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MEMORANDUM/NOTE DE SERVICE

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TO/A: Barbara Darling

FROM/DE: L.A. Willis

SUBJECT/OBJET: Overview of Provincial Positions: Fisheries

Comments/Remarques

A. Inland Fisheries

1. There is a general consensus that jurisdiction over inland fisheries should be transferred to the provinces. Most provinces, however, agree that there should be a form of concurrency for salmon and similar species whose habitat involves both fresh waters and the sea. Nova Scotia, however, thinks the federal government should have exclusive jurisdiction over salmon and B.C. thinks that jurisdiction over these species should be exclusively provincial.

Marine Fisheries

Newfoundland supports concurrent jurisdiction with specified areas of paramountcy for each level of government. The jurisdiction of the provinces would relate to fleets rather than to geographical areas.

All provinces except for B.C. and Nova Scotia have agreed to submit the Newfoundland draft to their governments as being "worthy of consideration by governments as a basis for consensus."

Nova Scotia opposes a transfer of jurisdiction, but would support the federal suggestion of mandatory consultation.

P.E.I. and New Brunswick appear to support a form of concurrent jurisdiction with a strong federal role; they also support the idea of mandatory consultation.

Quebec formally supports exclusive provincial jurisdiction but appears to be willing to go along with the Newfoundland position.

Comments/Remarques

Inland Provinces are giving support to the concept of concurrent jurisdiction basically along the lines proposed by Newfoundland.

B.C. supports exclusive provincial jurisdiction.

2. The evolution of the provincial positions does not really represent much progress from the federal point of view.

3. The remainder of this memorandum is highly conjectural, partly because the provinces spent much of the time caucusing among themselves during the July meetings and this procedure tended to limit the extent to which the attitudes of the various provinces were made apparent.

My appraisal of the objectives or mandates of the various CCMC Ministers is as follows:

Newfoundland There is no doubt that Newfoundland has a definite objective of obtaining a significant measure of concurrent jurisdiction over marine fisheries. Inland fisheries are of little interest to this province.

Nova Scotia's main objective is to prevent the adoption of any form of provincial jurisdiction which might affect the mobility of the wide ranging Nova Scotia trawler fleet.

New Brunswick and P.E.I. are probably both seeking an essentially cosmetic form of provincial jurisdiction, and would wish the federal government to be the principal decision-maker in this field.

Quebec is probably looking for, at a minimum, a form of jurisdiction that would give formal constitutional status to the jurisdiction they now exercise under the 1922 Agreement.

The Inland Provinces are clearly attempting to give moral support to the coastal provinces on this issue for political reasons. We would surmise, as well, that they would like to take over inland fisheries management not only to formalize their control of the fishery itself but to minimize the role of the federal government in the field of environmental management.

B.C. no doubt also feels strongly about minimizing the role of the federal government in environmental management,

what would we be giving up in this case?

perhaps more so than any of the other provinces. On marine fisheries, their extreme position is probably related to broader strategic considerations and general natural resource policies, and we would guess that their actual objective in this area is in fact much more modest.

4. Appraisals as to Fallback Positions:

Newfoundland. My guess is that Newfoundland's bottom line involves some form of provincial role in the licensing process - particularly in the selection of licensees. As well, they will probably require some sort of formal role in determining the allocation of quotas to the various groups of fishermen within the province.

Nova Scotia's fallback position is of course defined in terms of how far they could move in the opposite direction. In my opinion they could accept any form of concurrent provincial jurisdiction that does not involve Newfoundland control on the access of Nova Scotia trawlers to the Grand Banks or the Labrador Sea and which leaves all the basic decisions on the conservation of stocks within federal hands.

P.E.I. and New Brunswick have little practical interest in obtaining jurisdiction, and presumably might regard a powerful role for Newfoundland as a threat. I would guess that at the end of the day these provinces could probably accept something very close to the federal mandatory consultation approach.

None of the above provinces have much real interest in the inland fisheries question.

Quebec can probably go along with something very close to what was described above as the Newfoundland bottom line.

The provinces in general probably do not attach crucial importance to the inland fisheries question.

B.C. could probably accept a very modest form of provincial jurisdiction over marine fisheries.

L.A.W.
for L.A.W.

6. FISHERIESA. Status Report1. Marine Fisheries

This, of course, is the most important aspect of the fisheries item, and for the East Coast provinces, the sole area of major interest.

There is no provincial consensus on this issue. Newfoundland is probably the province that attaches the most importance to provincial jurisdiction over sea coast fisheries, and that province has developed a complex proposal for concurrent jurisdiction with the federal Government exercising paramountcy with respect to a number of important matters including conservation and international relations, and the provincial Government exercising paramountcy with respect to matters of primarily local concern. The Newfoundland proposal was attached as a "best efforts" draft to the Committee Chairman's report to the CCMC, and all provinces except for Nova Scotia and B.C. agreed to submit this draft to their governments for consideration.

Nova Scotia opposes a transfer of jurisdiction; and P.C. and Quebec favour exclusive provincial jurisdiction. New Brunswick and P.E.I. do not have a clear position, but appear to lean toward some form of concurrency with a strong federal role and mandatory consultation. The inland provinces are giving support to the concurrent jurisdiction option.

The federal Government opposes any transfer of jurisdiction over marine fisheries, largely because of the interprovincial and international aspects. It would, however, entertain the concept of mandatory consultation and agreed to forward to the Chairman of the Committee of Officials a written proposal embodying this concept. This paper, which should be ready for transmittal very shortly, involves two elements: (a) a simple constitutional clause requiring consultations between governments on fisheries management and related sectors within provincial jurisdiction (eg. fish processing and infrastructure); and (b) federal-provincial agreements to flesh out the mechanisms and procedures for such consultations.

2. Aquaculture and Sedentary Species

There was also an exploration during the July meetings of the option of giving the provinces exclusive jurisdiction over "fish farming" and immobile coastal species such as marine plants, clams and oysters. The federal representatives expressed a willingness to look at this option (provided provincial jurisdiction were restricted to a specified distance from shore) although reservations were expressed about its workability. The provinces generally appear to support this proposal.

A "best efforts" draft was prepared by the Committee of Officials reflecting the degree of possible agreement reached on a transfer of jurisdiction over these species and inland fisheries. This draft was attached to the Chairman's report.

3. Inland Fisheries

During the July talks, the federal Government expressed a willingness to consider transferring to the provinces exclusive jurisdiction over most inland fisheries, although some reservations about the workability of a provincial regime were expressed and no definite offer was made. The federal representatives also stated that, in the event of such a transfer of jurisdiction, there would have to be an exception in the case of salmon and similar "diadromous" species; and some provision would have to be made for the protection of the environment, native food fisheries, and the control of fish diseases.

The provinces all appear to support the principle of a transfer of exclusive jurisdiction. Most of them would agree that the federal Government should have a limited form of concurrent jurisdiction over salmon in fresh water areas, but B.C. has held out for exclusive provincial jurisdiction over salmon and Nova Scotia favours exclusive federal jurisdiction in this respect. On the environmental and native rights issues, the discussion did not reach a point where provincial views could be clearly discerned.

B. Background

The native fisheries and environmental implications of a transfer of jurisdiction to the provinces have not yet been discussed in detail, and could prove to be troublesome issues.

Some discussions with native rights experts within the federal Government have been held. While a final position has not yet been reached, the current thinking is that the new constitutional Act would include a guarantee of native food fishing rights along the lines of the clauses contained in the 1930 Natural Resource Transfer Agreements with the Prairie Provinces. This guarantee would be subject to provincial regulatory control only to the extent necessary to ensure conservation of the resource.

We are advised by officials of the Department of Indian and Northern Affairs that this could be a very sensitive political issue in terms of the Government's relations with the Indians.

With respect to the environmental issue, the inland fisheries power is now an important source of federal jurisdiction over water management, although two recent Supreme Court decisions have defined this power as one that must be strictly related to fishery management purposes. The question therefore arises as to whether some environmental authority should be specifically reserved to the federal Government in the event that inland fisheries jurisdiction is transferred. Discussions have been held with officials of the Department of the Environment, and the preliminary view is that there should be a specific reservation of federal jurisdiction over "fish habitat" management in waters shared with the United States or by two or more provinces, so that the federal Government could act as an arbiter of last resort in disputes between nations or provinces. As well, "fish habitat" authority would be retained over salmon streams. The issue will, however, be studied further before a position is developed for the August 26 meeting. This is an issue of some sensitivity to certain provinces, especially in the West.