

FOREIGN FISHING IN SOVIET WATERS

By William E. Butler*

The various nationalities inhabiting the coastal areas of the Union of Soviet Socialist Republics have fished for centuries. They were not alone. Since at least the seventeenth century, vessels from Great Britain and Scandinavia fished the Barents and White Seas; others from Japan, Korea, and China fished the Sea of Japan, the Okhotsk Sea, and the Bering Sea; Persian boats exploited the Caspian Sea; and still others from neighboring states operated in the Black and Baltic Seas.

Fishery resources seemed adequate for all, including the comparatively undeveloped Russian fishing industry. So until the nineteenth century, the Tsarist Government was relatively unconcerned about foreign fishing off Russian coasts.

By 1821, however, competition in seal fisheries was sufficiently intense to induce Tsar Alexander I to approve an edict reserving to Russia exclusive sealing and fishing rights within a 100-mile belt in the Bering Sea. (The "mile" used here is the Italian mile equal to 1.85185 kilometers.) After strenuous objections by the United States and Great Britain, the edict was abandoned in bilateral treaties with those countries in 1824-25. Thereafter, Russian jurists were highly critical of the edict, which they regarded as an unjustified extension of state jurisdiction.

Rejected 3-Mile Limit

Although Russia rejected the three-mile limit of territorial waters as a general rule of international law throughout the nineteenth century, the Government was reluctant to promulgate a broader limit to protect fishery interests. (By rejecting the three-mile limit as a general rule, Russia recognized the three-mile limit of other states but reserved the right to adopt a broader limit if her interests so required.) During the 1840's, Russian trading officials urged the Government

to extend territorial waters to forty Italian miles to reduce competition from foreign whalers. The Government declined. It stated that protests would result "since no clear and uniform agreement has yet been arrived at among nations in regard to the limits of jurisdiction at sea."

By the turn of the twentieth century, foreign competition on the northern and far eastern coasts, and the expansion of Russian fishing activity in coastal waters, increased pressure for restrictive legislation. Commissions appointed to consider the question recommended extending the limit of territorial waters to six, ten, or twelve miles. In 1906 one committee urged that a twenty-mile limit along the Murmansk coast be established, and that portions of the White and Kara Seas be closed to foreign vessels. Finally, in 1911, a twelve-mile fishing zone was incorporated into rules governing fishing on the far eastern coast of Russia, notwithstanding Japanese protests. Due partly to diplomatic pressure, a General Statute on Fishing adopted by the State Council in 1913 extending a twelve-mile fishing limit to all Russian coasts never became law.

PERIOD BETWEEN WORLD WARS

The succession of a Bolshevik regime in 1917 was accompanied by increased assertiveness regarding fishing rights. The Soviet Government "nationalized" its internal and territorial waters. In a decree of May 24, 1921, it created a twelve-mile fishing zone on its northern sea coast and the White Sea. That decree reserved fishing privileges only to those Russian citizens who had obtained special permits from the Main Administration for Fisheries and the Fishing Industry of the Russian Socialist Federated Soviet Republic.^{1/} Penalties for violations included confiscation of an offending vessel, its equipment and cargo, and fines for the vessel's master. Similarly, a decree of March 2, 1923, regulating

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^{1/}The USSR did not exist until December 1922, when the Republics of Russia, Ukraine, Belorussia, and Transcaucasia concluded a treaty establishing an all-union government. Today there are 15 union republics in the USSR. Each has legal competence to exercise jurisdiction in areas allocated by the USSR Constitution of 1936. Each republic, for example, has its own criminal code.

far eastern fisheries, annulled all prior treaties, concessions, contracts, and other conditions affecting fishing in the Sea of Japan, the Bering Sea, and the Okhotsk Sea. It established a twelve-mile fishing zone, thereby confirming the Russian decree of 1911. Limited access by foreigners to fishing grounds in the far east was permitted by auctioning parcels of the coastal area to the highest bidder in return for exclusive fishing privileges.

Other Soviet Measures

A decree on the Organization of the Fishing Economy of the RSFSR of September 1922, superseded by a 1927 statute, placed control over fisheries in virtually all portions of the sea coasts under the jurisdiction of the central authorities. Previously, local authorities had control over many such areas. Moreover, on February 2, 1926, the Soviet Union confirmed its adherence to the 1911 convention regulating sealing ratified by the Tsarist Government. Thus, within a few short years, the Soviet Government had taken vigorous measures to provide a legal basis for exclusive fishing rights within twelve miles of its coasts.

To appreciate the actual impact of Soviet fishing legislation, however, one must recall the international position of the USSR during the 1920's and 1930's. By 1921, the Soviet Union had just emerged from a debilitating civil war. It enjoyed little, if any, diplomatic support abroad. Soviet attempts to enforce the twelve-mile fishing zone in the north and far east produced sharp confrontations with Great Britain and Japan. Seizures and confiscations of British trawlers off Murmansk by Soviet patrol boats were countered by several diplomatic representations and intimations of naval reprisal. Confrontations with Scandinavian governments were less acrimonious because Soviet diplomacy soon found it desirable to conciliate neighboring states. Ultimately, the twelve-mile fishing zones created by the decrees were nullified in effect by bilateral treaties and informal agreements concluded with the protesting states.

Fishing Agreements

A provisional fishing agreement with Great Britain, May 22, 1930, permitted British fishing vessels to operate within three miles of

the northern coasts of the USSR and in specified portions of the White Sea. The agreement expressly provided that it did not constitute recognition or nonrecognition of the Soviet claim to a twelve-mile zone. This privilege automatically extended to Germany and Norway by virtue of most-favored-nation provisions in trade and navigation treaties signed by the USSR in 1925 with those states. Finland and the Soviet Union had reached an agreement about reciprocal fishing rights in territorial waters in the Gulf of Finland in 1922. Agreements signed with Japan in 1925 and 1928 were revised and renewed through 1940. The Soviet-Japanese agreements followed extremely difficult negotiations, and their provisions were sorely tested while they were in force.

In 1935 the Soviet Union adopted a comprehensive decree on fishing in which exclusive fishing rights in all Soviet territorial waters were unequivocally asserted. This decree, however, did not supersede treaties then in effect, nor did it define or delimit territorial waters.

Caspian Sea Unique

The Caspian Sea has a unique legal regime. General norms of international law relating to fisheries do not extend to the Caspian, whose regime is governed by Soviet-Iranian treaties. In a 1921 treaty of friendship with Iran, the RSFSR abrogated all treaties, agreements, and conventions of the Tsarist Government and annulled Russian concession rights in the Caspian. A 1927 fisheries agreement set up a joint Soviet-Iranian Company and granted it special concession privileges to catch and process fish. The concession lasted for twenty-five years. Iran elected not to renew the arrangement in 1953. However, it is bound not to grant a concession with respect to these fisheries to a third state for an additional twenty-five years. Each state has reserved a ten-mile fishing zone adjacent to its shore for vessels under its own flag; outside these zones, fishing may be engaged in exclusively by Soviet and Iranian nationals. The entire sea is open to fishing vessels of both states except in these zones, an arrangement confirmed in a 1940 Soviet-Iranian treaty. There has been no indication whether Soviet offshore oil drilling (now being conducted as far as seventy miles from shore) in the Caspian beyond the ten-mile zone has interfered with Iranian fishing.

THE POSTWAR PERIOD

Fishing concessions in Soviet waters were difficult to obtain after 1945. Catapulted to the status of major power by the war, the USSR was not disposed to allow foreign fishermen to operate within its twelve-mile limit. With the incorporation of Latvia, Estonia, and Lithuania into the Soviet Union in 1940, the twelve-mile limit was extended to Baltic coastlines. Enforcement resulted in seizure of numerous Danish and Swedish vessels in the late 1940's and early 1950's. The 1930 agreement with Great Britain was denounced in 1953 and renewed temporarily for 1954 and 1955. A new five-year agreement with Britain, which entered into force in 1957 and was denounced by the Soviet Union in 1961, has not been renewed.

In the far east, Japan was unable to renew the prewar arrangements. Large-scale arrests of her fishermen and vessels allegedly within the Soviet twelve-mile limit strongly colored Soviet-Japanese postwar relations. A 1957 Soviet decree declared Peter the Great Bay to be Soviet internal waters closed to foreign fishing. It probably was motivated primarily by strategic reasons: the naval port of Vladivostok is situated in Peter the Great Bay. The decree deprived Japanese fishermen of a rich fishing area. As the stronger power, the USSR has been generally successful in maintaining the integrity of its fishing zone and in persuading the Japanese to restrict fishing in the Sea of Japan and the Okhotsk Sea.

Limited Foreign Rights

At the present time, there are three agreements between the Soviet Union and adjacent states which give foreign citizens limited fishing rights in Soviet territorial waters. Pursuant to a 1959 agreement with Finland, renewed in 1966, the USSR consented to permit Finnish citizens resident in certain communes adjacent to the Soviet border to fish and seal in delimited areas of Soviet territorial waters in the Gulf of Finland.

Under a 1962 agreement between the Soviet Union and Norway, the latter's fishermen are permitted to fish in Soviet territorial waters in the Varanger Fiord until October 31, 1970.

In 1963 the State Committee on Fisheries^{2/} attached to the National Economic Council of

^{2/}Renamed the (Soviet) Ministry of Fisheries in 1964.

the USSR concluded an agreement with the Japan Fisheries Association permitting certain fishermen to gather sea kale near the Island of Kaigara. The Association pays the Soviets 12,000 Japanese yen (US\$33.33) for each participating vessel. Nonetheless, Japan has been unable to achieve a satisfactory arrangement to fish in Soviet territorial waters in the far east. The 1966 Soviet-Japanese consular convention, however, may improve the legal protection of Japanese fishermen who stray into Soviet territorial waters.

Decree Concerns Conservation

In 1958 the Soviet Union adopted a Decree Concerning Conservation of Fishery Resources and the Regulation of Fishing in the Waters of the USSR. It supplanted the 1935 decree on fishing. Under the 1958 decree, all Soviet waters which are used or which may be used for the commercial extraction of fish and other marine life and growth, or which have significance for the reproduction of fishery stocks, constitute the economic fishery reserves of the USSR.

Soviet territorial waters, whose breadth was established at twelve miles by a 1960 Statute on the Protection of the State Boundary of the USSR, fall within the category of economic fishery reserve. They are closed to fishing, crabbing, or hunting of marine fur-bearing animals by foreign vessels, except as provided for by the international agreements discussed above. Foreign vessels violating this rule, or having permission to engage in fishing but conducting it in violation of the established rules, are subject to detention; persons guilty of so doing are subject to administrative and criminal penalties under USSR and union republic legislation. Articles 163-166, for example, of the 1960 RSFSR Criminal Code contain severe penalties for illegally engaging in fishing or other extractive trades, hunting seals or beavers, blasting in violation of rules protecting fish reserves, and illegal hunting.

CLOSED SEAS

As the cold war intensified after World War II, some Soviet jurists suggested the concept of the closed or regional sea as a theoretical justification for denying, or severely restricting, access by foreign vessels to seas contiguous to the USSR. The underlying

principle was that when certain geographic criteria were present, the regime of a given sea should be established exclusively by agreement of the contiguous states. This would also include rules governing fishing. Presumably, contiguous states would have the right to exclude the vessels of noncontiguous states from the closed sea. Soviet jurists have formulated the geographic criteria in such a manner that six of the fourteen seas washing Soviet coasts--the Okhotsk Sea, the Sea of Japan, the White Sea, the Baltic Sea, the Black Sea, and the Sea of Azov--would fall into the category of closed seas.

However, this theory has never been espoused by the Soviet Government. Yet it remains on the record as a distinctive Soviet

contribution to legal theory relating to freedom of the seas. It may haunt Soviet diplomats in the future, when smaller powers invoke Soviet doctrine to justify exclusion of Soviet high-seas fishing fleets from their offshore fisheries.

Soviet high-seas fishing is a recent phenomenon post-dating most Soviet legislation and agreements discussed in the article. Soviet law is a product of the period when Soviet fishing was primarily coastal. Having established a pattern of limiting foreign access to Soviet waters, it remains to be seen how the Soviet Union will treat its own precedent when the same principle is invoked by other states.

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WHAT IS THE VOLUME OF THE WORLD'S OCEANS?

Estimates vary from 317 to 330 million cubic miles; the most reliable sources place the volume at approximately 328 million cubic miles. Ocean waters comprise about 85 percent of the total water on the earth's surface.



The volume of all land above sea level is only one-eighteenth of the volume of the ocean. If the solid earth were perfectly smooth (level) and round, the ocean would cover it to a depth of 12,000 feet. ("Questions About The Oceans," U. S. Naval Oceanographic Office.)