

DELEGATION OF CHILE - WORKING PAPER
SUGGESTIONS AND AMENDMENTS TO REVISION 4

1. In his Revision 4 Chairman Mansfield, while retaining important matters broadly supported in the past, has written into the text a preference for one single TAC or TAFE for the whole range of the resource and with the consent of the relevant coastal State, in the case of straddling stocks.

We share such choice and preference, limited to its objective, because it makes sense both for conservation and management purposes, given the nature of the resource and bearing in mind the long and proven Chilean experience with the main fishery of such nature in the Pacific Ocean, jack mackerel.

2. Agreeing with the assessment implicit in the text that a Total Allowable Catch should not necessarily be the best measure for all straddling resources, the characteristics and experience of the jack mackerel fishery make evident the necessity of a TAC for its management and that of related species. Such has been the method successfully applied during the last decade by Chile to its fishery. This assessment is shared by the majority of experts and should be written into the text together with the general option.

We are therefore proposing a new number 5 into Annex III of this fourth Revision, in that sense.

3. In the functional development of such a single TAC or TAFE, the first stage is the assessment which has to be done by the Scientific Committee throughout the whole range of the resource, to provide advice on different levels of risk corresponding to different fishing strategies, in order to establish an appropriate total allowable catch or total allowable effort. While agreeing with the general concept written into the text, we propose for this second paragraph of Annex III a slight clarification

4. The next and necessary stage are the Subregional Management Committees or SMCs. They provide an indispensable functional and political tool to develop recommendations to the Commission which cover conservation and management measures, including on a first stage a TAC or TAFE and in a second stage the participation therein. The SMCs are an adequate and probably irreplaceable channel and instrument to reach such agreements.

They are formed by those most directly involved: coastal States and States fishing in the subregion, who have better information, the greater concern and the most direct interests. This composition was clearer in Revision 3 than in the present drafting and we are consequently suggesting in article I2 a return to the former drafting.

For those functions and purposes, the recommendation of the SMCs should be the basis for the decision of the Commission on a TAC or TAFE, on a first stage; and on participation on a second separated but related stage. Without prejudice to bear in mind the advice of the Scientific Committee, the above, already present in the text, could be made clearer, and we are proposing language to that effect.

In the case of a single TAC or a TAFE for the whole range of the resource, the consent of the relevant coastal State should be necessary, not only for the decision of the Commission but also for the recommendation of the SMC. To make it explicit in the text we are proposing some wording for points 3 and 4 of Annex III.

5. To perform the role it is called to play -at the same time in functional and political terms-, the SMC has to be built, through specially its composition and decision making.

We have referred to composition. On decision making, previous Mansfield texts had wisely tried to strike a balance of interests by, in the absence of consensus, providing for a two thirds vote with the participation in it of two distant fishing States and two coastal States. From the point of view of equilibrium and equity, it seems more than appropriate to require the coastal participation, given the obvious fact that the States adjacent will never change, while the fishers may keep growing. From a Law of the Sea angle, the participation in the adjacent high seas of the coastal State is expressly called for, inter alia, in articles 63 and 116 of UNCLOS (direct cooperation on associated species or straddling stocks; freedom to fish subject, inter alia, to the rights and interests of the coastal State). If a certain balance of power, which corresponds to reality and law is not reflected, the SMC will be unable to play its role and the coastal State that fishes will be helpless.

We propose, therefore, to re-establish the language of Revision 3 to this part of present article 12.

Analogous considerations should apply to the rule in previous Mansfield texts which contemplated that the Commission, when not satisfied with a SMC recommendation, should, first, send it back to the Committee for it to produce a revision. The Commission can set a time frame and will always finally decide. The SMC can be asked, further, to be available to meet during the ordinary meeting of the Commission. Here, again, we are suggesting the re-establishment of the language of Revision 3.

6. On participation in fisheries, the fundamental criteria of every international fishing negotiation and of the practise of other operating RFMOs should be spelled more clearly and in a more relevant position. The text should use the term "fishing history", as in other instruments, instead of a mere reference to catches; give this element a more prominent place and on the rest keep the substance of Revision 4.

We are proposing a formula for such purpose on article 19, which does not detract of other criteria thereby spelled.

7. The text included in Revision 4 for compatibility is far from our ideal, because we believe it should reflect the reality which must, first, take into account existing rules, normally under national jurisdiction, and only afterwards new ones, produced by the RFMO.

But in a spirit of compromise we could live with present article 4 paragraph 3f, provided it is not further diluted and it also emphasizes that existing measures of the coastal State should not to be undermined, which we are proposing.

We believe that an application on compatibility must be found, on such a basis, when a single TAC or TAFE becomes impossible and, as provided by Mansfield 4, the Commission is called to set a TAC or TAFE for the high seas in close contact with the coastal State, that will provide one for the EEZ.

Another situation which calls for an exercise in compatibility is involved in providing measures complementary to a TAC or TAFE, applicable to the whole range of a straddling resource. These measures should be provided respectively by the Commission and the relevant coastal State, in a compatible and complementary manner, insuring full coverage for the resource as a whole.

In article 18.5 and Annex III.4 we are proposing language for such purposes.

8. We are proposing suggestions on other issues, such as species covered, settlement of disputes, entry into force and a range of articles. They are included in a separate document, entitled "Chilean Proposed Amendments Rev. 4".