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PRIORITY

(Security Classification)

FOREIGN SERVICE DESPATCH

144  
DESP. NO.

FROM : **Embassy, Quito.**

August 27, 1952

TO : THE DEPARTMENT OF STATE, WASHINGTON.

DATE

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REF :

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SUBJECT: **Fishing Vessel Seizure Problem in Ecuador.**

Supplementing the Embassy's despatches no. 132 of August 22, 1952, no. 137 of August 25, 1952, and 141 of August 27, 1952, respectively, the following report completes an investigation of the background and current status of the above subject.

At the outset it should be stated that the observations and suggestions set forth below are necessarily subject to the policies of the new Ecuadoran Administration which takes office on September 1, 1952. However, it is not believed that the situation will be ameliorated merely by a change in administration, since it appears that the forces behind current Ecuadoran policy, both in respect of territorial waters and in respect of fisheries, will be as influential in these matters after September 1 as at present. What follows, therefore, presumes that the new Government will continue of the same mind; that there will be no spontaneous demarche by President Ibarra's cabinet.

Differentiation Between Extraterritorial Claims and Fisheries Aspects.

Prior to the promulgation of Decree 0160 of January 29, 1952, in effect prohibiting foreign flag fishing vessels from entering, for any purpose, a twelve-mile-wide zone of waters along the Ecuadoran continental coast, the American tuna fishing industry was not, from a practical standpoint, affected by Ecuador's extraterritorial claims. This was due to the fact that fishing permits were purchased for the primary purpose of taking bait which, for the most part, is found within three marine miles of the coast. These permits also covered tuna fishing operations in Ecuadoran waters, with the practical result that whether Ecuador claimed fisheries control over three miles or twelve miles made little material difference to the industry. With the entry into force of Decree 0160 however, the current fisheries problem came into being, introducing questions of international law, namely, the legitimate extent of exclusive fisheries control, the proper location of baselines, and the scope of the concept "innocent passage". So long as the said prohibition obtains, it will be difficult to deal with the fisheries problem independently of the extraterritorial claims issue.

However, that is not to say that the two are necessarily inseparable. For while both Ecuador's position regarding fisheries jurisdiction and its current attitude toward foreign fishing operations in coastal waters spring from the same nationalistic motives, the latter has been in part inspired by private considerations not entirely aligned with Ecuador's best interests. If in some satisfactory manner the preexisting fishing privileges can be restored to American fishermen, the extent of Ecuador's

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REPORTER

~~CONFIDENTIAL~~

Page 6 ofDesp. No. 144From Embassy, QuitoAugust 27, 1952**CONFIDENTIAL**

(Classification)

Encl. No. \_\_\_\_\_

Desp. No. \_\_\_\_\_

From \_\_\_\_\_

extraterritorial claims would again be immaterial from an operational standpoint. It is not believed that this is impossible of accomplishment.

Even though the local seizure question may ultimately be answered without reference to the extraterritorial claims per se, the Department will wish to bear in mind the American fishing industry's natural concern over the precedential value of such claims to other states far off whose coasts the industry pursues large scale tuna fishing operations, as contradistinguished from baiting in inshore waters.

### Territorial Waters.

The subjects of territorial waters and fisheries jurisdiction have provided the Ecuadoran Government with important instruments of national policy. The identification of considerable reaches of water along the continental coast and around the Galapagos Islands as the exclusive property of Ecuador has great emotional appeal to the literate element, and the central authorities are keenly aware of that fact. When one considers the responsiveness of innate pride and patriotism to territorial aggrandisement, it is not difficult to understand why the extraterritorial claims of Ecuador have become an object of popular interest and support. Extensive and sympathetic press coverage of national action in this field, including incidents growing out of enforcement, have made a major contribution in that direction. The subject has become sensitive, politically, and under these circumstances probably no public official would risk levelling criticism of Ecuador's stand in the matter even if he felt it extreme.

In following the post-World War II trend toward the unilateral extension of special and general jurisdiction over coastal waters, Ecuador considers that she was merely getting in step with a number of other states in the Latin American area. Although taking comfort in numbers, Ecuador undoubtedly was motivated by considerations of the national welfare, viewing the natural resources of the coastal waters and continental shelf as sources of raw material for potential Ecuadoran industry which would in turn benefit the national economy. It is believed that this highly commendable desire to create new industry played a prominent part in the series of events leading to Decree 0160 of January 29, 1952.

### Decree 0160.

This decree, which together with the fisheries law of February 22, 1951, is the basis of recent seizures of American vessels, is believed attributable to four factors: (1) The activities of one Maury Rankin, an American citizen, who controls the embryonic Ecuadoran tuna fishing business; (2) an FAO mission to Ecuador in 1951; (3) the inability to appreciate fully the extremely unfavorable competitive position Ecuadoran canned tuna would occupy vis-a-vis the American market, considering the United States tariff, and Japanese, Peruvian, and American production; and (4) a misunderstanding of the factors which affect the amount of revenue Ecuador derives from American fishing operations in its waters.

Mr. Rankin's connection with Decree 0160, as related in the Embassy's despatch no. 141 of August 27, 1952, is believed to be substantially correct. It appears that he derives virtually all of his influence in the matter from the Manta fishermen and municipal authorities, having alienated himself from many high

**CONFIDENTIAL**

Page \_\_\_\_\_  
 Desp. No. 144  
 From Ambassy, Quito  
August 27, 1952

**CONFIDENTIAL**  
 (Classification)

Encl. No. \_\_\_\_\_  
 Desp. No. \_\_\_\_\_  
 From \_\_\_\_\_

government officials, including one close friend President Plaza and Minister of Economy Jalil, by demanding and argumentative tactics. It is said that he who controls the Manta fishermen controls Ecuadoran fisheries policy, and Mr. Rankin presently controls the Manta fishermen. However, the reported fall of this man into disfavor among central authorities is expected to obtain after the new administration takes over, since his modus operandi is well known in governmental circles and he is becoming unpopular with the local population in Manta, who can no longer obtain all the fish they want to eat as the fishermen sell it all to Rankin. This offers hope of attenuating his indirect influence on Ecuadoran fisheries policy. For example, it is believed that the Ecuadoran Government can be induced to participate in the work of the Inter-American Tropical Tuna Commission and thereby bring to light the facts regarding tuna populations along Ecuador's coast. In this way the validity of the contention that Decree 0160 is necessary to preserve the resource can be either proved or disproved scientifically, without in the meantime disturbing the Manta tuna fishing industry.

Reportedly, a recommendation along the lines of Decree 0160 also came from an FAO mission to Ecuador in mid-1951. This mission, said to have included Sr. Osorio TAFAL, a Spanish national, and a Chilean named Gonzalez, recommended that Ecuador cease being only a supplier of raw fish to foreign markets, and abolish the issuance of permits by radio in order to control illegal fishing. Further, it was suggested that foreign fishing in national waters be discontinued altogether. Undoubtedly, these suggestions were received with interest since Ecuador covets a canned tuna export industry, failing yet to appreciate fully the economic factors surrounding the canned tuna supply and market situation in the world today.

Ecuador is aware of Japan's dominant position as the chief foreign supplier of both canned and raw tuna to the United States market. But there does not seem to be a full realization that the Japanese, by an abundance of skilled and cheap labor, and technical know-how, can outstrip all foreign competition for that limited market. Here again Ecuador appears to be drawing encouragement from Peru's flourishing canned bonito industry, not understanding that such canned bonito, a tuna-like fish, is not competing directly with Japan's fancy albacore tuna canned in oil. Apparently INEPACA is aware of these factors, and is content to confine its export operations to the shipment of duty-free tuna in the round for canning in the United States. Although Ecuador will probably continue to aspire to a canned tuna export industry, the check against any disastrous attempt to establish one will be provided by the unwillingness of informed fish producers to invest in such an enterprise.

Early in 1951 Ecuador increased the cost of permits to fish in its waters from \$7.50 per ton to \$12.50 per ton, ostensibly for the purpose of increasing revenue. However, despite a substantial increase in the size of the American tunaboat fleet, the amount of revenue received by Ecuador from this source declined. The cause of this has not been readily understood by local authorities. There has been an attempt to impress upon Ecuadoran officials in concern the relationship of that decline to the tuna market situation in 1951, namely the cutting of production costs wherever possible by American fishermen in order to meet foreign competition. It has also been suggested that the present location of tuna fishing grounds off Northern Peru would make baiting privileges in Ecuadoran waters a convenience, and therefore a potential source of greatly increased revenue to Ecuador.

**CONFIDENTIAL**

Page 4 of

Desp. No. 144

From Embassy, Quito  
August 27, 1952CONFIDENTIAL  
(Classification)

Encl. No. \_\_\_\_\_

Desp. No. \_\_\_\_\_

From \_\_\_\_\_

The Department may be aware of the fact that under Ecuadoran law the commander of the seizing vessel receives 30% of any fine imposed upon the fishing vessel seized. This amounts to incentive pay. However, this aspect of the problem relates to enforcement rather than to the basic fisheries policy.

### Alternative Approaches to the Problem.

It is not suggested that the following list is complete. Other alternatives may suggest themselves as the Department studies the report of this investigation. Further, the order in which these items are mentioned has no special significance.

1. Adjudication in the International Court of Justice. The question of the right of foreign flag vessels to innocent passage through Ecuador's territorial waters might be referred to the ICJ for determination. The legal breadth of those waters need not be in issue, but rather the question of rights within them, whatever their legitimate extent. It is believed, however, that one should bear in mind the real possibility that the Court might not confine its decision to the question of innocent passage alone, but might very well pass judgment on the validity of Ecuador's territorial waters claim. In this latter connection, the present composition of the ICJ and the known philosophy of some of its members would seem to make a decision favorable to the United States highly unlikely.

Although the decision in the Sun Pacific case has not been rendered, there are reports that a finding of guilt and the assessment of a fine approximating \$11,000 is certain. The Sun Pacific case may have all the requisites of a test case regarding innocent passage. Representatives of the owner of this vessel are proceeding on the theory that it does and that it will be so employed.

2. Inter-American Tropical Tuna Commission. This Commission, as a medium for bringing Ecuador and the United States together in cooperative tuna research, should not be overlooked. Ecuador is actively interested in membership. Apart from providing a scientific means for determining the true state of the tuna resource in Ecuador's continental coastal waters, which goes to the heart of Decree 0160, this Commission would serve as an excellent agency for improving the relationship between the two countries in the field of fisheries.

3. Guarantees of Non-Fishing -- Innocent Passage. Consistently with the continued existence of the prohibition against foreign fishing in the continental territorial waters, consideration might be given to the development of mutually satisfactory guarantees of non-fishing by American tunaboats while passing through such waters, to avoid seizures. It is understood that at one time a form of guarantee against illegal fishing in Ecuadoran waters was successfully employed by the American tuna fleet. It seems that upon returning to home port in California, each tunaboat reported to the American Tunaboat Association the name of each vessel it had seen fishing in Ecuadoran waters. This was in turn reported to the Ecuadoran consul at San Diego who checked the names with the list of permittees. With everybody reporting on everybody else this is said to have worked very well. That is not to suggest that the same plan would be workable where there is an outright prohibition, as in the present case. Of course, any guarantees that might be developed in the present case would have to emanate from the industry and not the United States Government, since the latter would otherwise be compromising its

CONFIDENTIAL

Page \_\_\_\_\_

Desp. No. 344  
From Ambassy, Quito  
August 27, 1952

**CONFIDENTIAL**  
(Classification)

Encl. No. \_\_\_\_\_  
Desp. No. \_\_\_\_\_  
From \_\_\_\_\_

position on Ecuador's extraterritorial claims as stated in its note of protest thereof.

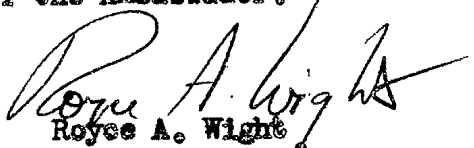
4. Permits to Catch Bait Only.

The American tuna industry's current difficulty off Ecuador is twofold: (1) The denial of innocent passage, and (2) the denial of fishing privileges. If, as it is understood in regard to the latter, the fleet is primarily interested in baiting privileges, the practicability of bait permits only might be explored with the industry. Tuna bait is found, for the most part, within three miles of the coast, thus eliminating any extraterritorial factor. As reported in the Embassy's despatch No. 141 of August 27, 1952, Senator Jorge PEREZ Serrano inquired into this possibility. If this approach is practicable and agreeable to the industry, it is believed that Senator Perez would be willing to advocate it providing he is fortified with information demonstrating its profitability to Ecuador.

5. Amendment of Fisheries Law to Restore Right of Innocent Passage to Foreign Fishing Vessels.

The Department may wish to consider lending some kind of informal, direct encouragement to Senator Perez who has already made a move in this direction (see Embassy despatch no. 141 of August 27, 1952). Senator Perez acted on his own initiative and because of his personal conviction that no valid distinction can be drawn between merchant vessels and fishing vessels for innocent passage purposes.

For the Ambassador:

  
Royce A. Wight  
Economic Attaché

Copies to:

- 1. Amcengen, Guayaquil.
- 2. Ecuador Desk, Department of State.
- 3. Embassy, Lima.

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