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March 14, 1967

NATIONAL SECURITY ACTION MEMORANDUM NO. 361

TO: The Secretary of State
The Secretary of Defense
The Secretary of the Treasury
The Secretary of the Interior
The Secretary of Transportation
The Attorney General

SUBJECT: Treatment of Foreign Vessels Illegally Fishing Within
9-Mile Exclusive Fisheries Zone

Public Law 89-658, which was approved by the President on October 14, 1966, establishes a fisheries zone of nine nautical miles beyond the three nautical mile territorial sea. This legislation applies to the United States, its territories and possessions, but not to other areas under United States administration. Within this fisheries zone the United States exercises the same exclusive rights over fisheries as in the territorial sea, subject to continuation of such traditional fishing by foreign vessels as may be recognized by the United States. Foreign vessels and nationals violating the provisions of this law may be seized, arrested and punished in accordance with federal law.

The following instructions regarding the enforcement of PL 89-658 are approved:

1. All Governments likely to be directly concerned with the implementation of PL 89-658 have been officially notified by the Department of State. Such notification was completed prior to December 1, 1966; the countries concerned included Japan, Canada, Mexico, the USSR and all parties to the International Convention for the Northwest Atlantic Fisheries.

2. a. Except as provided in paragraph 2. b. the following procedure shall apply. If there is reasonable or probable cause to believe that a vessel has violated PL 89-658, as defined in paragraph 3, it may be boarded and searched. If enough evidence is found that the vessel has been violating United States law it shall be detained for further investigation. If no reason for detaining the vessel is found it shall be permitted to continue on its way.

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b. Vessels of Japan, Canada, Mexico and the USSR fishing for the stocks of fish or as otherwise noted in the specific areas as described below will not be boarded and searched but will be sighted and reported to the operational commander and the Commandant, U. S. Coast Guard; information to State, Interior, Treasury and Defense. The Department of State will pass notice of violation to the country concerned; in case of Soviet vessels notice of violation to appropriate Soviet fishing fleet commanders by Coast Guard District Commanders will also be made if possible. This procedure will continue for the four countries concerned until new instructions are received from the Department of State reflecting the status of negotiations for the recognition of traditional fisheries for each country.

(1) Mexico - Fishing within the 3 to 12 mile zone off Southern California and Texas.

(2) Japan

(a) Trawling and long-lining in the 3 to 12 mile zone off the State of Alaska in the Bering Sea, the North Pacific Ocean, and the Gulf of Alaska west of 148° West Longitude.

(b) Whaling in the zone off the Aleutian and Pribilof Islands, and all other areas of the Pacific Coast of Alaska, including the Gulf of Alaska.

(c) Salmon fishing in the zone off the Aleutians west of 175° West Longitude.

(d) King crab fishing in the zone in the Bering Sea off the Alaska Peninsula and the Pribilof Islands.

(e) Tuna fishing in the zone off Southern California, the State of Hawaii, the Atlantic coast from New York to Maryland inclusive, the Atlantic coast of Florida, and off Texas, Louisiana, Mississippi, Alabama and Florida west of 85° West Longitude.

(3) USSR - Fishing within the 3 to 12 mile zone off the State of Alaska.

(4) Canada - Fishing within the 3 to 12 mile zone off Alaska, the Pacific Coast and New England states.

3. a. For the purpose of this directive, reason to believe that a foreign vessel has violated the law includes foreign vessels having fishing gear in use or rigged for use so as to lead to the evaluated conclusion that the vessel's intention is to commence fishing within the zone or that the vessel has recently completed removing the fishing gear from the waters within the zone.

b. Whenever foreign vessels are found carrying out fishing fleet support activities in the fisheries zone, the Coast Guard may, where there is reason to believe that a vessel has fish that were illegally caught in the territorial sea or the fisheries zone, board such vessel to determine if a violation has occurred. If reasonable cause does not exist, or if upon boarding there is no evidence to support a violation, the foreign vessel concerned shall be informed that it is in the fisheries zone of the United States and is to depart immediately. No force is authorized should an order to leave the fisheries zone be ignored.

c. The Commandant of the Coast Guard is directed to establish in consultation with other enforcement agencies criteria of proof for the guidance of subordinate commanders in enforcing this law. These criteria should specify that vessels which, under a reasonable interpretation of the evidence, may be deemed to have violated the law inadvertently shall be escorted out of the zone, and shall only be detained to the extent necessary to establish such inadvertency.

4. The distinction between the fisheries zone and the territorial sea is pertinent in carrying out enforcement procedures. As defined by law, fishing vessels within the territorial sea must be in innocent passage; within the contiguous fishery zone foreign vessels need only refrain from fishing operations as defined above. The doctrine of hot pursuit applies to foreign vessels fishing in the zone.

5. Every effort should be made not to discriminate between countries in the enforcement of this law.

6. All necessary force may be employed in carrying out these instructions provided that there is clear evidence that a violation of the law has occurred.

7. The Department of State, Interior, Treasury, Transportation and Defense will be kept informed by the most expeditious means of any action taken by enforcement agencies under these instructions.

8. The Commandant of the Coast Guard is authorized to delegate authority to the various Coast Guard District Commanders to take immediate action under these instructions.

9. Treatment of Soviet Bloc fishing vessels in United States territorial waters will continue to be governed by NSAM 265 of October 14, 1963.

W W Rostow

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