

CONFIDENTIAL

Continuing Committee of Ministers on the Constitution

Vancouver, July 24, 1980

Report of Committee of Officials
on Fisheries

The Committee continued its work using the "modus operandi" established in Toronto, i.e. to hold both federal-provincial and interprovincial meetings. From this process it was possible to develop draft formulations for consideration by governments for amendment to the BNA Act regarding fisheries jurisdiction.

In summary, agreement or near agreement is possible regarding inland fisheries, marine plants and sedentary species.

The essential issues requiring resolution concern:

- jurisdiction over diadromous species, and
- provisions for fish habitat and native peoples' fisheries

Regarding sea coast fisheries, a provincial text has been produced, which officials, except as noted below, believe susceptible to promoting a broad provincial consensus. This text contemplates concurrent jurisdiction. The federal representatives maintain a position based on exclusive federal jurisdiction. This essential issue remains to be resolved.

A. Inland Fisheries, Marine Plants and Sedentary Species

Regarding the inland fisheries, marine plants and sedentary species the Committee has produced a "best efforts" draft, which appears as Appendix 1 to this report. The first paragraph of the best effort has been supported by the provincial members of the Committee. The draft includes alternative formulations dealing with diadromous species. In advancing this draft(s) the Committee wishes to draw the attention of Ministers to the fact that the alternative formulations regarding diadromous species reflect approaches based on concurrent jurisdiction with limited federal paramountcy and exclusive federal jurisdiction.

Amendment Regarding Inland Fisheries
Marine Plants and Sedentary Species

- 92.1 (1) The Legislature of each province may exclusively make laws in relation to:
- a) inland fisheries in the non tidal waters of the province;
 - b) marine and aquatic plants¹ in the non tidal waters of the province and in tidal waters in or adjacent to the province;²
 - c) sedentary species in tidal waters in or adjacent to the province;
 - d) aquaculture within the province and in tidal waters or adjacent to the province that is not included in either a), b) or c);

A (2) Notwithstanding paragraph 1(a) the Parliament of Canada may make laws in relation to the determination of total allowable catches for diadromous species in non tidal waters and their allocation between provinces and any such law shall be paramount.

OR

B (2) Notwithstanding paragraph 1(a) the Parliament of Canada may exclusively make laws in relation to sea coast and inland fisheries for diadromous species.

Comment

- (1) While these matters are not reflected in the draft, the Federal government would wish provision to be made for the protection of the fish habitat and native people's fisheries, as well as the prevention of fish diseases.

Notes

- ¹ Participants to the committee agree that aquaculture, marine plants, sedentary species and diadromous species should be defined either by a generic description or a list of exclusion or inclusion. Diadromous species means species which spawn in fresh water and migrate to sea or spawn at sea and migrate into fresh water.
- ² There is an option to delineate the jurisdiction area by indicating a mileage from the ordinary low water mark or by a reference only to adjacent waters for both marine plants and sedentary species and aquaculture

Appendix II

Amendment Regarding Sea Coast Fisheries

- (a) Section 91(12) of the British North America Act would be repealed.
- (b) A separate section in the British North America Act, in the following terms, would be enacted.

95A (1) With respect to fish stocks adjacent to each province (as defined in subsection (5) below), the Legislature may make laws relative to the sea coast fisheries but any law covering those matters set out in subsection (3) shall have effect in and for the province so long as they are not repugnant to any Act of the Parliament of Canada made under subsection (2).

(2) The Parliament of Canada may make laws relative to the sea coast fisheries but any law covering those matters set out in subsection (4) shall have effect in and for any or all of the provinces so long as they are not repugnant to any Act of the Legislature of a province made under subsection (1).

(3) The matters referred to in subsection (1) are:

- (a) fixing parameters for the total allowable catch for stocks;
- (b) the allocation of quotas to foreign countries and the licensing of foreign vessels;
- (c) conservation of fish stocks.

(4) The matters referred to in subsection (2) are:

- (a) fixing the level of catch within the parameters referred to in subsection (3) (a) and the issuance of quotas up to the level so fixed;
- (b) licensing of fishing vessels other than foreign vessels taking fish from the residual quota;
- (c) all matters not referred to in this subsection and subsection (3).

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5. (a) The allocation of the fish stocks adjacent to each Province shall be determined by agreement between the Provinces in accordance with equitable principles taking account of all relevant information including traditional fishing patterns.
- (b) If no agreement can be reached within a reasonable period of time, the Provinces concerned shall refer the particular matter in dispute for expeditious arbitration.

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