from Kiernan," April 22, 1966. University of British Columbia, The Library, Special Collections Division, United Fishermen and Allied Workers' Union Collection

<sup>63</sup> Fisheries Association of British Columbia, "Meeting of Production Committee, April 18, 1966," Fisheries Association of British Columbia Collection, Box 26, file: Surfines. Unlike the Union, the Association was opposed to a fishery beyond the territorial waters of Alaska and the introduction of an offshore fishery on the west coast of Vancouver Island.

line with this reasoning, Herrington agreed, with one significant exception, to the Canadian argument that the state from which salmon originate should harvest the returns. American acceptance of the principle was offered, "provided that appropriate provision is made for historic fisheries."<sup>64</sup> Canada's insistence upon eliminating the Noyes Island fishery through the surfline revision process violated this tenet of the American position, especially when this or any other restriction imposed on the fishermen of Noyes Island did not seem inspired by a genuine concern with salmon conservation:

We agree that limitations or regulations should be imposed when needed for conservation purposes. However, we see no equity in Canada's insistence that an historic fishery of the United States be eliminated for the purpose of increasing the catch by Canadian fishermen at the direct expense of United States fishermen. Such a modification of existing practice obviously is not in the United States interest.<sup>65</sup>

The Canadian reply was as unequivocal: northern surfines must be adjusted by both Canada and the United States in order to minimize interceptions.

The effort of the May conference to redraw the surfline failed to produce a mutually satisfactory revision. Canada acknowledged that the United States proposal promised some inward adjustment of the 1957 line but concluded nonetheless that these modifications were "largely insignificant to fisheries".<sup>66</sup> Since the line was drawn deliberately to preserve the fishery at Noyes Island Canada's rejection was assured. By the end of the conference Canada appeared poised to retaliate. Needler's rather sombre conclusion was that:

"We are forced, Mr. Chairman, to seek an equitable situation in other directions and on behalf of the

<sup>64</sup> "Opening Statement for United States - Canada Meeting - Seattle - May 17, 1966, by U. S. Delegation," p. 2. United Fishermen and Allied Workers' Union Collection, Volume 189, file: BC - SE Alaska - Salmon Problems of Mutual Concern - 1966.

<sup>65</sup> *Ibid.*, p. 2.

<sup>66</sup> "Closing Canadian Statement, May 19, 1966," p. 1. United Fishermen and Allied Workers' Union Collection, Volume 189, file: BC - SE Alaska - Salmon Problems of Mutual Concern - 1966.

Government of Canada I reserve the right to extend Canadian fisheries seaward where appropriate to that end. We would do this with regret as we would much prefer the course we have proposed - - i.e. the inward adjustment of seaward fishing limits. . . ."67

In view of Canada's decision the Americans made a similar declaration. Like Canada, the United States promised to notify neighbouring authorities of any proposed changes.

By the end of the Seattle conference both nations then had increased the likelihood that one important source of the differential regulatory treatment of net and troll gear, the surfline, would be altered. Net fishermen seemed on the verge of joining their hook and line brethren on waters which since 1957 were defined as part of the high seas. In the immediate aftermath of the conference the Canadian industry rallied around the government's conference position and lobbied, if on occasion reluctantly, for regulatory change. Stevens of the UFAWU concluded that Needler's closing statement to the conference meant a policy of intercepting Alaska-bound salmon with nets on the high seas<sup>68</sup> and championed once again the list of policy options the Union first introduced in April.<sup>69</sup> The Union was not alone in demanding tough action. James Sinclair, the former Minister of Fisheries and a past-president of the Fisheries Association, telexed Robichaud on May 26th urging the Minister to follow the example Sinclair set in the 1950s and use the weapon of unrestricted offshore net fishing against the recalcitrant Americans.<sup>70</sup>

More reluctant support for actions of this type were expressed by members of the Fisheries Association. E. L. Harrison, the Association president, supported further talks with the Americans but saw no immediate alternative for Canada other

<sup>67</sup> *Ibid.*, p. 2.

<sup>68</sup> "Canadian action on Salmon Hinted," *Vancouver Sun*, May 21, 1966.

<sup>69</sup> See "Letter to Dr. A. W. H. Needler from Homer Stevens, Secretary Treasurer, UFAWU, May 21, 1966," United Fishermen and Allied Workers' Union Collection, Volume 189, file: BC - SE Alaska - Salmon Problems of Mutual Concern - 1966.

<sup>70</sup> Sinclair's telex read in part, "Now suggest you allow unrestricted Canadian fishing in High seas west of Noyes Island so that if fish are to be caught Canadians will catch them." Telex from James Sinclair to H. J. Robichaud, May 26, 1966, in Fisheries Association of British Columbia Collection, Box 26, file: Surfines.



than the extension of the net fishing limit.<sup>71</sup> This did not imply, however, Association support of the stance taken by its former President; the day after Sinclair's call for bold action Ken Campbell telexed Robichaud, dissociating the Association from Sinclair's remarks.<sup>72</sup> An even more tepid assessment of the wisdom of changing Canada's net fishing boundaries was offered by R. I. Nelson, a vice-president of one of the Association's member firms. Since the principles of the old pact were sound he regretted the probable extension of fishing limits since, in his judgment, this would be contrary to the Canadian interest.<sup>73</sup>

Despite sporadic signs of wavering on the part of some individuals an impressive alliance of capital and labour called for the government to take some punitive action against the Alaskan fishery. Despite this pressure, Robichaud informed Parliament that Canada did not intend to authorize a high seas net fishery.<sup>74</sup> Why did the government ignore the substantial group pressure or the threatening promises its spokesmen had made in conference? Again, as for our explanation of the introduction of the surflines in 1957, the spectre of Japan figures prominently in the calculus of the government's decision. Persistence of the idea that the most dangerous threat emanated from nations across the Pacific remained foremost in the minds of policy makers. This commitment to the principle of Asian exclusion bore primary responsibility for the unfulfilled threats of either nation to allow new net fisheries

<sup>71</sup> "Canadian action on Salmon Hinted," Vancouver Sun, May 21, 1966.

<sup>72</sup> "I have received copy of wire from J. Sinclair to you and wish to advise that it does not reflect the views of the Fisheries Association of B. C." Telex from Ken Campbell, Fisheries Association of British Columbia to H. J. Robichaud, Minister of Fisheries, May 27, 1966. Fisheries Association of British Columbia Collection, Box 26, file: Surflines.

<sup>73</sup> "Canadian action on Salmon Hinted," Vancouver Sun, May 21, 1966.

<sup>74</sup> Canada, House of Commons, Debates, May 20, 1966.

onto the high seas. Canada's determination to legitimize its criticisms of Japanese fishing stiffened Robichaud's resistance to the demands for retaliatory action against Alaskan fishermen. No better proof of Canada's fidelity to this principle exists than Robichaud's reply to Sinclair's counsel. In his response Robichaud explained:

The great difficulty we are facing is the fact that in our negotiations with Japan our only good argument for reserving Canadian-bred salmon for our fishermen is that high seas fishing for salmon makes conservation difficult, if not impossible. For this reason alone it is not desirable to open up high seas net fishing for salmon.<sup>75</sup>

Robichaud was not without outside support for this rationale. A similar, if somewhat more continentalist position, was taken by the editorial board of the Vancouver Sun. Canadian/American salmon fishing problems were particularly unfortunate, lamented the paper, "... at a time when the two countries should be closing ranks to protect their fisheries from the Russian and Japanese fleets."<sup>76</sup> Given the threat to the fishing territory of trollers posed by the relaxation of net fishing boundaries it is not surprising to note the effort by the Pacific Trollers Association (PTA) to link the net fishing issue with the battle against the Japanese. The Canada-United States offshore net agreement had served the national delegations to the INPFC well in their efforts to justify the continued abstention by the Japanese. "Abstention by Canada and the U. S. from fishing their salmon by nets on the high seas," PTA President Stanton went on to claim, "was a strong deterrent against other nations developing a net fishery for salmon off our immediate coast."<sup>77</sup>

The focus of this study on the relationship between Canadian/American fishery regime goals and national regulatory policies has pushed any discussion of the

<sup>75</sup> "Letter to the Hon. James Sinclair from the Hon. H. J. Robichaud, May 30, 1966," Fisheries Association of British Columbia Collection, Box 26, file: Surfines. Robichaud went on to mention the opposition of trollers to a seaward push of the surfines and uncertainty regarding the final outcome of an escalating fish war as other important reasons for the government's position.

<sup>76</sup> "A Fine Kettle of Fish," Vancouver Sun, May 24, 1966.

<sup>77</sup> "Offshore Nets Could Ruin Industry Say Trollers," Western Fisheries, June 1966, p. 46.

Japanese reaction to abstention to the background. The absence of a detailed exposition on Japanese fisheries policy from these pages should not lead the reader to the conclusion that Japan accepted the abstention principle without protest. As Langdon points out, opinion within Japan nearly unanimously condemned abstention since the early 1960s.<sup>78</sup> After June 1963 the convention could be terminated by any one of the contracting parties if one year's notice was served. Japan used this condition of the original agreement to try to secure the elimination of the abstention principle through negotiations with the Canadian and American delegations, a change neither North American government could countenance. Each time the issue was raised by the Japanese the North Americans rejected it. This pattern of negotiating led Kasahara to identify all three parties as satisfied with the existence of the principle:

Japan, too, appears to have carried out negotiations more as a political gesture than a serious attempt to change the status quo.<sup>79</sup>

Several factors would seem to account for the failure of Japan to ever seriously consider abolishing the INPFC arrangements. In the first place, until the movement of the abstention line to 175° east in 1979, Japan was still able to intercept a large number of Bristol Bay salmon.<sup>80</sup> A second important factor was the flexibility of the Japanese fishery and of Japanese consumer tastes. If one species was denied to Japanese

<sup>78</sup> Frank Langdon, The Politics of Canadian-Japanese Economic Relations, 1952-1983, (Vancouver: University of British Columbia Press, 1983), p. 67.

<sup>79</sup> Hiroshi Kasahara, "Japanese Distant-Water Fisheries: A Review," Fishery Bulletin, Vol. 70, no. 2 (April 1972), p. 247.

<sup>80</sup> Ibid., p. 247. Even after this general westward push of the abstention line the Japanese mothership fishery continued to have a significant impact on some Alaskan stocks. See, for example, Richard L. Major, "Yield Loss of Western Alaska Chinook Salmon Resulting from the Large Catch by the Japanese Salmon Mothership Fleet in the North Pacific Ocean and Bering Sea in 1980," North American Journal of Fisheries Management, Vol. 4 (1984).

fishermen either through regulation or overexploitation the fishery would concentrate its efforts on other, underutilized species of fish.<sup>81</sup>

If regime considerations, particularly the concerns over Japan, were a primary influence in the Canadian decision to abide by the status quo may the same conclusion apply to the American decision to leave its surpline intact? The sources used in this study do not enable us to speak with the same certainty regarding the impact of regime norms upon post-conference behaviour by the United States. At the same time, portions of the historical record may be used to illustrate overall American satisfaction with the status quo and to suggest the relevance of regime attitudes to at least part of the explanation for this. The American postscript to the three conferences of 1965-66 was of a much different tone from the Canadian one. Absent from it were the demands for boundary changes made by Canadian fishermen. Although American spokesmen were disappointed over the failure to redraw a mutually satisfactory surpline public commentaries seemed very restrained.<sup>82</sup> This reaction is not surprising since the status quo protected the established Noyes Island fishery. The Conference record shows that American adherence to versions of the surpline which would not disrupt the livelihood of Southeast Alaskan fishermen was justified in terms of its harmony with the regime goal of Asian exclusion pursued by the United States in the INPFC forum. Canadian accusations that the protectionist American attitude regarding Bristol Bay salmon contrasted sharply with the United States stance regarding the Noyes Island and Fraser River fisheries drew the following retort:

<sup>81</sup> Kasahara, "Japanese Distant-Water Fisheries: A Review," pp. 265-267; Langdon, The Politics of Canadian-Japanese Economic Relations, 1952-1983, p. 67; Christy and Scott wrote: "The Japanese, having relatively undifferentiated taste preferences, harvest all kinds of fish off their shores. Where one stock is depleted, another of similar value may take its place." See Christy and Scott, The Common Wealth in Ocean Fisheries, p. 235.

<sup>82</sup> "U. S. and Canada Still Tangled in Net fishing Lines off SE Alaska and BC," Pacific Fisherman, June 1966; "Cool Heads Needed in U. S. - Canadian Fish Controversy," Seattle Times, May 3, 1966.

Such commentators have failed to carefully examine the United States position. This position is that the country from whose streams the salmon originate and which has carried out research and management measures to maintain and increase the sustainable yield, and such other countries which have historically participated in the fishery, together are entitled to participate in the fishery. In Bristol Bay no country except the United States has historically participated in the salmon fishery. Thus it is clear that the United States position is consistent for all these fisheries.<sup>83</sup>

The surpline protecting the fishermen of Noyes Island was defended then for its consistency with the positions taken by the United States regarding the high seas capture of Bristol Bay stocks.

Reluctance to adjust the surpline in Juan de Fuca may also be accounted for in terms of the United States interpretation of the intent of the modification to the structure of the regime represented by the 1957 surpline agreement. "The original purpose of the "lines" as recommended by the International Salmon Commission," Herrington insisted, "was to prevent the development of new offshore net fisheries. That was the understanding of the United States and it provided the basis for what we agreed to do at the 1957 meeting."<sup>84</sup> Inasmuch as an historic offshore net fishery never existed beyond the mouth of Juan de Fuca Strait the advocacy of such a move would erode that portion of the policy defence erected by the United States at Seattle. Regulatory changes allowing a southern high seas fishery would violate a norm of the regime accepted without question by the United States.

The fact that neither country altered its regulatory framework in the wake of the failure to develop a consensus at Seattle may be linked to the reality that the migratory routes of salmon only allowed the parties to consider retaliatory measures which challenged cherished pillars of the regime. In the Canadian north it was not at

<sup>83</sup> "Opening Statement for United States - Canada Meeting - Seattle May 17, 1966 - By U. S. Delegation," p. 5, United Fishermen and Allied Workers' Union Collection, Volume 189, file: BC-SE Alaska.

<sup>84</sup> *Ibid.*, p. 1.

all certain that establishing the surfline on the boundary of the territorial sea would place Canadian fishermen in a position to inflict more damage upon native Alaskan runs of salmon. In the south similar doubts could be expressed about the efficacy of a surfline adjustment as a means to increase American ability to intercept Canadian stocks. Short of operating on the high seas contiguous to the territorial waters of the neighbouring state the migratory routes of salmon limited the retaliatory potential of the changes to harvesting regulations contemplated by some. High seas net operations off each other's territorial waters were inconceivable in light of the proscriptions demanded of the Japanese.

The limited or questionable potential of harvesting as a tactical weapon in this dispute may bear some responsibility for the threat by Senator Magnuson of Washington to have Congress review Canadian salmon exports to the United States.<sup>85</sup> The context of Magnuson's comments is also instructive for what it suggests about American satisfaction with the status quo. Magnuson proposed Congressional action only if Canada disrupted the status quo in the north, not if this situation was affirmed.<sup>86</sup>

The 1965-66 meetings between Canada and the United States illustrate quite well the powerful influence regime norms and understandings had upon the national regulatory policies of both nations. The controversy over the location of surflines threatened to destroy an important foundation of the different regulatory treatment accorded offshore trollers and inshore net fishermen. Without question Canada's refusal to listen to the cries of an outraged fishing industry to open parts of the offshore to net fleets was inspired by its concern over the ramifications this policy change would have for the future of the abstention principle. The United States also incorporated its international policies in its defence of the status quo, citing the compatibility of the Noyes Island fishery with its concerns for the future of the Bristol

<sup>85</sup> Gerry Kidd, "The Fishy Eye," Western Fisheries, April 1966, p. 60.

<sup>86</sup> "Salmon Fuss May Require Congress Aid," Seattle Times, May 4, 1966; "U. S. raises salmon issue again," Vancouver Province, May 6, 1966.

Bay fishery and with its interpretation of the rationale for the modification to the regime represented by the introduction of the surfline principle in 1957. American identification of the surfline as a principle intended to prevent the introduction of new offshore fisheries also limited the likelihood of seaward adjustments being made to this boundary in Washington State.

Finally, the controversy which swirled around the surfline issue is instructive for it illustrates the stability of the regime structure despite indications from Canada and the United States that one central concept of the regime, North American equity, was being refined or reformulated. In these conferences Canada reformulated the concept of equity; this reformulation defined equity in terms of the right of a nation to be the primary harvester of those anadromous stocks which spawned in its territory. Canada downplayed the relevance of historic fisheries, extending the ownership criterion articulated in the Hull doctrine of 1937 to the American-Canadian relationship. Interceptions should be minimized according to the Canadian version of the state-of-origin principle. Equity, as Robichaud made very clear, was being recast in terms of ownership rights:

We were prepared to accept further curtailment of Canadian fisheries in the interests of better management and of equity. We believe that the over-all effect of the Canadian proposal made at these meetings would be advantageous to both countries through better management resulting from Canada and the United States each harvesting their own stocks separately.<sup>87</sup>

The United States was not prepared to accept this narrower definition of equity. The American delegation subscribed to the view it held to animate the North Pacific

<sup>87</sup> Canada, Parliament, House of Commons, Debates, Twenty seventh Parliament, first session, (Ottawa: Queen's Printer, 1966), p. 5357.

Fisheries Convention and the Sockeye and Pink Convention, namely, that historic fisheries must be respected.<sup>88</sup>

#### State Capacity and the Preservation of the Status Quo

One purpose of this investigation is to demonstrate that the regime objectives highlighted here because of their relevance to the explanation of national regulatory preferences as well as the vigour with which they were prosecuted were themselves influenced by the organizational or administrative capacities of the states involved. A case may be made for understanding the nature of the 1965-66 Canadian demands for regime change and the ultimate acceptance by both nations of an indeterminate continuation of the status quo in terms of one aspect of state capacity - the available scientific evidence about the intermingling and health of stocks in the disputed area. Canada based much of its demand for the inward adjustment of surfines upon the results of a 1957 tagging study conducted for the United States Bureau of Commercial Fisheries. This study concluded that perhaps as much as 71% and 68% of the respective 1957 pink and sockeye salmon catches made in Alaska statistical area 121 were fish returning to British Columbia streams. If this study represented accurately the usual interception rate Canada's concern over the Alaskan surfline was certainly legitimate. However, results from a similar tagging project conducted in 1958 indicated much lower percentages of British Columbia fish in the total Alaskan catch from this area. In fact, the 1958 study found that the amount of Alaska-bound salmon caught by Canadian fishermen exceeded the amount of British Columbia-destined salmon taken by Alaskan fishermen.

The radically different conclusions of these studies forced the American and Canadian authors of the joint report on the conservation and management of stocks in

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<sup>88</sup> The United States recommendation made at the April session in Ottawa that West Beach, Discovery Bay, and Bellingham Bay areas should be withdrawn from the jurisdiction of the IPSFC contradicted this view. Perhaps, in part, for this reason the United States dropped these items from the agenda of the May meeting in Seattle.



the north to doubt the general validity of the 1957 or 1958 conclusions. The tagging programs had been designed for other purposes and were unable to offer precise data about the location or the extent of intermingling of Alaska and British Columbia stocks.

The committee concluded:

It should be emphasized that the calculations of Alaska-bound fish taken by Canadian fishermen and of Canada-bound fish taken by United States fishermen applied to 1957 and 1958 only. The results cannot necessarily be applied to other years because of possible year-to-year variations in migration routes, weather conditions affecting efficiency of fishing gear, and in the character of the fisheries. Further study of such factors is recommended.<sup>89</sup>

Although part of the available data suggested some justifications for the Canadian claim, the scientists of both countries doubted the reliability of the figures Canada used in its case for more restrictive fishing and, for that matter, those used by the American delegation in its defence of the status quo. The scientific community simply did not know with a sufficient degree of confidence the extent of intermingling. Without definitive proof then, Canada was handicapped in its argument for boundary revision and found itself drawn back towards the status quo.

The ambiguity over the interception data produced the one agreement to follow this series of meetings - there was a clear need for both nations to design a research program to provide information on the movement and intermingling of southeast Alaska and northern British Columbia salmon stocks. A coordinating committee was charged with the task of exchanging information and preparing proposals for cooperative research.<sup>90</sup> To a certain extent then a professional commitment to the principle of scientific management of the resource contributed to

<sup>89</sup> Anonymous, Report of the Committee on Problems of Mutual Concern Related to the Conservation and Management of Salmon stocks in Southeast Alaska and Northern British Columbia, (September 1964), p. 16.

<sup>90</sup> The members of this coordinating committee were: Walter Kirkness, Commissioner of the Alaska Department of Fish and Game; Harry Reitze, Alaska Regional Director, United States Bureau of Commercial Fisheries; W. R. Hourston, Pacific Area Director, Canadian Department of Fisheries; Peter A. Larkin, Fisheries Research Board of Canada.

the willingness of both countries to forego the unilateral violation of established regime norms. This professional commitment was part of the "gentlemen's agreement" Canadian fisheries personnel identified as responsible for Canada's decision to abide by the status quo.<sup>91</sup>

The decision by both parties to abide by their 1957 agreement, despite chest-pounding declarations from them of their intent to do the contrary, is suggestive then of the subtle relationship I believe exists between state capacities and two other variables: the definition of regime goals vital to understanding national regulatory policy and the vigour with which these goals were pursued. Canada and the United States were two nations that prided themselves on the extent to which their fishery management systems tried to emulate scientific values. No matter how deeply either nation felt about particular policy objectives they both were forced to concede that their claims for change often rested upon the shakiest of foundations. Unsatisfactory data became the standard excuse for maintaining the status quo in the structure of the regime, a status quo with different implications for different types of fishing gear.

#### The Declarations of Twelve Mile Fishing Zones

Further indications of the extent to which state competition within the fishery regime during the 1960s revolved around a North America/Asia axis rest in the decisions by both Canada and the United States to extend jurisdiction over fisheries to a distance of twelve miles from shore. This section traces how these modifications to the legal order drew an important part of their inspiration from the fear of Soviet/Japanese encroachment, adhered to the principle of North American equity, and buttressed national regulatory frameworks which catered more attentively to trollers than to net fishermen.

<sup>91</sup> Mike P. Shepard, Ocean Studies Seminar, University of British Columbia, April 1983; Confidential interview, Department of Fisheries, Vancouver, January 28, 1986.

In 1964 Canada implemented unilaterally the claim it had championed at the first and second sessions of the Law of the Sea Conference, a twelve mile fisheries jurisdiction.<sup>92</sup> Rather than adopt either the UFAWU's proposal for a twelve mile territorial sea or the Fisheries Council of Canada's recommendation of a six mile territorial sea and a six mile fishing zone the government instead reverted to the essence of its 1956 proposal to the United Nations General Assembly - retention of a three mile territorial sea plus an additional nine mile fishing zone. The breadth of these areas would be measured from straight baselines omitted from the legislation pending negotiations with the countries with established fisheries in these newly claimed waters. The straight baselines along Labrador and Newfoundland were not established until 1967; straight baselines were not established along the coasts of Nova Scotia, Vancouver Island, and the Queen Charlotte Islands until 1969.<sup>93</sup>

The Canadian decision to shrug aside the prior reluctance to move unilaterally on this issue seems rooted in two primary factors. The first was the belief of the first Pearson government that international agreement to a twelve mile fishing zone was not attainable in the foreseeable future.<sup>94</sup> The second was the fear of foreign fishing fleets. "It is our opinion," warned the Fisheries Council of Canada, "that unless Canada takes immediate action to protect and conserve the marine fishery resources,

<sup>92</sup> For discussions on the events leading up to the decision to declare a twelve mile fishing jurisdictional zone see: Thomas F. Keating, "Nongovernmental Participation in Foreign Policy Decisions Affecting Canada's Fisheries Relations with the United States," (Dalhousie University: Unpublished PhD Thesis, 1982), Chapter Six; L. H. J. Legault, "Maritime Claims," in Macdonald et al, Canadian Perspectives on International Law and Organization; Gottlieb, "Canadian Diplomatic Initiatives: the Law of the Sea;" Barbara Johnson, "Canadian Foreign Policy and Fisheries," in Johnson and Zacher (ed.), Canadian Foreign Policy and the Law of the Sea.

<sup>93</sup> Legault, "Maritime Claims," p. 383.

<sup>94</sup> See the statement by Hon. Paul Martin, Minister of External Affairs, in Canada, Parliament, House of Commons, Debates, Twenty sixth Parliament, second session, (Ottawa: Queen's Printer, 1964), May 20, 1964, pp. 3408-3412.

they will be rapidly depleted by reason of the incursion of foreign fishing fleets."<sup>95</sup> When the Minister of External Affairs moved that Bill S-17 be read a second time he warned the Parliamentary benches that immediate action was required before newly-christened distant-water fishing nations tried to establish historic fishing rights off the Canadian coast:

So far the vessels of certain important fishing countries have not come within 12 miles of our coasts. It is possible that they might do so soon. By establishing fishing zones now, before they can lay claim to any so-called historic fishing rights, we are excluding them under Canadian law from coming into our 12-mile zone in future, and we are thus protecting the living resources of our adjacent areas.<sup>96</sup>

Jurisdictional extension was perceived then as a defensive strategy to be used against unnamed potential interlopers - among them Japan and the Soviet Union.

To the federal government, the fishermen of the United States did not belong to the foreign fishing fraternity. Along with France the United States was assured of the continued right to fish in their customary fishing areas within the fishing zone. Keating, in his research concerning the decision to proclaim the new fisheries limits, could find no indication that the Liberal government ever intended to restrict American fishing activities in the new zones.<sup>97</sup> The Canadian fishing industry greeted this decision with a lukewarm reaction. The strongest support for the government's position came from the Fisheries Council. Prior to the introduction of the actual legislation the Council advocated negotiations with the French and the Americans "... with the objective of reaching a mutual understanding with regard to their

<sup>95</sup> Fisheries Council of Canada, Brief, p. 1. At the 1964 annual meeting of the FCC the retiring President, Jack Estey, cited the need for extended jurisdiction as being more urgent than ever because of the incursion of the Soviet Union and Japan in the North Pacific and Atlantic Oceans. See "Fisheries Council of Canada Name D. F. Miller President," Pacific Fisherman, May 1964, p. 17.

<sup>96</sup> House of Commons, Debates, Twenty sixth Parliament, second session, (Ottawa: Queen's Printer, 1964), May 20, 1964, pp. 3411.

<sup>97</sup> Keating, "Nongovernmental Participation," p. 269. Johnson takes a different view: "Clearly, the intent of the act was to create an enlarged and exclusive preserve for Canadian fishermen." Johnson, "Canadian Foreign Policy and Fisheries," p. 66.

historic fishing rights in Canada's national waters as enclosed by the proposed base line."<sup>98</sup> Other Pacific industry groups responded more critically. The UFAWU, in its customary strident language, continued its insistence that the twelve mile zone should be an exclusive zone from which all foreign fishermen should be banned.<sup>99</sup> The Pacific Trollers Association did not want permanent recognition granted to any nation's historic fishing rights in Canadian waters.<sup>100</sup> In his speech to Parliament on Bill S-17 the Fisheries Minister made it quite clear that the exemption of American fishermen was not an altruistic act. Robichaud expected reciprocal treatment for Canadian fishermen. He told the House of Commons that the exemption granted to the United States:

... would be contingent on United States recognition of reciprocal treatment to be accorded our fishermen by the United States, should it decide to assume jurisdiction over areas off the United States coasts beyond the three mile limit, where our fishermen would be exploiting stocks of fish.<sup>101</sup>

This recognition did not appear until the United States passed its own twelve mile limit legislation in 1966. In the interregnum between passage of the Territorial Sea and Fishing Zones of Canada Act and the introduction of Bill S. 2218 on June 29, 1965 by Senators Bartlett, Magnuson, and Kennedy, American reaction to the Canadian initiative was mixed. The United States coastal fishing community applauded the legislation, regarding it as the type of policy the American administration should

<sup>98</sup> Fisheries Council of Canada, Brief, p. 6.

<sup>99</sup> The UFAWU denounced vigorously Bill S-17 in May 1964. A Union press release read in part: "This sell-out of Canadian fishing resources and of Canadian fishermen is the most disgraceful giveaway since the Government of Great Britain handed over the Alaskan Panhandle to the Americans . . . . We want it (Bill S-17) amended to define the baseline exactly, not leaving this to a weak-kneed Government to decide by secret Order-in-Council. We want ALL foreign fishermen excluded from the 12 mile belt outside the baseline." "Press Release - Re 12 Mile Limit," May 14, 1964. United Fishermen and Allied Workers' Union Collection, Volume 141, file: 141-12.

<sup>100</sup> Keating, "Nongovernmental Participation," p. 271.

<sup>101</sup> House of Commons, Debates, Twenty sixth Parliament, second session, (Ottawa: Queen's Printer, 1964), May 27, 1964, pp. 3661.

endorse.<sup>102</sup> The Administration, on the other hand, protested the Canadian claims, especially the proposal to use straight baselines for the measurement of the territorial sea and attendant fishing zone.<sup>103</sup>

When the legislation proposing United States adoption of a nine mile fishing zone was introduced in the Senate it received unanimous praise. As in Canada, the sponsors of the legislation and their supporters viewed the fishing zone as an innovation required urgently to prevent foreign fishermen from pillaging their birthright. Throughout the Congressional hearings called to consider S. 2218 and similar measures Canadians were not counted among these illegitimate intruders. The Soviets and the Japanese, not friendly North American cousins, were the targets of the legislation just as they had been singled out by Canada's parliamentarians. Witness after witness before the Senate Subcommittee on Merchant Marine and Fisheries warned that without S. 2218 the Soviets or the Japanese would exploit ruthlessly the resources found adjacent to the United States territorial sea.<sup>104</sup> Throughout the Senate hearings only one witness complained about the activities of Canadians beyond the American three mile limit,<sup>105</sup> while the Senate sponsors and several other witnesses agreed about the importance of granting fishing rights to Canada in the new fishing

<sup>102</sup> Keating, "Nongovernmental Participation," p. 272.

<sup>103</sup> Hollick, U. S. Foreign Policy and the Law of the Sea, p. 172.

<sup>104</sup> For examples see the statements of Dr. Edward W. Harvey, Administrator, Oregon Otter Trawl Commission; Fred Phebus, Fishermen's Marketing Association; Jacob J. Dykstra, President, Point Judith Fishermen's Cooperative Association; Alvin Holdiman; William Holmstrom, State Representative, Oregon; Harold E. Lokken, Fishing Vessel Owners' Association, Seattle; Tom Cook, Business Manager, West Coast Trollers Association; and Alaska Fishermen's Union in United States, Senate, Committee on Commerce, Hearings before the Subcommittee on Merchant Marine and Fisheries on S. 2218, 89th Congress, second session, (Washington: U. S. Government Printing Office, 1966).

<sup>105</sup> See statement of Jacob Ostensen, Port Agent, New Bedford Fishermen's Union, in Senate, Commerce Committee, Hearings on S. 2218.

zone.<sup>106</sup> Encouragement for S. 2218, with its recognition of traditional fishing rights, also came from Governor Evans of Washington and Washington's Director of Fisheries, Thor Tollefson.<sup>107</sup>

The federal administration was somewhat ambivalent towards the twelve mile proposals. The Department of State had no objections to S. 2218; on several occasions, the State Department offered its opinion that there was no question that Canada would qualify as having traditionally fished within any new twelve mile limit.<sup>108</sup> Because this legislation lent credence to restrictions other nations might lay upon United States distant water fishermen the Department of the Interior initially hedged its support for the legislation. The department neither objected to it nor believed the level of foreign fishing off the United States coast warranted extension at that time.<sup>109</sup> When later in the 1965 fishing season the department concluded that Soviet fishing vessels had increased their level of activity off the Pacific coast Interior became more supportive of the twelve mile bill.<sup>110</sup> Whether Interior had any opinion regarding the appropriateness of Canadians operating in the three-twelve mile zone is

<sup>106</sup> See the exchange between Senators Bartlett and Kennedy in Senate, Commerce Committee, Hearings on S. 2218, p. 9 and the statements of Phebus and Dykstra and the letter from Senator Saltonstall in Ibid. Congressmen Meeds of Washington supported the 12 mile zone on the basis that it placed an informal United States/Canada understanding on a more permanent footing. See United States, House of Representatives, Committee on Merchant Marine and Fisheries, Hearings before the Subcommittee on Fisheries and Wildlife Conservation, Miscellaneous Fisheries Legislation, Part I, 89th Congress, second session, (Washington: U. S. Government Printing Office, 1966), p. 302.

<sup>107</sup> See the telegram from Governor Evans and the letter from Fisheries Director Tollefson, in Senate, Commerce Committee, Hearings on S. 2218, pp. 152, 180.

<sup>108</sup> See statement of William Herrington, Special Assistant for Fisheries and Wildlife, Department of State, in House of Representatives, Hearings on Miscellaneous Fisheries Legislation, p. 283; see also United States, House of Representatives, Report to Accompany H. R. 9531, Establishing a Contiguous Fisheries Zone Beyond the Territorial Sea of the United States, 89th Congress, second session.

<sup>109</sup> Statement of Clarence F. Pautzke, Deputy Assistant Secretary for Fish and Wildlife and Parks, United States Department of Interior, in Senate, Commerce Committee, Hearings on S. 2218.

<sup>110</sup> House of Representatives, Report to Accompany H. R. 9531, p. 3.

unclear since the Deputy Assistant Secretary for Fish and Wildlife and Parks offered the Senate Subcommittee the incredible misstatement that:

As a practical matter, it should be noted that only American fishermen now fish in the zone between 3 and 12 miles, except off the coast of Alaska where we know of intermittent Japanese and Soviet fishing.<sup>111</sup>

This observation must have come as quite a surprise to the Canadian trollers and trawlers who operated beyond American territorial waters off the coasts of Alaska and Washington!

By the end of 1966 then, the principles of Asian exclusion and North American equity found themselves expressed in the modifications to national fishery policy concomitant with the extension of fisheries jurisdiction to twelve miles. On the Pacific coast the seaward expansion of national authority affirmed the historic intermingling of salmon and groundfish fisheries. In regards to salmon these legislative initiatives in combination with the continuing fidelity of governments to the earlier agreements regarding the surfline and uniform troll regulations reinforced the location of the troll fishery on a different plane from that occupied by the net fishery.

To this point, we have seen the powerful influence played in the 1960s by the principle of equity upon the policy affecting the salmon fishery. The persuasiveness of this perspective may be measured by more than the willingness of governments to grant a neighbour's fishermen access to waters they now claimed as their own for certain purposes. It is also suggested by the fact that no indication could be uncovered of either governments or their suitors in industry regarding the principle of reciprocity in a strategic light. It never appears to have been considered as a useful lever in the other fisheries controversies of the time such as the conflict over the location of the surfline.

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<sup>111</sup> Senate, Commerce Committee, Hearings on S. 2218, p. 38.



### The 1970 Reciprocal Fishing Privileges Agreement

The replacement of the informal understandings regarding reciprocity promised in the jurisdictional extensions of the mid-1960s with a formal reciprocal fishing rights agreement in February 1970 further institutionalized the liberal regulatory treatment of Canadian and Washingtonian offshore trollers. To the casual observer, this agreement appears as nothing more than a ratification or codification of the practices of the 1950s and 1960s. Yet, that portion of the agreement touching the salmon fishery did not come easily and constituted something of a compromise between divergent national positions. This divergence between the Canadian and American delegations was linked intimately with the evolution of the character of the two trolling fleets. As the importance of the American troll salmon fishery in Canadian offshore waters was waning, Canadian trolling in offshore Washington waters was becoming more significant. Salmon reciprocity, with its attendant regulatory implications, then was not valued equally by the two governments. For this reason, it became a chip in a larger multi-species bargaining game, a game involving halibut and groundfish fisheries on the Pacific coast. It emerged as a concession aimed primarily at satisfying the Canadian industry, a concession offered at least in part for the affirmation of the traditional American access to Canada's groundfish resources.

By the late 1960s the general commitment of Canada and the United States to reciprocity as well as the specific commitment to apply reciprocity to the salmon fishery was changing. Some of this change was noted earlier in the increasing propensity of both nations, but most particularly Canada, to redefine equity in terms of ownership. Salmon, for example, were the property of their spawning nation and exploitation patterns in southeastern Alaska and Juan de Fuca Strait should be adjusted to respect this principle. Despite Canada's use of the state-of-origin principle in its arguments about the status of particular salmon fisheries such as the Noyes Island or the Fraser fisheries, the Canadian position more generally sought a broad

interpretation of reciprocal fishing rights. At the first round of informal talks about reciprocal fishing held in Ottawa in 1968 Canada adopted an expansionist posture. Reciprocity should be established on a very broad footing. This position, allowing for stated exceptions, sanctioned the development of new fisheries by either nation. The United States adopted a much more restrictive view of reciprocity. Only established historic fisheries should be allowed to continue in the respective fishing zones.<sup>112</sup>

At a second round of informal talks held in Washington over a three day period in September 1969 the two delegations opened the talks with faithful renditions of their 1968 overtures. The basic Canadian position, as outlined by the delegation's leader, Needler, supported the broad exercise of reciprocal fishing rights in each country's nine mile contiguous fishing zone. Only lobster and scallops would not qualify for reciprocal fishing. Canada's newly drawn straight baselines would not affect the access of American fishermen to the Canadian zone. This privilege, only offered to the United States, meant that on the Pacific coast the Americans would be allowed to continue their exploitation of the groundfish stocks in Dixon Entrance, Hecate Strait, and Queen Charlotte Sound.

The United States rejected this proposal. Donald McKernan, Assistant Undersecretary of State for Fish and Wildlife, replied to Needler by noting the general disillusionment of American fishermen with foreign fleets. He expressed the view that his government was under considerable pressure to keep all foreign fishermen out of the contiguous zone. At this initial session McKernan made it very clear that the Americans' intent was to preserve their then-current levels of fishing in the Canadian fisheries zone and to prevent Canadians from either establishing new or expanding existing fisheries in the American zone. This perspective reflected their belief that on

<sup>112</sup> "Letter from Jack Davis, Minister of Fisheries, to Gordon O'Brien, Manager, Fisheries Council of Canada, January 9, 1970," Fisheries Association of British Columbia Collection, Box 26, file: Canada-U. S. Negotiations Reciprocal Rights.

the Pacific coast the greatest potential for fisheries development lay off Alaskan shores.

During the second day of talks the United States again stressed the development potential off Alaska but agreed to try to draft a compromise proposal. On the final day of the informal talks the American compromise draft was discussed. The Canadian delegation would go no further than agree to take the draft home and consult with industry about it. In deference to the American desire to have a formal agreement in place before the spring 1970 fishing season Canada replied that it would try to be ready to meet again in January or February.<sup>113</sup>

Not only did the United States generally adopt a more protectionist attitude in the reciprocity discussions but it also proposed to drop salmon from the list of reciprocal fisheries.<sup>114</sup> The decision to drop what had been an historic fishery from the list of candidates for reciprocal fishing seems predicated upon a change in the nature and the fishing pattern of the Pacific Northwest-based trolling fleet. Up until the 1960s very significant percentages of Washington's troll salmon landings were taken off the British Columbia coast. The Washington Department of Fisheries (WDF) calculated that, on a weight basis, 54.9% of the State's 1958 troll chinook catch was made off Canada. In 1959, the department estimated that 52.5% of this catch was taken there. Smaller, but still significant, amounts of the Washington troll coho catch were taken in

<sup>113</sup> This version of events during the second round of talks is taken from the conference summary contained in the document "Confidential: Canada-USA Talks Concerning Reciprocal Fishing Rights," Fisheries Association of British Columbia Collection, Box 26, file: Canada-U. S. Negotiations Reciprocal Rights.

<sup>114</sup> Section 3.a. of the U. S. compromise declared that, "there will be no fishing for salmon withing the contiguous zone by fishermen of the other country." Clams, scallops, crabs, shrimps, and lobsters were also proposed as fisheries where reciprocal privileges would not apply. See "Points for Consideration by Canada and the United States," Fisheries Association of British Columbia Collection, Box 26, file: Canada-U. S. Negotiations Reciprocal Rights.

these same waters.<sup>115</sup> During the 1950s Washington trollers operating off the Canadian coast were playing something of a distributional role, intercepting American and Canadian salmon that otherwise would have been subject to exploitation by Canadian offshore fishing vessels only.

A review of catches made in the 1960s showed a sharp decline in the importance of the fishing grounds off Canada. "Inspection of catch statistics by area caught during the 1960's," concluded Wright and Brix, "showed virtual elimination of the Washington-based troll fishery off British Columbia's coastline."<sup>116</sup> Part of this reduction in effort was attributed to a more intensive Canadian troll fishery off the west coast of Vancouver Island. This development, coupled with the more frequent use of larger, freezer trollers, "... forced Washington's troll fishermen to seek areas elsewhere, mainly off Washington and Oregon."<sup>117</sup> This dramatic change in the fishing pattern was also due to changes in the nature of the Washington fishery. In the first place, the concurrent development of increased coho salmon production from the Columbia River hatchery systems encouraged this southerly shift in effort.<sup>118</sup> Moreover, the character of the fleet was shifting away from the emphasis on the traditional commercial troller to one on "com-sport" boats, smaller vessels licensed for both commercial and sport fishing which were less likely or capable to stay offshore

<sup>115</sup> The WDF estimated these percentages at 37.4% and 22.8% respectively of the total state coho landings in 1958 and 1959. See Sam Wright and Richard Brix, "Geographical Origin, Trends and Timing of Washington's Troll Salmon (*Oncorhynchus*) Catches, 1960-1969," in Pacific Marine Fisheries Commission, Bulletin No. 8, (Portland: Pacific Marine Fisheries Commission, 1972), p. 34.

<sup>116</sup> Ibid., p. 34.

<sup>117</sup> Washington (State), Washington Department of Fisheries, Plan for Washington State Food Fisheries, (June 1970), p. 34. It is curious that the WDF should conclude that Canadian developments forced the United States fleet southward since Canada did not grant preferential treatment to Canadian trollers or discriminate against United States trollers who fished in Canadian waters.

<sup>118</sup> Ibid., p. 34.

for days at a time.<sup>119</sup> Therefore, although salmon trolling off of Vancouver Island qualified as an historic fishery it was clearly becoming more and more marginal to the overall health of the Washington troll fishery.<sup>120</sup>

In December 1969 the federal deputy minister of fisheries convened a meeting of representatives from the Fisheries Association, the UFAWU, the Pacific Trollers Association, the Native Brotherhood of British Columbia, the Prince Rupert Fishermen's Cooperative Association, and the Independent Trawlers Association. The purpose of the meeting was to formulate Canada's position for the February 1970 encounter with the Americans. Needler offered the opinion to the assembled industry members that, according to the terms of the United States 1969 proposal, only the Canadian halibut fishery in the waters of the fishing zone off Alaska would qualify as a traditional fishery. He further informed the Pacific organizations that Atlantic industry representatives supported his suggestion that the Canadian position should be to negotiate reciprocal fishing rights with a view to extending Canadian fisheries except for lobsters and other fully exploited species and, failing to obtain that preference, forbid any type of reciprocal fishing. Regarding salmon, the Fisheries Association recollection of this meeting noted that:

Dr. Needler said that we should treat salmon as complete and separate. The more the Americans complained about Canadian interception of Columbia chinooks and Puget Sound cohoes the better because we can then point to the inequity of the Fraser Treaty.<sup>121</sup>

<sup>119</sup> This shift was noted in 1968 by Sam Wright and recorded in Canada, Fisheries Research Board of Canada, H. Godfrey, Background Information for the Canada-United States Reciprocal Fishing Privileges Agreement: Salmon Catches by Canadian and United States Trollers in the Fishing Zones of Each Other's Country, Confidential Report Series No. 22, (Nanaimo: Pacific Biological Station, 1972), p. 2.

<sup>120</sup> For a discussion of the evolution of the Washington ocean salmon sport fishery up until the mid-1970s see Washington (State), Washington Department of Fisheries, Lloyd A. Phinney and Marc C. Miller, Status of Washington's Ocean Sport Salmon Fishery in the Mid-1970's, Technical Report no. 24, (January 1977).

<sup>121</sup> "Meeting with Dr. A. W. H. Needler, Deputy Minister of Fisheries, at the Department of Fisheries, December 9, 1969," Fisheries Association of British Columbia Collection, Box 26, file: Canada-U. S. Negotiations Reciprocal Rights.

A consensus formed around four points. First, Canada should reject the position that only so-called historic fisheries may continue. Second, Canada should discuss reciprocity as long as it was equitable. Third, failing to reach a formal agreement Canada should leave the next step to the United States despite the danger this tack posed for the halibut fishery. Finally, salmon should be treated in a separate set of discussions.<sup>122</sup>

At the February meeting between the two countries neither government imposed its salmon fishing preferences upon the other. Both nations modified their initial bargaining positions in order to accommodate important elements of the other party's demands. The United States conceded to Canada's position that the status quo should be sustained in the salmon fishery pending a complete and separate investigation that would allow the introduction of other salmon fishery issues, particularly the interception of stocks bound for their nation of birth.<sup>123</sup> Canada meanwhile accepted the American proposal to reduce the scope of reciprocal salmon fishing. The result was a reciprocal fishing zone for salmon between three and twelve miles stretching from Cape Scott at the northern tip of Vancouver Island to Cape Disappointment on the southwest coast of Washington.<sup>124</sup> This zone included the most productive American offshore salmon fishing grounds frequented by Canadians.

The ability of the two governments to agree to this compromise seems in some measure due to the multitude of fisheries subject to the reciprocity discussions. This inclusion of the salmon fishery on a multitudinous agenda departed from the

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<sup>122</sup> Ibid.

<sup>123</sup> Canada, Treaty Series 1970, no. 11, Agreement Between the Government of Canada and the Government of the United States of America on Reciprocal Fishing Privileges in Certain Areas off their Coasts, (Ottawa: Queen's Printer, 1970), Article 7.

<sup>124</sup> Ibid., Article 2.b. It is quite likely that Cape Scott was selected as the northern boundary in order to avoid controversy over either the fisheries closing lines or the Alaska boundary. This inference is made in "Letter from Jack Davis, Minister of Fisheries to Gordon O'Brien, Manager, Fisheries Council of Canada, January 9, 1970," Fisheries Association of British Columbia Collection, Box 26, file: Canada-U. S. Negotiations Reciprocal Rights.

customary Canadian-American salmon negotiating style. This change in style would have particularly important consequences between 1971 and 1976 when, for the United States, acceptance of salmon reciprocity to a considerable degree hinged upon the values derived from other fisheries governed by the reciprocal agreement. The United States had won important concessions from Canada in the 1970 agreement. The list of fisheries excluded from reciprocal fishing was longer than that first proposed by Canada in 1968. It added clams, crabs, shrimp, and herring to the species of lobster and scallops suggested by Canada. Canadians could not, therefore, develop a fishery for the valuable crab resource of the Gulf of Alaska. The United States, by averting the seemingly serious Canadian threat to eliminate all reciprocal fishing, also gained security for the groundfish catches taken by Pacific Northwest fishermen in the waters of Hecate Strait and Queen Charlotte Sound enclosed by the Canadian fisheries closing lines.

The Canada-United States reciprocal fishing rights agreement formalized existing norms of the regime affecting North American salmon fishing and introduced several other features to the overall regime that, prior to 1977, provided added security for offshore trollers against the shortening of seasons then afflicting net fishermen. The already existing norm regarding the territorial limits for net and troll gear was reinforced by the stipulation in Article 2. b. that only trollers could fish for salmon in the fishing zone of the neighbouring country. As well, the 1970 agreement formalized the principle of equal regulatory treatment for trollers, irrespective of nationality, introduced by the 1957/1959 conferences. Article 4 declared in part that:

Regulations established by one country pertaining to the taking or possession of fish within its reciprocal fishing area shall apply equally to the nationals and vessels of both countries operating within such area.<sup>125</sup>

<sup>125</sup> Canada, Treaty Series 1970, no. 11, Agreement Between the Government of Canada and the Government of the United States of America on Reciprocal Fishing Privileges in Certain Areas off their Coasts, (Ottawa: Queen's Printer, 1970), Article 4.

But perhaps most important of all, this agreement contained several procedural provisions which made it virtually impossible to alter quickly the overall regulatory package. Article 4 established sixty days notice of intended regulatory change as a requirement before either party could alter its own national regulations. Moreover, this article stipulated further that if proposed regulatory change called for "major changes in fishing gear" up to one year's notice of the changes had to be given the nationals and vessels of the other country.

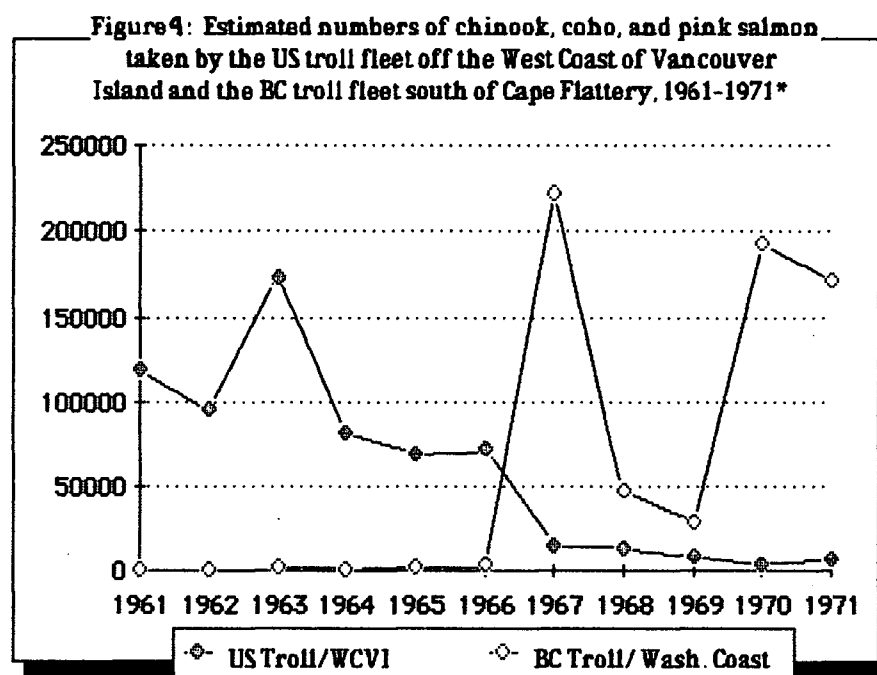
The reinforcement the 1970 agreement offered to the liberal character of the offshore troll fishery seems quite evident. A move by either signatory to restrict the activities of its residents in its own national fishing zone would invite the wrath of its nationals and retaliation by managers in the second jurisdiction. For example, reducing the Canadian trolling season off the west coast of Vancouver Island definitely would harm Canadians operating in those waters and would have the potential to hurt Canadians trolling in Washington's contiguous fishing zone, not to mention the binational consensus developed over nearly two years of intergovernmental negotiation.

Because this was more than just a reciprocal agreement for salmon fishing the stakes involved in making national regulatory changes in any one fishery were potentially much higher. This factor must also be regarded as supportive of the status quo in the management of all reciprocal fisheries, including offshore trolling. Regulatory changes found offensive by one party could undermine the entire agreement damaging not only more than one Pacific fishery but also the reciprocal fisheries on the Atlantic coast.<sup>126</sup> The signing of the reciprocal agreement set the stage for salmon regulation to be considered in the light of the benefits nations derived from other reciprocal fisheries.

<sup>126</sup> As will be discussed in Chapter Six, a conflict over salmon fishing privileges was largely responsible for the cancellation in 1978 of the reciprocal agreement for all fisheries.



The inertia imparted to the status quo in salmon trolling regulations by the 1970 agreement was especially significant for the attitude Canada would adopt towards its offshore trolling fleet and reduced the prospects that Canada would introduce more restrictions upon this segment of the Pacific fleet. The reason for this is simple enough: Canada's troll fleet, taking advantage of federal incentives to modernize its capacity, was expanding aggressively off the west coast. It seemed to be outcompeting American vessels on popular Vancouver Island grounds and was taking more fish off the Washington coast. This development in the overall exploitation pattern is found in



\* Source: Canada, Fisheries Research Board of Canada, H. Godfrey, Background Information for the Canada-United States Reciprocal Fishing Privileges Agreement, pp. 13,19.

Figure 9. Barring the emergence of a severe conservation crisis or an agreement by the United States to reduce its interceptions of Canadian stocks, Canada was unlikely to restrict its own offshore troll fishery. In fact, as Needler implied during the December 1969 meeting with the Pacific fishing industry the status of the offshore troll fishery as an interception fishery had advantages. Canada could try to turn any American

criticisms of this fishery back upon the United States by criticizing the allocation terms of the Sockeye and Pink Salmon Convention.

On the surface, the United States would appear to have been more amenable to toughening the regulation of trollers since the importance of American trolling in Canadian waters was waning. However, the interests of the groundfish fishery would be a powerful deterrent to this course of action. Washington's support for reciprocity was most likely rooted in the favours reciprocal fishing privileges offered the Pacific Northwest's groundfish fleet. Chapters Five and Six will show how this relationship flowered during the 1970s.

### Conclusion

From 1957 to 1970 the regulatory principles typically applied to the Pacific offshore troll fisheries of Canada and the United States drifted further and further into a sphere distinct from that occupied by their inshore net brethren. The nature of the concerns and pressures influencing the national troll regulations became much different from those affecting the restrictions placed upon most of the net fisheries of British Columbia and Washington. Various complementary regime interests helped to place the offshore troll fishery on a different, less-regulated, platform in both jurisdictions than the standing accorded to net fisheries. For most of this period symmetry characterized the interests Canada and the United States pursued in the fishery regime. This symmetry was most pronounced in regards to the principle of Asian exclusion. Throughout this period state competition within the regime was perceived by these two countries as revolving around a North America/Asia axis. North Americans were preoccupied with the threats to the conservation and allocation of Pacific salmon posed by the Japanese, and later the Soviet, fishing fleets. This reasoning was paramount in the decisions to introduce the surfline and extend fisheries jurisdiction. Foreign factory ships and trawlers, not a neighbour's trollers, were targetted as the primary danger to the future vitality of Canadian and American

salmon stocks and the industries dependent upon them. How these targets were attacked had different regulatory implications for different methods of salmon fishing.

The neighbourly character of the Canadian-American relationship during this era was reflected in the considerable extent to which the principle of regulatory parity infused national policies. The uniform salmon trolling regulations of the 1950s and the formalization of reciprocity in the mid-to-late 1960s conformed to the expectations attending this principle. These agreements when combined with the willingness of both governments to adhere, if reluctantly, to the surfline agreements of 1957 further solidified the qualitative difference between national troll and net regulatory perspectives.

The material presented in this chapter does more than sustain the contention that international circumstances and goals influenced national regulatory policy. It also offers some support for the claim that, when weighing the advisability of various regulatory profiles, the state was guided by a set of interests distinct from those articulated by the leading societal constituencies. The controversy over the location of the surfline which marked this period illustrates well this point. Here was a situation where the state, especially perhaps in Canada, defied the demands for regulatory change made by key representatives of capital and labour. The state's defiance of these demands was not based upon a fundamentally different conception of the preferred outcome. Canadian officials, like those of the Pacific fishing industry, sought to increase Canada's harvest of salmon spawned in Canadian territory. The state's refusal to accommodate the industry perspective seems instead to have been predicated upon the value attached by Canadian officials to the existing framework of informal and treaty arrangements. The type of regulatory posture sought by industry threatened to disrupt the international legal setting and unravel the agreements through which the government pursued Canadian policy. Capital and labour were clearly less sensitive than the Canadian state to these procedural or institutional

considerations. For the state, the means used to pursue Canada's foreign fishery policy goals had to conform to the expectations raised by established international norms and conventions.

The regulatory inheritance carried into the 1970s was not, however, identical to the one which greeted policy makers in 1957. Cracks had appeared in the section of the North American consensus regarding equity as early as 1959 and seemed to widen as the decade of the 1960s progressed. The basis on which the principle of parity rested was being reformulated during this period. By 1966 Canada, resentful of American interception of Fraser and Skeena River stocks, proposed to recast the notion of equity into the territorial language used to this point only in reference to the Japanese. Canadian-bred salmon should be caught only by Canadians. The United States tended to remain more faithful to the traditional interpretation of this idea: the state-of-origin principle should be respected except when historic fisheries existed.

This crack in the Canada-United States consensus was not enough to prevent the final brick in the foundation of the liberal offshore regulatory framework, the reciprocal agreement, from being laid. The substantive breadth as well as the procedures of this agreement also injected a certain amount of inertia into the character of offshore trolling regulations, inertia which in subsequent years would foster continuity in this dimension of the overall regime despite the sharpening of differences between Canada and the United States. The international dimension of the respective national troll fisheries and their linkage with fisheries for other species in the substance of the reciprocal agreement erected an institutional impediment to unilateral change untypical of most national net fishery regulations.

**Chapter V: Intensified Canada-United States Competition and the Retention of the Offshore Regulatory Status Quo, 1971-1975**

In the beginning of the 1970s, the winds of the bilateral relationship which had fathered the liberal attitude towards the offshore troll fishery continued to shift, relocating dramatically the axis around which state competition occurred in this corner of the fishery regime. Canada and the United States reinterpreted the salmon fishing rights of the other so as to accentuate their status as competitors. In this reinterpretation their relationship became less like the one between two coastal nations sharing a continental resource and more like that typical of coastal state and distant water fishing nations, a relationship in which coastal states wanted to establish the principle of exclusion<sup>1</sup>. Yet, as the history of fishing seasons indicated, continuity in the regulation of the offshore fishery stretched from 1957 to 1975. Why didn't a widening difference of opinion over the portion of the international fishery regime dealing with salmon affect the very national regulatory patterns I have insisted were born from a particular configuration of principles and state interests?

This chapter will try to account for the regulatory status quo in the offshore despite an intensified clash between state interests and principles. The argument is spread over five sections. The first section focusses upon the bilateral conflict bred by the Canadian-American consensus articulated at the Third Law of the Sea Conference concerning the preferential salmon harvesting rights of coastal states. There we will consider the regulatory futures promised by these complementary positions and note that the combination of geography, salmon migratory routes, and the allocation terms of earlier bilateral agreements influenced the strictness with which the two countries interpreted the state-of-origin principle. From this consideration of multilateral

<sup>1</sup> The observation that the Canadian/American bilateral relationship may be viewed in these terms was drawn to my attention in Edward Miles, Stephen Gibbs, David Fluharty, Christine Dawson, and David Teeter, The Management of Marine Regions: The North Pacific, (Berkeley: University of California Press, 1982), p. 75.

objectives we move to consider in the second, third, and fourth sections the vital role played by bilateral relations in the maintenance of the offshore regulatory pattern. The second section discusses the resurrection in bilateral negotiations of equity as a governing principle of resource allocation and its regulatory implications. The third section notes how, in Canada, an important strategic relationship developed between regulatory policy in the offshore and intergovernmental bargaining over the salmon fishery. In the fourth section we leave the strict consideration of each state's salmon fishing interests to examine instead the relationship between institutions of the regime and state regulatory behaviour during this period. The regime is presented as something of an intervening variable, encapsulating a host of interests in fisheries other than those for salmon. The importance of these interests and the inertia derived from their incorporation into formal intergovernmental agreements influenced national salmon regulatory behaviour despite changing configurations of specific state interests in regards to the salmon fishery. Finally, the chapter concludes with a discussion of the influence of one aspect of state capacity - knowledge - on the regulatory predispositions at work from 1971 to 1976.

#### Conflict From Consensus: Canada, the United States and the Law of the Sea

Indications that Canada and the United States were reinterpreting their salmon fishing relationship in increasingly competitive terms had been dramatized by the gulf separating the initial Canadian and American positions at the informal talks on reciprocal fishing rights in 1968 and 1969. The one aspect of their relationship not affected by these revisions in outlook, however, was their subscription to the principle of Asian exclusion. Throughout the 1970s both Canada and the United States strove to ensure that any new Law of the Sea would guarantee the safety of North American salmon from the fishing activities of nations bordering the North West Pacific. The recurring fear of Asian exploitation was primarily responsible for the initial rejection by the fishing organizations and governments of both countries of proposals to rely

upon clearly established fishing zones, usually defined in terms of the continental shelf margin or 200 miles from shore, as the sole limit of national fisheries jurisdiction. For example, the Association of Pacific Fisheries, an organization representing over ninety percent of the west coast canning industry, warned Congress that a 200 mile limit would place the salmon of Canada and the United States at even greater risk to their arch-rival Japan. Using National Marine and Fisheries Service statistics the Association supported its preference for the protection institutionalized in the North Pacific Convention with the claim that reliance on only a 200 mile limit for salmon conservation would be followed by a nearly seven-fold increase in the Japanese catch of North American salmon, from an average of 3.5 million fish to approximately 23.5 million.<sup>2</sup> "We submit," testified the Association's President, "that to allow such a catch off our shores would decimate North American salmon runs and complete chaos would result to both American and Canadian salmon industries."<sup>3</sup>

Canadian processors and fishermen held similar views. Like their American counterparts they preferred to graft a species sensitive approach to the extended fishery zone proposals. Accordingly, anadromous species such as salmon generally would be exploited only by their state-of-origin. The UFAWU, while recognizing that a 200 mile limit probably would resolve the problems caused for B. C. trollers by Soviet trawlers, did not believe that this particular limit offered sufficient protection to

<sup>2</sup> Statement of J. S. Gage, President, Association of Pacific Fisheries, in United States, House of Representatives, Committee on Merchant Marine and Fisheries, Subcommittee on Fisheries and Wildlife Conservation, Hearings - Commercial Fisheries, (Washington: U. S. Government Printing Office, 1971), p. 402. George Johansen of the Alaska Fishermen's Union took a somewhat different position. His union favoured the 200 mile limit because he did not believe that the declaration of a conservation zone abrogated the North Pacific Convention. Moreover, he doubted that Japan would abrogate the treaty in order to get more salmon because of the Japanese interest in groundfish stocks that would fall inside the new zone. *Ibid.*, pp. 414-419.

<sup>3</sup> *Ibid.*, p. 402. This set of hearings, held in Seattle, was dominated by complaints against the operations of Soviet and Japanese vessels off the west coast. These fleets allegedly were decimating groundfish stocks, taking significant incidental catches of salmon, and threatening the safety of North American trollers and trawlers by reckless vessel handling. No complaints were raised about the operations of Canadian trollers off the Washington coast.

Canadian salmon stocks.<sup>4</sup> Adequate protection depended upon abolishing all high seas salmon fishing or extending the abstention principle to any nation conducting a distant water fishery in the North Pacific.<sup>5</sup> Canadian processors also sought greater protection for salmon than was promised by a 200 mile limit. The Fisheries Council of Canada urged the government to push the Law of the Sea Conference for resolutions recognizing salmon as the property of the country of origin and requiring other countries to abstain from fishing them.<sup>6</sup> Asian exclusion remained therefore an important shared objective of Canada and the United States in their approach to the international fishery regime.

Somewhat ironically, it was Canadian/American agreement on this general principle of the rights of the coastal state which was the source of the complications in their bilateral relationship. Geography, salmon migratory paths, and the allocation terms of earlier agreements combined to lead the two countries towards significantly different refinements of the state-of-origin principle. In preparations for the Third Law of the Sea Conference both nations pushed vigorously for conference participants to agree to the special interest of the coastal state in the salmon fishery. Of the two countries, Canada advanced the most exclusive interpretation of this position. J. A. Beesley, the Canadian representative to the Seabed Committee, argued that since the sustenance of salmon imposed significant burdens upon the host state, in terms of both

<sup>4</sup> The difficulties caused by the Soviets for the west coast trollers are outlined in the following articles: "Trudeau May Discuss Fishboat Incidents During Moscow Visit," Western Fisheries, Vol. 80, no. 4, (July 1970), p. 10; "Russian Fleet on West Coast Jumps in July," Western Fisheries, Vol. 80, no. 4, (July 1970), p. 10; "Soviet-Canadian Meeting in Vancouver Soon," Western Fisheries, Vol. 80, no. 5, (August 1970), p. 12; "950 Fishboats in Victoria 'Sail-In' Against Russians," Western Fisheries, Vol. 80, no. 6, (September 1970), p. 10; "Troller Trades Whiskey for Glimpse of Salmon," Western Fisheries, Vol. 80, no. 6, (September 1970), p. 15; "Big Bank Conflicts Ended by New Pact," Western Fisheries, Vol. 81, no. 1, (October 1970), p. 10; "Trollers Approve New W. C. Pact With Soviets," Western Fisheries, Vol. 81, no. 6, (March 1971), p. 16.

<sup>5</sup> This position was articulated in "Letter from J. H. Nichol, Secretary-Treasurer, UFAWU to Mr. Heibert, Secretary-Treasurer, Area J - Strathcona-Comox Region," August 11, 1970 in United Fishermen and Allied Workers' Union Collection, Box 334, folder no. 334-15.

<sup>6</sup> "Salmon Should Belong to Country of Origin," Western Fisheries, Vol. 82, no. 2, (May 1971, p. 54.



the finances needed for spawning enhancement and the sacrifice of other potentially valuable river uses, "... we in Canada believe that coastal states should have the sole right to harvest salmon bred in their own rivers."<sup>7</sup> This was not a controversial view within Beesley's domestic constituency. The Fisheries Association had advocated consistently this position.<sup>8</sup> The West Coast Salmon Fleet Development Committee, an ad hoc advisory body with representatives from all major British Columbia organizations, recommended that Canada pursue "... the principle that the country of origin of anadromous fish be granted special and exclusive rights to manage and harvest such fish."<sup>9</sup> The absence from these policy statements of qualifications to the exclusive rights of the coastal state was due to the combination of geography, salmon migratory routes, and the obligations of the Fraser salmon agreements. Only one Canadian salmon fishery, the offshore troll fishery, was primarily an interception fishery while important Canadian Fraser and Skeena River stocks were arguably the mainstays of American fisheries in Puget Sound and southeastern Alaska.

In a position paper delivered to the Seabed Committee in 1972 Ambassador McKernan of the United States also underlined the need for coastal state control of fishery resources. Yet, in regards to salmon the position was somewhat ambivalent. On the one hand, salmon should be controlled to the extreme of their migration by the nation in which they spawned. On the other hand, the American position reportedly

<sup>7</sup> "Appendix A: Statement by Mr. J. A. Beesley, Representative of Canada to the United Nations Seabed Committee (Preparatory Committee for the Third Law of the Sea Conference), Sub-Committee II, New York, March 15, 1972," in Canada, Parliament, House of Commons, Standing Committee of Fisheries and Forestry, Minutes of Proceedings and Evidence, Twenty-Eighth Parliament, Fourth Session, Issue no. 5, April 20, 1972, p. 29.

<sup>8</sup> For examples of this see "Letter from E. L. Harrison, Executive Vice President, B. C. Packers Ltd. to Dr. J. R. Weir, Chairman, Fisheries Research Board of Canada," December 16, 1971 in Fisheries Association of British Columbia Collection, Box 26, file: Department of the Environment (Government-Industry Fisheries Seminars) 1971 Montebello; "Hecate Strait Should be Declared "Internal Waters", " Western Fisheries, Vol. 84, no. 2, (May 1972), p. 46.

<sup>9</sup> West Coast Salmon Fleet Development Committee, Report, (April 1973), p. 15. The UFAWU dissented from many of the committee's recommendations in its separate minority report. However, it agreed with this particular viewpoint of the committee.

stated that "... coastal and anadromous resources which are located in or migrate through waters adjacent to more than one coastal state shall be regulated by agreement among such states."<sup>10</sup>

Given Hollick's judgment that after 1971 American fisheries policy was formulated directly by the fishing industry it is not surprising to note the consonance between west coast industry opinion and the United States Law of the Sea position presented to the Seabed Committee.<sup>11</sup> At the Congressional hearings in Seattle in the spring of 1971 the processors advocated coastal state ownership of salmon with the proviso that historic interception fisheries such as those of the Fraser River should not be affected.<sup>12</sup> In June 1971 a conference sponsored by the National Federation of Fishermen passed a resolution declaring that:

Anadromous fish shall be the property of the coastal nation of origin. No nation shall harvest anadromous species of fish without express consent and approval of country or origin (sic). Where anadromous fish is habitating and is harvestable in territorial waters of a country other than the country of origin, it shall be mandatory upon the nations involved to work out harvesting rules consistent with conservation with due regard to the rights of each nation to its proper share of the allowable catch.<sup>13</sup>

Subsequently, the National Federation of Fishermen, the West Coast Troller's Association, and the Association of Pacific Fisheries all supported the American

<sup>10</sup> Richard H. Philips, "U. N. Conference Difficulties Aired at West Coast Forum," National Fisherman, Vol. 53, no. 9, (January 1973), p. 12-C. See also "New American Position Closely Parallel to Canadian, Australian," Western Fisheries, Vol. 85, no. 1, (October 1972), p.20; "U. S. Against Stop-Gap Salmon Agreements," Western Fisheries, Vol. 85, no. 2, (November 1972), p. 47; Ann L. Hollick, U. S. Foreign Policy and the Law of the Sea, (Princeton: Princeton University Press, 1981), pp. 266-271.

<sup>11</sup> Hollick, U. S. Foreign Policy and the Law of the Sea, p. 241.

<sup>12</sup> Statement of J. S. Gage, President, Association of Pacific Fisheries, Hearings - Commercial Fisheries, p. 403. The historic sharing of salmon by Canada and the United States should also have been preserved according to the testimony of the AFU's Johansen and Frank E. Caldwell, the Secretary-Treasurer of the Northwest Trollers Association. See Ibid., pp. 414-415, 490.

<sup>13</sup> "U. S. Fishermen Adopt Strong Shelf Proposal," Western Fisheries, Vo. 82, no. 5, (August 1971), p. 25.

fisheries proposals.<sup>14</sup> The appearance of some form of the historic fisheries principle in the foregoing was due undoubtedly to the substantial economic benefit Washington fishermen derived from the Fraser River Treaty.

The positions drafted by the United States and Canada in anticipation of the Third Law of the Sea Conference promised starkly different regulatory futures for the conduct of the Pacific salmon fishery in the waters of Washington and British Columbia. If the state-of-origin principle came to govern Canadian-American salmon fishery relations, established fishing practices would be forced to change. The qualifications added to the American state-of-origin principle in order to safeguard established American interception fisheries pledged minimal disruption to American fishing habits. No American interception fishery failed to qualify as an historic fishery.<sup>15</sup> The strict application of the American interpretation would not tolerate, however, all Canadian fishing behaviour. The novelty of the Canadian troll effort off the coast of Washington raised serious doubts about whether it would qualify for the exemption the Americans were more than willing to grant historic fisheries. If the American view of the rights accruing to the state-of-origin prevailed, Canadians would be under pressure to withdraw from the Washington fishery. Their efforts off the west coast of Canada would be curtailed less easily since this harvest clearly qualified as an historic fishery.

The Canadian version of this principle demanded dramatic American concessions on their exploitation of Fraser and Skeena River salmon stocks; the American interception of these stocks would have to be curtailed sharply. Speaking to the annual convention of the UFAWU in 1971 Jack Davis, the Minister of Fisheries and Forestry, exclaimed that the Sockeye and Pink Salmon Convention with the United

<sup>14</sup> "U. S. Against Stop-Gap Salmon Agreements," Western Fisheries, Vol. 85, no. 2, (November 1972), p. 47.

<sup>15</sup> During salmon interception talks with Canada held in January 1972 McKernan stated that every American salmon fishery qualified as a long-established fishery.

States represented a "strait jacket" for Canada; Canadians must "... insist upon a much larger Canadian share of the total catch."<sup>16</sup> This attitude was certainly not foreign to the outlook of the British Columbia fishing industry where the only difference of opinion concerned the percentage, if any, of the Fraser run Canada should allow the United States to take. The West Coast Salmon Fleet Development Committee recommended total exclusion of the Americans from the future development of the Fraser fishery:

With respect to the Fraser River and the International Pacific Salmon Fisheries Convention, and its Pink Salmon protocol, *the Committee recommends that the Government of Canada take what action is necessary to secure the sole right to develop the sockeye and pink salmon stocks of the Fraser River and to manage and harvest the increases in these runs.*<sup>17</sup>

The Union's attitude on the Fraser was predictably tougher: Fraser salmon should be fished by Canadians only.<sup>18</sup> All of these scenarios promised additional restrictions upon the American Puget Sound fishery.

The Canadian version of the state-of-origin principle also promised serious disruptions in the offshore troll fishery. Davis expressed this opinion when he announced the formation of the advisory committee on fleet development. Davis warned vessel owners that one of the byproducts of a new Law of the Sea could be a ban

<sup>16</sup> "Canadians Want "Much Larger Share" of Fraser Catch," Western Fisheries, Vol. 81, no. 6, (March 1971), p. 14.

<sup>17</sup> West Coast Salmon Fleet Development Committee, Report, (April 1973), pp. 15-16. Emphasis in original.

<sup>18</sup> United Fishermen and Allied Workers' Union, "Minority Report to the West Coast Salmon Fleet Development Committee," in Ibid., p. 26. Among the other Fraser proposals the Prince Rupert Fishermen's Cooperative Association proposed a two-thirds/one-third split; the Fishing Vessel Owners' Association suggested a 60/40 division; and the Fisheries Association proposed a more complicated formula whereby the maximum United States catch would be 50% of the total catch up to a maximum which would be their average catch over a particular period. See "Letter from Carl Giske, Prince Rupert Fishermen's Cooperative Association, to Mike Shepard, Fisheries Research Board of Canada, August 31, 1970"; "Letter from Frank Buble, Secretary, Fishing Vessel Owners' Association, to Mike Shepard, Fisheries Research Board of Canada, September 9, 1970"; "Letter from K. M. Campbell, Manager, Fisheries Association of British Columbia, to Dr. M. P. Shepard, Fisheries Research Board of Canada, August 25, 1970" in Fisheries Association of British Columbia Collection, Box 26, file: Canada-U. S. Negotiations (Salmon Working Party).

on all salmon fishing on the high seas. "The Law of the Sea Conference in Geneva next year could limit our movement seaward," Davis observed, "and have important consequences to the troll fishery."<sup>19</sup> Outrage and horror greeted this announcement in the offshore troll community. A leading member of the Pacific Trollers Association described the suggested absolute ban of salmon fishing on the high seas as "ludicrous";<sup>20</sup> other trollers merely wondered if the government's Law of the Sea policy demanded their eviction from their traditional fishing grounds off Canada's west coast.<sup>21</sup>

Throughout 1972 the debate raged in the pages of Western Fisheries about the regulatory impacts upon trollers of Canada's pursuit of the state-of-origin principle in the United Nations. Trollers and their supporters warned that the Canadian position promised to destroy the trolling industry.<sup>22</sup> Others, especially government officials, tried to allay these fears. On several occasions Davis suggested that his reference to the high seas ban on salmon fishing referred to the definition of the high seas that would exist under his preferred regime. High seas here did not refer to the waters beyond the twelve mile territorial limit but instead to waters beyond the limits of Canadian fisheries control, be they found at 200 miles or the margin of the continental shelf.<sup>23</sup>

Despite these reassurances from government leaders there is little doubt that Canada's lax regulatory attitude towards the offshore troller violated the principles

<sup>19</sup> "Phase IV Hot Potato Tossed to Industry," Western Fisheries, Vol. 83, no. 5, (February 1972), p. 22.

<sup>20</sup> "Davis Good Talker, Poor Legislator," Western Fisheries, Vol. 83, no. 6, (March 1972), p. 36. This condemnation by Alan Meadows was applauded by Gerry Kidd, the editor of Western Fisheries. See "The Fishy Eye," Western Fisheries, Vol. 83, no. 6, (March 1972), p. 54.

<sup>21</sup> "Where Are We Going?", Western Fisheries, Vol. 83, no. 3, (December 1971), p. 37.

<sup>22</sup> Henry Frew, "Alberni Trollers Fight Law of Sea Proposals," Western Fisheries, Vol. 84, no. 2, (May 1972), p. 54; Gerry Kidd, "The Fishy Eye," Western Fisheries, Vol. 84, no. 2, (May 1972), p. 82.

<sup>23</sup> "Meadow's (sic) Attack 'Full of Inaccuracies'," Western Fisheries, Vol. 84, no. 2, (May 1972), p. 64; "The Fishy Eye," Western Fisheries, Vol. 84, no. 4, (July 1972), p. 42. See also Gerry Kidd, "The Crunch Has Come in Salmon Interception Talks," Western Fisheries, Vol. 84, no. 1, (April 1972), p. 11.

of salmon fishery management prescribed by Beesley in his March 1972 statement to the Seabed Committee. The west coast troll fishery for chinook and coho flagrantly violated the state-of-origin principle trumpeted by Canada before the United Nations. A very significant percentage of the west coast of Vancouver Island catch of these species, let alone that made off the Washington coast, was American salmon. The United States calculated that, in the years 1968 and 1969, Washington-Oregon coho made up seventy and fifty-two percent of the catch of Canadian trollers operating in Juan de Fuca Strait and off the west coast of Vancouver Island.<sup>24</sup> Americans contended that the contribution of Washington-Oregon chinooks to the catches of Canadian trollers was even higher. Eighty-five percent of the chinook troll catch made in these two areas was estimated to be salmon from these two states.<sup>25</sup> Canadian estimates, while never this high, nevertheless confirmed the general point that a substantial portion of the livelihood of west coast trollers was the product of Pacific Northwest streams and hatcheries.<sup>26</sup>

#### Bilateral Relations I: The Regulatory Implications of Resurrecting the Equity Principle

Despite the logical inconsistency a scarcely regulated offshore fishery presented for Canada's avowed international intentions the offshore troll fishery remained untouched. Why? Should continuity in the regulation of Canada's offshore be attributed to an interest group logic stressing the lobbying efforts made by trollers in 1971 and 1972? Would a similar logic be sufficient to account for the continuation of the same regulatory predispositions in Washington State? While it may be possible to

<sup>24</sup> Anonymous, Estimates of Interceptions of Salmon of United States and Canadian Origins by Fisheries of the Other Country 1967 to 1970. (A report prepared by the United States Section for United States-Canada consultations on salmon problems of mutual concern). (May 1971), p. 9.

<sup>25</sup> *Ibid.*, p. 17.

<sup>26</sup> Canada's Salmon Negotiation Working Party, created to develop proposals for discussion with the United States in 1971, claimed there was little doubt that an average of two thirds of the catch of Canadian trollers operating off the west coast of Vancouver Island and Washington were American fish. See Anonymous, "Draft. Report of the Pacific Salmon Negotiation Working Party, 1970-1971," (Vancouver: March 1971), p. 12.

construct and defend such an argument to do so would ignore a key feature of the period relating to the interdependence of the Canadian-American fishery, the competitive allocational struggle. Moreover, the bald assertion that input from this particular constituency automatically produced the indicated result will not help us at all to understand the contextual factors affecting group success. Why did some specific groups, rather than others, receive regulatory favours from the state? Continuity in offshore regulation may be explained in terms of developments in bilateral relations between Canada and the United States. In this section the focus is upon the regulatory implications flowing from an event which contradicted somewhat the tenor of positions advocated in the Law of the Sea forum, namely, the resurrection of equity as a principle in the allocation of the resource. Both Canada and the United States perceived the troll fishery as a vital piece of their bilateral allocational puzzle. When the principle of equity was resurrected in June 1971 both countries judged an unhindered troll fishery as a steppingstone towards realizing equity.

As the last chapter pointed out, Canada distanced itself from equity in the mid-1960s, developing in its place an exclusionist perspective. This outlook was a driving motivation for Canada's desire to see the reciprocal agreement signed in 1970 recognize that salmon fishing issues should be treated separately from the others outlined in the agreement.<sup>27</sup> Hence, the final article of the 1970 agreement promised a meeting between the two countries within one year to discuss all matters of mutual concern in the Pacific salmon fishery.<sup>28</sup>

Six days after the conclusion of the 1970 agreement the Canadian deputy minister of fisheries huddled with the west coast advisory group. The product of this

<sup>27</sup> "Meeting with Dr. A. W. H. Needler, Deputy Minister of Fisheries, at the Department of Fisheries, December 9, 1969," Fisheries Association of British Columbia Collection, Box 26, folder: Canada-U.S. Negotiations Reciprocal Rights.

<sup>28</sup> Canada, Agreement Between the Government of Canada and the Government of the United States of America on Reciprocal Fishing Privileges in Certain Areas off Their Coasts, (April 24, 1970), Article 7.

meeting was the Pacific Salmon Negotiation Working Party, charged with the task of developing proposals for a Canadian position for those future talks. Led by Mike Shepard of the Fisheries Research Board of Canada this working party drew representatives from the Fisheries Research Board, the Canadian Fisheries Service, the Commercial Fisheries Branch of the British Columbia government, the Fisheries Association of B. C., the Pacific Trollers Association, the Fishing Vessel Owners' Association of B. C., the Prince Rupert Fishermens' Cooperative Association, and the Native Brotherhood of B. C. Between May 1970 and February 1971 the party met five times and succeeded in drafting principles satisfactory to all its members.

In the draft report of the party's deliberations it is quite clear that the Canadian government and its advisors developed a set of short term objectives supplementary to the longer range objectives of Canadian policy. The long range view corresponded to the strict interpretation of the state-of-origin principle articulated at the Law of the Sea Conference. Looking several decades into the future, the Working Party saw a salmon fishery where the imbalance in interceptions between Canada and the United States was even more favourable to the Americans than it was, according to the working party's calculations, in 1970. The prospects for greater Canadian salmon production from the Fraser and Skeena Rivers and Georgia Strait hatcheries when combined with the party's prediction of a levelling off or decline in the production from Washington and Oregon implied that Canada would be worse off than ever. "Under the circumstances," argued the working party, "Canada will gain by pursuing policies which encourage harvest by each country of salmon bred in its own rivers."<sup>29</sup>

Canada had no delusions, however, about the prospects for an enthusiastic reception by the Americans of this proposal. Accordingly, a shorter term perspective was adopted, one which resurrected a vestige of the equity principle. American

<sup>29</sup> Anonymous, "Draft. Report of the Pacific Salmon Negotiation Working Party, 1970-1971," p. 22. Fisheries Association of British Columbia Collection, Box 26, folder: Canada-U.S. Negotiations (Salmon Working Party).



reluctance to remove the interception fisheries which offended the special interest of the coastal state in its anadromous resources should be met with the demand that "... where it is not feasible to eliminate such fisheries, there should be an equitable balance in the value of salmon intercepted by the two countries."<sup>30</sup> Canada's approach to the United States pushed both of these perspectives, striving to eliminate interceptions while insisting upon equity in the overall balance of interceptions. To the Salmon Working Party, these goals could only be attained by retaining the regulatory status quo in the offshore troll fishery. With an equitable balance of interceptions pronounced as one objective of any agreement, the working party pointed out that Canada's average annual deficit in interceptions, calculated over the 1958-1969 period, was \$3.1 million.<sup>31</sup> Against this background, the idea of more intensively regulating Canada's premier interception fishery was preposterous.

It is important to note the strength of the consensus among the members of the working party on this particular point. Industry representatives were generally enthusiastic supporters of an aggressive, possibly even expansionist, Canadian offshore troll presence. In a letter to the convenor of the advisory group, the Fisheries Association argued that, in the interest of equity, the trollers should not be regulated any further; in fact, the Fisheries Association wanted the government to push the United States to reopen the nine mile contiguous fishing zone off Alaska to Canadian trollers.<sup>32</sup> The UFAWU also believed that the 1970 exclusion of Canadian trollers from the United States contiguous zone off Alaska, Oregon, and California was inequitable.<sup>33</sup> The scope of solidarity with the maintenance of a liberally-regulated offshore troll

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<sup>30</sup> *Ibid.*, p. 24.

<sup>31</sup> *Ibid.*, p. 34.

<sup>32</sup> "Letter from K. M. Campbell, Manager, to Dr. M. P. Shepard, Fisheries Research Board of Canada, Ottawa, August 25, 1970", Fisheries Association of British Columbia Collection, Box 26, folder: Canada-U.S. Negotiations (Salmon Working Party).

<sup>33</sup> "Memorandum from Shepard to Participants, Salmon Negotiations Working Party, June 25, 1970: Summary of June 10th meeting", Fisheries Association of British Columbia Collection, Box 26, folder: Canada-U.S. Negotiations (Salmon Working Party).

fishery is illustrated in the conclusions of the working party. In these conclusions, the principle of equity in interceptions was used to justify the continuance of Canada's troll fishery, despite the party's acknowledgment that this fishery contradicted the strict application of the state-of-origin principle favoured by Canada. With a policy of equalizing interceptions the working party concluded that,

... unless the United States makes concessions equivalent to giving up their fisheries on Fraser salmon, maintenance of an active Canadian troll fishery is an essential element if the present inequitable balance in interceptions is not to worsen.<sup>34</sup>

The fact that the section of the report from which this quotation is drawn was "agreed to by all Working Party members participating in the meetings" underlines the breadth of the Canadian consensus on the importance of the troll fishery to reaching an equitable balance in interceptions.<sup>35</sup>

Paradoxically perhaps, equity also appealed to the Americans. This allocational consideration figured prominently in their negotiating proposals and management policies. By using a different time period and a different method of calculating the value of interceptions the United States was able to plead injury at the hands of Canadian fishermen. The United States disputed the Canadian claim that the balance of interceptions favoured American fishermen. In response to Canada's contention that its fishermen suffered from an inequitable balance of interceptions the United States countered that, between 1967 and 1970, the value of all Canadian salmon intercepted by United States gear was approximately \$1.1 million less than the

<sup>34</sup> Anonymous, "Draft Report of the Pacific Salmon Negotiating Working Party, 1970-1971," p. 24.

<sup>35</sup> Later in the report the working party wrestled with the issue of what levers could be used to secure American acceptance of Canadian terms. Because of the differential fleet impact inherent in the wide variety of measures considered by the party there was not unanimous support or agreement within the party about the appropriateness of the various possibilities. See Anonymous, "Draft. Report of the Pacific Salmon Negotiation Working Party, 1970-1971," p.37.

value of American salmon taken in Canadian fisheries.<sup>36</sup> This overall estimate was composed of two sharply different interception patterns. In the north the value of the interceptions made by Alaskans exceeded that of Canadians by nearly \$1.4 million. But, in the south, the value of Canadian interceptions was approximately \$2.5 million greater than the value of Canadian salmon caught by American vessels. This southern imbalance was produced by the greater dollar-per-pound value of the coho and chinook targetted by the Canadian troll fleet relative to the prices of the sockeye and pink stocks which were the mainstay of the United States interception fishery.

This shared sense of being the injured party in the exploitation of the salmon resource facilitated the ultimate agreement in June 1971 about the principles which should guide Canada-United States discussions on salmon problems of mutual concern. Talks held in April 1971 made little progress because of the radically different conclusions regarding the status of interceptions the two delegations drew from their different data sets. Biologists from the two countries disagreed over the meaning of their findings. This conflict produced the decision to create a new Technical Committee on Salmon Interceptions, a committee charged with the task of trying to resolve interpretive differences and reduce the distance between Canadian and American statistical estimates.<sup>37</sup>

When the two negotiating teams reconvened in June 1971 under the stewardship of the long-standing protagonists, Donald McKernan and A. W. H. Needler, the shared sense of injury was translated into a mutually satisfactory set of negotiating principles. The Seattle meeting opened with by then familiar refrains. Canada proposed that each nation fish its own salmon as much as possible, minimize

<sup>36</sup> Anonymous, Estimates of Interceptions of Salmon of United States and Canadian Origins by Fisheries of the Other Country 1967 to 1970 (A report prepared by the United States section for United States-Canada consultations on salmon problems of mutual concern), (May 1971), p. 21.

<sup>37</sup> "U. S., Canada Set Up New Study on Salmon Catches," Western Fisheries, Vol. 82, no. 1, (April 1971), p. 9.

interceptions, and balance the value of interceptions where they were unavoidable. To Needler, some mention of minimizing interceptions was warranted given the advice Canada and the United States had tendered in preparatory discussions for the Law of the Sea Conference. McKernan replied by reiterating American policy. Generally, the state-of-origin should take the salmon from its rivers, providing of course for the continuation of any historic fisheries by other interested parties.

Any disagreement bound to result from these views was quelled by the recognition that equity offered a potential basis for agreement. McKernan regarded equity in the catch of the two countries as a possible way to overcome the differences in the two points of view. Similarly, Needler offered the achievement of an equitable balance as the framework for the discussions. The negotiating principles agreed to in June incorporated the highlights of both perspectives. Each party pledged itself to fish salmon bound for its own rivers and to avoid interception of salmon destined for its neighbour's waters. Four considerations qualified, however, this declaration. The first consideration stipulated that since it was impossible to avoid some interceptions and since long-established fisheries in both countries depended upon interceptions an equitable balance should be struck between the interceptions made by both countries. The second consideration was that, where possible, equity should be achieved by reducing interceptions and each country should adjust its fishery techniques and economics in order to make the reduction of interceptions possible. Thirdly, these adjustments should take conservation into consideration.<sup>38</sup> Finally, the governments committed themselves to annual reviews of the balance and to mandatory implementation in four years of whatever measures would be needed to achieve an equitable balance. Given their sharply different conclusions about the state of

<sup>38</sup> These principles were quoted in West Coast Salmon Fleet Development Committee, Report, pp. 14-15. See also "U. S., Canada Reach Salmon Accord," Western Fisheries, Vol 82, no. 3, (June 1971), p. 11.

interceptions, both countries found temporary solace in insisting upon equity as the guiding management principle.<sup>39</sup>

Subsequent American proposals regarding the management of the Pacific fishery reflected this belief that American fishermen were being shortchanged. Historic fisheries, such as the Fraser River fishery, had to be maintained if the balance of interceptions, as characterized by the United States, was not to worsen. Governor Evans of Washington wrote President Nixon and stressed the importance of full federal funding of the first phase of a \$14 million development plan proposed by the IPSFC for the Fraser. After outlining his perception that the British Columbia fishing industry was pushing the Canadian government to assume the entire cost of the project and claim all the benefits of enhancement Evans declared: "It would be catastrophic to fishermen and to our economy for this to happen. The U. S. Government cannot afford to let this occur."<sup>40</sup>

Evans also pressed the federal government to secure concessions from Canada regarding the Canadian offshore fishery in the bilateral reciprocal fishing privileges negotiations. In 1972, American trollers were reported to be lobbying their state and federal governments to evict Canadian trollers from the contiguous zone off of Washington.<sup>41</sup> In August, Evans asked Secretary of State Rogers to reconvene meetings with Canada with the aim of reducing the impact of Canadian fishermen on Washington's salmon resources. A renewal of negotiations was required because Washington fishermen were facing, in Evans words, "a critical shortage in a current

<sup>39</sup> When commenting upon the contribution a joint technical committee could make to reducing differences between the Canadian and American data McKernan claimed that absolute agreement on the interception issue was not needed before agreeing to negotiating principles. This representation of events in June 1971 is drawn from notes taken by Ken Campbell, Manager of the Fisheries Association, at the conference. See "Stenographer's Notebook initialled K. M. C.," in Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights.

<sup>40</sup> "Budget set for first phase of Fraser Development Plan," National Fisherman, v. 53, (July 1972), p. 14-A.

<sup>41</sup> "U. S. Trollers Ask for Canadian Restrictions," Western Fisheries, Vol. 83, no. 6, (March 1972), p. 19.

chinook salmon fishery because of the inroads made on this fishery by Canadian trollers."<sup>42</sup> On the eve of the 1973 round of talks Evans intensified his demands. The portion of the agreement dealing with salmon fishing privileges should not be renewed by the United States. Since relatively few Washington trollers ventured far from port Canadians were taking the bulk of the troll catch off the coast of Washington.<sup>43</sup>

These allocational concerns had clear implications for the management of Washington's ocean fishery. American officials, professing to suffer from a large deficit in chinook and coho interceptions, were not disposed to intensify their regulation of the very American fishery capturing the lion's share of these two species. The United States section to the talks on problems of mutual concern (interception talks) reported that, on average, Canadians intercepted 947,000 more coho and 528,000 more chinook from Washington, Oregon, or California streams than the American southern fishery took from Canadian stocks of these species. Most importantly, the United States attached a price tag of \$7.246 million to this Canadian advantage.<sup>44</sup> Since concerns had been voiced about the redistributive possibilities which could attend further restrictions on Washington's trollers such measures were regarded dubiously by fishermen and managers alike. These worries about the consequences for the international catch allocation picture of unilateral restrictions became identified then as a deterrent to more onerous Washington troll fishery regulations:

... many of the potential resource 'savings' which might be achieved through unilateral adoption of more restrictive ocean fishing controls by the State of Washington would be transferred to fishermen of other

<sup>42</sup> "Washington Governor Urges Renewal of U. S.-Canada Talks," Western Fisheries, Vol. 84, no. 5, (August 1972), p. 11.

<sup>43</sup> "Governor Draws Bead on Canadian Trollers," Western Fisheries, Vol. 85, no. 6, (March 1973), p. 30; "End Fishing Privileges," Vancouver Sun, February 24, 1973.

<sup>44</sup> Anonymous, Estimates of Interceptions of Salmon of United States and Canadian Origins by Fisheries of the Other Country, p. 60.

states and to Canadian salmon fishermen. Obviously, we have some justification for not making any ocean fishery changes unless everyone else does the same thing. This, however, brings the problem full circle and back to the primary reason for inaction in the past.<sup>45</sup>

Both countries' preoccupation with attaining an equitable balance of interceptions was then an important factor in explaining the decision of each of them to disregard the possibility of introducing tighter restrictions upon their troll fishery.

### **Bilateral Relations II: The Strategic Importance of the Canadian Offshore Troll Fishery in Bilateral Bargaining**

Some of the continuity in the offshore regulatory pattern is also explained by the relationship between regulatory policy and intergovernmental bargaining in the salmon fishery. A tremendous qualitative difference in the regulatory treatment of common property may separate the setting where allocational goals have been realized from the one in which they are being pursued. In the latter setting bargaining requirements influence regulatory policy, favouring regulations with the potential to deliver useful leverage in negotiations. The security of Canada's offshore trollers throughout the 1970s and indeed into the 1980s sprang from their strategic importance to the Canadian government's battle to secure American acknowledgment of Canada's right to harvest the lion's share of the salmon bred in Canadian waters. The fact that a new Law of the Sea recognizing the Canadian view was not in the offing buttressed the primacy of regulatory approaches which furthered the pursuit of this goal. For Canada, maintaining the status quo in the troll fishery was the most obvious and least controversial approach.

For Canada, the offshore fishery also came to be regarded as a strategic asset, a status which helped to insulate it from more restrictive regulations. The advocacy of a strong Canadian offshore presence was based on more than just an interest in

<sup>45</sup> "Regulation Proposals for 1976 Washington Commercial Troll Salmon Fishing," cited in Washington (State), Department of Fisheries, Samuel G. Wright, Status of Washington's Commercial Troll Salmon Fishery in the mid-1970's, Technical Report No. 21, (October 1976), p. 50.

equalizing interceptions; it was made in the knowledge of the troll fishery's importance as a bargaining lever. No other Canadian fishery took as many American fish as the offshore troll fishery did - a condition Americans found particularly rankling since a significant proportion of this catch was expensive, hatchery production.<sup>46</sup> Throughout the 1970s Canadian officials and their advisors from industry regarded the offshore troll fishery as very valuable currency in the bilateral bargaining process. K. D. Lucas, a senior assistant deputy minister, stressed the importance of Canadian trollers to the furtherance of the Canadian negotiating position:

So the Americans are very unhappy at seeing their hatchery-produced fish caught by Canadian fishermen. We are actually catching some of their fish in their contiguous zone. We have trawl fisheries (sic) off the State of Washington Coast, for instance. We are not happy catching their fish but we feel if they are catching ours, we have to be catching theirs to bring them to the bargaining table.<sup>47</sup>

Thus, while Canada's continued public adherence to the minimal interception provision of the 1971 statement of principles stifled public bragging about successful interception of United States salmon,<sup>48</sup> it nonetheless viewed a thriving troll fishery as an important instrument with which to push for American acceptance of Canadian terms.

The perception of the troll fishery as a strategic asset in the Canada-United States negotiations was held throughout the industry. Throughout the 1970s,

<sup>46</sup> The Salmon Negotiation Working Party estimated that Canadians took about 35% of the total catch of hatchery-produced Columbia River fall chinooks, between 50 and 66% of Puget Sound hatchery-raised cohos, and a similar, perhaps slightly smaller proportion of Puget Sound hatchery chinooks. See Anonymous, "Draft. Report of the Pacific Salmon Negotiation Working Party, 1970-1971," p. 13.

<sup>47</sup> Canada, Parliament, House of Commons, Standing Committee of Fisheries and Forestry, Minutes of Proceedings and Evidence, First Session, Twenty-ninth Parliament, Issue no. 10, May 8, 1973, p. 15.

<sup>48</sup> See, for example, the statement of the Honourable Romeo LeBlanc, the Minister of State for Fisheries in Canada, Parliament, House of Commons, Standing Committee of Fisheries and Forestry, Minutes of Proceedings and Evidence, First Session, Thirtieth Parliament, Issue no. 31, May 26, 1975, p. 25.



organizations predominantly made up of net fishermen were willing to subordinate their worries about the impact of a thriving troll sector upon the net fishing share of the total catch to the larger issue of the negotiations with the United States. The support offered to the Pacific Trollers by the UFAWU is very germane to this point. To the Union, support for the trollers was a tactical necessity. Differences of opinion with the trollers over catch shares could wait until the conclusion of an agreement with the United States. In 1974, Homer Stevens, now the UFAWU President, objected to the Canadian negotiating proposal of February 1974 in part because "... there will be quite unnecessary catch limits on the west coast Canadian trollers and net fishermen, since the imbalance has been and still is strictly in the United States' favour."<sup>49</sup> In the short run the Union argued that the best interests of the Canadian industry were served by supporting the trollers. "What we are saying and have said in talks and elsewhere," George Hewison, the Union's business agent reminded Standing Committee members, "that it is not really necessary for Canada even to consider reducing her West Coast troll fishery at this stage of the game because that imbalance is still there and has been going on for a number of years. (sic)"<sup>50</sup> Once an agreement had been concluded the focus of debate could shift to examine questions such as whether or not trollers were sharing the burden of conservation fairly with the net fisheries. Hewison rejected the inference by a committee member that the Union, because of the composition of its membership, hoped to put the trollers out of business. When he

<sup>49</sup> Canada, Parliament, House of Commons, Standing Committee of Fisheries and Forestry, Minutes of Proceedings and Evidence, Second Session, Twenty-ninth Parliament, Issue no. 9, May 1, 1974, p. 11. In March 1975 Dr. Shepard put the Canadian proposal in a different light. Rather than try and reduce interceptions Canada proposed to place a limit on them. Therefore, with a lid in place, every new fish produced by a Canadian enhancement venture would be credited to Canada alone and not subject to interceptions. Canada, Parliament, House of Commons, Standing Committee of Fisheries and Forestry, Minutes of Proceedings and Evidence, First Session, Thirtieth Parliament, Issue no. 7, March 4, 1975, p. 19.

<sup>50</sup> Canada, Parliament, House of Commons, Standing Committee of Fisheries and Forestry, Minutes of Proceedings and Evidence, First Session, Thirtieth Parliament, Issue no. 17, April 15, 1975, p. 15.

elaborated on this rejection he implied that the Union regarded the regulatory requirements of the negotiation phase to be very different from those that could apply after a treaty was signed:

What we have suggested is that we must correct the imbalance with the United States. Once that is done, then I think we could look at some of the other things in terms of living up to the over-all principles; but we have got a long, long way to go before that, certainly, is done.<sup>51</sup>

The comparison of the troll fishery with currency implies that its conduct was not in itself sacrosanct and that Canada was willing to barter the offshore troll fishery for a more highly valued prize. In this case, an increased Canadian share of the Fraser River fishery was the object coveted by the Canadian government. Throughout the negotiations leading up to the signing of a modified reciprocal fishing privileges agreement in June 1973 Canada dangled its offshore troll fishery before American negotiators, hoping to extract concessions from the United States in the Fraser in return for limitations in the Canadian offshore.

The utility of the troll fishery as a bargaining chip is borne out by the obvious irritation of the Americans with the growing interceptions by this fishery of expensive American hatchery-produced chinook and coho salmon. At the salmon talks held in January 1972 McKernan probed this issue with C. R. Levelton, the new leader of the Canadian delegation. The United States had made a large investment in artificial propagation and American legislators questioned the increased catches by Canadian fishermen of these hatchery stocks.<sup>52</sup> Americans, not Canadians, should harvest increased troll stock production from the Columbia River over and above the traditional number of these fish taken by the Canadian troll fishery. Would Canada consider

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<sup>51</sup> *Ibid.*, p. 42.

<sup>52</sup> This version of events is from a stenographer's book of notes taken by Ken Campbell, Manager of the Fisheries Association of British Columbia. The contents of this notebook cover a series of meetings attended by Campbell from January 1972 to May 1973. Hereafter it will be referred to as Campbell, "Stenographer's Notebook." One example of the outrage of American legislators with Canadian exploitation of hatchery production is found in "Against Treaty Renewal," *Fishermen's News*, March 1973.

restrictions on offshore trollers? Levelton's response underlined Canada's willingness to adopt these measures if American concessions on the Fraser were forthcoming. While he rejected the possibility of totally eliminating the troll fishery he was prepared to consider a reduction in interceptions. In the January 25th session Levelton tied a proposal of troll reductions to the Fraser. Both countries should be prepared to contemplate mutual reductions in intercepting fisheries. If the United States would signal its willingness to reduce substantially its Puget Sound fishery Canada would reciprocate in the west coast troll fishery up to the point where equity was achieved. Later that same day Levelton again posed this possibility to McKernan. Would McKernan join Canada in a program of mutual reductions in long-established fisheries? He replied by saying that, if Levelton meant would the United States reduce its Fraser River Treaty fishery in return for a less intense Canadian troll fishery, the American answer would have to be no. The United States contribution to the rehabilitation of the Fraser made this river different to the Americans than either the Columbia or the Skeena.

On the eve of negotiations concerning the renewal of the reciprocal agreement Campbell of the Fisheries Association reiterated this interpretation of events to officials from some of the Association's member companies:

Canada takes the position that reduction of interceptions is inherent in the draft principles. The American trollers and sports fishermen are anxious to have the Canadian take of U. S. chinook and cohoes reduced. In a balancing agreement, however, this could only be done if the Puget Sound fishermen and/or south east Alaskan fishermen reduced their take of the Canadian net species.<sup>53</sup>

At the talks convened in April 1973 to discuss the reciprocal agreement, as opposed to salmon interceptions, the United States pressed again for some

<sup>53</sup> "Letter to J. B. Buchanan, BC Packers Ltd., L. H. Monk, Canadian Fishing Company Ltd., from K. M. Campbell, Manager, Fisheries Association of British Columbia, March 1, 1973," in Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights.

retrenchment of the Canadian offshore fishery.<sup>54</sup> Reciprocal salmon fishing privileges should be dropped altogether from the bilateral agreement. In the deliberations of the Pacific Sub-Committee McKernan symbolized the American proposal as one of primarily symbolic value. Canadian effort off the Washington coast between 1967 and 1972 was less than ten percent of the effort off southern Vancouver Island. Therefore, the elimination of Canada's Washington fishery would amount to a difference of less than ten percent. The broader question of total Canadian troll interceptions would be tabled until the next session of the interception talks, scheduled for early May.

Canada viewed the implications of the American proposal as much more than symbolic. If anything, the American calculations, an average over a five year period, minimized the significance of the Canadian fishery. Canadian effort off Washington in the last two years of the period, 1971 and 1972, was considerably higher in percentage terms than that of the earlier years. William Sprules, the Director of the International Fisheries Branch in the Fisheries and Marine Service, linked the status of contiguous zone trolling to the negotiations on interceptions. If removal from the contiguous zone was justified by the interception balance presented during these latter negotiations it would be done.<sup>55</sup> At the Canadian caucus meeting on the morning of the third day of talks the presence of Canadian fishermen off the Washington coast was characterized as an important lever in the salmon interception discussions and consequently an important benefit of the reciprocal agreement. Eliminating salmon fishing privileges would leave the fishery for Alaska halibut as the only benefit of reciprocity for west coast fishermen. Canadian refusal to delete salmon fishing privileges from the overall agreement prompted a short-term extension of the

<sup>54</sup> This account of the conference is from a set of notes taken by Ken Campbell at the April 10-13, 1973 meetings held in Washington. Hereafter they are referred to as Campbell, "April 1973 Notes."

<sup>55</sup> Campbell, "April 1973 Notes," p. 4, Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights.

agreement in order to offer an opportunity to try and resolve the difficulties over the salmon fishery.<sup>36</sup>

This opportunity proved fruitless. The interception talks of the first week of May 1973 did nothing more than accentuate the gulf between the two perspectives. They concluded with Canada's resurrection of the type of threats it had made in the 1950s and 1960s: the violation of the established norms of the Canadian-American relationship. Canada threatened to send its net fishermen outside the surfline and extend the troll season in order to increase the Canadian catch of Fraser River fish. The inevitable increase in U. S. interceptions that would follow these moves was characterized by Levelton as an unfortunate, if inevitable, by-product of Canada's efforts to take greater numbers of its own fish.<sup>37</sup> It would take one last attempt to rescue reciprocity to prevent the threatened breakdown of the regulatory consensus.

For the purposes of this study the May interception talks are instructive for their characterization of the Canadian offshore fishery. Once again, this fishery was used by Canada as a bargaining lever; once again, offshore concessions were offered in exchange for concessions on the Fraser; once again, a stalemate emerged. Canada offered to make compulsory reductions of five percent per year in its offshore fishery if the United States would reciprocate on the Fraser. McKernan balked at the idea that these reductions should be mandatory, proposing instead that they be listed merely as objectives. His added suggestion that the idea of the Fraser convention area be struck from any agreement, to be replaced by the concept of Fraser River stocks, was an anathema to Canada's delegation. Since Canada intercepted Fraser fish in a variety of fisheries outside of the convention area a lower American percentage of Fraser stocks could yield more fish than a fifty percent share of the convention area catch. As

<sup>36</sup> "Agreed Press Guidelines, April 14, 1973," Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights.

<sup>37</sup> Gerry Kidd, " 'Blue Line' No More - Nets Move to Sea," Western Fisheries, May 1973, p. 48.

McKernan characterized the stalemate near the conclusion of the meetings the allocation of Fraser River salmon had been tied to Canadian interceptions of United States hatchery fish. The failure to modify the terms of the Fraser River Treaty - a failure due substantially to the insistence of the United States that historic fisheries be respected in some form in any successive agreement - sustained the Canadian regulatory pattern responsible for interceptions of American chinook and cohoes and consternation in the American delegation.

It is worth mentioning at this point that the Washington troll fishery did not enjoy the strategic importance of its Canadian counterpart in the bilateral negotiations. This insignificance is verified by several sources. One estimate suggested that fewer than 5% of Washington's total troll chinook catch was made up of Canadian fish. Canadian coho were believed to account for only 8% of the State's total troll catch of that species.<sup>58</sup> Its impotence as a bargaining resource also helps to explain McKernan's willingness to sacrifice troll fishing privileges off Vancouver Island in a modified reciprocal agreement.<sup>59</sup> When looking for the international contributors of American regulatory policy, the reluctance of United States officials to regulate their offshore fishery more severely seems due in some measure to the potentially damaging redistributive consequences of unilateral regulation cited earlier. As we will now see, the importance to the American fishing industry of other offshore fisheries conducted in Canadian waters also contributes to explaining the retention of the salmon fishery status quo in the 1970s.

### Bilateral Relations III: The Regime as an Intervening Variable - the Significance of Structure and Non-Salmon Fishing Interests

<sup>58</sup> Wright, Status of Washington's Commercial Troll Fishery, pp. 19-20. See also Anonymous, Estimates of Interceptions of Salmon of United States and Canadian Origins by Fisheries of the Other Country, 1967 to 1970 (A report prepared by the United States Section for United States-Canada consultations on salmon problems of mutual concern), (May 1971); U. S.-Canada Consultations on Salmon Problems of Mutual Concern, Third Report of the Technical Committee on Salmon Interceptions, (May 1973).

<sup>59</sup> Campbell, "April 1973 Notes," p. 4, in Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights.

To this point, we have argued that the increasing conflict between the salmon management norms sought by Canada and the United States did not disrupt the regulatory pattern in the troll fishery for two reasons. In both countries, the regulatory status quo was perceived as an important prerequisite for the realization of equity in the balance of interceptions while in Canada alone, the troll fishery's strategic importance buttressed the status quo pending concessions from the United States on its conduct of the fishery for Fraser River salmon. In this section we shift course away from considering the relationship between state interests in the anadromous fishery and behaviour. Instead we contemplate the relationship between one element of the regime, the reciprocal fishing privileges agreement, and state behaviour as measured by the regulation of the offshore salmon fishery.

"Regimes . . .," in Lipson's words, "may be analyzed either as outcomes to be explained or as social institutions mediating economic and political intercourse."<sup>60</sup> Here the regime is considered in the second light, as an intervening variable. One component of the regime, the reciprocal agreement, governed more than just the salmon fishery. A valuable groundfish fishery was conducted by American fishermen within Canada's exclusive fishing limits. In addition, halibut fishermen from each nation wandered into the waters of the other, a particularly rewarding practice for Canadian longliners operating off Alaska. The fate of salmon fishing regulations came to depend then on the strength of attachments to the pursuit of these other fisheries interests, interests already protected by and entrenched in the overall regime through the medium of the reciprocal agreement. To understand the role these other fisheries played in the approach taken to salmon fishery regulation we must return to the negotiations of April and May 1973.

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<sup>60</sup> Charles Lipson, "The transformation of trade: the sources and effects of regime change," *International Organization*, Vol. 36, no. 2 (Spring 1982), p. 418.

In April 1973 Canada held the reciprocal agreement itself hostage. The threat of cancelling all reciprocal privileges was used to try to defuse the American demand to delete all salmon fishing privileges from the agreement. Canada knew well that the value of the reciprocal agreement to Americans from the Pacific states rested upon United States access to Canadian halibut and groundfish stocks. Canada's west coast advisory group, when it met before the April meetings, learned that Americans would lose \$323,000 in halibut, \$1,730,000 in groundfish, and only \$50,000 in salmon if reciprocity was cancelled. This outcome would cost Canadian halibut fishermen \$1,750,000 and salmon fishermen \$648,000.<sup>61</sup> In the formal negotiating sessions Canada tried to use the significant American interest in the groundfish fishery to temper the reductions proposed for salmon. Sprules warned that if the salmon provisions were stripped from the agreement Canada would have little to gain from continuing reciprocity in the Pacific. His comment to McKernan that the loss of the salmon fishery promised to jaundice Canada's attitude towards other fisheries as well as his reminder that the United States had a very large groundfish interest off the Canadian coast played upon the importance of Canadian waters to the continued health of this sector of the Pacific Northwest's fishing industry.<sup>62</sup> Canada's preparedness to lose access to the Alaskan contiguous zone was taken in the belief that Canadians could probably make up these losses by operating outside of the American twelve mile zone.<sup>63</sup> This luxury would not be available to American groundfish fishermen since Canada's exclusive fishing zone in Hecate Strait, Queen Charlotte Sound, and Dixon Entrance was much broader than twelve miles and ninety percent of the American catch was taken from those "inside" waters.

<sup>61</sup> Campbell, "Stenographer's Notebook, notes of west coast advisory group meeting, March 5, 1973," in Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights.

<sup>62</sup> Campbell, "April 1973 Notes," p. 6, in Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights.

<sup>63</sup> *Ibid.*, p. 9.



The significance of the groundfish fishery was not lost upon the American delegation. The strategy of trying to separate salmon privileges from other fishing privileges signalled the value the United States attached to the part of the status quo most clearly benefiting its fishermen. In April, McKernan emphasized that continuation of the bilateral agreement, albeit without salmon privileges, was the goal of his negotiating team. He conceded that his delegation did not particularly relish the prospects of operating without a bilateral agreement but would consider it as an alternative if Canada would not yield on the salmon issue.<sup>64</sup>

In May, eleventh hour discussions rescued reciprocity from expiring. Here again the importance of the well-entrenched interests of other fisheries contributed to the retention of much of the salmon regulatory pattern enunciated in the 1973 agreement. McKernan acknowledged early in the sessions that the salmon questions could not be separated from the fate of the remainder of the bilateral agreement.<sup>65</sup> Levelton as well stressed that the preservation of the reciprocal agreement was contingent upon a mutually satisfactory agreement on the salmon fishery. He signalled a willingness to make some concessions to the United States salmon fishing demands if the United States would offer concessions valued by Canada.<sup>66</sup> The United States then faced the choice of whether the already established privileges in other fisheries warranted the search for a compromise on the potential stumbling block of salmon privileges. On May 24th the United States offered a package of concessions. Canada would abandon its Washington salmon fishery south of Carroll Island and agree to consult with Washington State regarding regulations in Juan de Fuca Strait and Puget Sound. The United States would relinquish the privilege to troll commercially off

<sup>64</sup> Campbell, "April 1973 Notes," p. 10, in Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights.

<sup>65</sup> Campbell, "Stenographer's Notebook, notes of May 23-25, 1973 meetings," in Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights.

<sup>66</sup> Ibid.

most of Vancouver Island and Washington State would agree to coordinate its spring chinook fishery and fall chum fishery conducted in the Point Roberts area for Fraser River stocks with Canada's openings in the Fraser River area.<sup>67</sup> Agreement to these terms illustrated the willingness of both delegations, but perhaps the American delegation most of all, to compromise on the salmon issue in order to preserve other valued elements of the reciprocity agreement. Although the American industry as a whole had the most to lose through the cancellation of reciprocity Canadians also characterized their tolerance of reciprocity in terms of other fisheries interests. In a memorandum to the heads of member companies, the Fisheries Association, after relating the unhappiness of the Canadian delegation with the outcome of the Ottawa talks, claimed that "... it was necessary to make this agreement in order that the important Canadian halibut fishery in the Alaskan 12 mile fishing zone could continue this year."<sup>68</sup>

To some extent, offshore salmon regulatory predispositions were shaped more by the salmon preferences of the 1950s and 1960s, institutionalized as they were in the vehicle of the reciprocal agreement, than by the contemporary management preferences of government. The sustaining power of the agreement was attributable to its wide ranging agenda and provisions. The sharp disagreement over salmon privileges did not overwhelm the consensus that for other fisheries the agreement delivered important benefits. The increasing gap in the salmon fishery between regulatory practice as articulated in the agreement and regulatory preferences may then be traced to the importance of halibut and groundfish resources to the American

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<sup>67</sup> Ibid.

<sup>68</sup> Fisheries Association of British Columbia, "Memorandum to Heads of Member Companies, June 12, 1973," in Fisheries Association of British Columbia Collection, Box 26, folder: Canada-US Negotiations Reciprocal Rights. The UFAWU was very critical of the Canadian decision to compromise. See "Stevens raps fishing pact: 'Canadians sold down river,'" Vancouver Sun, May 29, 1973. The president of the PTA accepted the agreement as the lesser of two evils. See "Washington coast barred to trollers," Vancouver Sun, May 28, 1973.

and Canadian delegations.<sup>69</sup> Until such time as the interests of the salmon fishery were divorced from those of other fisheries an important prop of the regulatory pattern would remain intact.

### Knowledge and Regulation

Throughout much of this chapter the reader has faced an interest-based explanation of regulatory behaviour. Yet, in Chapter Three and Four we identified the important role one dimension of state capacity - knowledge - played in modifications of the fishery regime and the regulatory patterns they called for. For example, the selection of 175° west longitude as the provisional abstention line in the North Pacific Convention was founded on the mistaken belief that this boundary represented the limits of North American salmon migrations. Similarly, gaps in the stock migration knowledge gathered through to the 1960s played some part in the retention of established regulatory practices. In this final section of the chapter we shall return to this theme and argue that knowledge once again made a consequential contribution to the regulatory decisions of the 1971-1976 period.

Ernst Haas is perhaps the most prominent advocate of the importance of knowledge to the development of international regimes. He has defined knowledge as

... the sum of technical information and of theories about that information which commands sufficient consensus at a given time among interested actors to serve as a guide to public policy designed to achieve some social goal.<sup>70</sup>

It is tempting to overstate the extent to which Haas regards knowledge as always being a positive, conflict-reducing force. Knowledge is only consensual when it dominates policy making and is accepted by all the major participants.<sup>71</sup> While knowledge may

<sup>69</sup> One important possibility I have not been able to either confirm or deny in this section is whether the status of Pacific fisheries was linked to that of Atlantic fishing interests. A version of reciprocity in the salmon fishery may have also been sustained by the values perceived to be gained by retaining reciprocal fishing privileges in the Atlantic.

<sup>70</sup> Ernst Haas, "Why Collaborate? Issue-Linkage and International Regimes," World Politics, Vol 32, no. 3 (April 1980), pp. 367-368.

<sup>71</sup> Ibid., p. 370.

transcend ideological differences and enhance the likelihood of convergent behaviour between states the creation of regimes does not signal the arrival of the millennium. The sharing or exchange of knowledge may not alter established lines of cleavage and knowledge may remain, for indeterminate periods of time, under the political or economic control of those who originate it.<sup>72</sup>

Stein has also commented about the relationship between knowledge and state behaviour.<sup>73</sup> Again, consensus is an important prerequisite for regime change. New knowledge about the causes of communicable diseases, their transmission and treatment provided the basis for international cooperation and depoliticized health care policy.<sup>74</sup> "Without consensus," Krasner maintains, "knowledge can have little impact on regime development in a world of sovereign states. If only some parties hold a particular set of beliefs, their significance is completely mediated by the power of their adherents."<sup>75</sup> Turning to the salmon fishery, may a link be established between the state of knowledge about the resources in question and the continuance of one element of the regime, liberal trolling regulations?

The history of salmon regulation may be characterized generally as one where the burden of proof that additional restrictions are needed has been borne always by the scientific community. Uncertainties about the health of stocks tended to be translated into inaction. This tendency was especially apparent in the regulation of the offshore troll fishery. Mystery shrouded the health of chinook and coho stocks, the primary targets of both troll fleets, and buttressed the legitimacy of the prevailing offshore fishing pattern. In 1969 the Informal Committee on Chinook and Coho

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<sup>72</sup> *Ibid.*, p. 369.

<sup>73</sup> Stein defines knowledge more simply as "(c)hanges in the nature of human understanding about how the world works." See Arthur A. Stein, "Coordination and Collaboration: regimes in an anarchic world," *International Organization*, Vol. 36, no. 2 (Spring 1982), p. 320.

<sup>74</sup> *Ibid.*, pp. 320-321.

<sup>75</sup> Stephen D. Krasner, "Structural causes and regime consequences: regimes as intervening variables," *International Organization*, Vol. 36, no. 2 (Spring 1982), p. 204.

concluded that accurate estimates of spawning escapements were impossible to make given the state of the data available to managers.<sup>76</sup> Despite this uncertainty managers leaned towards optimistic appraisals of the future. The Washington Department of Fisheries ten year plan for the state's food fisheries remarked in 1970 that Puget Sound stocks of these species were in good shape; of the three separate Columbia River runs of chinook salmon only the numbers of summer stocks were depressed severely while the Columbia's coho stocks were considered to be in excellent condition.<sup>77</sup> This overall enthusiasm seemed confirmed by a coincidence of spectacular catches and escapements. Columbia River coho and chinook catches in 1970 were reported at near record levels.<sup>78</sup> Two years later the largest run of spring chinooks returned to the Columbia River since counts began in 1938. Hatcheries were credited with much of this success.<sup>79</sup> These optimistic signs were certainly consistent with the claim of the Washington Fisheries department that it was "virtually impossible to 'overfish' any of the multitude of specific chinook and coho stocks available."<sup>80</sup> Compounding the element of mystery was the lack of many meaningful measures of fishing effort even by the mid-1970s.<sup>81</sup> In their absence the impact of trollers on these stocks remained a matter of conjecture. Finally, before the mid-1970's Washington State's fishery

<sup>76</sup> Informal Committee on Chinook and Coho, Reports by the United States and Canada on the Status, Ocean Migrations and Exploitation of Northeast Pacific Stocks of Chinook and Coho Salmon, to 1964, Volume II (Report of the Canadian Section), (1969), p. 31.

<sup>77</sup> Washington (State), Department of Fisheries, Plan for Washington State Food Fisheries, (1970), pp. 68, 69, 101-103.

<sup>78</sup> "Columbia Coho, Chinook Season Near Record," Western Fisheries, Vol. 81, no. 6 (March 1971), p. 32.

<sup>79</sup> "Spring Chinook in Columbia River In Record Run," National Fisherman, August 1972, p. 12-C.

<sup>80</sup> Washington (State), Department of Fisheries, "A brief history of the Washington troll fishery," (November 1971).

<sup>81</sup> Washington (State), Department of Fisheries, Samuel G. Wright, Status of Washington's Commercial Troll Salmon Fishery in the mid-1970's, Technical Report No. 21, (October 1976).

managers claim not to have realized that a primary troll management consideration was rapid chinook growth in the spring and summer.<sup>82</sup>

A further knowledge-related source of support for the status quo in the salmon fishery arose from disagreement rather than uncertainty. The two countries could not agree on the numbers of fish intercepted let alone who the balance favoured. Nor could they agree on the method which should be used to calculate the value of interceptions. These radically different interpretations, discussed at length earlier in this chapter, inhibited the development of a consensus about the implications of the offshore regulatory pattern for stock management. Without this consensus neither country was forced to recognize that elements of its regulatory behaviour contributed to the gains they made at the expense of the other.

#### Conclusion

In this chapter we have focussed upon a period which is something of a watershed in the nature of state competition over the rights to exploit the salmon resource. While the principle of Asian exclusion continued to thrive in the approaches of both Canada and the United States the governments of these two countries found themselves increasingly at odds over the norms which should govern the allocation of the resource between their fishermen. At the Law of the Sea Conference they agreed on the preferential harvesting rights of the state-of-origin yet disagreed - for reasons related to geography, salmon migratory routes, and the allocation terms of bilateral agreements - on the strictness with which this principle should be applied to their neighbour's conduct. Canada, as it had in the 1960s, offered a stricter version of the state-of-origin principle than did the United States. The Americans still sought to recognize historic fisheries as a necessary foundation of the Canadian-American relationship.

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<sup>82</sup> Ibid., p. 24.

This disagreement and the failure of the Law of the Sea Conference to resolve it increased tensions in the bilateral relationship, tensions both nations agreed should be addressed through the search for equity in the balance of interceptions. From this search significant support arose for the maintenance of the regulatory status quo. Each delegation's contention that its fishermen were the aggrieved parties legitimized a liberal approach to the regulation of trollers. This approach enabled Canada to limit the prospects of a perceived imbalance from worsening and the United States to limit the chances of Canadians taking even greater numbers of chinook and coho salmon.

The examination of the negotiations on salmon problems of mutual concern and on the renewal of the reciprocal agreement in 1973 also illustrated the strategic character of the Canadian troll fishery. Canada used this fishery during the 1971-1976 period as both a carrot and a stick in negotiations. The refusal to tighten offshore regulations as a means of limiting interceptions was used as a stick to keep the Americans at the bargaining table. Alternatively, this fishery was used as a carrot when Canada dangled the possibility of troll restrictions in its offshore waters if the United States would concede on the Fraser sockeye and pink fishery.

The links between troll fishery regulation and the issues of equity and bargaining strategy tell us something of the contextual factors which were responsible for the favours bestowed upon offshore trollers throughout these years. It is too simplistic to view this liberal pattern of treatment as the consequence of effective lobbying by one interest group in the fishery. As we found particularly in the case of Canada, support for this pattern of regulation was widespread among those who were the trollers' prime commercial competitors, the net fishermen. This support was not the result of naivete on the part of net fishermen but developed rather from their recognition and acceptance of the trollers' significance in the conduct of international negotiations.

The situation appears then as one that, at the very least, modifies the conventional interest group explanation of policy articulated in the second chapter. As in the previous two chapters international goals, specifically those arising from the portion of the regime occupied by bilateral agreements, encouraged government to adjust national policies in aid of international objectives. Regarding our second critique of interest group theory, the extensive support within industry for liberal offshore troll regulations does not allow us to argue confidently that the state possessed substantive policy objectives different from those of the industry. Nonetheless, the period does offer indications that the range of regulatory options states would draw on in their bilateral competition was limited to those which were sanctioned by prior international agreements. Levelton's threat, for example, that Canada would allow offshore netfishing was never carried out. Such behaviour, inasmuch as it would have contradicted the Canadian negotiating position at the Law of the Sea Conference as well as Canadian undertakings in the INPFC, violated important procedural values held by Canadian fisheries diplomats. This lends plausibility to the inference that regulatory policies were influenced by a set of state interests arising from certain process or procedural norms inherent in interstate bargaining.

The suggestion that the regulatory treatment of trollers was contingent upon international negotiating circumstances and requirements is somewhat akin to a discovery Schultz made in his study of the role of interest groups in the federal-provincial bargaining over Canadian transportation policy.<sup>83</sup> In a federal system, the possibility exists of there being at least a two-dimensional relationship between groups and government. Demands may flow in either direction: from group to government or government to group. In the Canada-United States negotiations the regulatory treatment of trollers was conditional upon the positive value the Canadian government

<sup>83</sup> Richard J. Schultz, Federalism, Bureaucracy, and Public Policy: The Politics of Highway Transport Regulation, (Montreal: McGill-Queen's University Press, 1980).



attributed to an unfettered offshore fishery. The conditional nature of this policy was underlined by the willingness to trade the status quo in the offshore for the Fraser River fishery. It is this circumstance which supports the assertion that trolling regulations may be best explained not by a simple interest group logic but rather by a logic where a group's importance or favouritism hinges upon its usefulness to the state's pursuit of its international policy agenda.

Although the configuration of salmon fishery goals pursued by governments is offered as the primary source of the regulatory predispositions of the period structural factors also have been accorded some importance. Specific political institutions of the overall regime may be regarded as influential supports for a regulatory pattern where practice and preference were dissonant. The multidimensional character of the reciprocal fishing privileges agreement contributed to the retention of the regulatory status quo in the offshore salmon fishery. When this agreement was signed in 1970 its terms of reference governed more than just the salmon fishery, linking as it did salmon and non-salmon fishing interests in one overarching agreement. The cohabitation of both sets of interests in one formal agreement and the strong attachment to these non-salmon fisheries tempered the intensifying clash developing between salmon fishery perspectives. This attachment seems to have been particularly strong for the United States. The value garnered through the exploitation of the Canadian groundfish resources increased American tolerance of salmon regulatory arrangements which granted Canadian offshore fishermen access to United States chinook and coho stocks within part of the United States fisheries zone. Finally, knowledge, one constituent of state capacity, also figures in this explanation of dissonance. The inability of governments either to identify that a conservation crisis was brewing or to agree on the balance of interceptions encouraged regulatory inaction.

**Chapter VI: Of Courts and Two Hundred Mile Limits: Treaty Indian Rights, State Capacities, Bilateral Bargaining, and the Disintegration of the Offshore Regulatory Consensus, 1977 - 1984**

From 1977 to 1984 the severity of the regulations imposed on offshore trollers varied enormously from one jurisdiction to the next. In Canada, the favouritism established during the previous twenty years prevailed for the most part. In the State of Washington, the year 1977 arguably marked the beginning of the demise of the offshore troll fishery. From that date through to 1984 a light regulatory touch was swept aside and replaced by an ever-tightening regulatory grip. In this chapter this striking divergence in regulatory inclinations is related to three sets of changes: changes in the nature of the bilateral competition in fisheries between Canada and the United States, changes in the capacity of the American state to subordinate national regulatory policy to the pursuit of United States foreign fishery policy objectives, and changes in the importance of native/non-native interests in the Washington commercial salmon fishery.

State competition took a dramatic turn at the outset of this period. By March 1977 both Canada and the United States had extended unilaterally the national boundaries of fisheries jurisdiction from twelve to two hundred miles.<sup>1</sup> This last, great seaward push of jurisdiction had implications for the bargaining agenda faced by the fisheries diplomats of these two countries. The extension of jurisdiction consummated the expansion of the bilateral negotiating agenda begun by the reciprocal fishing privileges agreements. This agenda now included much more than one species on one coast. Boundary questions and the exploitation of the wide range of fisheries resources that thrived between the old 12 mile limit and the new 200 mile claims joined the

<sup>1</sup> The Act extending United States jurisdiction to 200 miles, the Fishery Conservation and Management Act of 1976, came into effect on March 1, 1977. The new Canadian boundaries took effect on January 1, 1977. They were described in Order-in-Council P. C. 1977-1 published in Canada, Canada Gazette, Part I, Extra no. 101, Vol. 110 (November 1, 1976).

salmon fishery on the bargaining table. The decision of these governments to tackle these diverse issues simultaneously in hopes of reaching a comprehensive agreement on west coast/east coast fisheries and maritime boundaries is of some consequence to this accounting of offshore salmon regulations.

The extension of Canadian and American jurisdictions to 200 miles represented an impressive expansion of state authority onto areas of the oceans which theretofore were relatively free of regulation. As such the new limits must be regarded as a considerable enlargement of the formal capacity of both states to control the wealth of the oceans. While for Canada this expansion of jurisdiction may usefully be regarded as simply an addition to state capacity in the United States the move to 200 miles not only extended state authority but also reallocated it among political institutions. The most pertinent aspect of this reallocation for this argument was its impact upon the distribution of national and foreign fishery policy making in offshore waters. The passage of the Fishery and Conservation Management Act (Magnuson Act) crippled the ability of the American State Department to subordinate national fishery regulations, specifically offshore salmon regulations, to the necessities of bilateral diplomacy and regime goal pursuit.

Initially, this chapter examines factors responsible for the precipitous decline in the number of days open to offshore trolling in Washington. In large measure, the hardship visited upon the Washington troll community may be traced to the redistribution of fishery management authority mandated by the Magnuson Act. In the last chapter we suggested that the good fortune of Washington's trollers in the early to mid-1970s was buoyed by two goals of American foreign fishery policy - equalizing the balance of Canadian/American interceptions and preserving the access the Pacific Northwest groundfish fishery enjoyed to Canadian waters. The reversal of the troller's fortunes was not a product of a reformulation of these American interests in the international fishery regime. The United States remained committed to

retaining access to the Canadian fisheries zone for its groundfish fleet. In its efforts to accomplish this policy objective the State Department, as it had in the preceding period, tried to offer Canada the status quo in the offshore salmon fishery as a quid pro quo. However, changes in the United States fishery management system brought about by the Magnuson Act sapped the State Department of the power needed to subordinate regulatory policy in the offshore salmon fishery to the demands of bilateral diplomacy. The powers and responsibilities bequeathed to the regional councils created by this Act were responsible for this diminution of the State Department's authority. With the appearance of the regional councils on the fishery management horizon, foreign policy preferences no longer guaranteed the maintenance of a complementary national regulatory environment, an environment that had offered substantial benefits to Washington's trollers.

An additional theme, the realignment of interests in the Washington salmon fishery created by judicial interpretation of treaty Indian fishing rights, complicates and enriches our account of the demise of the Washington trollers. If pre-1977 State troll fishery policy had been influenced by the search for equity in the Canada-United States relationship, post-1977 policy was influenced more by a different version of equity sanctioned by the federal courts - equity in the allocation of the salmon catch between native and non-native fishermen. The first two sections of the chapter suggest that it was the combination of this shift in allocational priorities and the redistribution of state capacities which doomed the Washington troller to bear a heavier and heavier regulatory burden.

The third section of the chapter returns to familiar territory, the overall importance of Canadian offshore trolling regulations to bilateral negotiations. It presents the essence of our explanation for the continuation of liberal regulatory treatment in Canada. The bargaining leverage and distributional advantages of the offshore fishery continued to insulate this fishery from regulation. This section also

suggests that, although our primary goal in the chapter is to account for the divergence in patterns of troll regulation, the importance of Canada's offshore regulatory practices to the conduct of international bargaining influenced how Canadian officials addressed domestic conservation problems. The offshore troll fishery's international status protected this sector from increased regulation more than any other. In Canada, the burden of conservation fell on the inside fisheries, particularly the net fisheries, even when the offshore fishery exerted an undeniable impact upon the threatened stocks.

**The Boldt Decision and Interest Group Realignment: Intensifying the Pressure for Stringent Offshore Troll Regulations**

When considering the plight of the Washington troll fishery in the late 1970s one cannot ignore the fact that a concern over conservation was a precursor of this fishery's decline. The inaugural salmon fishery management plan of the Pacific Fishery Management Council released in 1977 only identified a few Washington chinook runs as appearing to be in fairly good shape. The most encouraging comment made about Columbia River chinook stocks was that they were generally below their historic levels of abundance; minimum escapement targets were not being reached by many of the Columbia's natural stocks; natural chinook stocks in Puget Sound were described as depressed.<sup>2</sup> What was particularly noteworthy about this concern over the health of American chinook and coho stocks was the new-found conviction that offshore trolling constituted a threat to stock rebuilding campaigns. No longer were managers asserting that it was virtually impossible for ocean trollers to overfish chinook and coho populations.<sup>3</sup> Yet, this modification to management's outlook is

<sup>2</sup> United States, Department of Commerce, National Oceanic and Atmospheric Administration, Salmon Fishing: Fishery Management Plan for Commercial and Recreational Fisheries Off the Coasts of Washington, Oregon, and California, (1977), pp. 19-20, published in United States, Federal Register, Vol. 42, no. 80 (April 26, 1977), p. 21428.

<sup>3</sup> This assertion had been made in 1971 by the Washington Department of Fisheries. See Washington (State), Department of Fisheries, "A brief history of the Washington troll fishery," November 1971.

arguably of itself insufficient to account for the timing or severity of the restrictions imposed on the Washington ocean troll fishery. To explain the heavier regulatory toll levied on the troll fishery we must first consider the revolutionary impact of the Boldt decision of 1974 on the priorities of fishery management in Washington State.

Up until the mid-1970s Washington State enjoyed the lion's share of de facto, if not de jure, fishery management authority in the offshore as well as in the territorial sea and inland waters. Through its landing laws the State controlled the operations of offshore trollers.<sup>4</sup> In practice State authority was limited only by the delegation of management authority to the IPSFC and by the treaty rights derived from a series of 19th Century treaties signed with the aboriginal residents of the Pacific Northwest. The litigation over the meaning of these treaty rights ultimately disrupted the State's authority to manage the fishery.

In the 1850s, the first Governor of the Washington Territory, Isaac Stevens, signed a series of treaties with the natives of western Washington. These treaties, signed between sovereign parties, generally preserved the right of self-government for the Indian reservations they established; specifically, they retained for the native signatories the right to take fish "at all usual and accustomed grounds and stations".<sup>5</sup> This combination gave the signatory tribes the exclusive right to whatever fishery resources existed within the territory of the reservation. From this right flowed their

<sup>4</sup> VanderZwagg defines a landing law as: "... a state statute that authorizes state regulation of fish caught beyond the territorial sea and subsequently transported into the territorial sea." David L. VanderZwagg, The Fish Feud: The U. S. and Canadian Boundary Dispute, (Toronto: D. C. Heath and Company, 1983), p. 38. It must be stressed that this exercise of State authority did not imply that State laws took precedence over federal legislation. The Bartlett Act of 1966, in establishing the nine-mile fisheries zone, declared: "Nothing in this chapter shall be construed as extending the jurisdiction of the States to the natural resources beneath and in the waters within the fisheries zone established in this chapter." See 16 U. S. C. A. § 1094 (1974). The Bartlett Act was repealed in 1977.

<sup>5</sup> The language quoted is taken from the Treaty of Medicine Creek signed on December 26, 1854; cited in *United States v. Washington*, 384 F. Supp. 312 (1974) at p. 331.

distinction as the exclusive regulators of on-reservation fishing. This limitation on the State's jurisdiction was not challenged by the State:

Washington does not attempt to regulate fishing on reservation by treaty and nontreaty Indians, since the right to hunt and fish on reservation without state regulation is generally considered to be implied by the treaties which distinguish reservation territory from ceded lands.<sup>6</sup>

While Washington accepted this on-reservation limitation of its regulatory powers it contested for decades the native contention that the Stevens treaties gave natives the right to conduct off-reservation fishing without interference from state regulations. To the State, Department of Fisheries control over off-reservation fishing was essential to the conservation of the salmon runs. Situated at the end of the user-group chain, native harvesters had to be restricted in order to ensure adequate spawning escapements.<sup>7</sup> In 1968, the State received judicial confirmation of its authority to regulate the time and manner of off-reservation fishing. The United States Supreme Court, in *Puyallup Tribe v. Department of Game of Washington (Puyallup I)*,<sup>8</sup> held that the State could limit Indian net fishing when necessary for conservation.<sup>9</sup> Although the Supreme Court granted the State this right it added two noteworthy

<sup>6</sup> William L. Hanson, "The Law of Indian Fishing Rights in Washington," in American Friends Service Committee, Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians, (Seattle: University of Washington Press, 1970), p. 84.

<sup>7</sup> At times the native fishery was discussed as if it was the only one taking fish from the spawning runs. In a September 3, 1964 memorandum Clarence F. Pautzke, the Commissioner of the United States Fish and Wildlife Service and former assistant director of the Washington Department of Fisheries, argued as follows: "While percentagewise the Indian catch in the Pacific Northwest is not of major significance, the locations where the Indian fishery is carried on make it of extreme importance insofar as the proper management of the anadromous fish is concerned . . . the Indian catch usually takes a disproportionately high percentage of the spawning runs. . . ." Cited in American Friends Service Committee, Uncommon Controversy, p. 177.

<sup>8</sup> 391 U. S. 392 (1968).

<sup>9</sup> For background on the history of Indian treaty fishing rights see Richard A. Finnigan, "Comment - Indian Treaty Analysis and Off-Reservation Fishing Rights: A Case Study," Washington Law Review, Vol. 51 (1975), pp. 61-95; United States, Department of Interior, Bureau of Indian Affairs, Background Information on Indian Fishing Rights in the Pacific Northwest, (Portland: Bureau of Indian Affairs, 1976).

conditions to the exercise of this power: State regulation of Indian fisheries must meet appropriate standards and must not discriminate against Indians.

The controversy over Indian treaty fishing rights and the respective regulatory powers of State and tribal governments did not end with the Puyallup I decision. In 1970, the treaty tribes took their claims back to court. The resolution of these claims in *United States v. Washington*<sup>10</sup> radically altered the regulatory structure and allocational priorities in the State of Washington. In this decision Judge Boldt ruled that signatory tribes to the Stevens Treaties possessed a treaty right to the opportunity to take up to 50 percent of the harvestable fish in the state, as well as a right to ceremonial and subsistence catches.<sup>11</sup> While Boldt affirmed the Puyallup I decision's ruling that State authority over native treaty fishing was limited to the minimal regulation needed to preserve the resource his recognition of the concept of tribal regulation limited the situations when the State could employ this power. When a tribe was able to demonstrate to the court its ability to regulate itself in order to protect salmon escapements State regulation was no longer necessary and could not be exercised. Two tribes, the Quinault and the Yakima, met these criteria in 1974. Subsequently, the remaining tribes involved in the Boldt decision attained self-regulatory status.<sup>12</sup>

<sup>10</sup> 384 F. Supp. 312 (1974).

<sup>11</sup> In 1979 the United States Supreme Court upheld most of the Boldt decision in *Washington v. Washington State Commercial Passenger Fishing Vessel Association* (443 U.S. 658). The Court modified the 50 percent allocation to include subsistence and ceremonial catches within the 50 percent. For analyses of the Boldt decision see: Finnigan, "Comment - Indian Treaty Analysis and Off-Reservation Fishing Rights"; Ralph W. Johnson, "The U. S. Indian Fishing Rights Controversy: Implications for Salmon Management," in Anthony H. J. Dorsey (ed.), Coastal Resources in the Future of B. C. (Vancouver: Westwater Research Centre, 1979); William G. Clark, "Fishing in a Sea of Court Orders: Puget Sound Salmon Management 10 Years after the Boldt Decision," North American Journal of Fisheries Management, Vol. 5, no. 3B (Summer 1985), pp. 417-434.

<sup>12</sup> Janet Harper, "Indian Fisheries Management in the State of Washington: A Working Document," (Unpublished paper prepared for Indian and Northern Affairs Canada, September 1982), p. 29.



Boldt's landmark affirmation of treaty rights disoriented totally the regulation of the State's salmon fishery. To the Pacific Marine Fisheries Commission, this decision plunged Washington and Oregon fishing legislation into a state of turmoil.<sup>13</sup> Meanwhile, the Washington Department of Fisheries (WDF) bemoaned the federal court's assault upon its traditional authority. Boldt's demand that the salmon catch be reallocated between user groups and his introduction of off-reservation regulatory powers to tribal governments combined with his designation of the State as the ultimate bearer of responsibility for the fate of the resource placed the WDF in a seemingly untenable situation; the department suggested pessimistically that, "(t)his task is formidable and may result in reducing the State to a subordinate role in the management of its resources."<sup>14</sup>

While the affirmation of the off-reservation regulatory power of the treaty tribes fractured the state management system it was the allocational dictates of the court which threatened the security of the troll fishery. Between 1968 and 1973 the Indian catch never amounted to more than 11.1% (1972) of the commercial non-Indian catch and dipped to as low as 6.2% of the commercial non-Indian fishery in 1971.<sup>15</sup> Of equal significance for trollers was the fact that most Indian fishing gear was net gear. Trollers could not expect the liberalization of their regulations to become a means of dividing equally the salmon catch between native and non-native fisheries. If anything the gear structure of the Indian fishery implied further regulation of the troll fishery. (See Wright 1976 for a brief comment on the mandate of the State to include troll catches when calculating the allocation of fish between the two fisheries.)

<sup>13</sup> Pacific Marine Fisheries Commission, 26th Annual Report for the year 1973, p. 9.

<sup>14</sup> Washington (State), Natural Resources and Recreation Agencies, 1974 Annual Report, p. 29.

<sup>15</sup> These figures are derived from Washington (State), Department of Fisheries, 1982 Statistical Report, (Olympia: Government Publishing Plant, 1983), p. 23. If the sport catch is included the native catch percentage dropped to a range of 5.0 - 7.7% between 1968 and 1973.

In the immediate aftermath of Boldt's decision the State avoided imposing additional restrictions on Washington offshore trollers since this fishery operated outside of the Boldt case area and represented something of a haven for non-native fishermen whose net fishing activities were restricted in order to try and satisfy the new allocative demands.<sup>16</sup> In the area of trolling, the State's Director of Fisheries only moved against the smaller commercial troll fishery within the three-mile limit. Tollefson's total closure of this fishery, subsequently rescinded by a temporary injunction obtained by the Washington Kelpers Association, appeared to some to be designed primarily to unite the non-native community against Boldt's judgment.<sup>17</sup>

By 1975, the benign neglect to that point shown to the offshore was under pressure and the State poised itself for a major departure from its traditional management pattern, a shorter troll season.<sup>18</sup> Trollers fought the proposed closures and additional gear restrictions in the courts, where they secured an injunction against the State's 1976 troll fishery regulatory plan. The basis for the Thurston County Court's decision was that the State's proposals would make the Washington offshore regulations more restrictive than those of Oregon and California, a circumstance which violated the provisions in Washington's Fisheries Code established when the State

<sup>16</sup> After Washington introduced a salmon licence moratorium in 1974 Browning wrote: "The uncertainties of the Washington moratorium on licensing of salmon vessels already had driven some men from the fishery when the moratorium became effective in 1974. Continuing uncertainty turned other men to other pursuits or put them into the coastal troll fishery which has not been affected by the Boldt decision." Robert J. Browning, "One of Worst Fish Runs Ever Expected in Washington State," National Fisherman, Vol. 56, no. 3 (July 1975), p. 24-A.

<sup>17</sup> This opinion of Tollefson's moves in 1974 was offered in Robert J. Browning, "Two-Thirds Cut in Fishing Time in Puget Sound Planned By Thor," National Fisherman, Vol. 55, no. 5 (September 1974), p. 14-A and Burton T. Coffey, "Whom Did Treaty Rip Off?", National Fisherman, Vol. 55, no. 5 (September 1974), p. 6-A. The injunction is detailed in Robert J. Browning, "Washington Fishermen More Worried About Inflation than Indian Ruling," National Fisherman, Vol. 55, no. 6 (October 1974), p. 15-A.

<sup>18</sup> Robert J. Browning, "Supreme Court Upholds Boldt; Even Salmon Trollers in Soup," National Fisherman, Vol. 56, no. 12 (April 1976), p. 20-A. The State's regulatory proposals for 1976 are detailed in: Wright, Status of Washington's Commercial Troll Salmon Fishery in the mid-1970's, pp. 48-50.

joined the Pacific Marine Fisheries Commission in 1947.<sup>19</sup> Thus, the State's efforts to tighten its regulatory grip on the troll fishery in 1976 were frustrated.

The sweeping promise of catch re-allocation contained in the Boldt decision, a promise only realizable through drastic curtailment of the non-Indian fisheries, stood the status quo in the Washington fishery on its head. Yet, as the events of 1976 illustrated, the State's efforts to place some restraints on the activities of trollers were handicapped, at least temporarily, by decisions of the State's courts. While Boldt realigned the importance of the State's various fishing interests and intensified the pressure for the adoption of more stringent offshore troll regulations this decision did not succeed immediately in reducing the fishing opportunities available in the offshore. As we will see in the next section, the hurdles to tightening the regulation of offshore trollers were removed in 1977 when the federal government expanded its capacity to regulate fishing operations in the offshore through the declaration of a 200 mile fisheries zone and took an active managerial profile beyond the territorial sea. The responsibility felt by the Pacific Fishery Management Council (PFMC), born in 1977 by the Magnuson Act, to comply with the spirit of the Boldt decision and the inability of the State Department, in its pursuit of American foreign fishery policy goals, to prevent the changes in domestic offshore salmon regulatory policy the PFMC felt were demanded by Boldt's allocational prescriptions darkened the future of Washington's trollers.

#### Realizing the Regulatory Threat of the Boldt Decision: Redistributing the Capacity of the American State

The realignment of domestic fishing interests precipitated by the verdict in *U. S. v. Washington* provides us with only one key to understanding the trollers' rapid

<sup>19</sup> Wright, Status of Washington's Commercial Troll Salmon Fishery in the mid-1970's, pp. 29-30. Section 75.40.050 of this code stated in part that: "... no rule or regulation shall be issued governing the conduct of citizens of this state unless like rules of regulations or statutes have been made or will become effective jointly as to the citizens of the states of Oregon and California."

fall from grace. Boldt did not prompt, as noted above, immediate offshore regulatory changes. In fact, until 1981 the courts left unresolved the question of whether the federal government was under a legal obligation to adjust its offshore regulatory policy in order to satisfy the allocational stipulations of the courts.<sup>20</sup> Yet, the troller's rapid fall from grace began four years earlier, in 1977. What accounts for this time lag? In this section we argue that the other key to understanding the abrupt fall of Washington trollers from the ranks of the chosen is provided by the relationship between changes in the capacity of the American state brought about by the adoption of a 200 mile fisheries jurisdiction and American foreign fishery policy goals. The redistribution of state capacity introduced by the Magnuson Act, in the light of interest group realignment, frustrated the efforts of the State Department to offer Canada the status quo in the Washington salmon fishery as a quid pro quo for Canada's respect of the activities of the Pacific Northwest groundfish fleet in Canadian waters. With the advent of the 200 mile limit the State Department lost the ability to trade concessions to Canadians fishing in United States waters for concessions to Americans fishing in Canada's waters. The benefits Washington trollers garnered as a result of this relationship evaporated when the PFMC regarded the implementation of the Boldt decision as part of its mandate, a perspective which effectively eliminated the State Department's ability to manipulate American offshore regulatory policy in the interests of United States fishermen operating in Canadian waters.

Prior to the unilateral declaration of a two hundred mile fisheries jurisdiction by the United States in 1977 the State Department spoke for the executive branch on United States policy towards the extension of fisheries boundaries. This reflected the State Department's generally high profile in matters concerning offshore

<sup>20</sup> The judgment in *Hoh v. Baldrige* (1981) stated, in part, that federal offshore policy must be consistent with the Boldt decision's stipulations and thereby formally extended the responsibility for implementing the decision to the federal government. Harper, "Indian Fisheries Management in the State of Washington: A Working Document," p. 25.

regulation. Other branches of the administration deferred commenting upon the thirty one bills that by May 1974 had been introduced in Congress in favour of boundary expansion. As the Department of Interior explained to the chairman of the House Committee on Merchant Marine and Fisheries:

Since all of these bills involve major questions regarding their impact on the United States position in the current Law of the Sea negotiations, the responsibility for developing Executive Branch policy on this legislation has been assigned to the Law of the Sea Task Force under the aegis of the Department of State.<sup>21</sup>

Although the State Department was sympathetic to the frustrations of American coastal fishermen, the Department opposed the unilateral adoption of a 200 mile fishing zone. The basis for this opposition was the fear that unilateral action would damage the United States' efforts at the Law of the Sea Conference to entrench a 200 mile economic zone while safeguarding other interests. "A unilateral declaration of fisheries jurisdiction at this time," warned one senior official, "could seriously hamper our efforts in the Law of the Sea Conference and greatly hamper the chances for a satisfactory settlement of the fisheries question on a multilateral basis."<sup>22</sup> The State Department regarded unilateral extensions of jurisdiction beyond twelve miles as violations of international law and worried that United States violation of this principle would encourage other countries to do the same, countries whose claims, unlike the Congressional proposals, might impinge on navigation, overflight, seabed

<sup>21</sup> United States, House of Representatives, Hearings before the Subcommittee of Fisheries and Wildlife Conservation and the Environment on extending the jurisdiction of the United States beyond the present twelve-mile fishery zone, Ninety-third Congress, second session, (Washington: U. S. Government Printing Office, 1974), p. 11.

<sup>22</sup> "Letter to Leonor K. Sullivan, Chairman, Committee on Merchant Marine and Fisheries from John Norton Moore, Chairman, NSC Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference," in Hearings before the Subcommittee of Fisheries and Wildlife Conservation and the Environment on extending the jurisdiction of the United States beyond the present twelve-mile fishery zone, p. 12.

resources, and scientific research rights.<sup>23</sup> Moreover, the State Department warned that unilateral action might actually endanger United States fishing interests better protected by international treaties and agreements. For example, the chairman of the NSC Interagency Task Force on the Law of the Sea warned Governor Hammond of Alaska that a unilateral 200 mile limit would endanger the International North Pacific Fisheries Convention.<sup>24</sup>

These warnings were ignored by Congress and on April 13, 1976 the Fishery Conservation and Management Act became law. This law, later renamed the Magnuson Act after one of its sponsors - Senator Magnuson of Washington, responded to a variety of political forces. In Atlantic waters, foreign fleets were outfishing American vessels - depleting the stocks in the process - and causing extensive damage to American fishing gear.<sup>25</sup> Fishermen responded to these developments by lobbying the Congress for unilateral action. Reliance on the Law of the Sea process, as urged by the State Department, was dismissed since an early resolution of these talks was very doubtful. The fact that Maine, New Hampshire, Rhode Island, Massachusetts, North Carolina, and Oregon all made extensive claims to regulate fisheries beyond the territorial sea in the early 1970s, claims that the Bartlett Act held to be the responsibility of Congress, may also have weighed heavily in the Congressional decision to act.

<sup>23</sup> Ibid., pp. 12-13. See also the statement made by Moore to the Armed Services Committee in United States, Senate, Hearing before the Committee on Armed Services, United States Senate, Ninety-fourth Congress, first session on S. 961 A Bill to extend jurisdiction of the United States over certain ocean areas for certain purposes, (Washington: U. S. Government Printing Office, 1975).

<sup>24</sup> United States, Hearing before the Committee on Armed Services, United States Senate, on S. 961 A Bill to extend jurisdiction of the United States over certain ocean areas for certain purposes, p. 225.

<sup>25</sup> VanderZwagg, The Fish Feud: The U. S. and Canadian Boundary Dispute, pp. 41-42. VanderZwagg cites statistics from the Legislative History of the Fishery Conservation and Management Act showing the the American catch off New England had fallen from 100% in 1960 to 11.8% in 1975. Ibid., p. 41.

The Magnuson Act modified extensively the institutional terrain of American fishery management. In the first place, its boundary extension expanded the formal capacity of the American state to regulate fisheries. Moreover, the Act represented a transition from passive to active federal management of offshore fisheries, whether these fisheries were conducted by foreign or American fishermen.<sup>26</sup> As an effort to establish a comprehensive federal management regime this Act was unprecedented. One American fisheries authority termed it "a radical departure from historical United States fishing policy".<sup>27</sup> A similar appraisal was offered by Senator Magnuson himself: "Until enactment of the 1976 Act, the federal government did no more than act as caretaker or custodian of the waters of the contiguous zone and as a research backup to state conservation efforts."<sup>28</sup>

Responsibility for developing federal offshore management policy was entrusted to eight Regional Fishery Management Councils; of these the Pacific Fishery Management Council was given responsibility for managing salmon in the fishery conservation zone stretching from the outermost limit of the territorial sea to 200 miles from the California, Oregon, and Washington shoreline. The Regional Council was somewhat of an organizational hybrid due to the federal/state/private sector composition of its membership. The PFMC's voting membership of thirteen was allocated as follows: one Governor-appointed member from each of the four constituent states (California, Oregon, Washington, and Idaho), the Regional Director of the National Marine Fisheries Service, and eight members appointed by the Secretary of Commerce. Three of these federal appointments are from California, two are from

<sup>26</sup> The regulatory focus of the Bartlett Act, by contrast, was set only upon foreign fishing off the American coast. The regulation of United States citizens remained the primary responsibility of State governments.

<sup>27</sup> Dayton L. Alverson, "The Role of Conservation and Fishery Science Under the Fishery Conservation and Management Act of 1976," Washington Law Review, Vol. 52 (1977), p. 739.

<sup>28</sup> Warren G. Magnuson, "The Fishery Conservation and Management Act of 1976: First Step Toward Improved Management of Marine Fisheries," Washington Law Review, Vol. 52 (1977), p. 433.

Oregon, two are from Washington, and one is from Idaho. Characterized by this mixture of federal, state, and private sector membership the Pacific Council nonetheless derives its powers from federal constitutional authority and is responsible to the Secretary of Commerce for its conduct. This Council, barring intervention from the Secretary of Commerce, is the lead agency in the development of fishery plans and conservation regulations for the exclusive federal management zone between three and two hundred miles.<sup>29</sup> Enforcement was shared primarily between the United States Coast Guard (regulation of foreign fishermen) and the National Marine Fisheries Service (regulation of domestic fishermen).

For the purposes of this section it is crucial to note that this extension of state authority to a limit of 200 miles involved more than just the creation of new management authorities; it also clearly separated national and international policy making in fisheries matters. It redistributed the capacity of the American state. Policy making in the new national waters enclosed by the United States fishery conservation zone rested in the hands of the Secretary of Commerce and the Regional Councils; in the sphere of foreign affairs, the Secretary of State retained most of the responsibility to negotiate treaties, governing international fishery agreements (GIFAs), boundary agreements, and international fishery agreements granting American vessels access to stocks falling under another nation's exclusive fishery management authority. This distinction between national and international policy making in the offshore was not a characteristic of the earlier, passive phase of federal offshore management. Then, the State Department wielded considerable influence in both spheres. When nations such as Canada were able to claim traditional fishing operations in the nine mile contiguous fishing zone the State Department negotiated continued access to the American offshore in exchange for the affirmation of American fishing interests in foreign

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<sup>29</sup> The Secretary of Commerce may prepare a fishery management plan if a Regional Council fails to develop a management plan or if the Secretary disapproves of the content, in whole or in part, of a plan prepared by a Regional Council.



waters. This was the style of decision-making used to reach the agreements on the terms of the reciprocal fishing privileges agreements. Canadian interests in the offshore salmon fishery were met in order to safeguard important American groundfish fishing interests in Canadian waters.

The Magnuson Act did more than compromise the State Department's involvement in offshore policy making. It also placed severe restrictions on the conditions under which foreign fishing would be contemplated in the fishery conservation zone. Generally, after February 28, 1977 foreign fishing would be prohibited in this zone unless, in a Regional Council's estimation, a portion of the optimum yield in a fishery could not be harvested by United States vessels. In the event that such a surplus existed it could be allocated to foreign fishing fleets. The access of foreign nations to any surplus depended in large part on whether they qualified as traditional fishing nations. As the Committee of Conference on H. R. 200 reported to Congress, "... nations whose fishermen have continually fished on a particular stock for a substantial number of years in compliance with any applicable fishery treaties or domestic law would have a strong case for a preference for an allocation of the total allowable level of foreign fishing."<sup>30</sup> This linkage between optimum yield and foreign fishing had not existed previously. Before the declaration of a 200 mile fishing limit the demonstration of traditional fishing justified continued fishing irrespective of the harvesting level of United States vessels.

There was, however, a certain ambiguity in the Act's treatment of foreign fishing. Section 201(f) established reciprocity as a precondition for foreign access to the United States zone:

<sup>30</sup> United States, House of Representatives, Report of the Committee of Conference on H. R. 200 to provide for the conservation and management of the fisheries, and for other purposes, (Washington: U. S. Government Printing Office, 1976) in United States, Public Law 94-265, "An Act to provide for the conservation and management of the fisheries, and for other purposes," (1976), p. 43.

Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.<sup>31</sup>

This section seemingly allowed another country to request the privilege to exploit a fully exploited species in the United States fishery conservation zone on the grounds that the very same privileges were extended to United States vessels operating in the fishery zone of the petitioner.

A review of Congressional Committee testimony by leading State Department officials offers strong indications that the State Department seized upon this ambiguity and argued that, in order to fulfill its duty to enter into international fishery agreements allowing United States vessels to harvest foreign controlled stocks, reciprocal access should continue to govern Canada-United States fisheries relations pending the outcome of negotiations on maritime boundaries and a long-term bilateral East/West coast fisheries agreement.<sup>32</sup> On the Pacific coast, this meant the continuation of established salmon fishing patterns. Rozanne Ridgway, the Deputy Assistant Secretary for Oceans and Fisheries Affairs in the State Department, stressed this perspective to members of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment in June 1976:

"There are areas, that, if you will, are so mixed up with respect to fishing patterns that one may decide not to apply the standard rule of trying to sort them out but allow them to continue to be mixed up as long as they are properly managed and there is a management authority for both countries."<sup>33</sup>

<sup>31</sup> United States, Public Law 94-265, section 201(f).

<sup>32</sup> This State Department duty was outlined in United States, Public Law 94-265, section 202(a)(4)(A).

<sup>33</sup> United States, House of Representatives, Hearings before the Subcommittee of Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries, House of Representatives, Ninety-fourth Congress, first session, on 200-mile fisheries zone, (Washington: U. S. Government Printing Office, 1976), pp. 19-20.

Elsewhere she argued that international treaty obligations would supersede Regional Council regulations in the event of conflict. For example, if the United States agreed to International Convention for North Atlantic Fisheries gear regulations and a regional council developed different regulations the ICNAF system would prevail.<sup>34</sup>

The enthusiasm of the State Department for the continuation of reciprocal fishing arrangements with Canada was underlined again three months later. The National Federation of Fishermen, the principal spokesgroup for fishermen during the 200 mile limit debates, characterized the State Department's approach to United States-Canada fisheries relations as one which circumvented the intent of the 200 mile legislation and threatened the role of the Regional Councils. "It is clear. . .," charged Richard Sharood, formerly minority counsel to the House Subcommittee, "that the State Department intends to encompass within one Agreement, United States and Canada fisheries on both the East and West Coasts, and that these fisheries will be managed outside the scope of PL 94-265."<sup>35</sup> Ambassador Ridgway's reply to these criticisms emphasized that the GIFA requirements of the Magnuson Act were of little use in protecting an important American policy objective, the continued access of United States vessels to the fisheries resources found in the Canadian zone. Since neither Canada nor the United States traditionally exploited fish stocks where surpluses existed reciprocity was then, in the State Department's mind, the best way of insuring this policy objective. Both nations were prepared to identify historic fisheries which would continue whatever the level of the resource. In a reply to Congressman De la Garza, Ridgway acknowledged her department's willingness to apply two sets of rules, one for Canada and one for the rest of the world.<sup>36</sup> The State Department strategy called for each nation to respect the established fishing habits of its neighbour:

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<sup>34</sup> *Ibid.*, p. 13.

<sup>35</sup> *Ibid.*, p. 82.

<sup>36</sup> *Ibid.*, p. 95.

We are saying if it is possible under interpretation of the act for the United States to guarantee to Canada a place in already fully utilized fisheries and thereby reduce the amount available to Americans, because we expect Canadians to reduce quantities available in the zone to Canadians.<sup>37</sup> (sic)

The negotiation of an interim reciprocal fishing agreement with Canada in 1977 illustrated that the State Department's commitment to reciprocity was no longer supported with the jurisdictional integrity needed to insure that national regulatory policy in the offshore would serve its diplomatic objectives. The need for the interim agreement developed from two sets of circumstances. The first was the inability of the Canadian and American negotiators to conclude final agreements on maritime boundaries, Pacific salmon, and traditional fisheries by their target date of January 1, 1977. By October 1976 both sides realized that a short term arrangement was needed to give the negotiators time in 1977 to resume and hopefully consummate the long term negotiations.<sup>38</sup> As in the 1971-1976 period, sustaining reciprocity was valued because of the support it lent to the negotiating process itself. The second was the need to safeguard the activities of Americans fishing in Canadian waters. Secretary of State Vance, in a letter to the House Subcommittee on Fisheries and Wildlife Conservation and the Environment, recommended approval of the agreement because it protected United States fishery interests off Canada without prejudicing the American position in the dispute over maritime boundaries.<sup>39</sup> Returning to the theme of her 1976 testimony before this same subcommittee Ambassador Ridgway argued that an agreement with

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<sup>37</sup> Ibid., p. 95.

<sup>38</sup> See the March 17, 1977 statement of Ambassador Rozanne L. Ridgway, Deputy Assistant Secretary, Ocean and Fisheries Affairs, Department of State in United States, in United States, House of Representatives, Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment - International Fishery Agreements, Ninety-fifth Congress, first session, (Washington: U. S. Government Printing Office, 1977).

<sup>39</sup> "Letter to the Hon. Robert Leggett, Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment from Cyrus Vance, Secretary of State," in United States, Hearings - International Fishery Agreements, p. 230.

Canada which strictly conformed to the GIFA provisions of the Magnuson Act would not meet American objectives:

I do not intend, at this point, to seek a GIFA unless someone instructs me that we are not interested in pursuing fisheries off the coast of Canada. It was the charge to create the most favorable economic situation for our men in the Canadian zone that has kept us from concluding a GIFA. As long as we operate there, we have to be prepared to reciprocate.<sup>40</sup>

Since the United States claimed that in the aggregate Pacific fishery, calculated on the basis of 1971-1975 averages, the American fishing industry captured \$8 million more each year in the Canadian fishery zone than Canadians took in the American zone access to the Canadian zone was commercially significant. Reciprocity was clearly one method of realizing these commercial benefits. Congressional approval of the 1977 agreement was offered in recognition of the protection extended to Americans fishing off Canada: "The primary necessity for this legislation arises from the need to protect the U. S. fishery in Canadian waters which is imperiled by the extension of Canada's fisheries jurisdiction to 200 miles."<sup>41</sup> This was also the basis for the support extended to the agreement by the National Federation of Fishermen.<sup>42</sup>

In addition to Ridgway's testimony, the 1977 agreement itself reveals the strong attraction of the two negotiating parties towards the preservation of the status quo in the fishery, an attraction frustrated ultimately by the redistribution of national fishery management authority established by the Magnuson Act. Article II.3 of the 1977 agreement stipulated that:

Fishing by nationals and vessels of each party in the zone of the other shall continue in accordance with existing

<sup>40</sup> United States, Hearings - International Fishery Agreements, p. 249.

<sup>41</sup> United States, House of Representatives, Report No. 95-193, United States-Canada Reciprocal Fisheries Agreement, Ninety-fifth Congress, first session, (Washington: U. S. Government Printing Office, 1977), p. 4.

<sup>42</sup> See the testimony of Lucy Sloan, Executive Secretary, Richard Sharood, Counsel, and Jacob Dykstra, Eastern Region President in United States, Hearings - International Fishery Agreements.

patterns, with no expansion of effort nor initiation of new fisheries.<sup>43</sup>

In regards to salmon trolling regulations, Canada interpreted the phrase "existing patterns" as a guarantee that the 1976 salmon regulations would continue to be applied.<sup>44</sup> The initial United States position, on the other hand, clearly recognized the constraints placed on the latitude of the State Department by the introduction of the Regional Councils. The American Law Section of the Congressional Research Service offered this assessment of the United States salmon proposal: "The United States earlier draft proposal [Art. V(3)] appeared to contemplate the imposition of new regulations in the United States zone subject to consultations with Canada prior to the application of the regulations."<sup>45</sup> As Ridgway's testimony indicated, this uncertainty flowed from the divorce of international negotiations from control over national offshore resource policy. During the bilateral negotiations the United States could not answer the Canadians' questions about the salmon trolling season length the PFMC would approve.<sup>46</sup> Lacking jurisdiction over national policy the State Department was left to rely upon persuasion and could do little more than hope that the Pacific Council would respect the diplomatic importance of regulatory continuity in salmon regulations.<sup>47</sup>

The fate of Washington trollers in the 1977 season hinged then upon the extent to which the Pacific Council would accommodate State Department interests in its fishery management plan. As in the 1971-1976 period, the Washington troll fishery

<sup>43</sup> Canada, Treaty Series, My emphasis.

<sup>44</sup> This interpretation was contained in Canada's draft proposal for Article V (salmon trolling regulations). See "Document prepared by American Law Section, Congressional Research Service, Library of Congress for the House Merchant Marine and Fisheries Committee, February 28, 1977", in United States, Hearings - International Fishery Agreements, p. 293.

<sup>45</sup> Ibid.

<sup>46</sup> United States, Hearings - International Fishery Agreements, p. 239.

<sup>47</sup> In the 1977 agreement the State Department tried to respect the new domestic management system while still achieving its objectives regarding American interests in the Canadian zone. To accomplish these objectives Ridgway said "... we would expect Canada to request the same kind of accomodation of their interests in our zone." Ibid., p. 233.

was firmly attached to the State Department's bargaining goals and strategies. In order to insure Americans continued access to Canadian groundfish stocks the State Department seemed willing to appease Canada's concern that its salmon fishermen continue to enjoy the same fishing privileges off the Washington coast as they had in the past, a concern that, if fulfilled, would also protect the seasons of the Washington troller.

The release of the Pacific Council's fishery management plan for the salmon fishery showed that a total accommodation of State Department interests had not occurred. Instead of maintaining a six and one-half month trolling season the Council reduced this season to three and one-half months off of northwestern Washington State and five months off of the southwest Washington coast. Somewhat melodramatically, the Secretary of Commerce declared that an "emergency" plagued the Pacific chinook and coho salmon fishery "... because the unmanaged fishing activity by domestic commercial and recreational fishermen would have a detrimental effect on the stock of these highly valuable species."<sup>48</sup> The Pacific Council identified declining escapements and the need to satisfy the salmon allocation requirements of the Boldt/Belloni court decisions as the criteria guiding its approach to offshore management in 1977. "Immediate regulation change considerations should be limited," ordered the Council, "to ocean waters off Washington and Oregon north of Tillamook Head in order to comply with pressing judicial requirements mandating greater fishing opportunities to treaty Indian fishermen as well as the need to provide increased escapement of weakened stocks."<sup>49</sup>

<sup>48</sup> United States, Department of Commerce, National Oceanic and Atmospheric Administration, Fishery Management Plan for Commercial and Recreational Fisheries Off the Coasts of Washington, Oregon, and California, published in United States, Federal Register, Vol. 42, no. 80 (April 26, 1977), p. 21412.

<sup>49</sup> Department of Commerce, Fishery Management Plan, p. 27 cited in United States, Federal Register, Vol. 42, no. 80, p. 21432.

Although conservation was cited by the Secretary of Commerce as the cause of the emergency, Congressional testimony in the months and years following the announcement of the 1977 offshore regulations stressed the importance of the treaty obligations to Council behaviour. This was certainly the viewpoint of the National Federation of Fishermen. Sharood complained to his former employers that:

The Council seemingly has made up its mind that come what may, they are going to enforce Judge Boldt's decision, and enforcing Judge Boldt's decision, and Judge Baloney's (sic) enforced agreement among the States is apparently in their minds the paramount responsibility of the Pacific Management Council.<sup>50</sup>

John McKean, Council Co-Chairman, argued before the same subcommittee that the Council was born into an environment influenced, perhaps even dominated, by the allocation requirements of the Boldt and Belloni decisions. His statement did little to refute the orientation suspected by Sharood:

Our immediate problem is created primarily by the Indian decision; the U. S. is just as obligated as the States are to get 50 percent of those fish back to the Treaty Tribes. This burden fell upon the council at its first meeting. The handwriting was on the wall, either the council does it, and the Secretary does it, or the Federal Court will, so that is the kind of position we are in.<sup>51</sup>

Faced with the threat of judicial regulation in the offshore and the requirement that fishery management plans must conform with any other applicable law the Council

<sup>50</sup> See statement of Richard Sharood in United States, House of Representatives, Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, 200 mile fishery, Ninety-fifth Congress, second session, (Washington: U. S. Government Printing Office, 1978), p. 28.

<sup>51</sup> See the statement of John McKean, Co-Chairman, Pacific Coast Council in House of Representatives, Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, 200 mile fishery, p. 205. For its part, the Northwest Indian Fisheries Commission, representing the treaty tribes agreed with the PFMC management plan. See the statement of Jim Heckman in Ibid., p. 336.



felt it had little choice but to respect the decisions.<sup>52</sup> The realignment of domestic interests accomplished by the Boldt/Belloni decisions, not the foreign fishery policy objectives of the State Department, dominated the approach to offshore trollers taken by the PFMC.

The State Department's preference for the continuation of the offshore regulatory status quo in 1977 also arose during Congressional hearings on the 1978 interim reciprocal agreement. By this time it had become apparent that promises made every spring about finalizing a Canada-United States fisheries treaty by the end of the year bore no relation whatsoever to the ability of negotiators to perform this feat. The year 1977 ended predictably enough; December came and went without the initialling of a final agreement. For their part, Canadian negotiators expressed some reluctance over the prospect of concluding another interim agreement to cover 1978. They felt betrayed by the course of events in 1977. Since equality of regulatory treatment remained a touchstone of the 1977 agreement while the option of retaliation within the framework of the agreement was impossible, Canada had little choice but to watch American groundfish fishermen operate in Canadian waters even as Canadian trollers were barred from valuable American grounds. According to the 1977 agreement, closing the groundfish fishery to Americans also would have required Canadians to remain in port.<sup>53</sup>

<sup>52</sup> McKean in *Ibid.*, p. 344. Don Johnson, Regional Director of the NMFS and a PFMC member informed Congress that: "While the FCMA does not contain a mandate specifically, requiring fishery management plans to implement Indian treaty rights, I've been advised by our attorneys that the language in section 303 strongly suggests that the applicable Indian treaty should be viewed as part of that body of "other applicable law" with which a plan must be consistent. This interpretation of section 303 is supported by legislative history of the act." *Ibid.*, p. 349.

<sup>53</sup> In a move widely interpreted as a retaliatory gesture, Canada closed the Tofino shrimp fishery in June 1977 for "conservation reasons". Like the salmon trolling closures in United States waters, this closure applied to the fishermen of both nations. See Canada, Parliament, House of Commons, Standing Committee of Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirtieth Parliament, third session, Issue no. 15, (April 11, 1978), pp. 15-18; Stephen Greene and Thomas Keating, "Domestic Factors and Canada-United States Fisheries Relations," Canadian Journal of Political Science, Vol. XIII, no. 4 (December 1980).

In their efforts to win Congressional approval of the 1978 agreement both Ambassador Cutler, the leader of the United States delegation in the overall negotiations, and Ambassador McKernan, the Special Negotiator for the salmon fisheries, acknowledged that the Pacific Council's actions in 1977 violated the provisions of the 1977 agreement. Their recognition of this was couched in terms of the requirement in that agreement for existing fishing patterns to be respected. Cutler, for example, argued that the 1978 agreement was designed "... to recognize the original principle of continuing the previous levels of fishing."<sup>54</sup> McKernan's testimony noted that the Canadians viewed the pre-1977 regulatory arrangement as a very important component of maintaining a balance of the two nations' salmon interests, a balance shifted by the unilateral action of the United States in 1977<sup>55</sup>. The State Department took, however, little blame for this disruption of the status quo. As McKernan said in respect to the 1978 agreement:

The intent of the agreement is to negotiate some recognition of the Canadian position that the United States did not carry out the 1977 agreement, albeit for reasons beyond its control.<sup>56</sup>

The loss of influence over offshore regulatory policy cited by McKernan determined the type of approach the State Department was forced to take in 1978 in order to try to restore the equilibrium shattered by the Pacific Council's behaviour in 1977. Unable to offer Canada a longer trolling season, a prerogative now belonging to the Pacific Council, the State Department instead offered to expand the area off the Washington coast open to Canadian fishing by extending the southern reciprocal fishing boundary a further 65 miles to the south. Stripped of the ability to influence the length of the offshore season the State Department was forced to offer a concession

<sup>54</sup> United States, House of Representatives, Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment - Canadian Fisheries Agreement, Ninety-fifth Congress, second session, (Washington: U. S. Government Printing Office, 1978), p. 12.

<sup>55</sup> Ibid., p. 18.

<sup>56</sup> Ibid., p. 18. My emphasis.

bereft of any short-term benefits for Washington trollers. This feature of the compromise, as well as Canada's delay in respecting the United States request for a temporary closure of the Swiftsure Bank area, intensified the opposition of Washington trollers and their Congressional representatives to the terms of the 1978 agreement.<sup>57</sup>

A federal court decision that the more favourable terms of the 1978 agreement could not be implemented without the prior approval of the Congressional Committee chairmen and Canada's eleventh-hour request for a reduction in American fishing intensity on Georges Bank also helped doom the 1978 agreement. The history of United States-Canada reciprocal fishing privileges ended on June 4, 1978 when fishermen from both countries were banned from the other's waters. The cancellation of reciprocity won widespread support from the domestic constituencies of both governments and was even welcomed by the beleaguered maritime negotiating teams. For the latter groups the cancellation, by underlining the severity of the fisheries disputes, offered some potential as a means of mobilizing interest group support for a final resolution of Canadian-American differences.<sup>58</sup>

The institutional changes to the American fishery management system delivered by the traumas of judicial interpretation of Indian treaty fishing rights and passage of the Magnuson Act illuminate several aspects of the Canada-United States relationship in fisheries. Greene and Keating used this focus to explain the turmoil culminating in the suspension of the 1978 interim agreement.<sup>59</sup> The Regional Councils

<sup>57</sup> Scott Stafne, Counsel for the Washington State Trollers Association, offered to accept the terms of the 1977 agreement: "We would do this because we recognize that altogether there are not many of them, there the draggers that are fishing off the coast of Vancouver and the the long-term agreement with the nation of Canada we believe is in the best interests of ourselves and in the best interest of their country. (sic)" in United States, Senate, Hearing before the Committee on Commerce, Science, and Transportation on Reciprocal Fisheries Agreement for 1978 Between the United States and Canada, Ninety-fifth Congress, second session, (Washington: U. S. Government Printing Office, 1978), p. 20.

<sup>58</sup> Greene and Keating, "Domestic Factors and Canada-United States Fisheries Relations," p. 739.

<sup>59</sup> Ibid.

and Congress intruded into what had been to that point a very centralized foreign policy making process. The introduction of the councils and Congressional oversight unleashed domestic political factors capable of derailing this agreement. The argument of this section focused instead on a different dimension of what Greene and Keating termed "the domestic politics of bilateral relations." Here we have focused upon the regulatory implications for the offshore troll fishery in Washington which flowed from the redistribution of state capacity and the reordering of allocational priorities inherent in this same set of institutional changes.

Both before and after the federal court decisions and the passage of the Magnuson Act the Washington troll fishery's location amidst the intricate web of the general Canadian-American fisheries relationship gave it the potential to avoid stricter regulations. The fate of Washington trollers was tied inextricably to that of Canadian trollers. The principle of regulatory equality enunciated in the reciprocal agreements as well as the willingness of the State Department to trade access to Washington waters for Canadian trollers for access to Canadian waters for Pacific Northwest groundfish fishermen offered protection to the Washington troll fishery for as long as the State Department was able to subordinate national regulatory policy in the offshore to the goals of bilateral fisheries diplomacy. This ability lasted until the adoption of the 200 mile limit and its attendant replacement of passive federal management with a more active style centred in the offices of the Secretary of Commerce and the Regional Councils, a new management style in which the issue of native/non-native catch allocation dominated all others. The redistribution of state capacity, taking place in the context of a realignment of domestic interests, shattered the security theretofore enjoyed by the trollers of Washington State.

#### Canadian Offshore Trollers: Beneficiaries of the Search for a Pacific Salmon Treaty

Canada's fishery management waters, unlike those of its neighbour, were not rocked by institutional upheaval during the mid-to-late 1970s. Although the

federal government's ten year plan for rebuilding the commercial fisheries, announced eight months before the declaration of the 200 mile limit, promised more direct participation by fishermen in the formulation and implementation of fishery policy, institutional changes were not made.<sup>60</sup> The established, yet ad hoc, practices of industry consultation remained in effect and fisheries personnel retained effective control of both national and international fishery policy making. In this section we will see how during the frustrating search for a bilateral treaty the combination of this capacity and bargaining necessities exempted the offshore troll fishery from stricter regulation even when that fishery was a significant contributor to a conservation problem facing Canadian stocks. Even when the liberal regulatory treatment of offshore fishing could be blamed for a portion of a Canadian conservation problem, this fishery's role in the United States-Canada relationship meant that stricter offshore regulations were not part of the immediate solution.

The last chapter stressed the dependence of Canadian offshore regulations upon the status of bilateral negotiations, a dependence sensitizing regulatory predispositions to changes in the complexity of the negotiating process. For a brief time the liberal offshore regulatory environment in Canada drew additional encouragement from the expansion of the bilateral fisheries agenda which accompanied the declarations of 200 mile limits by Canada and the United States in 1977. Earlier we noted that issues pertaining to maritime boundaries and traditional fisheries on each coast joined the salmon fishery on the negotiating agenda at that time. On August 1, 1977 Canada and the United States appointed special chief negotiators to conduct maritime boundary and resource negotiations. Ambassadors Cadieux and Cutler faced a monumental, ultimately insurmountable, challenge - develop a comprehensive agreement on boundaries, fisheries, and hydrocarbons by December 1, 1977. Concerns

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<sup>60</sup> Canada, Environment Canada, Fisheries and Marine Service, Policy for Canada's Commercial Fisheries, (Ottawa: Fisheries and Marine Service, 1976), p. 5.

in all three areas were to be resolved in a matter of four months. This conscious choice to strive for a comprehensive settlement linked the resolution of the salmon issues to mutual satisfaction on the other fronts. As Lorne Clark, Canada's Deputy Negotiator for Maritime Boundaries, stated:

We have concluded and the Americans independently have concluded that we should take steps to ensure that the salmon interception negotiations are successfully concluded and wrapped in under the umbrella of the over-all Boundaries Fisheries Agreement.<sup>61</sup>

As another Canadian official put it, "... nothing is settled until everything is settled."<sup>62</sup>

The extent to which this transformation of the negotiating agenda into a multi-issue one sustained the bilateral atmosphere in which Canada's offshore trollers thrived is difficult, if not impossible, to assess without consulting the actual participants in the negotiations. The interception negotiations themselves were plagued, after all, by disputes over data and the legitimacy of historic fisheries and may not have been brought to an earlier conclusion in the absence of this change to the negotiating mandate. Yet, it seems certain that the move from relative simplicity to extreme complexity through issue linkage did not increase the prospects of concluding a salmon treaty or any other separate agreement. The embrace of a complex, comprehensive agenda meant that it was no longer sufficient to satisfy one issue unless

<sup>61</sup> Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirtieth Parliament, third session, Issue 15 (April 11, 1978), p. 15.

<sup>62</sup> See the statement of B. G. Hankey, Secretary, Negotiations for Maritime Boundaries, in Ibid., p. 18.

it could be satisfied in a fashion which would not compromise the objectives of simultaneous negotiations on other issues.<sup>63</sup>

The long-livedness of lax troll regulations did not depend solely upon the complications presented to negotiators by the extension of fisheries jurisdiction to 200 miles. Throughout the 1977-1984 period Canada's troll fishery retained the strategic importance acquired in preceding years. This quality was in the forefront of justifications for and defences of regulatory laxity. The strategic value of the fishery was drawn from its role in the distributional battles preoccupying salmon negotiators. By the late-1970s trollers played more clearly a dual role in this conflict. As before, the troll fishery was trumpeted for its interception capability. Now though its value increased because of a newly-developed ability to minimize the imbalance in interceptions in a second way, by maximizing the Canadian catch of Fraser River sockeye and pink salmon taken outside convention waters.

Industry outrage at the restrictions slapped on Canadian trollers in the Washington offshore in 1977 recognized the first dimension of the trollers' role. It underlined the importance of offshore trolling as an activity that, by preying on American fish, helped to maintain American interest in negotiating a new salmon treaty. "The fact is that the troll fishery off the west coast of Washington is one of the better weapons in the Canadian negotiating arsenal," asserted George Hewison, the UFAWU Secretary-Treasurer, "and any infringement on the ability of Canadian fishermen to operate effectively in those waters prejudices this country's position in

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<sup>63</sup> Clark expressed the challenge offered by the goal of reaching a comprehensive settlement in these terms: "So, it is not so much a question of trading off or keeping open the option of trading off, as it is keeping open the option of reviewing some of the applicable principles which may have different applications in the context of only a partial settlement than in the context of an over-all settlement. So, we want to be very careful that we do not get in a position where we have locked ourselves into an agreement on one coast or the other, and then find we cannot quite reach agreement on the other and yet we cannot go back and review that to see whether we might be prejudiced by the agreement on the one coast, if we were to go to arbitration on the other." *Ibid.*, pp. 21-22.

salmon interception talks and tends to further distort the catch balance and make equitable catch division harder to attain."<sup>64</sup> Later in 1978 Hewison, the Union's advisor to the international negotiations, warned that Canada was on the verge of accepting a treaty he characterized as a "sell-out". Among his criticisms was the proposal to curtail the west coast trollers. "Canadian fishermen may well ask," he suggested, "why, if the U. S. intercepting two salmon for every one Canada intercepts, the West Coast troll fishery should be curtailed. (sic) It is the only one in which Canadians intercept substantial numbers of U. S. fish."<sup>65</sup>

Canadian management remained faithful to this sentiment and was unwilling to act as an altruist and restrict offshore trollers for the future benefit of Washington and Oregon fishermen. The involvement of the Minister's Advisory Council (MAC) in the preparation of a chinook management plan for the 1983 season admirably reflected this dynamic in operation. The year 1982 concluded with the signing of a comprehensive salmon interception agreement by Mike Shepard, for Canada, and Lee Alverson, for the United States.<sup>66</sup> According to the two year management plan developed from the principles of the framework agreement a ceiling of 868,000 pieces would be placed on the Canadian chinook catch. The DFO argued that it was critical for Canada to achieve this figure in 1983; violation of the chinook ceiling would make it very difficult to convince the Alaskans to agree to the terms of the treaty.<sup>67</sup> Council members were asked to consult with their membership and report to the MAC in February on the measures they would accept in order to stay below this ceiling. On January 26th an ad hoc troll committee representing the Pacific Trollers

<sup>64</sup> "New pact 'cosmetic touch to ugly face'." The Fisherman, Vol. 43, no. 8 (April 21, 1978), p. 1.

<sup>65</sup> George Hewison, "Sell-out, fish war are treaty options," The Fisherman, Vol. 43, no. 23 (October 20, 1978), p. 5.

<sup>66</sup> "Salmon pact nears," The Fisherman, Vol. 47, no. 23 (December 10, 1982), p. 1; "Canada retreats on treaty issues," The Fisherman, Vol. 48, no. 2 (January 28, 1983), pp. 8-9.

<sup>67</sup> "Minutes: Minister's Advisory Council," Session II, Day 5, January 21, 1983, p. 9.



Association, the Gulf Trollers Association, the Northern Trollers Association, and the UFAWU trollers recommended a May 25 - June 25 coastwide troll closure as the means of attaining the management plan objectives.<sup>68</sup>

In mid-February, when the MAC met again to consider the proposed chinook conservation measures it did so against the background supplied by Alaska's reservations about the treaty. Although this session of the advisory council endorsed the one month closure several members made it very clear that this regulatory measure was contingent upon American ratification of the treaty. Without a treaty Canada would not heed the call to reduce its chinook catch.<sup>69</sup> Within three weeks of this MAC recommendation Alaska announced its rejection of the treaty provisions.<sup>70</sup> Since in the United States the salmon treaty was viewed as a regional issue Alaska's opposition insured the scuttling of the agreement.<sup>71</sup>

In the aftermath of Alaska's balk the MAC was left to consider whether it should stand by its earlier recommendation or abandon it altogether. For reasons which are more fully discussed in a later section some pressure for implementing a coastwide trolling closure remained in order to better apportion the burden of conserving Canadian chinook stocks. The DFO personnel attending the April 8th meeting of the Council, however, rejected any thought of proceeding with the May 25 - June 25 closure. In their view this closure would entail the unnecessary loss of 40,000 to 50,000 chinook.<sup>72</sup> This closure was unacceptable without similar concessions from American, particularly Alaskan, regulators. "The MAC proposal would be too restrictive," a DFO document warned, "and would cut back on U. S. fish, for which there

<sup>68</sup> "Minutes: Minister's Advisory Council," Session III, Day 2, January 26, 1983.

<sup>69</sup> "Minutes: Minister's Advisory Council," Session IV, February 16-18, 1983. See also the remarks of Director-General Shinnars to the annual convention of the UFAWU in "UFAWU 38th Annual Convention, Fisheries Session," The Fisherman, Vol. 48, no. 3 (February 17, 1983), p. 10.

<sup>70</sup> "Alaska rejects salmon pact," The Fisherman, Vol. 48, no. 5 (March 11, 1983), p. 1.

<sup>71</sup> Lee Alverson speaking to the Ocean Studies Seminar, University of British Columbia, April 1983.

<sup>72</sup> "Minutes: Minister's Advisory Council," Session V, Day 4, April 8, 1983, p. 73.

would be no compensation."<sup>73</sup> The vacillation over the substance of the 1983 chinook fishing plan clearly points to the status of the international negotiations as the key variable around which the DFO oriented its regulation of the offshore. As Wayne Shinnars, the DFO Director-General for the Pacific region, said later:

... the bulk of the fish, taken off the west coast of Vancouver Island are not Canadian fish ... there is little incentive on our part to curtail our west coast fishery until we have some arrangement with the United States that also provides Canada with some benefits, particularly in northern waters.<sup>74</sup>

This, then, was the essence of the Canadian management approach.

The marriage of the offshore fishery to the international bargaining process meant that the liberal treatment of trollers relied upon the presence of a negotiating impasse. The trollers were certainly well aware that their regulatory future depended upon the success or failure of the treaty negotiations. In one of its briefs to the Pearse Commission on Pacific Fisheries Policy, the Pacific Trollers Association regretted that international affairs had been excluded from the inquiry's terms of reference:

The impact of international agreements cannot be overstated. We are moving towards a U. S./Canada international agreement which will greatly affect management of trans-boundary stocks. Interception fisheries, now used as a bargaining tool, will be drastically reduced after agreement.<sup>75</sup>

Fisheries Department officials also periodically pointed out the essentially transient character of liberal offshore regulations. Shinnars made it very clear to the members of the Standing Committee on Fisheries and Forestry that a treaty agreement would have important regulatory consequences for offshore trollers. "If we have a

<sup>73</sup> Canada, Department of Fisheries and Oceans, Anonymous, "Draft: Chinook Fishing Plan," 1983.

<sup>74</sup> Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-Second Parliament, second session, Issue no. 15 (April 12, 1984), p. 12.

<sup>75</sup> Pacific Trollers Association, "Presentation to Commission on Pacific Fisheries Policy," June 5, 1981, p. 4.

Canada - U. S. agreement," he warned, "the west coast trawl fishery obviously is very much in question because it may be eliminated or drastically reduced. (sic)"<sup>76</sup>

Some of the credit for the strategic merit of retaining liberal trolling regulations in Canada is owed to the impact of technological development in the troll fishery. Technological change in this fishery endowed trollers with the ability to make a second contribution to the distributional battle with the United States. It enabled them to increase the Canadian share of Fraser River pink and sockeye salmon catches, thereby satisfying perennial international allocation dreams without violating the letter of the Sockeye and Pink Salmon Convention. The advent of the freezer troller meant that those who fished her could remain at sea for weeks on end. Loran navigation systems enabled the fleets to return to the precise sites of their past successes. Power gurdies, stainless steel line, and new lures combined to increase exponentially the effectiveness of trolling craft. One DFO estimate claimed that from 1950 to 1970 the catching power of trollers jumped by approximately 300 percent.<sup>77</sup> Perhaps the most radical change was the development of new trolling lures, a development promoted by the technological development research program sponsored under the Fisheries Development Act. "The most important development regarding structure," wrote Shaffer, "has been the troll lure, enabling troll vessels to catch the sockeye species which was traditionally caught by net gear."<sup>78</sup> What was once

<sup>76</sup> Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-Second Parliament, second session, Issue no. 8 (March 15, 1984), p. 44. In an appearance before this same committee in 1982, Fisheries Minister LeBlanc offered a very similar appraisal of the regulatory implications which would attend the resolution of the negotiations. See Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-Second Parliament, first session, Issue no. 47 (March 26, 1982), p. 19.

<sup>77</sup> Canada, Department of Fisheries, Anonymous, "Changes in Salmon fishing power," no date, p. 2.

<sup>78</sup> Marvin Shaffer, An Economic Study of the Structure of the British Columbia Salmon Industry, (prepared under contract to the Salmonid Enhancement Program, April 1979), p. 134.

considered an extraordinary event - a significant troll catch of sockeye and pink salmon - had now become commonplace.

In Canada, this interaction between technological development in trolling and the peculiar institutional context for regulation established by the Sockeye and Pink Salmon Convention helped to sustain liberal trolling regulations. The regulatory responsibilities of the IPSFC, it will be recalled, were limited to the waters of the convention area. Moreover, its regulatory proposals were subject to the approval of the signatories to the agreement. For decades, this regulatory authority was generally sufficient to fulfill the Commission's allocational mandate. Barring extraordinarily heavy diversions of Fraser stocks through the Johnstone Straits the heaviest fishing for Fraser runs occurred in the convention area. Regardless, trollers enjoyed only negligible success in landing these traditional net species.

With the technical improvements to the troll fleet Canada could now intercept considerable numbers of the Fraser runs before they entered the convention area and became subject to IPSFC management and the 50/50 allocation condition of the treaty. Canada, by allowing its trollers to operate unmolested outside of the convention area, now possessed the potential to increase its share of the Fraser run far beyond the equal division envisaged by the convention. This potential was an obvious concern to the United States and to the IPSFC.

Prior to the 1979 fishing season the IPSFC tried to act on these concerns, recommending to the Canadian and American governments that the high seas troll fishery in the convention area be regulated on the basis of 10 day openings, followed by 4 day closures from June 15 to September 7. The recommendations for these high seas regulations were rationalized in terms of the commission's concern over the increasing harvest of sockeye and pink salmon prior to their entry into convention net fishing areas, leaving net fishermen to bear the brunt of closures to guarantee needed escapement to the Fraser system. In the commission's words, "(s)imilar

participation in regulatory measures by the offshore troll fishery must be implemented to bring all user groups under management control."<sup>79</sup> Canada responded cautiously to the proposals. LeBlanc promised to consult with industry before making a final decision. Allocation and international negotiation considerations were foremost in Canada's calculus on this issue:

My officials and Canadian salmon commissioners will be consulting with industry groups to examine implications of the proposals, both from the allocation viewpoint and from the standpoint of their impact on the negotiation of an equitable agreement with the U. S. on Pacific salmon interceptions.<sup>80</sup>

In June 1979 Canada notified the Commission that it had approved of the 1979 proposed regulations except for the section pertaining to regulating the high seas troll fishery.<sup>81</sup>

The significance of the offshore troll fishery to the campaign to minimize the American percentage of the total Fraser River sockeye and pink salmon runs may also be illustrated by considering the development of a management strategy for the pink salmon fishery in 1983. In January 1983 the MAC was asked to develop a management plan for the upcoming pink season, keeping in mind certain parameters articulated by the DFO. The department's primary concern was that the troll catch of pinks in Canadian convention waters was too high. The DFO, in the interests of international catch allocation, did not want trollers to operate inside the convention area. The intent of the department was to allow trollers to target on pinks above the 49th parallel (the northern boundary of the convention area), leaving only a net fishery within the jurisdiction of the IPSFC.<sup>82</sup> The DFO's preferred strategy was not without its problems for some of the commercial net fishing organizations represented

<sup>79</sup> "IPSFC sees Fraser run of 3.8 million," The Fisherman, Vol. 43, no. 27 (December 15, 1978), p. 2.

<sup>80</sup> "IPSFC proposals spark criticism," The Fisherman, Vol. 44, no. 1 (January 17, 1979), p. 6.

<sup>81</sup> International Pacific Salmon Fisheries Commission, 1979 Annual Report, p. 9.

<sup>82</sup> "Minutes: Minister's Advisory Council," Session III, Day 1, January 23, 1983.

on the Council since the catching power of the troll fleet had expanded to the point where an unrestricted troll fishery could threaten decimation of the runs and deny the net fleets a reasonable share of the catch. The dilemma of accommodating international and domestic allocation dimensions was thrust upon the MAC.

During its April meetings the MAC succeeded in developing a management plan capable of winning the unanimous support of all council members. After first rejecting a proposal to impose a 10 days open/4 days closed pattern on offshore trollers, a proposal found unacceptable by the DFO and the trollers, the Council approved a motion calling for restrictions on where and when trollers could retain pink and sockeye salmon. The Council recommended that on the west coast of Vancouver Island trollers would be prohibited from retaining pinks and sockeyes below the 49th parallel for the entire season unless either the run size was very large or the outside troll catch was low. If these latter events transpired the trollers should be given access to areas below the 49th parallel and in Johnstone Straits. In contiguous waters above the 49th parallel trollers would be allowed to retain pinks and sockeyes from July 25th to August 15th unless catch monitoring showed a variation in the strength of the run. "The objective," read the Council's motion, "is that the total troll catch of Fraser River pinks inside and outside should not exceed one-third of the Canadian catch."<sup>83</sup> The willingness of the trollers to support this endeavour to satisfy international and domestic allocation concerns evaporated once they returned to inform their membership of the MAC recommendation. In May the MAC heard a request that the trollers be assured of a 26 day pink fishery rather than the 22 days recommended by the Council.<sup>84</sup>

In June the MAC wrestled once again with the contentious issue of the pink salmon fishery. During the meetings of June 17th and 18th further evidence arose

<sup>83</sup> "Minutes: Minister's Advisory Council," Motion #21, Session V, Day 5, April 9, 1983.

<sup>84</sup> "Minutes: Minister's Advisory Council," Session VI, May 11, 1983.

confirming the disintegration of whatever consensus had existed in the industry regarding the importance of liberal trolling regulations to the Canada-United States negotiations. On June 18th the MAC established a "War Committee", a special committee charged with advising on international issues as they affected or could be affected by in-season management. The membership of this committee split on the question of how Canadian regulations should respond to the bilateral talks. Representatives of troller organizations wrapped themselves in the Canadian flag and demanded an increase in their fishing opportunities. The Pacific Trollers Association asserted that the Council had a responsibility to minimize the number of fish taken in convention waters. The future of the Council was linked to the MAC's willingness to use the established framework and regulations of the salmon fishery to accomplish this end, an approach which legitimized the status quo in offshore waters. Representatives of other organizations objected to the self-serving argument of the trollers on the grounds that the Council also had a responsibility to recommend regulations which offered some protection to net fishermen. Some resurrected the historic call to open the offshore waters beyond the west coast of Vancouver Island to netfishermen. If the DFO wanted to maximize the Canadian catch outside convention waters netfishermen should share in the windfall. When the Council reaffirmed Motion 5.21 over the objections of the Pacific Trollers, the Northern Trollers Association, and the Prince Rupert Fishermen's Cooperative, the PTA representative condemned the council and stormed out of the session.<sup>85</sup> When proposed regulations promised that trollers would benefit at the expense of Canadian netfishermen as well as Americans the industry consensus on the legitimacy of liberal trolling regulations disappeared.

<sup>85</sup> "Minutes: Minister's Advisory Council," Session VII, Day 3, June 18, 1983. This stormy conclusion to the MAC's consideration of the pink salmon management plan was followed by the Pacific Trollers Association attempt to obtain an injunction to prevent implementation of the plan approved by the MAC. This bid by the Pacific Trollers was rejected by the courts. See "PTA injunction bid rejected," The Fisherman, Vol. 48, no. 14 (July 25, 1983), p. 1.

Although the MAC's recommendation respected the essence of the DFO's management preferences, the department nevertheless had reservations about all of the plan's details. The nature of these reservations showed that the DFO was more sensitive to the issue of international allocation than it was to the issue of the division of the catch between troll and net fishermen. The department's primary objective was to maximize the catch of Fraser stocks outside of the convention area. Accompanying this preoccupation was a concern that the domestic allocation considerations thrashed out in the MAC plan would be inconsistent with maximizing the non-convention waters catch. The DFO's staff doubted that the proposed 22 day troll fishery would give the trollers the 33% of the pink catch mandated by the MAC proposal, a development that increased the likelihood of allowing fishing below the 49th parallel. The department objected to this on the basis that it would increase the amount of fish taken by the United States in the convention area.<sup>86</sup>

A review of the DFO files also provides clear indications that the department wanted to maximize Canada's share of the fish that were returning to her own streams and adjusted its troll regulations to satisfy this national allocational appetite. A departmental review of the 1983 salmon season applauded the unprecedented diversion of Fraser pink and sockeye stocks through Johnstone Strait. "The best thing about this," the review said in reference to the diversion, "was that U. S. fishermen got a very small share of Fraser sockeye and pinks. The U. S. catch of 373,000 sockeye was 11.8% of the combined U. S. and Canadian catch, and the 1,817,000 U. S. pink catch was 16.3% of the combined catches."<sup>87</sup> At a MAC meeting in 1984 Shinnars expressed the view that if a major diversion of sockeye occurred again through Johnstone Strait, an opportunity that could be seized by both troll and net fishermen, Canada's position would not change. Canada would take as many fish as possible before they reached convention

<sup>86</sup> "Minutes: Minister's Advisory Council," Session VII, Day 2, June 17, 1983.

<sup>87</sup> Canada, Department of Fisheries and Oceans, Anonymous, "Review of the 1983 Salmon Season," no date.



waters.<sup>88</sup> This general DFO attitude, in tandem with the technological improvements, was a boon for west coast trollers since they were situated along the customary route taken by stocks destined for the Fraser. Since a relatively unfettered troll fishery was one method by which the department could improve Canada's share of these catches it is not surprising to note the reference to the institutional context in a hindsight appraisal of differential troll and net gear regulation:

To conclude, it would appear that the existence of the Treaties (both current and former) has influenced management decisions generally with regard to differentiation between troll and net gear.<sup>89</sup>

The institutional incentive offered by the Sockeye and Pink Convention to the DFO to develop fisheries for these two species outside of the convention area was then another prop for liberal troll regulations in the Canadian offshore during this period.

This institutional incentive to intercept Fraser stocks in Johnstone Strait or on the west coast of Vancouver Island does not appear to have been a particularly treasured management consideration since it worked hardship upon Fraser River gillnet fishermen. This was especially the case when anticipated runs did not materialize or passed unexpectedly through United States waters where they faced a gauntlet of American fishermen. Wally Johnson, Director General of the Pacific Region in 1979, graphically related the frustrations he felt in 1978 when the need to take fish outside of convention waters was followed by a surprise in the route taken by the Fraser chum run, circumstances which cut sharply into the fishing time and livelihood of the river fishermen:

As you well know, here we were last year trying to get first of all the sockeye, trying to get as much for Canada as we could before they got into Convention waters. Later on, when they (U. S. fishermen) got the chum salmon, it turned out they were going down south of us to Puget Sound areas.

<sup>88</sup> "Minutes: Minister's Advisory Council," Session XVI, April 16-18, 1984.

<sup>89</sup> Canada, Department of Fisheries and Oceans, "Confidential Memorandum," August 19, 1985.

There's no question it is one of the key bloody allocation problems we've got. And there's no question the gillnetter is the guy biting the goddamn bullet too often. You have the troll and the net fisheries hitting things before they ever get to the rivers for gillnet fishermen. I assure you we are going to try and do something with this, Edgar.<sup>90</sup>

These assurances were of little comfort to the UFAWU delegates. In fact, regrets and frustrations, however sincere, did not sway the government from following the management course dictated by the allocation terms of the Sockeye and Pink convention and the desire to minimize the deficit in the balance of interceptions. The government addressed domestic conservation needs with its eyes fixed firmly upon the necessities of maintaining leverage in the negotiations with the United States.

One of the more striking illustrations of this was the conservation package designed to address a serious decline in the chinook salmon populations of the Fraser system. The wide migratory range of these populations exposes them to numerous predators. Based on the average exploitation between 1970 and 1979, Fraser River chinook suffered most at the hands of the Georgia Strait sport (186,144 pieces) and troll (135,195) fisheries. Washington's troll, net, and sport fisheries combined to be the third largest exploiter of these stocks (86,655). Fraser River gillnetters took, on average, the fourth largest amount of the catch (83,999). The west coast of Vancouver Island troll fishery was also a substantial beneficiary of Fraser chinook, taking an average of 64,925 fish.<sup>91</sup> Throughout the time period discussed in this chapter this pattern of exploitation was accompanied by declining chinook spawning escapements in the Fraser system which troubled Canadian fishery managers.<sup>92</sup> By the 1980s the

<sup>90</sup> "UFAWU 34th annual convention, Bearpit with Dr. Wally Johnson and his staff," The Fisherman, Vol. 44, no. 3 (February 19, 1979), p. 8.

<sup>91</sup> These figures are taken from "Appendix FIFO-17: Total Exploitation of Fraser River Chinook, 1970-79 Average," in Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-second Parliament, first session, Issue no. 34 (May 28, 1981), p. 34A:1.

<sup>92</sup> See, for example, the testimony of R. Crouter, Fisheries and Marine Service, Pacific Region in Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirtieth Parliament, second session, Issue no. 15 (March 24, 1977), pp. 15-16.

status of chinook stocks was described variously as "a very serious conservation problem"<sup>93</sup> or a situation requiring drastic conservation measures.<sup>94</sup>

Despite this pattern of exploitation, when the government actually began to flex its regulatory muscles in order to get more chinook to the spawning grounds the impact of its regulatory measures bore, at best, a very imperfect correlation to the division of responsibility for the escapement shortages. Department officials conceded that some of the conservation problem was due to adopting management decisions on the basis of their impact on the conflict with the United States. Ron MacLeod, Director-General of the Fisheries Services Directorate, made this point succinctly to the Standing Committee on Fisheries and Forestry:

The problems in conservation are long standing and have a cumulative impact that we are appreciating or realizing now, partly stemming from very deliberate decisions in the case of the chinook stocks to put them at risk to some degree in order to maintain our leverage in our negotiations with the Americans on the resolution of these issues, and where we are called on now to pay some price.

I think all of the components in the fishery, whether commercial or sport fishermen or Indian food fishermen, are having to make their contribution to giving Canada that leverage.<sup>95</sup>

Fraser River gillnetters were asked to pay a particularly high price for helping to maintain Canada's leverage - the elimination of their targetted chinook fishery and the introduction of mesh restrictions designed to reduce the incidental catch of chinook

<sup>93</sup> J. R. MacLeod, Acting Assistant Deputy Minister, Pacific and Freshwater Fisheries, in Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-second Parliament, first session, Issue no. 1 (June 5, 1980), p. 28.

<sup>94</sup> Doug Johnston, Assistant Deputy Minister, Pacific and Freshwater Fisheries, in Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-second Parliament, first session, Issue no. 23 (March 18, 1981), p. 7.

<sup>95</sup> Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-second Parliament, first session, Issue no. 12 (July 22, 1980), p. 9.

during the sockeye fishery.<sup>96</sup> This price was demanded despite the admission that they were not identified as primarily responsible for the escapement crisis. At an April 5, 1981 meeting in New Westminster the Area Manager for the Fraser River told gillnetters that, although they were not part of the chinook conservation problem, they were part of the short-term solution. In language very reminiscent of Wally Johnson's message to the 1979 UFAWU convention Fred Fraser was reported to have told the fishermen that: "You guys have got to hang on just a little bit longer."<sup>97</sup>

The debate within the MAC about the 1983 chinook fishing plan also highlighted the reticence of the department to compromise its bargaining strength in order to ameliorate a worsening domestic stock situation. With the collapse of the 1982 agreement under the weight of Alaska's objections several members of the MAC tried to reinterpret the motive behind the development of the plan. The DFO, in asking for the MAC's opinions on the management of the chinook fishery, viewed the plan solely as a means of reaching anticipated international obligations while some of the MAC members added the perspective that the chinook fishing plan should shift some of the domestic conservation burden off the backs of Fraser River gillnetters and other inside fisheries and onto the offshore fleet. When new treaty obligations did not materialize some members of the MAC nonetheless wanted the adoption of the proposed west coast closure approved by the Council as a means of sharing this burden and conserving the Fraser chinook stocks.<sup>98</sup> These concerns were not enough to persuade the DFO to

<sup>96</sup> These measures are discussed in: "Fraser, Rivers closures hit salmon net fishermen hard," The Fisherman, Vol. 45, no. 12 (June 13, 1980), p. 1; "Total closure on Fraser," The Fisherman, Vol. 46, no. 2 (January 30, 1981), p. 1; "Sport fleet feels fisheries' wrath after Fraser closure," The Fisherman, Vol. 46, no. 3 (February 13, 1981), p. 3.

<sup>97</sup> "LeBlanc softens stand on total Fraser closure," The Fisherman, Vol. 46, no. 7 (April 14, 1981), p. 1. In its coverage of the 1981 UFAWU convention The Fisherman reported: "In a bittersweet acknowledgement of what Fraser River fishermen have always contended, Fraser said 'the department does not consider the Fraser River gillnet fleet to be the root of the problem. User groups such as the offshore troll, Georgia Strait sports fleet and American interceptions, to name just three, must be brought under control.'" The Fisherman, Vol. 46, no. 3 (February 13, 1981), p. 9.

<sup>98</sup> "Minutes: Minister's Advisory Council," Session V, Day IV, April 8, 1983.

restrict the offshore fishery. Such restrictions would only accompany a treaty settlement or, as we will soon see, ad hoc agreements on mutual fishing restrictions.

The introduction of severe chinook conservation measures in the commercial fishery against first the gillnetters and then the Georgia Strait trollers was tied intimately to the fact that neither of these fisheries played a consequential role in intercepting American fish. In 1984, the DFO announced reductions in the Georgia Strait, west coast of Vancouver Island, and north coast troll seasons. The Georgia Strait trollers faced by far the harshest cuts, seeing their five and one-half month season chopped to two months. West coast trollers, on the other hand, only stood to lose two weeks from their 1983 season. After the curbs were announced Director-General Shinnars explained the varying severity of the restrictions in terms of the context set by the Canada-United States relationship. Referring to the poor health of Georgia Strait stocks he remarked:

Those particular runs of chinook fish are stocks that we have control over, almost total control, and which are not involved to the same extent with the Canada-U. S. problem which complicates our ability to manage domestically.<sup>99</sup>

At a subsequent committee hearing Shinnars stressed again that since the bulk of the fish taken in the Strait of Georgia troll fishery were Canadian fish the department had a responsibility to take measures that would increase escapements. Barring a satisfactory treaty settlement, the same logic did not apply to the offshore troll fishery since it was an interception fishery:

... the bulk of the fish, taken off the west coast of Vancouver Island are not Canadian fish ... there is little incentive on our part to curtail our west coast fishery until we have some arrangement with the United States

<sup>99</sup> Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-second Parliament, 2nd session, Issue no. 13 (April 5, 1984), p. 10. Shinnars made a similar argument to the MAC. See "Minutes: Minister's Advisory Council," Session XVI, April 16-18, 1984, p. 15.

that also provides Canada with some benefits, particularly in northern waters.<sup>100</sup>

The fact that, in 1984, the offshore trolling seasons on the north/central coast and the west coast of Vancouver Island escaped the severe cuts suffered by the Georgia Strait fishery demonstrated admirably the marginal impact of domestic considerations upon offshore regulatory development. International influences were well-established as the most crucial elements in the dynamics of offshore regulation. Canada's regulatory profile off the west coast of Vancouver Island, for example, was affected by the willingness of United States officials to accommodate Canadian escapement or management goals. With the promise of such a quid pro quo in hand Canada would agree to reduce the pressure applied by west coast trollers to American stocks. DFO restrictions on the west coast coho fishery in 1984 were made in return for an agreement by Washington to abstain from fishing Fraser-destined chum salmon. "We have responded in southern waters," Shinnars testified, "by having a restrictive Canadian fishery on their stocks . . . . They have responded by not having a chum fishery on Fraser bound chum."<sup>101</sup> In the north, the length of the 1984 season was shaped largely by the light chinook catch restrictions adopted by the Alaskans. Drastic cutbacks in the north could have been expected had an international agreement been reached but without that accord trollers only faced a two to three week closure in June "... in light of no response from the Alaskan situation."<sup>102</sup> That Alaskan intransigence was not rewarded with the replication of the regulatory status quo may be attributed, on the one hand, to the severity and pervasiveness of the chinook decline throughout the Pacific coast. There was little doubt in the collective mind of fishery

<sup>100</sup> Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-second Parliament, 2nd session, Issue no. 15 (April 12, 1984), p. 12.

<sup>101</sup> Ibid., p. 17.

<sup>102</sup> Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-second Parliament, 2nd session, Issue no. 8 (March 18, 1984), p. 37.

managers that North American chinook runs faced a grave future.<sup>103</sup> In the light of these circumstances Canadian officials were prepared to temper the use of their bargaining lever, if for no other reason than to pin the label of irresponsibility on Alaska when it came to conserving endangered chinook stocks. As one DFO official involved intimately with the United States-Canada negotiations informed the MAC, the use of the west coast troll fishery for bargaining clout had to be accommodated with Canada's wish not to appear totally irresponsible in regards to stock preservation.<sup>104</sup>

The adjustments Canada made to her offshore troll season in 1984 were not the only examples of one country or the other setting regulatory policy either in response to or to solicit particular management policies by a neighbouring jurisdiction. As we have argued before, for Canada regulatory change in the offshore was regarded as a commodity exchangeable for valued concessions from the United States. The imposition of an October closure on the troll fishery in 1981 showed that this objective could operate at a less grand level than that of treaty negotiations. Earlier we noted the collective status of Washington fishermen as the third largest exploiter of Fraser chinook. Of the various Washington fisheries preying upon these Canadian fish the Point Roberts net fishery was the single most damaging. It accounted for a yearly average of 30,847 chinook calculated over the 1970-79 period. Canada's approach to increasing the escapement of Fraser chinooks included then a search for catch reduction concessions from the United States. At the 1981 UFAWU convention Shinnors was grilled about the department's willingness to shut Fraser River fishermen out of the chinook fishery while Americans took Fraser chinooks at Point

<sup>103</sup> Mike Shepard, the Canadian negotiator who, with Lee Alverson from the United States, orchestrated the 1982 agreement which collapsed under the weight of Alaska's objections suggested that a conservation crisis was a prerequisite for creating the circumstances needed to produce a treaty. Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-second Parliament, first session, Issue no. 17 (November 6, 1980), p. 29.

<sup>104</sup> "Minutes: Minister's Advisory Council," Session XVI, April 16-18, 1984, p. 12.

Roberts. His response to these verbal attacks emphasized that the trollers' privileges could be curtailed if the U. S. would assist the Canadian efforts aimed at Fraser chinook:

We are attempting to negotiate with the Americans for a move off Point Roberts in exchange for a cutback in the troll fishery off the west coast of Vancouver Island where we are impacting substantially on their fish bound for the Columbia. At this point we are very hopeful and very optimistic that we are going to get a major move on Point Roberts this year.<sup>105</sup>

Later Shinnors confirmed to the Standing Committee on Fisheries and Forestry that the State of Washington had agreed to Canada's request that the Point Roberts net fishery only operate during the period controlled by the salmon commission. The price secured for this concession was the October troll closure. Retention of the concessions in following years required:

... that the Canadians, on the other hand, would have to reciprocate by keeping their conservation measures in place that not only assist Canadian fish but also have some benefits to the Americans, such as the October closure on the west coast of Vancouver Island which assists not only our Canadian-bound Chinook but also the Columbia River-bound Chinook.<sup>106</sup>

### Conclusion

This chapter focussed our attention upon the period in which the consensus on offshore salmon fishing, after surviving for twenty years, disintegrated. While Canadian offshore trollers continued to operate with very few restrictions their counterparts in Washington suffered under a more and more onerous regulatory burden. The Canadian pattern, as we have just seen, remained largely untouched from

<sup>105</sup> "UFAWU 36th Convention Fisheries Session," The Fisherman, Vol. 46, no. 3 (February 13, 1981), p. 12.

<sup>106</sup> Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirty-second Parliament, first session, Issue no. 34 (May 28, 1981), p. 26. The DFO credited, in part, the restrictions implemented by the United States for an increase in the escapement of early Fraser chinook runs. See "Early chinook return good, mesh limits appear to work," The Fisherman, Vol. 46, no. 16 (August 21, 1981), p. 9.



1977 to 1984 because of the indissoluble bond between offshore trolling and fishery negotiations with the United States. International objectives continued to influence national policy making. As in the preceding period, Canadian diplomatic efforts sought to rewrite the fisheries relationship with the United States to correspond with a strict interpretation of the state-of-origin principle. In these aspirations the troll fishery retained its strategic significance. This fishery was so strategic that it was exempted from the regulatory measures designed to address a conservation problem partially of the trollers' own doing.

As this period progressed the indissolubility of the bond between Canadian offshore trolling and the bilateral talks was questioned by a growing number of industry organizations. In large part this industry skepticism may be traced to the concern that liberal trolling regulations were hurting not only American fishermen but also Canadian inshore netfishermen. The insensitivity of the state's regulatory preferences to the view that trollers should bear some added restrictions in order to address domestic allocation and conservation concerns aroused considerable anger among the spokesmen for important netfishing organizations.

For some, this feature of the Canadian regulatory pattern from 1977 to 1984 may be interpreted as an affirmation of troller efficacy. Yet, the explicit linkage of troll fishery regulation to bilateral bargaining erodes the credibility of this outlook. Throughout these eight years liberal regulations were not regarded as an inviolable right of trollers. On several occasions senior departmental officials discussed the essentially transient character of liberal trolling regulations. Restrictions on Canadian trollers, rather than being rejected out of hand, were offered to the Americans in exchange for restrictions on American fisheries hitting either Fraser River or Skeena River stocks. The evidence of this chapter then joins that of its predecessors in challenging the tenets of a traditional interest group perspective on the policy process. As in the mid-1960s the Canadian state, guided by its international

goals, pursued its preferred national policy option despite the intensified opposition of fishing organizations towards its preferences.

If government officials were unresponsive to the immediate demands of their societal constituencies, what motivated the state to act as it did? Arguably, the state's reluctance to respond to these criticisms of its regulatory preferences arose from the conviction that these preferences were the most suitable means for pursuing ends shared by government and industry. Yet, this chapter contains the germ of a second explanation. It offers indications that a policy's suitability was measured also according to its consonance with certain international institutions or process norms valued by government officials. As a signatory to bilateral and multilateral fisheries agreements Canada was unprepared to authorize fishermen to behave in ways which violated an international institutional framework of which Canada was a major architect and beneficiary. Thus, as in the past, Canadian officials rejected suggestions that netfishing be permitted in offshore waters. The state's interest then in pursuing its fisheries objectives according to terms and conditions set by respected international arrangements also assists in explaining Canadian willingness to shelter the offshore troll fishery from additional restrictions.

This more statist concern with legitimate processes of goal pursuit was expressed in other ways during this period. The interest of Canadian negotiators in preserving the integrity of the salmon interception talks and Canada's status therein also demanded national regulatory adjustments. The modest reductions made to the west coast ocean troll fishery in 1984 were adopted in part for the credibility officials believed they lent to Canada's efforts to appear as a responsible trustee of the salmon resource.

A state's concern with maintaining the integrity of the intergovernmental processes through which it seeks goal advancement also inspired the American State Department's perception of appropriate offshore regulations. As we saw in this

chapter, the extension of national jurisdictions to two hundred miles produced a more complex Canada-United States bargaining environment. The addition of boundaries, hydrocarbons, and traditional fisheries to the bargaining agenda and their linkage to the salmon interception negotiations in a single comprehensive negotiating framework made the settlement of one issue contingent upon the settlement of the others. The commitment to maintain a process capable of producing a comprehensive agreement prompted American negotiators to support the status quo in the offshore salmon regulatory pattern. Any changes to this pattern were potential threats to the complex process established to search for a resolution of competing national claims to marine resources.

While the transition from twelve to two hundred mile fisheries jurisdictions may have buttressed the offshore predispositions of Canadian regulators the institutional change attending this transition in the United States is one key to understanding the darker future which awaited Washington trollers. The other key is offered by the realignment of domestic fishery interests created by the judicial interpretation of treaty Indian fishing rights. The institutional change came with the introduction of the regional councils and Congressional oversight, a change which divorced the responsibility for national regulatory policy in the offshore from the responsibility for international policy making. What made this redistribution of state capacity most threatening to the Washington troller was its accompaniment by a preoccupation within the new offshore managers to regulate the offshore fishery in accordance with the allocation terms laid down by the federal courts. This fragmentation of what was also a significant accretion to the capacity of the American state in tandem with the reordering of domestic allocation priorities prevented the State Department in 1977 from guaranteeing the regulatory concessions to Canadian trollers which would have protected the length of the trolling season in the American offshore. The move to a two hundred mile fisheries jurisdiction and the need to

reallocate the salmon catch to a native community composed primarily of net fishermen robbed the State Department of the ability to subordinate national policy to the pursuit of its international fishery objectives - specifically, the protection of American groundfish fishermen in Canadian waters and the comprehensive bargaining process established in 1977.

## Chapter VII: Interdependence, State Competition, and National Regulatory Policy

Between 1957 and 1984 the lengths of Pacific salmon fishing seasons in Washington and British Columbia tended to vary inversely with the fishing power of the salmon fleets. As technological breakthroughs in the fishery sustained man's confidence in his ability to develop ever more efficient techniques of exploiting the earth's resources, fewer and fewer opportunities to deploy the products of his ingenuity were allowed. This study arose out of a curiosity about one particularly striking exception to this pattern - the anomaly of liberal offshore trolling regulations. Why, for much of this period, were governments predisposed to turn a blind eye towards the offshore troll fishery, a fishery that, arguably more than its net cousins, so plainly and completely violated the management precepts outlined by the literatures of fishery biology and economics? What aspects of fishery politics may assist in accounting for this treatment?

The arguments developed here in response to these queries departed from a well-established logic of explaining regulatory behaviour, whether in social and economic life generally or in the fisheries specifically. This departure was inspired by the conviction that those who characterize regulation as a product of a closed, interest group dominated process sacrifice a more persuasive explanation for the regulations nations adopt towards common property resources shared with other countries. A richer understanding of common property resource regulation awaits those who consider the incentives for national regulatory policies offered to self-interested actors by the context of resource interdependence. This change of intellectual style strove to weave strands from the literatures on interdependence, international regimes, and the state in an effort to illustrate that, in the study of salmon fishing seasons in Washington and British Columbia, our comprehension of particular national

regulatory policies is enhanced by considering the international ambitions of states and the structures in which these ambitions are expressed and mediated.

This final chapter intends to highlight both the promise and the limits of this perspective on regulatory politics. This aspiration is couched, however, within the same claim of modesty made in the concluding chapters of many other case studies. Individual case studies cannot be used to construct powerful generalizations. Yet, at the same time, the case study method may tempt us to follow fruitful alternative analytical avenues. The findings of this particular investigation merit attention for the explanatory value they attribute to factors seldom considered when constructing explanations of regulatory politics, factors which may offer promise as guides to future research.

#### Resource Interdependence, Regimes, and Regulatory Politics

This study of regulation suggested that an intimate bond exists between resource interdependence, international fishery regime goals, and national regulatory policy. To a very considerable degree, the status of the salmon resource as international common property exerted a powerful formative influence upon the formulation of international fishery objectives by Canadian and American administrations. The presence of resource interdependence lent credence to the distributive objectives - captured here by the phrases Asian exclusion, North American equity, and state-of-origin principle - Canada and the United States sought to incorporate as revisions to the traditional fishery regime.

Resource interdependence was the source of more than just the tendency to define regime objectives in distributional terms. It also encouraged government to judge national regulatory options according to their potential as contributors to the realization of these distributional dreams. Options were exercised or rejected according to their utility as means to be used for the accomplishment of regime objectives. The regulatory preferences implemented by government tell us something about the state's

ordering of regime objectives. Tight restrictions upon the geographical extent of net fishing and lax ocean troll restrictions suggests that the norm of Asian exclusion enjoyed the highest standing within the hierarchy of international goals pursued by Canada and the United States. Regulators tended to cast a beneficent eye towards the activity of the offshore trollers because their behaviour did not compromise the basis of the claims directed against the Japanese.

The preoccupation with protecting the legitimacy of Asian exclusion assumed particular prominence in several key regulatory decisions of the 1950s and 1960s. When American and Canadian fisheries negotiators met in Seattle in 1957 to discuss the coordination of fisheries regulations, long-tenured foreign fishery policies framed their deliberations and guided their selection of national policy options. Their commitment to the norm of Asian exclusion, fuelled by a fear that Japan would seek the removal of salmon from the list of species protected by abstention, inspired the delegations' embrace of the surfline principle. Offshore trolling's status as a fishing technique which did not compromise the North American interest in curtailing Japan's high seas net fishery helped to insure the placement of the ocean troll fishery onto a less-regulated pedestal than that reserved for net fishing.

The overarching concern with minimizing Japanese interception of North American salmon also influenced the propensity to use national regulations as retaliatory devices during the course of United States/Canada disputes over the surfline's location in the 1960s. Retaliatory options which threatened the legitimacy of the proscriptions demanded of the Japanese were rejected by decision makers. This was clearly the primary rationale for the Canadian refusal to allow widespread net fishing on the high seas off northern British Columbia and seems to offer a very plausible explanation for the Americans' refusal to allow their fishermen to operate beyond Canadian territorial waters off the west coast of Vancouver Island. Regulatory actions

which were clearly inconsistent with the abstention demanded of the Japanese were taboo.

As the example of the surfline dispute suggests, North American concerns about the behaviour of distant water fishing fleets affected the conduct of Canada/United States fisheries competition. Throughout the period considered here this second axis of competition centred on what ultimately became different conceptions of equity. By establishing certain parameters of national regulatory behaviour the principle of Asian exclusion also placed important constraints upon the nature of the regulatory measures which Canada and the United States employed in efforts to entrench the interpretations of North American equity they favoured. Troll fishermen benefitted from these constraints since offshore trolling could be used to pursue equity without risking the foundation of abstention. The security derived from this special circumstance was enhanced by bilateral developments in the 1970s. Each nation's plea that it was the victim of an imbalance in interceptions helped sustain the liberal regulatory treatment of trollers in both jurisdictions.

In Chapters five and six the regulatory favouritism enjoyed by Canadian ocean fishermen in the 1970s and 1980s was attributed to the strategic importance of their behaviour to the United States/Canada salmon interception negotiations. An unfettered offshore troll fishery, intercepting as it did large numbers of American salmon, was perhaps Canada's most significant bargaining lever. Canadian regulators certainly treated it as such. The favourable regulatory treatment of this fishery should not be attributed solely to its ability to intercept American salmon. After all, a high seas net fishery could have accomplished a similar goal. Rather, this treatment flowed from the status of the offshore troll fishery as a legitimate interception fishery, a status established by the peculiar location of offshore trolling within the conjuncture created by the simultaneous pursuit of Asian exclusion and North American equity. Again, the regulatory attitude towards Canadian offshore fishing was molded by this



behaviour's ability to serve Canadian ends in the bilateral relationship without endangering the principle entrenched in the International North Pacific Fisheries Convention. Throughout the period covered by this study the interaction between resource interdependence and the principle of Asian exclusion had a profound impact upon the regulatory destiny of the offshore troll fishery.

We cannot leave this section without noting that this destiny, particularly as it affected Washington fishermen, also was influenced by the linkage made in the reciprocal fishing privileges agreements between salmon fishing practices and important foreign fishery policy interests in other species. These agreements not only further institutionalized the offshore regulatory parity established in the 1950s and 1960s but also tied the principle of offshore trolling reciprocity, a paramount Canadian goal, to the preservation of the American groundfish fishery in Canadian waters. Before both nations extended their fisheries jurisdictions to two hundred miles in 1977 this linkage served as a vital ingredient in the willingness of American governments to tolerate the continuation of established offshore salmon fishing patterns.

The incorporation of national regulatory policy as part of the calculus of regime politics demonstrates how the anomaly of liberal offshore regulations may be incorporated into an architectonic interpretation of fishery policy, an interpretation where political considerations derived from foreign fishery policy objectives subordinated biological and economic management principles. Unrestrained troll fisheries were tolerated largely because of their compatibility with the fishery regime visions pursued by North American governments in bilateral and multilateral venues.

#### State Competition, Interest Groups, and Regulatory Politics

The findings of this study do more than suggest that national regulatory policy may be affected by the international politics surrounding common property resources. They also address several popular nostrums used to unravel the intricacies of interest group politics. At the outset this enterprise was justified in terms of the

suggestion that these nostrums incorporated two damaging tendencies - tendencies to explain national policy only through reference to domestic politics and to reduce state behaviour to little more than the product of the demands of private sector interests. The analysis certainly has succeeded in pointing to the interpretative weaknesses accompanying the use of the first assumption in constructing an explanation for offshore regulatory dispositions. The preceding section went some distance in corroborating this flaw in the literature on regulation. Time after time interest groups and government officials justified regulatory preferences in terms of international ambitions. The starkest example of this was provided by the longstanding unanimity in the Canadian industry over the need for a relatively unconstrained offshore fishery. Even net fishermen, those who would have benefitted immediately from offshore troll restrictions, tended to favour this course of action on the grounds that Canada's goals in international negotiations demanded it.

The findings of this study also may be used to criticize the contention that government responds rather slavishly to the demands made by interested private parties. Until recently, public policy studies showed little hesitation in assuming that, when interest groups received favours from the state, these essentially short-term private preferences determined governmental behaviour. Few studies bothered to consider the possibility that public/private sector policy preferences may be shared for quite different reasons. This study offers some support for the position that, in instances where the policy preferences of governments and groups converge, the state's behaviour may be animated by a set of motivations quite distinct from that held by the private actors who benefit immediately from government action.

The record of the bilateral negotiations in the 1970s and 1980s illustrated quite well that, in Canada, the coincidence of troller and government regulatory preferences was founded upon fundamentally different concerns. Government preferred a liberal offshore policy for its bargaining appeal and not out of a concern

with maximizing the self-interest of the ocean troll fraternity. The record indicated at several points that Canada was quite prepared to limit the ocean troll fishery. Canadian negotiators, frequently but unsuccessfully, offered offshore restrictions in return for American concessions on the Fraser River and/or Skeena River, concessions withheld because of the United States' tenacious hold upon the concept of historic fisheries. The only constraint upon the efforts of Canada's negotiators to barter away the liberal offshore regulatory pattern was the intransigence of their American counterparts, not the objections of trollers. The Canadian government's short-term regulatory preferences, although identical to those of the trollers, were inspired by quite different motivations.

The importance of state preferences and motivations to the explanation of national policy was more clearly evident when the regulatory preferences of public and private actors diverged, as they did in regards to American offshore salmon policy in the early 1970s. The demands made by Washington's Governor and Washington State troller organizations for the United States to drop salmon fishing privileges from the reciprocal fishing privileges agreement were satisfied only partially by the modifications made to reciprocity in 1973. Canadians were not banished from all of the contiguous fishing zone off Washington State. The refusal of government to heed this type of counsel then and in 1976/1977 may be traced in part to the importance the United States attached to the operation of an American groundfish fishery in Canadian waters.

The willingness of the state to implement regulations that clashed with the short-term interests of important societal interests also was illustrated vividly by the course of events in the Canadian fishery during the late 1970s and early 1980s. This period was one when serious catch allocation complaints were made by net fishermen organizations, complaints inspired by the triangle formed by the sharp declines in Fraser River chinook escapements, the increased sockeye and pink catching power of

the troll fleet, and the offshore regulatory status quo. The resulting demands for regulatory restrictions on trollers, as made during the deliberations over the substance of the 1983 fishing plan, were ignored by government on the grounds that such modifications would compromise the troll fishery's position as a bargaining lever in the United States/Canada negotiations. The Canadian government's refusal to crimp the trollers' share of the pink and sockeye salmon catches revealed that the government's primary substantive goal was the maximization of Canada's harvest of Fraser River salmon, not the distribution of the resource among Canadian fishermen.

At the very least, findings such as these require extensive modifications to the foundations of interest group theory. Such modifications are offered by a structural Marxist interpretation of public policy, an interpretation where the state does not act at the behest of dominant capitalist interests but rather serves their long run interests. The environment of international fisheries relations offered a context where a government's ability or willingness to respond to even the most powerful members of the relevant constellation of private forces was shaped by the state's evaluation of the bargaining resources and requirements needed to further national distributive goals. In this respect, this study offers an important qualification to Schultz's observations, made in regards to Canadian federal-provincial relations, that group support of a government's bargaining position may be a valuable political resource for negotiators. "Indeed," he concluded, "group support may be such a central political resource that actors will jettison it only at their peril."<sup>1</sup> Much we have uncovered here confirms this conclusion. Both the American and Canadian administrations valued the input and support of their respective commercial fishing industries, a suspicion affirmed by the quite extensive industry-government consultation processes typical of this entire period. Yet, this support, although valued,

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<sup>1</sup> Richard J. Schultz, Federalism, Bureaucracy, and Public Policy, (Montreal: McGill-Queen's University Press, 1980), p. 172.

became expendable on those occasions when industry sought regulatory changes which clashed with the regulatory pattern maintained by a state for its utility in the government's efforts to further long-run industry interests. Group behaviour, not group support, became the vital bargaining commodity for government negotiators. The coercive character of the regulatory process may have allowed government to rely somewhat less upon group support as a means of sustaining the pattern of group behaviour it valued as a political resource.

If the relationship between state activity and private interests detailed here may be incorporated into a structural Marxist interpretation it is equally plausible to interpret some of the more significant government regulatory actions according to a much more purely statist set of concerns. Throughout this study we have encountered indications that the state's attitude towards the legitimacy of various offshore regulatory options was inspired by more than just a concern to increase national harvests of salmon. Throughout the period considered here Canada and the United States attached considerable importance to safeguarding the legitimacy of established international institutions and norms of conduct. The manner in which national regulations were adapted to the pursuit of fishery regime objectives respected this interest of Canadian and American governments. States, arguably to a far greater degree than their societal constituents, value particular processes and institutions of international interaction and negotiation. Fishery regulations which threatened this statist interest in legitimate procedures of sovereignty adjustment were anathemas, irrespective of their possible value as means for realizing distributional ambitions.

The refusal of the Canadian government to push the surfline seaward in the 1960s illustrates well the influence enjoyed by this alternative set of state motivations. Here was a situation where the government refused to follow the counsel offered by most British Columbia fishery organizations. The government statements of the time confirmed that the means used by Canada in its dispute with the United States must

conform to the expectations raised by established international norms and conventions. The government's regulatory preferences and subsequent policies were motivated primarily by institutional or procedural concerns. Surflines adjustments would undermine the basis of the jurisdictional claims entrenched in both the International North Pacific Fisheries Convention and the subsequent bargaining posture assumed against Japan.

Other decisions of this period also suggest that the use of national regulations in aid of fishery regime objectives was mediated by this statist concern with norms of interstate relations. The refusal of the American government to abandon reciprocity in 1976/77 may be traced partially to the commitment of the American negotiators to sustaining the integrity of the very complex bilateral bargaining process through which they hoped to resolve competing Canada-United States claims to sovereignty over marine regions and resources. Similarly, in the 1980s Canada's refusal to allow nets beyond the surflines as well as the adjustments made to Canadian offshore trolling seasons appear to have been designed to protect the bargaining process as much as the substantive interests of Canadian salmon fishermen.

#### State Capacities, Regime Structure, and Regulatory Policy

The use of language such as calculus and architectonic is faithful to the imagery accompanying Allison's characterization of the rational actor model.<sup>2</sup> Authorities in Canada and the United States sought specific international regime objectives and endorsed liberal ocean troll regulations in part because of the assistance these regulations lent to the pursuit of these goals. Ironically perhaps, a significant regulatory anomaly served important political functions because of the prominence liberal offshore policy enjoyed in the high politics of state-to-state negotiations. While state competition is the key to unlocking the promise of this particular policy making

<sup>2</sup> Graham T. Allison, Essence of Decision: Explaining the Cuban Missile Crisis, (Boston: Little, Brown and Company, 1971).

interpretation its explanatory power is mediated by two intervening institutional variables - the capacities of states to formulate and implement policies and the structure of the international regime itself.

Two dimensions of state capacities - knowledge and the fragmentation of authority - figured in the development of our understanding of national policy. From the outset knowledge played an important role in framing regime goals and in establishing the relationship between these goals and the regulation of the various fisheries. Ignorance about vital subjects such as stock migrations and the stock composition of the various fisheries led to questionable and contentious decisions such as the selection of 175° West Longitude as the abstention line in the North Pacific Fisheries Convention. As research inquiries centred around the fisheries where formal international obligations existed, sporadic, rather than systematic, attention was devoted to other fisheries which were becoming more contentious in the overall Canada-United States relationship such as those off Southeastern Alaska/Northern British Columbia and the west coast of the Vancouver Island. For example, the failure of either Canada or the United States to base their complaints of the mid-1960s upon firm evidence helped maintain the regulatory status quo. During the interception negotiations of the 1970s the limits of mankind's knowledge about the salmon resource again played an important role in maintaining historical offshore fishing patterns. Uncertainty over the health of certain stocks and disagreement over the numbers of fish Canada and the United States intercepted from each other inhibited the development of a consensus regarding the implications of these patterns for stock management and the search for a balance of interceptions.

State capacity influenced more than just the definition of regime goals and the identification of pertinent regulatory policies; it also shaped the ability of states to use national policy in aid of international goals. An appreciation of state capacity helps us to identify conditions when the mere possession of international goals will not

guarantee the adoption of suitable national policies. Fragmentation of authority, the second dimension of state capacity treated here, assumes primary importance in this respect. As we already have noted, both states adopted a variety of important national regulatory policies in conformance with international objectives. These regulatory approaches were challenged in both states by disputes over the domestic allocation of the resource between either the various commercial fishing interests or various ethnic communities. The ability of Canadian and American officials to contain these challenges and to maintain an internationally useful pattern of national policy was related intimately to the extent to which the authority of the state to manage offshore waters was fragmented.

The demands of state competition ceased to be sufficient to guarantee a liberal Washington ocean troll fishery once the American fishery management system was rocked by the institutional upheaval delivered by the Boldt decision and the Magnuson Act. The realignment of domestic salmon fishing interests engineered by the federal courts and the redistribution of the capacity of the American state to manage the fishery inherent in the Magnuson Act combined to produce cut after cut to the Washington ocean troll season after 1976. The first event intensified the pressure for offshore restrictions while the second event destroyed the State Department's ability to subordinate American offshore policies to the pursuit of foreign policy goals, goals which remained constant throughout the 1970s.

The resolve Canadian officials showed by their unwillingness to succumb to the challenges to established regulatory practices posed by the development of domestic resource allocation controversies also had something of an institutional parentage. Throughout the 1957-1984 period federal fisheries officials controlled both the national and international fishery policy making process. In the first instance, this control may be ascribed to the constitutional division of powers, bequeathing as it does sole jurisdiction over the fisheries to the federal government. In addition to the



capacity derived from this formal grant of authority, the federal government's capacity to subordinate national policy to international concerns may have been strengthened by the general absence of federal-provincial controversy over the management of the fishery. Federal constitutional primacy in many other areas of Canadian economic life has not guaranteed provincial acquiescence. British Columbia's disinterest in the exercise of the federal fishery power in Pacific waters may therefore appear somewhat puzzling.<sup>3</sup> The word disinterest is chosen carefully. Although the provincial government claimed that its views on the fisheries dispute with the United States diverged from those of the federal government and joined eight other provinces in supporting a constitutional amendment seeking a shared jurisdiction in sea coast fisheries, the province seldom protested seasonal regulatory decisions in the commercial fishery.<sup>4</sup> Nor did the province seek to maintain formal mechanisms of intergovernmental consultation. The Commission on Pacific Fisheries was left to wonder whether a federal-provincial fisheries committee established in the 1950s still existed in 1982.<sup>5</sup> The absence of a vital, articulate provincial position on the commercial regulatory decisions of federal officials certainly did not detract from the

<sup>3</sup> Copes has offered the fiscal burdens of fishery management, the transboundary controversies, and the relative prosperity of the fishery as factors which may account for provincial disinterest. See Parzival Copes, "The Evolution of Marine Fisheries Policy in Canada," Journal of Business Administration, Vol. 11, no. 1-2 (Fall 1979/Spring 1980), p. 132; Parzival Copes, "Implementing Canada's marine fisheries policy: objectives, hazards and constraints," Marine Policy, Vol. 6, no. 3 (July 1982).

<sup>4</sup> The former claim was made in British Columbia, Executive Council, British Columbia's Constitutional Proposals, (Victoria: Queen's Printer, 1978), p. 18. British Columbia's advocacy of shared jurisdiction was made at the Federal-Provincial Conference of First Ministers on the Constitution, September 8-13, 1980. See Canada, Canadian Intergovernmental Conference Secretariat, Federal-Provincial Conference of First Ministers on the Constitution, Verbatim Transcript (unverified text), (Ottawa: Canadian Intergovernmental Conference Secretariat, 1980), pp. 338-341.

<sup>5</sup> Canada, Commission on Pacific Fisheries Policy, Turning the Tide: A New Policy for Canada's Pacific Fisheries, (Ottawa: Minister of Supply and Services Canada, 1982), p. 230. Federal arrangements with British Columbia are discussed in Ibid., pp. 227-230.

ability of the federal department to exercise its management responsibilities as it saw fit.<sup>6</sup>

The retention by federal fisheries officials of the capacity needed to manipulate national policies in the ways noted in this dissertation also seems related to the relative mildness of bureaucratic competition with other departments, particularly the Department of External Affairs. I suspect that the tranquility characteristic of this relationship may be traced to the harmony existing between the type of bargaining posture struck by Canada's fisheries experts and that adopted generally by Canadian officials in their efforts to manage the relationship with the United States. Keohane and Nye characterized the general Canada-United States relationship in these terms:

Ever since World War II the Canadian-American relationship has been governed by a regime based on alliance, constant consultation, and the prohibition of overt linkage of issues.<sup>7</sup>

The fisheries department's success in retaining control over the international and national aspects of fishery policy may be rooted in this factor - the reluctance to link issues. A leading member of Canada's maritime boundary negotiating team pointed out that this was the strategy Canada preferred to follow when negotiating with the United States. Lorne Clark, Deputy Negotiator for Maritime Boundaries, rejected the suggestion that Canada link maritime issues with non-maritime issues in the following words:

Where you have a country that is ten times the size of Canada and with a great deal more economic influence and economic strength, I think it has been the traditional policy of Canada - and in today's world a policy, I think, which stands up very well - that we do not get into the game of linkage with the United States, that this is a game where Canada eventually would possibly be at a very

<sup>6</sup> We cannot pursue adequately here explanations for this "non-decision". Possible explanations for the province's assumption of a very low profile in regards to the commercial fishery might include the province's responsibility for forests and inland waters, resources whose exploitation has conflicted with fisheries interests.

<sup>7</sup> Robert O. Keohane and Joseph S. Nye, Power and Interdependence: World Politics in Transition, (Boston: Little, Brown and Company, 1977), p. 170.

grave disadvantage. . . in general, we have been able to deal with the United States on specific questions without getting into a game of what can be termed tit for tat.<sup>8</sup>

To the Canadian diplomatic mind, Canadian success devolved from the avoidance of linkage.<sup>9</sup> The consonance between this general attitude and the approach of Canadian fisheries negotiators may help to explain why the capacity of the Canadian state remained so cohesive throughout the period considered. Because state capacities may intervene, then, between the norms sought in regime politics and the adoption of complementary national regulatory policies consideration of the distribution of state capacities may be valuable in other instances where the pursuit of international objectives is contingent upon the erection of a particular national policy framework.

A second institutional factor, the regime itself, also mediated the competition between states. One particular element of the regime, the reciprocal fishing privileges agreement, was particularly important in maintaining established offshore salmon regulatory preferences at a time when the clash between American and Canadian salmon fishery perspectives was intensifying. The procedural stipulations of the agreement increased the regulatory inertia in the offshore first created by the 1957 conference on the coordination of regulations. A second element of the regime, the International Pacific Salmon Fisheries Convention, also provided an institutional stimulus for adopting a liberal approach towards the regulation of the troll fishery. As trollers gained the technological ability needed to intercept significant numbers of pink and sockeye salmon their activity played a heightened role in Canada's efforts to maximize the Canadian harvest of Fraser River stocks without violating the letter of the convention. The government encouraged trollers to operate beyond the confines of

<sup>8</sup> Canada, Parliament, House of Commons, Standing Committee on Fisheries and Forestry, Minutes of Proceedings and Evidence, Thirtieth Parliament, Third Session, Issue no. 16 (April 13, 1978), p. 38.

<sup>9</sup> Michael Shepard also suggested that the linkage of the salmon dispute with other issues was a dangerous ploy, likely to produce trade-offs at the expense of the fishery. University of British Columbia, Ocean Studies Seminar, March 1984.

the convention area in order to increase the Canadian share of the overall Fraser River harvest.

### Conclusion

In this chapter we have tried to stake out the boundaries of the argument made in this dissertation. Our interest in the contemporary history of the Pacific salmon fishery has been used to develop a note of caution addressed to those who accept on faith the worth of interest group theories of politics. The logic of the policy process enunciated by these theories is of quite questionable utility when we shift to consider the international politics of common property resources. The criticisms made here, however, have implications for more than just our appreciation of the role national regulations may play in the competition between states over the distribution of the benefits and costs associated with resource interdependence. They also suggest that the economic activities of groups offer potentially important bargaining advantages to governments engaged in interstate competition. Accordingly, governments will manipulate the policy processes they control in order to realize this potential. In the environment of intergovernmental relations, private group behaviour may become a very important bargaining commodity, one that may be exploited by the regulatory process. States may not orchestrate at will, however, group behaviour in aid of their intergovernmental objectives. To an important extent the limits of the state's ability to adopt successfully the type of political strategies identified in this work are inherent in the capacities of the state itself and in the broader political institutional framework in which governments formulate and pursue goals. Since these conclusions arise from a single comparative case study they cannot be pushed too far. Nevertheless, they are suggestive of the possibility that significant analytical rewards may await those who are willing to adopt this alternative perspective on the relationship between governments and their societies.

## Select Bibliography

### I. Government Documents

- British Columbia. Legislative Assembly. Select Standing Committee on Agriculture. The Salmon Industries in British Columbia, Phase III, Research Report, Victoria: 1979.
- Canada. Commission on Pacific Fisheries Policy. Turning the Tide: A New Policy for Canada's Pacific Fisheries, Ottawa: Minister of Supply and Services Canada, 1982.
- Canada. Committee on Problems of Mutual Concern Related to the Conservation and Management of Salmon Stocks in Southeast Alaska and Northern British Columbia. Report of the Committee on Problems of Mutual Concern Related to the Conservation and Management of Salmon Stocks in Southeast Alaska and Northern British Columbia, Ottawa: 1964.
- Canada. Department of the Environment. Fisheries and Marine Service. Policy for Canada's Commercial Fisheries, Ottawa: Department of the Environment, 1976.
- Canada. Department of the Environment. Fisheries Research Board. Godfrey, H. Background Information for the Canada-United States Reciprocal Fishing Privileges Agreement: Salmon Catches by Canadian and United States Trollers in the Fishing Zones of Each Other's Country, (Confidential Report Series No. 22), Nanaimo: Pacific Biological Station, 1972.
- Canada. Department of the Environment. West Coast Salmon Fleet Development Committee. Report, Vancouver: 1973.
- Canada. Department of Fisheries. Fisheries Research Board. The Commercial Fisheries of Canada, a Study Prepared for the Royal Commission on Canada's Economic Prospects, Ottawa: Queen's Printer, 1956.
- Canada. Department of Fisheries. Sinclair, Sol. License Limitation - British Columbia: A Method of Economic Fisheries Management, Ottawa: Department of Fisheries, 1960.
- Canada. Department of Fisheries and Oceans. Doucet, Fernand J. and Pearse, Peter H. Fisheries Policy for the Pacific Coast: Issues and Advice, (A Report to the Honourable Romeo LeBlanc, Minister of Fisheries), Vancouver: October 1980.
- Canada. Department of Fisheries and Oceans. Fletcher, Heather. "Salmon Interception: Problems and Prospects," no date.
- Canada. Department of Fisheries and Oceans. Harper, Janet. "The Economic Effects of the Boldt Decision," Vancouver: 1984.
- Canada. Department of Fisheries and Oceans. Minister's Advisory Council. Minutes.
- Canada. Department of Fisheries and Oceans. Pacific and Yukon Region. Presentations to the Commission of Pacific Fisheries Policy, no date.
- Canada. Department of Fisheries and Oceans. Pacific Region. Shinnars, Wayne. "Down to the Crunch: A Discussion of Salmon Allocation in B. C.," Vancouver: February 1983.

Canada. Department of Fisheries and Oceans. Sinclair, Sol. A Licensing and Fee System for the Coastal Fisheries of British Columbia (2 Volumes), Vancouver: Department of Fisheries and Oceans, 1978.

Canada. Economic Council of Canada. Reforming Regulation, Ottawa: Minister of Supply and Services Canada, 1981.

Canada. Indian and Northern Affairs Canada. Harper, Janet. "Indian Fisheries Management in the State of Washington: A Working Document," Vancouver: 1982.

Informal Committee on Chinook and Coho. United States Section. Reports by the United States and Canada on the Status, Ocean Migrations and Exploitation of Northeast Pacific Stocks of Chinook and Coho Salmon, to 1964. Volume I: Report by the United States Section, 1969.

Informal Committee on Chinook and Coho. Canadian Section. Reports by the United States and Canada on the Status, Ocean Migrations and Exploitation of Northeast Pacific Stocks of Chinook and Coho Salmon, to 1964. Volume II: Report by the Canadian Section, 1969.

International Pacific Salmon Fisheries Commission. Annual Report.

Pacific Marine Fisheries Commission, Annual Report of the Pacific Marine Fisheries Commission.

Pacific Marine Fisheries Commission, Reference Documents prepared for the Comprehensive Salmon Management Plan of the Pacific Fishery Management Council, Portland: Pacific Marine Fisheries Commission, 1977.

United States. Bureau of Indian Affairs. "Background Information on Indian Fishing Rights in the Pacific Northwest," Portland: U. S. Department of the Interior, 1976.

United States. Congress. House. An Act to Provide for the Conservation and Management of the Fisheries, and for other purposes, Pub. L. 94-265, 94th Cong., 2d sess., 1976.

United States. Congress. House. Establishing a Contiguous Fisheries Zone Beyond the Territorial Sea of the United States, H. R. Report to Accompany H. R. 9531, 89th Cong., 2d sess., 1966.

United States. Congress. House. Facilitating the Application and Operation of the Fish and Wildlife Act of 1956, H. R. Report to Accompany H. R. 9547, 87th Cong., 2d sess., 1962.

United States. Congress. House. Fishery Conservation Zone Transition Act Amendment, H. R. Report 95-1215 to Accompany H. R. 12571, 95th Cong., 2d sess., 1978.

United States. Congress. House. United States-Canada Reciprocal Fisheries Agreement, H. R. Report 95-193 to Accompany H. R. 5638, 95th Cong., 1st sess., 1977.

United States. Congress. House. Committee on International Relations. H. R. 200, the Marine Fisheries Conservation Act of 1975. Special Oversight Hearing before the Committee on International Relations, 94th Cong., 1st sess., 1975.

- United States. Congress. House. Committee on Merchant Marine and Fisheries. Canadian Fisheries Agreement. Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, 95th Cong., 2d sess., 1978.
- United States. Congress. House. Committee on Merchant Marine and Fisheries. Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment on extending the jurisdiction of the United States beyond the present twelve-mile fishery zone, 93rd Cong., 2d sess., 1974.
- United States. Congress. House. Committee on Merchant Marine and Fisheries. International Fishery Agreements. Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, 95th Cong., 1st sess., 1977.
- United States. Congress. House. Committee on Merchant Marine and Fisheries. Merchant Marine and Fisheries Problems - Alaska and Pacific Coast. Hearings before the Alaska Subcommittee, 85th Cong., 1st sess., 1957.
- United States. Congress. House. Committee on Merchant Marine and Fisheries. Miscellaneous Fisheries Legislation. Hearings before the Subcommittee on Fisheries and Wildlife Conservation, 89th Cong., 2d sess., 1966.
- United States. Congress. House. Committee on Merchant Marine and Fisheries. Problems Confronting Fishermen on the West Coast of the United States. Hearing before the Subcommittee on Fisheries and Wildlife Conservation, 90th Cong., 1st sess., 1967.
- United States. Congress. House. Committee on Merchant Marine and Fisheries. Salmon Legislation. Hearings before the Subcommittee on Fisheries and Wildlife Conservation on H. R. 9547, 87th Cong., 2d sess., 1962.
- United States. Congress. House. Committee on Merchant Marine and Fisheries. United States-Canadian Fishing Agreements. Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, 96th Cong., 1st sess., 1979.
- United States. Congress. House. Committee on Merchant Marine and Fisheries. 200-mile fisheries zone. Hearings before the Subcommittee on Fisheries and Wildlife Conservation, 94th Cong., 1st sess., 1976.
- United States. Congress. House. Committee on Merchant Marine and Fisheries. 200-mile fishery. Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, 95th Cong., 2d sess., 1978.
- United States. Congress. Senate. Conservation of U. S. Fishery Resources, S. Report to Accompany S. 1734, 89th Cong., 1st sess., 1965.
- United States. Congress. Senate. Twelve Mile Fishery Zone, S. Report 1280 to Accompany S. 2218, 89th Cong., 2d sess., 1966.
- United States. Congress. Senate. The 1978 United States-Canadian Reciprocal Fisheries Agreement, Report 95-955 to Accompany H. R. 12571, 95th Cong., 2d sess., 1978.
- United States. Congress. Senate. Committee on Armed Services. Hearing before the Committee on Armed Services on S. 961. A Bill to extend jurisdiction of the United States over certain ocean areas for certain purposes, 94th Cong., 1st sess., 1975.

United States. Congress. Senate. Committee on Commerce. Hearings before the Merchant Marine and Fisheries Subcommittee on S. 909 (H. R. 23), S. 998, and S. 1734, 89th Cong., 1st sess., 1965.

United States. Congress. Senate. Committee on Commerce. Hearings before the Subcommittee on Merchant Marine and Fisheries on S. 2218, 89th Cong., 2d sess., 1966.

United States. Congress. Senate. Committee on Commerce. North Pacific Fisheries Problems. Hearings before the Merchant Marine and Fisheries Subcommittee, 87th Cong., 1st sess., 1961.

United States. Congress. Senate. Committee on Commerce. North West Salmon Fisheries Resources. Joint Hearing before the Senate Committee on Commerce and House Merchant Marine and Fisheries Committee at Tacoma, Washington, 87th Cong., 1st sess., 1961.

United States. Congress. Senate. Committee of Commerce, Science, and Transportation. Hearing before the Committee on Commerce, Science, and Transportation on Reciprocal Fisheries Agreement for 1978 Between the United States and Canada, 95th Cong., 2d sess., 1978.

United States. Congress. Senate. Committee on Commerce, Science, and Transportation. Hearings before the Committee on Commerce, Science, and Transportation on oversight of the FCMA, 95th Cong., 2d sess., 1978.

United States. Congress. Senate. Committee on Commerce, Science, and Transportation. Hearings before the Committee on Commerce, Science, and Transportation on the Status and Conservation of Washington State Salmon and Steelhead Stocks, 96th Cong., 1st sess., 1979.

United States. Congress. Senate. Committee on Commerce, Science, and Transportation. International North Pacific Fisheries Convention. Hearing before the Committee on Commerce, Science, and Transportation, 95th Cong., 2d sess., 1978.

United States. Congress. Senate. Committee on Interstate and Foreign Commerce. Pacific Coast and Alaska Fisheries. Hearings Pursuant to S. Res. 13 - A Resolution to Investigate Certain Problems Relating to Interstate and Foreign Commerce, 84th Cong., 2d sess., 1955.

United States. Department of Commerce. National Oceanic and Atmospheric Administration. Salmon Fishing: Fishery Management Plan for Commercial and Recreational Fisheries Off the Coasts of Washington, Oregon, and California. Washington: U. S. Government Printing Office, 1977.

United States. Office of the Comptroller General. Progress and Problems of Fisheries Management Under the Fishery Conservation and Management Act. Washington: U. S. Government Printing Office, 1979.

United States. Pacific Fishery Management Council. A Review of the 1983 Ocean Salmon Fisheries and Status of Stocks and Management Goals for the 1984 Salmon Season off the Coasts of California, Oregon, and Washington. Portland: Pacific Fishery Management Council, 1984.



United States. Pacific Fishery Management Council. A Review of the 1983 Ocean Salmon Fisheries and Status of Stocks and Management Goals for the 1984 Salmon Season off the Coasts of California, Oregon, and Washington, Supplement 1, Regulations to Achieve 1984 Management Goals, Portland: Pacific Fishery Management Council, 1984.

United States. Pacific Fishery Management Council. Perspective on Management of Ocean Chinook and Coho Salmon Fisheries Within the Fishery Conservation Zone off California, Oregon and Washington, Portland: Pacific Fishery Management Council, 1982.

United States. Pacific Fishery Management Council. 1984 Ocean Salmon Fisheries Review, Portland: Pacific Fishery Management Council, 1985.

United States. Regional Team of the Federal Task Force on Washington State Fisheries. Settlement Plan for Washington State Salmon and Steelhead Fisheries, 1978.

Washington (State). Department of Fisheries. A brief history of the Washington troll fishery, (November 1971).

Washington (State). Department of Fisheries. Fisheries Volume Two: Contributions of Western States, Alaska and British Columbia to Salmon Fisheries of the North American Pacific Ocean, Olympia: State Printing Plant, 1959.

Washington (State). Department of Fisheries. Plan for Washington State Food Fisheries, Olympia: State Printing Plant, 1970.

Washington (State). Department of Fisheries. 1984 Fisheries Statistical Report, Olympia: State Printing Plant, 1985.

Washington (State). Department of Fisheries. Curtis, Toni and Austin, A. Dennis. 1976 Summary of Department of Fisheries and Treaty Indian Commercial Salmon Fishing Regulations in the Boldt Case Area (Technical Report No. 25), Olympia: State Printing Plant, 1977.

Washington (State). Department of Fisheries. Harvest Management Division. Highlights of 1977 Management of Puget Sound Salmon Fisheries (Technical Report No. 44), Olympia: State Printing Plant, 1979.

Washington (State). Department of Fisheries. Harvest Management Division. In-Season Management Report for the Commercial Net Salmon Fisheries in Puget Sound, 1982 (Progress Report No. 205), Olympia: State Printing Plant, 1984.

Washington (State). Department of Fisheries. Matthews, Stephen B. and Wendler, Henry O. "Relative Efficiency and Economic Yield of the Columbia River Drift Gill Net and Indian Set Net Fisheries," Olympia: State Printing Plant, 1970.

Washington (State). Department of Fisheries. Phinney, Lloyd A. and Miller, Marc C. Status of Washington's Ocean Sport Salmon Fishery in the Mid-1970's (Technical Report No. 24), Olympia: State Printing Plant, 1977.

Washington (State). Department of Fisheries. Stern, Loren and Austin, A. Dennis. 1977 Summary of Department of Fisheries and Treaty Indian Commercial Salmon Fishing Regulations in the Boldt Case Area (Technical Report No. 40). Olympia: State Printing Plant, 1978.

Washington (State). Department of Fisheries. Wright, Samuel G. Status of Washington's Commercial Troll Salmon Fishery in the Mid-1970's (Technical Report No. 21). Olympia: State Printing Plant, 1976.

Washington (State). Moore, Milo. Report on the United Nations' Conference on the Law of the Sea, Geneva, Switzerland - March 17 to April 26, 1960, 1960.

## II. Books, Theses, and Reports

American Friends Service Committee. Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians, Seattle: University of Washington Press, 1970.

Argue, A. W., Hilborn, R., Peterman, R. M., Staley, M. J., and Walters, C. J. Strait of Georgia Chinook and Coho Fishery, Canadian Bureau of Fisheries and Aquatic Sciences, no. 211, Ottawa: Minister of Supply and Services Canada, 1983.

Atkinson, Michael and Chandler, Marsha, ed. The Politics of Canadian Public Policy, Toronto: University of Toronto Press, 1983.

Barsh, Russel L. The Washington Fishing Rights Controversy: An Economic Critique (rev. ed.), Seattle: University of Washington Graduate School of Business Administration, 1979.

Bernstein, Marver H. Regulating Business By Independent Commission, Princeton: Princeton University Press, 1955.

Browning, Robert J. Fisheries of the North Pacific: History, Species, Gear and Processes, 2nd edition, Anchorage: Alaska Northwest Publishing Company, 1980.

Cairns, Robert D. Rationales for Regulation, Ottawa: Economic Council of Canada, 1980.

Carrothers, W. A. The British Columbia Fisheries, Toronto: University of Toronto Press, 1941.

Childerhose, R. J. and Trim, Marj. Pacific Salmon, Vancouver: Douglas and McIntyre, 1981.

Christy Jr., Francis and Scott, Anthony. The Common Wealth in Ocean Fisheries, Baltimore: John Hopkins Press, 1965.

Commercial-Recreational Fisheries Delegation. Settlement Plan for Washington State Salmon and Steelhead Fisheries, 1978.

Cooley, Richard A. Politics and Conservation: The Decline of the Alaska Salmon, New York: Harper and Row, 1963.

- Crutchfield, James A., ed. The Fisheries: Problems in Resource Management, Seattle: University of Washington Press, 1965.
- Crutchfield, James A. and Pontecorvo, G. The Pacific Salmon Fisheries: A Study in Irrational Conservation, Baltimore: John Hopkins University Press, 1969.
- Ellis, Derek V. ed. Pacific Salmon Management for People, Victoria: University of Victoria, 1977.
- Environmental and Social Systems Analysts Ltd. An Assessment of Stocks and Management Problems of the Commercial Fisheries of Canada's Pacific Coast, Vancouver: Commission on Pacific Fisheries Policy, 1982.
- Fishing Vessel Owners Association of B. C. "Presentation to the Commission on Pacific Fisheries Policy," June 24, 1981.
- Fletcher, Heather A. "An Analysis of the Pacific Salmon Interception Issue Between Canada and the United States," Unpublished M. A. Thesis (Economics), Simon Fraser University, 1983.
- Fraser, F. J., Starr, P. J., and Fedorenko, A.Y. A Review of the Chinook and Coho Salmon of the Fraser River, Canadian Technical Report of Fisheries and Aquatic Sciences No. 1126, Ottawa: Minister of Supply and Services Canada, 1982.
- Fraser River Gillnetters Committee. "Submission to Commission on Pacific Fisheries Policy," May 19, 1981.
- Gulf Trollers' Association. "Submission to the Commission on Pacific Fisheries Policy," June 12, 1981.
- Hartle, Douglas G. Public Policy Decision Making and Regulation, Toronto: Butterworth and Co., 1979.
- Hollick, Ann L. U. S. Foreign Policy and the Law of the Sea, Princeton: Princeton University Press, 1981.
- Johnson, Barbara. "The Regulation of International Fisheries," PhD Thesis (Political Science), University of Washington, 1973.
- Johnson, Barbara and Zacher, Mark W. ed. Canadian Foreign Policy and the Law of the Sea, Vancouver: University of British Columbia Press, 1977.
- Kasahara, Hiroshi and Burke, William. North Pacific Fisheries Management, Washington: Resources for the Future, Inc., 1973.
- Keating, Thomas F. "Nongovernmental Participation in Foreign Policy Decisions Affecting Canada's Fisheries Relations with the United States," PhD Thesis (Political Science), Dalhousie University, 1982.
- Keohane, Robert O. and Nye, Joseph S. Power and Interdependence: World Politics in Transition, Boston: Little Brown and Company, 1977.
- Krasner, Stephen D. Structural Conflict: The Third World Against Global Liberalism, Berkeley: University of California Press, 1985.

- Langdon, Frank. The Politics of Canadian-Japanese Economic Relations, 1952-1983. Vancouver: University of British Columbia Press, 1983.
- Leos, Kate Julin. The Legislature and the Legislative Process in the State of Washington. Seattle: University of Washington, Institute of Governmental Research, 1973.
- Logan, Roderick MacKenzie. "The Geography of Salmon Fishing Conflicts: the case of Noyes Island," M. A. Thesis (Geography), University of British Columbia, 1967.
- MacDonald, J. Douglas. Regulating Pacific Salmon - the Alternatives Reviewed. Technical Report no. 24, Ottawa: Economic Council of Canada, 1982.
- McDougal, Myres S. and Burke, William T. The Public Order of the Oceans: A Contemporary International Law of the Sea. New Haven: Yale University Press, 1962.
- Miles, Edward, Gibbs, Stephen, Fluharty, David, Dawson, Christine, and Teeter, David. The Management of Marine Regions: The North Pacific. Berkeley: University of California Press, 1982.
- Milne, D. J. and Godfrey, H. The Chinook and Coho Salmon Fisheries of British Columbia. Fisheries Research Board of Canada Bulletin no. 142, Ottawa: Fisheries Research Board of Canada, 1964.
- Mullen, W. F. ed. The Government and Politics of Washington State. Pullman: Washington State University Press, 1978.
- Northwest Indian Fisheries Commission. "Executive Summary of Formal Response to Settlement Plan for Washington State Salmon and Steelhead Fisheries," October 1978.
- Olson, Mancur. The Logic of Collective Action: Public Goods and the Theory of Groups. Cambridge: Harvard University Press, 1971.
- Oregon State University. Department of Agricultural and Resource Economics. Socio-Economics of the Idaho, Washington, Oregon, and California Coho and Chinook Salmon Industry. Portland: Pacific Marine Fisheries Commission, 1978.
- Pacific Coast Salmon Seiners Association. "Time for a Course Change - A Brief Presented to the Pearse Royal Commission on Pacific Fisheries Policy," June 4, 1981.
- Pacific Gillnetters Association. "Brief to the Commission on Pacific Fisheries Policy - 'The Pearse Commission'," June 3, 1981.
- Pacific Trollers Association. "Presentation to Commission on Pacific Fisheries Policy," June 5, 1981.
- Petry, Glenn H. Pacific Northwest Salmon and Steelhead Fishery Project: The Economic Status of the Oregon and Washington Non-Indian Salmon Gillnet and Troll Fishery, Volume I. Pullman: Washington State University College of Business and Economics, 1979.
- Petry, Glenn H. Pacific Northwest Salmon and Steelhead Fishery Project: The Economic and Employment Impacts of Commercial and Sport Fishing for Salmon and Steelhead

in the Pacific Northwest, Volume II, Pullman: Washington State University College of Business and Economics, 1980.

Prince Rupert Fishermen's Cooperative Association. "Submission to the Commission of Pacific Fishery Policy," July 24, 1981.

Prince Rupert Fishing Vessel Owners' Association. "Submission to the Royal Commission on the Pacific Fishery Policy," no date.

Quirk, Paul J. Industry Influence in Federal Regulatory Agencies, Princeton: Princeton University Press, 1981.

Rothschild, Brian J., ed. World Fisheries Policy: Multidisciplinary Views, Seattle: University of Washington Press, 1972.

Royce, W. F., Bevan, Donald E., Crutchfield, James A., Paulik, Gerald J. and Fletcher, Robert L. Salmon Gear Limitation in Northern Washington Waters, Seattle: University of Washington, 1963.

Scott, Andrew M. The Dynamics of Interdependence, Chapel Hill: University of North Carolina Press, 1982.

Scott, Anthony and Neher, Philip A., ed. The Public Regulation of Commercial Fisheries in Canada, Ottawa: Minister of Supply and Services Canada, 1981.

Shaffer, Marvin. An Economic Study of the Structure of the British Columbia Salmon Industry, (Study prepared under contract to the Salmonid Enhancement Program, 1979).

Van Cleve, Richard and Johnson, Ralph W. Management of the High Seas Fisheries of the Northeastern Pacific, Seattle: University of Washington, 1963.

Underdal, Arild. The Politics of International Fisheries Management: The Case of the Northeast Atlantic, Oslo: Universitetsforlaget, 1980.

Wagner, J. Richard. Canada's Impact on United States Legislative Processes: the Chicago Diversion Bills, Tucson: University of Arizona, Institute of Government Research, 1973.

Wong, Fred Yuen Churk. "Analysis of Stock-Recruitment Dynamics of British Columbia Salmon," M.Sc. Thesis, University of British Columbia, 1982.

Young, Oran. Resource Management at the International Level: The Case of the North Pacific, London: Frances Pinter Ltd., 1977.

Young, Oran R. Resource Regimes: Natural Resources and Social Institutions, Berkeley: University of California Press, 1982.

### III. Articles

Boeri, David. "How Big is Foreign Salmon Haul Off Northwest?" National Fisherman, Vol. 54, (March 1974).

- Browning, Robert J. "Tiny Mesh Gillnet Found Suggests Japanese Small Salmon Fishery," National Fisherman, Vol. 54, (April 1974).
- Browning, Robert J. "Court Ruling Favoring Indians Appalls Washington Fishermen," National Fisherman, Vol. 55, (May 1974).
- Browning, Robert J. "Washington Works to Meet Indian Ruling," National Fisherman, Vol. 55, (June 1974).
- Browning, Robert J. "Washington's Gov. Evans Signs Limited Entry Into Fisheries," National Fisherman, Vol. 55, (July 1974).
- Browning, Robert J. "Inflation Joins Indian Harvest Rule To Stifle Wash. Salmon Fishermen," National Fisherman, Vol. 55, (August 1974).
- Browning, Robert J. "Two-Thirds Cut in Fishing Time in Puget Sound Planned By Thor," National Fisherman, Vol. 55, (September 1974).
- Browning, Robert J. "Washington Fishermen More Worried About Inflation than Indian Ruling," National Fisherman, Vol. 55, (October 1974).
- Browning, Robert J. "Washington Salmon Season Ends in Near-Mutiny," National Fisherman, Vol. 55, (December 1974).
- Browning, Robert J. "Appeals Court Concurs With Boldt On The Fishing Rights of Indians," National Fisherman, Vol. 56, (August 1975).
- Browning, Robert J. "Buy-Back Would Benefit Failing Salmon Fishery," National Fisherman, Vol. 56, (August 1975).
- Browning, Robert J. "Judge Tightens Screws on Salmon Fishery," National Fisherman, Vol. 56, (September 1975).
- Browning, Robert J. "Northwest Salmon Hassle Rages," National Fisherman, Vol. 56, (October 1975).
- Browning, Robert J. "Wash. Salmon Season Ends With Bitterness on All Sides," National Fisherman, Vol. 56, (January 1976).
- Browning, Robert J. "Washington's Vessel Buyback Plan Begins Cutting Into Oversize Fleet," National Fisherman, Vol. 56, (April 1976).
- Browning, Robert J. "Supreme Court Upholds Boldt; Even Salmon Trollers in Soup," National Fisherman, Vol. 56, (April 1976).
- Coffey, Burton T. "Fishermen Get LOS Recognition," National Fisherman, Vol. 53, (May 1972).
- Coffey, Burton T. "U. S. Revises Stand on Limits; Fishermen's Interests Reflected," National Fisherman, Vol. 53, (June 1972).
- Coffey, Burton T. "Conservation Japanese Style," National Fisherman, Vol. 54, (January 1974).

Coffey, Burton T. "High-Seas Fisheries Act Back in Fetching Guise," National Fisherman, Vol. 55, (May 1974).

Coffey, Burton T. "High Level Voice Grows Weak," National Fisherman, Vol. 55, (June 1974).

Coffey, Burton T. "U. S., Soviets Tentatively Accept 200-Mi. Limitation At Caracas," National Fisherman, Vol. 55, (September 1974).

Coffey, Burton T. "Whom Did Treaty Rip Off?," National Fisherman, Vol. 55, (September 1974).

Coffey, Burton T. "Pacific Future Clouded by INPFC Failure," National Fisherman, Vol. 55, (January 1975).

Coffey, Burton T. "Federal Management Comes Near," National Fisherman, Vol. 56, (June 1975).

Coffey, Burton T. "Time Runs Out for LOS Treaty," National Fisherman, Vol. 56, (June 1975).

Coffey, Burton T. "Politics Could Hurt 200 Miles," National Fisherman, Vol. 56, (August 1975).

Copes, Parzival. "The Evolution of Marine Fisheries Policy in Canada," Journal of Business Administration, Vol. 11, no. 1-2 (Fall 1979/Spring 1980).

Copes, Parzival. "Implementing Canada's marine fisheries policy - objectives, hazards and constraints," Marine Policy, Vol 6, no. 3 (July 1982).

Clark, William. "Fishing in a Sea of Court Orders: Puget Sound Salmon Management 10 Years After the Boldt Decision," North American Journal of Fisheries Management, Vol. 5, 1985.

Crutchfield, James A. "Economic and Social Implications of the Main Policy Alternatives for Controlling Fishing Effort," Journal of the Fisheries Research Board of Canada, Vol. 36, 1979.

Crutchfield, James A. "Economic and Political Objectives in Fishery Management," Transactions of the American Fisheries Society, Vol. 102, 1973.

Crutchfield, James A. "The Marine Fisheries: A Problem in International Cooperation," American Economic Review, Vol. 54, no. 3 (May 1964).

Fraidenburg, Michael E. and Lincoln, Richard H. "Wild Chinook Salmon Management: An International Conservation Challenge," North American Journal of Fisheries Management, Vol. 5, 1985.

Fraser, G. Alex. "Limited Entry: Experience of the British Columbia Salmon Fishery," Journal of the Fisheries Research Board of Canada, Vol. 36, 1979.

Gilbert, DeWitt. "Frictional Fisheries 'Of Common Concern'," National Fisherman, Vol. 54, (Yearbook Issue).

- Gordon, H. Scott. "The Economic Theory of a Common Property Resource: The Fishery," Journal of Political Economy, Vol. 62, 1954.
- Gottlieb, A. E. "Canadian Diplomatic Initiatives: The Law of the Sea," in Michael G. Fry, ed. Freedom and Change: Essays in Honour of Lester B. Pearson, Toronto: McClelland and Stewart, 1975.
- Greene, Stephen and Keating, Thomas. "Domestic Factors and Canada-United States Fisheries Relations," Canadian Journal of Political Science, Vol. XIII, no. 4 (December 1980).
- Haas, Ernst B. "Why Collaborate? Issue-Linkage and International Regimes," World Politics, Vol. XXXII, no. 3 (April 1980).
- Hayward, Brian. "The B. C. Salmon Fishery: A Consideration of the Effects of Licensing," B. C. Studies, No. 50, Summer 1981.
- Hilborn, Ray. "Annual Cycle of Chum Salmon Management," A Presentation to the Faculty-Graduate Seminar, Department of Political Science, University of British Columbia, November 30, 1984.
- Hilborn, Ray. "Fleet Dynamics and Individual Variation: Why Some People Catch More Fish Than Others," Canadian Journal of Fisheries and Aquatic Sciences, Vol. 42, 1985.
- Hilborn, Ray and Ledbetter, Max. "Analysis of the British Columbia Salmon Purse-seine Fleet: Dynamics of Movement," Journal of the Fisheries Research Board of Canada, Vol. 36, 1979.
- Hilborn, Ray, Walters, Carl J., Peterman, Randall M., and Staley, Michael J. "Models and Fisheries: A Case Study in Implementation," North American Journal of Fisheries Management, Vol. 4, 1984.
- Hirshleifer, Jack. "Comment on Peltzman," Journal of Law and Economics, Vol. 19, 1976.
- Keating, Thomas. "Domestic groups, bureaucrats, and bilateral fisheries relations," International Journal, Vol. 39, no. 1 (Winter 1983-84).
- Keohane, Robert O. "The demand for international regimes," International Organization, Vol. 36, no. 2 (Spring 1982).
- Krasner, Stephen D. "Regimes and the limits of realism: regimes as autonomous variables," International Organization, Vol. 36, no. 2 (Spring 1982).
- Krasner, Stephen D. "Structural causes and regime consequences: regimes as intervening variables," International Organization, Vol. 36, no. 2 (Spring 1982).
- Larkin, P. A. "An Epitaph for the Concept of Maximum Sustained Yield," Transactions of the American Fisheries Society, Vol. 106, 1977.
- Larkin, P. A. "A Perspective on Population Genetics and Salmon Management," Canadian Journal of Fisheries and Aquatic Sciences, Vol. 38, 1981.



- Larkin, P. A. "Maybe You Can't Get There From Here: A Foreshortened History of Research in Relation to Management of Pacific Salmon," Journal of the Fisheries Research Board of Canada, Vol. 36, 1979.
- Lipson, Charles. "The transformation of trade: the sources and effects of regime change," International Organization, Vol. 36, no. 2 (Spring 1982).
- Logan, Roderick MacKenzie. "Geography and Salmon: The Noyes Island Conflict, 1957-1967," The Journal of the West, Vol. 8, 1969.
- Ludwig, Donald and Walters, Carl J. "Measurement Errors and Uncertainty in Parameter Estimates for Stock and Recruitment," Canadian Journal of Fisheries and aquatic Sciences, Vol. 38, 1981.
- Mahaffy, Bob. "Canadian Fish Policies are Outlined by Lucas," National Fisherman, Vol. 56, (May 1975).
- Mahon, Rianne. "Regulatory Agencies: Captive Agents or Hegemonic Apparatuses," in J. Paul Grayson, ed., Class, State, Ideology and Change, Toronto: Holt, Rinehart and Winston of Canada Ltd., 1980.
- Major, Richard L. "Yield Loss of Western Alaska Chinook Salmon Resulting from the Large Catch by the Japanese Salmon Mothership Fleet in the North Pacific Ocean and Bering Sea in 1980," North American Journal of Fisheries Management, Vol. 4, 1984.
- McCorquodale, Susan. "The Management of a Common Property Resource: Fisheries Policy in Atlantic Canada," in Michael Atkinson and Marsha Chandler, ed. The Politics of Canadian Public Policy, Toronto: University of Toronto Press, 1983.
- McDonald, J. "The Stock Concept and its Application to British Columbia Salmon Fisheries," Canadian Journal of Fisheries and Aquatic Sciences, Vol. 38, 1981.
- Miller, Marc L. and Broches, Charles F. "U. S. Fishery Negotiations with Canada and Mexico," Ocean Development and International Law, Vol. 14, no. 4 (1984-85).
- Miller, Mark L. and Broches, Charles F. "Treaty Talking: Observations on Canada-U. S. Salmon Negotiations," The American Review of Canadian Studies, Vol. XII, no. 3 (Fall 1982).
- Needler, A. W. H. "Evolution of Canadian Fisheries Management Towards Economic Rationalization," Journal of the Fisheries Research Board of Canada, Vol. 36, 1979.
- Noll, Roger G. "The Behaviour of Regulatory Agencies," Review of Social Economy, Vol. 29, 1971.
- Pace, Len. "200 Miles, Management Authority Canadian Hopes," National Fisherman, Vol. 54, (October 1973).
- Peltzman, Sam. "Toward a More General Theory of Regulation," Journal of Law and Economics, Vol. 19, 1976.
- Philips, Richard H. "Salmon War Keeps Bubbling," National Fisherman, Vol. 53, (December 1972).

- Philips, Richard H. "Officials Gloomy in Wake of North Pacific Meeting," National Fisherman, Vol. 53, (January 1973).
- Philips, Richard H. "U. N. Conference Difficulties Aired at West Coast Forum," National Fisherman, Vol. 53, (January 1973).
- Philips, Richard H. "Abstention Line Strangling Bristol Bay Fishery," National Fisherman, Vol. 53, (March 1973).
- Philips, Richard H. "Alaska Wants to Halt Japanese Fish Exports," National Fisherman, Vol. 53, (April 1973).
- Philips, Richard H. "Impasse in U. S.-Canada Negotiations Threatens Fraser Salmon Resource," National Fisherman, Vol. 54, (July 1973).
- Philips, Richard H. "Columbia Gillnetters Hit Bonanza," National Fisherman, Vol. 54, (December 1973).
- Pinkerton, Evelyn. "Co-Management Rights in an Interception Fishery: Local Reaction to State Regulation," Paper Read to the Society for Applied Anthropology, Toronto, May 1984.
- Posner, Richard A. "Theories of economic regulation," The Bell Journal of Economics and Management Science, Vol. 5, no. 2 (Autumn 1974).
- Posner, Richard A. "Taxation by regulation," The Bell Journal of Economics and Management Science, Vol. 2, no. 1 (Spring 1971).
- Puchala, Donald J. and Hopkins, Raymond F. "International regimes: lessons from inductive analysis," International Organization, Vol. 36, no. 2 (Spring 1982).
- Ricker, W. E. "Review of the Rate of Growth and Mortality of Pacific Salmon in Salt Water and Noncatch Mortality Caused by Fishing," Journal of the Fisheries Research Board of Canada, Vol. 33 (1986).
- Royce, W. F. "Salmon Management in the United States," Journal of the Fisheries Research Board of Canada, Vol. 30, 1973.
- Schmidhauser, John R. "Whales and Salmon: The Interface of Pacific Ocean and Cross-National Policy Making," in Don Walsh, ed., The Law of the Sea: Issues in Ocean Resource Management, New York: Praeger Publishers, 1977.
- Schultz, Richard. "The Impact of Regulation: Panel Discussion," Canadian Public Policy, Vol. V, no. 4 (Autumn 1979).
- Schultz, Richard. "Regulatory Agencies and the Dilemma of Delegation," in O. P. Dwivedi, ed., The Administrative State in Canada, Toronto: University of Toronto Press, 1982.
- Scott, Anthony. "Fisheries, Pollution and Canadian-American Transnational Relations," in Fox, Annette Baker, Hero Jr., Alfred O., and Nye Jr., Joseph S. ed. Canada and the United States: Transnational and Transgovernmental Relations, New York: Columbia University Press, 1976.

- Scott, Anthony. "Development of Economic Theory on Fisheries Regulation," Journal of the Fisheries Research Board of Canada, Vol. 36 (1979).
- Scott, Anthony. "Regulation and the Location of Jurisdictional Powers: The Fishery," Osgoode Hall Law Journal, Vol. 20, no. 4 (1982).
- Shaw, Charles. "Limit U. S. to 25% of Fraser Salmon: Jack Davis," National Fisherman, Vol. 53, (December 1972).
- Shaw, Charles. "11-Month U. S./Canada Accord May Have Averted Salmon War," National Fisherman, Vol. 54, (August 1973).
- Sinclair, Peter. "The survival of small capital," Marine Policy, Vol. 10 (1986).
- Skocpol, Theda and Finegold, Kenneth. "State Capacity and Economic Intervention in the Early New Deal," Political Science Quarterly, Vol. 97, no. 2 (Summer 1982).
- Sloan, Lucy. "200-Mile Limit Winning Adherents," Vol. 54, (April 1974).
- Smith, A. D. M. and Walters, Carl J. "Adaptive Management of Stock-Recruitment Systems," Canadian Journal of Fisheries and Aquatic Sciences, Vol. 38, 1981.
- Stein, Arthur A. "Coordination and collaboration: regimes in an anarchic world," International Organization, Vol. 36, no. 2 (Spring 1982).
- Stigler, George J. "The theory of economic regulation," The Bell Journal of Economics and Management Science, Vol. 2, no. 1 (Spring 1971).
- Strange, Susan. "*Cave! hic dragones*: a critique of regime analysis," International Organization, Vol. 36, no. 2 (Spring 1982).
- Thompson, Peter C. "Institutional Constraints in Fisheries Management," Journal of the Fisheries Research Board of Canada, Vol. 31, 1974.
- Townes, Brooks. "State Dept. Now Rooting For Passage," National Fisherman, Vol. 56, (April 1976).
- Walters, Carl J. "Optimum Escapement in the Face of Alternative Recruitment Hypotheses," Canadian Journal of Fisheries and Aquatic Sciences, Vol. 38, 1981.
- Walters, Carl J. and Ludwig, Donald. "Effects of Measurement Errors on the Assessment of Stock-Recruitment Relationships," Canadian Journal of Fisheries and Aquatic Sciences, Vol. 38, 1981.
- Wolf, Charles, Jr. "A Theory of Nonmarket Failure: Framework for Implementation Analysis," Journal of Law and Economics, Vol. 22, (1979).
- Wright, Sam. "Contemporary Pacific Salmon Fisheries Management," North American Journal of Fisheries Management, Vol. 1, (1981).
- Young, Oran R. "Interdependencies in World Politics," International Journal, Vol. 24, no. 4 (Autumn 1969).

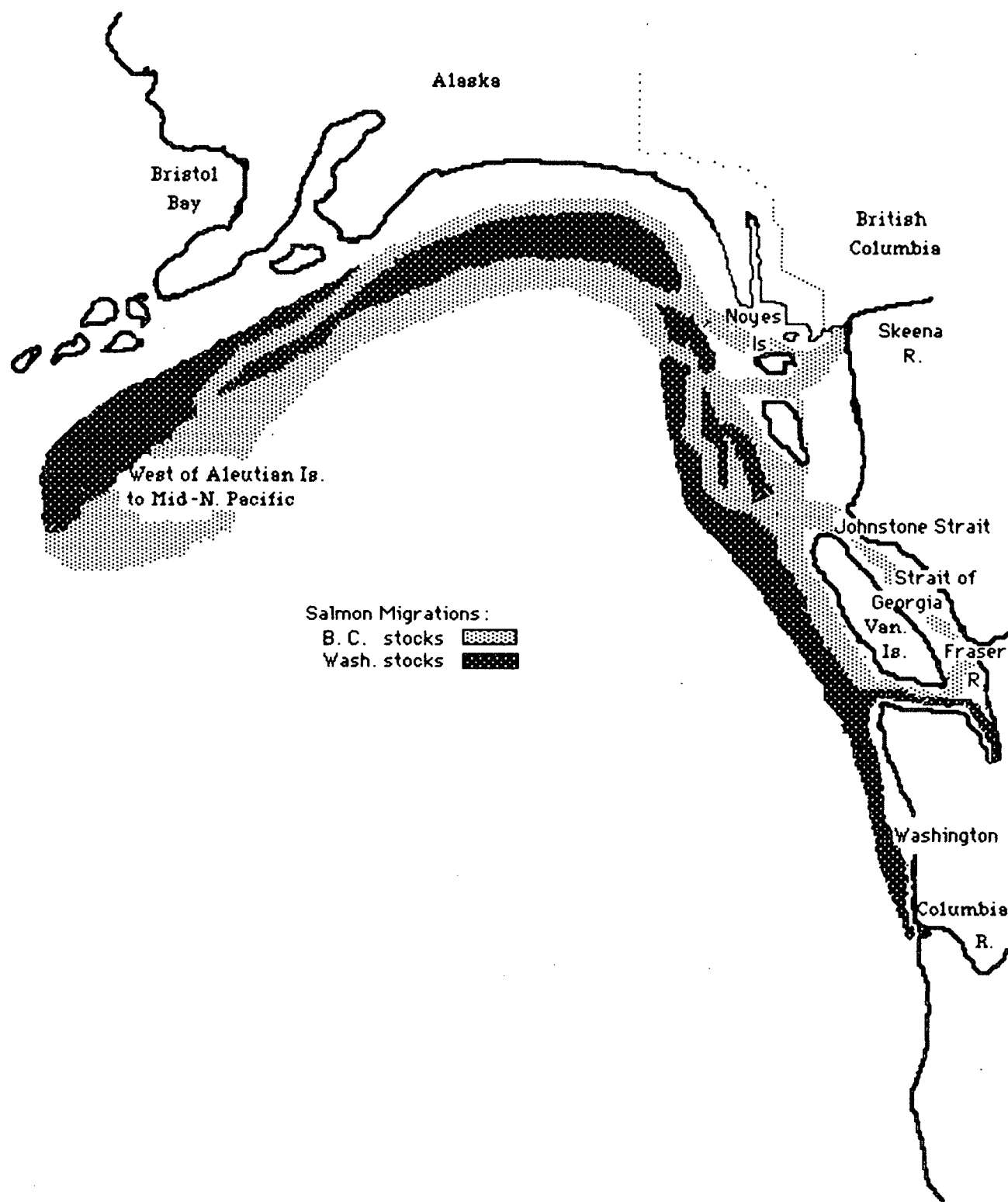
Young, Oran R. "Regime dynamics: the rise and fall of international regimes,"  
International Organization, Vol. 36, no. 2 (Spring 1982).

#### IV: Archival Sources


Vancouver, British Columbia. University of British Columbia. Special Collections  
Division. Fisheries Association of British Columbia MSS.


Vancouver, British Columbia. University of British Columbia. Special Collections  
Division. James Sinclair Papers MSS.

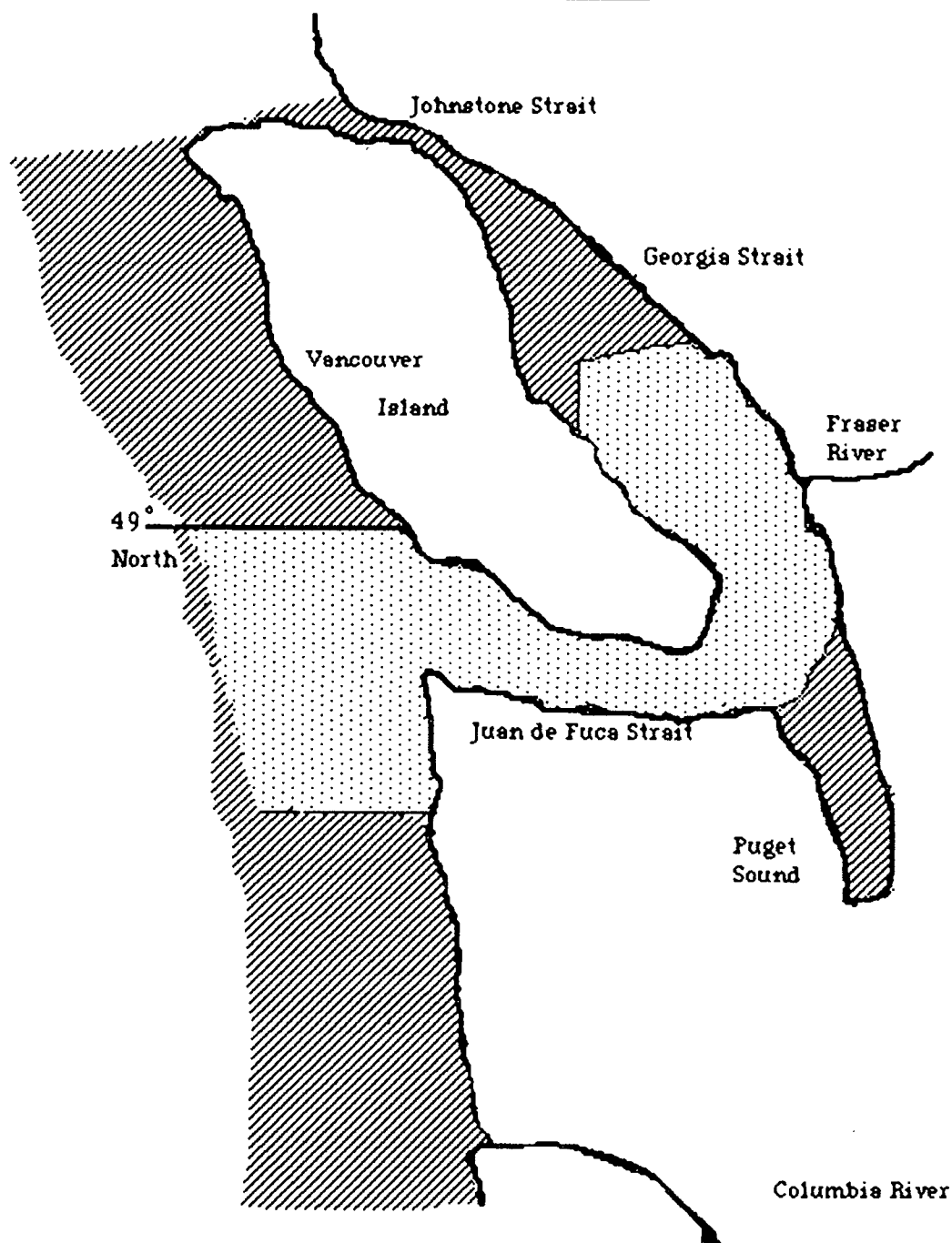
Vancouver, British Columbia. University of British Columbia. Special Collections  
Division. United Fishermen and Allied Workers' Union MSS.



### Appendix B: Study Area

The areas selected for study are shaded 

This area includes International Pacific Salmon Fisheries Commission waters which are shaded 



Appendix C - Resolution Adopted at the 1957 Annual Meeting of the Pacific Marine Fisheries Commission

"WHEREAS, the States of Washington, Oregon, and California, in accordance with the principles expressed in the Pacific Marine Fisheries Compact of 1947, have by concurrent legislative action prohibited net fishing for salmon on the high seas by their citizens, and similar and concurrent action has been taken by Canada, and the United States, and

"WHEREAS, the above-mentioned States and Canada adopted such measures upon the grounds that high seas salmon fishing by nets would nullify and make ineffective the programs of salmon conservation now being applied; and because the indiscriminate taking of immature salmon at sea by net gear is a wasteful use of the resource, and

"WHEREAS: A high seas salmon net fishery of constantly increasing intensity is being prosecuted by Japanese nationals in the area of the Western Aleutian Islands and northerly thereto, where large numbers of salmon of North American origin are being taken, and

"WHEREAS: The U. S. Section of the International North Pacific Fisheries Commission, after reviewing scientific and statistical evidence, made the following statements at the closing session of the Commission's 4th Annual Meeting (Nov. 8, 1957) at Vancouver, B.C.:

" "If the Japanese high seas fishing is on the same scale as in 1957, and if it takes as many Bristol Bay red salmon, the United States Government will be faced with two alternatives: (1) close our own fishery entirely and deprive our Bristol Bay fishermen of a season altogether, in order to achieve a reasonable escapement; or (2) allow our fishermen to fish seven days a week, as the Japanese do, and destroy this cycle."

" "We therefore propose establishment in advance of the 1958 season of a zone in which there shall be cessation of all fishing in the waters where a substantial proportion of salmon of North American origin are found." " (sic)

"THEREFORE BE IT RESOLVED: That the Pacific Marine Fisheries Commission, at its meeting held at Portland, Oregon, November 20, 1957, does unequivocally endorse and support the position of the U. S. Section as expressed in the foregoing quoted statements and in the Section's further statements justifying its proposal; and that the Pacific Marine Fisheries Commission does further express its concern that threatened depletion of major stocks of salmon in Alaska will lead to more intense fishing pressure upon remaining salmon populations and will be a serious threat to those salmon stocks which are administered by the several states party to the Commission.

"BE IT FURTHER RESOLVED that the Secretary of State of the United States be requested to express to Japan this country's strong feeling for an immediate alteration of Japanese fishery practices so as to conform to the principles of the North Pacific Treaty, and

"BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States, Secretary of State, Secretary of the Interior, the United States Section of the International North Pacific Fisheries Commission, and the members of Congress and Governors of California, Oregon and Washington. Approved November 20, 1957."