

Fishery Industry (C)

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD  
WHITEHALL PLACE, LONDON S.W.1



From the Minister

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PRIME MINISTER

MF

Prime Minister

This will be taken at a restricted meeting of Ministers next Wednesday to discuss policy on the Mandate. You may like to read over the weekend.

A.J.C.  $\frac{12}{3}$

*Robin Maitland*

REVISION OF THE COMMON FISHERIES POLICY

We could face a major crisis in the European Community on the Common Fisheries Policy in the latter months of this year. The Secretary of State for Scotland and I feel that we should bring this matter to the attention of colleagues in good time in order that we may examine all of the options that are available to us and consider our tactics before pressure increases.

There may be advantage in taking an early initiative by making it clear that a Common Fisheries Policy needs to be concluded in the context of the Mandate/Agricultural Prices package. A link has already been made with the Mandate in the 30 May declaration, and colleagues might conclude that the only hope of obtaining a fisheries policy satisfactory to our industry is to make such a link.

We recognise the problems in coming to this conclusion. The Annex to this paper, with which the Secretary of State for Scotland agrees, clearly sets out that the alternatives available in December 1982 have perhaps greater disadvantages.

Certainly current indications from the Commission are that they have no confidence in obtaining a settlement other than in the context of the Mandate package.

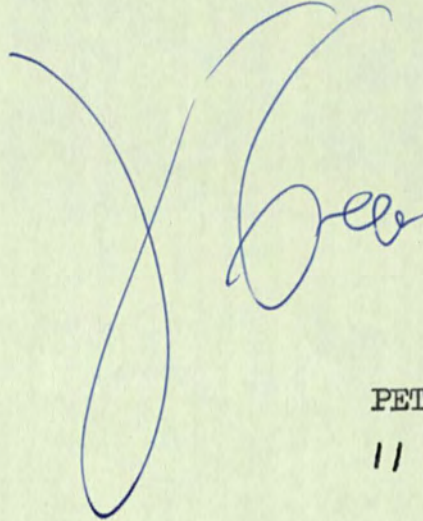
/I am sending copies ...

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I am sending copies of this minute and enclosure to the Foreign and Commonwealth Secretary; the Secretary of State for Scotland; Chancellor of the Exchequer and to Sir Robert Armstrong.

A handwritten signature in blue ink, appearing to read 'P Walker', with a large, stylized flourish on the left side.

PETER WALKER

11 March 1982

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ANNEX

## REVISION OF THE COMMON FISHERIES POLICY (CFP)

### RECENT HISTORY

1. Since May 1979 we have been instrumental, notably during our Presidency, in obtaining important advances on conservation where we have now secured a consensus on measures which our predecessors had adopted nationally and illegally; on marketing where we have secured a new regime which is greatly improved from our point of view; on third country issues which we have got onto a much more systematic basis, and on other matters such as control. But these, though significant, are second order issues. Less progress has been made on the nub of the matter - access and quotas. It is these issues which are meant when reference is made to a "CFP settlement".

### BACKGROUND

2. An acceptable fisheries solution remains a major goal. We are heavily committed politically to securing one; the absence of one encourages the catching sector in their financial demands on government; the industry needs an end to the present uncertainty; and the very awkward situation with which we would be faced after the expiry of the access provisions in the Act of Accession at the end of this year (see below) provides a real incentive to reach a solution.

3. It is important for us to achieve a fisheries settlement, but it must be an acceptable one. We have committed ourselves, especially in the 1979 Election campaign, to securing certain objectives and there would undoubtedly be a very severe adverse public and Parliamentary reaction if we accepted a deal that clearly did not measure up to our past assurances. To do so would give our political opponents opportunities to whip up anti-Community feelings to our disadvantage. Given this constraint, it is quite possible that an acceptable outcome cannot be found in the Fisheries Council over the next few months.

### THE PROSPECTS

4. The key to a settlement is access. The legal position is that access to all waters under the sovereignty or jurisdiction of Member States is open to all vessels flying the flag of and registered in a Member State except for the areas within 6 miles of baselines and certain

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areas between 6 and 12 miles as provided for in Articles 100 and 101 of the Act of Accession respectively which are valid until 31 December 1982. In August 1979 the Law Officers agreed

"... if the Community does not take a decision on access to waters by 31 December 1982, the principle of equal access will apply throughout the waters of Member States ... This would mean in theory that vessels from all Member States could fish in all the maritime waters subject to our sovereignty or jurisdiction - as it is commonly called 'up to the beaches'."

They also agreed that, although Article 103 of the Act of Accession provides for provisions to be agreed to follow Articles 100 and 101, if no decision were taken by the terminal date (ie 31 December 1982):-

"... The Community's powers [ to take a decision ] will run on even if the terminal date passes; but the transitional derogations will expire automatically on 31 December 1982. In that event Community law ... will revert to ... equal access to and use of inshore fishing grounds by fishing vessels of all Member States."

5. Since 1979 the European Court has held in a fisheries case (paragraph 29 of the judgement in case 804/79) that equal access to fish stocks for all Community fishermen flows directly from Article 7 of the EEC Treaty. It is possible that the Court would hold, if asked, that the arrangements which could legally be agreed under Article 103 of the Act of Accession could not go further by way of derogation from the Community "norm" (ie equal access) than the arrangements set out in Articles 100 and 101. This would not permit an acceptable settlement. It is probable that the Court would hold that any derogations could only be temporary, since they would be regarded as a continuation of the transitional arrangements originally provided for in the Act of Accession.

6. The legal advice will be particularly significant if there is no agreed solution in the Council since in those circumstances the issue is much more likely to be referred to the Court for a ruling.

7. It will be recalled, against this background, that we are committed (for example by our statement of 26 April 1979) to securing "an adequate exclusive zone" (which all informed observers have taken



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to mean 12 miles from baselines) and outside that "a further considerable area of preferential access".

8. In these difficult circumstances we have sought to make progress on access bilaterally with the French, the main antagonists on this issue. We have moved from the concept of a fully exclusive zone to permitting some exceptions based on historic rights. We did achieve some movement from the French towards the end of last year, but were not able to come to an overall solution. Very recently there have been indications that the Commission may put forward a revised proposal. But experience indicates that this is unlikely to be acceptable to us; even if it were, the French, who are in a strong legal position and therefore have no real incentive to make concessions in order to reach agreement, would be unlikely to accept it in isolation.

9. Public attention has already begun to focus on the position at the end of the year and we were recently obliged to state that there is no question of our allowing fishing "up to the beaches" from 1 January 1983.

10. We are advised that, in the absence of agreed action under Article 103 of the Act of Accession, unilateral national action would be necessary to maintain any restriction on access round our coast after 31 December 1982. Since any such action would almost certainly be rapidly found to be incompatible with Community law probably by the United Kingdom Courts but if not by the European Court of Justice, we would have no means of prosecuting offenders unless we took the very serious step of amending the European Community Act 1972 by primary legislation. Such a course would obviously raise very grave constitutional and political issues.

### OTHER ISSUES.

11. The Fisheries Directorate-General of the Commission have delayed putting forward even to the Commission the 1982 proposals on total allowable catches (TACs) for the EC and on national quotas until after the Greenland referendum. Quotas are possibly the most important aspect of the fisheries negotiations in practical terms and we are fully committed to securing a good deal. We have always maintained, and, if we are to have any hope of overall success, must continue to maintain, that access and quotas must be settled together.



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12. In the absence of a settlement, there would be serious risks for fishery stocks. Though the Community fisheries agreements with third countries provide a means of setting an overall limit on some catches, thereby providing a limited degree of protection for the stocks concerned, there would be no agreement on TACs for many stocks, no agreement on national quotas for any stocks and probably no agreement to apply uniform control measures which are needed to ensure that the quotas are in fact observed.

13. Some fish stocks, for example mackerel, are experiencing a sharp decline in abundance because of the continued absence of effective catch limits and controls. The continued absence of a settlement on quotas therefore threatens a collapse of some stocks and a serious decline in others which could at best only be reversed by sharply cutting back catches for a number of years, with serious implications for the financial viability of the fleet.

14. The absence of a CFP settlement has undoubtedly encouraged and strengthened the industry in their bids for special aid. We have had to provide £42 million over the last two years. Another claim has been submitted and is now under consideration. These annual claims pose harsh political choices.

15. Politically it is impossible to resist the industry's claim for aid when we have failed to obtain a Common Fisheries Policy agreement. It is only when we know the details that we will be able to decide on the restructuring of the fleet.

16. Any impression that we are abandoning the Common Fisheries Policy prior to obtaining a secure future would have major political repercussions particularly in Scotland and the South West.



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### THE OPTIONS

17. For the reasons set out above, if we continue on our present course we are unlikely to find a settlement in the Fisheries Council. In the absence of a settlement the political temperature is likely to rise as 1982 progresses with growing demands for unilateral action. In these circumstances we would be faced with some very unattractive options at the end of the year:-

- (a) to do nothing, which would face us with fishing "up the beaches". This would clearly be unacceptable politically and indeed we have already been obliged to state that we will not allow it. Quotas would also remain unsettled, with the possibility of a serious decline in some fish stocks;
- (b) to take unilateral national action restricting access to our waters. This would, as explained above, involve amending the European Community Act and would gravely prejudice our position in the Community; quotas would also remain unsettled on this option with the same implications for the stocks as on alternative (a);
- (c) to settle for what we could get. At best this would provide for a maintenance of the status quo on access and probably a poor deal on quotas, a settlement which would be universally regarded as a failure on our part. As time advances it might, because of the deterioration of our negotiating position, be difficult to secure even that much.

18. On all these options we would probably face increasing demands from the catching industry for financial support. None of them is at all appealing. In the Community framework there is only one other option - to make a link with other issues. If the matter is left until the end of the year, we are likely to find that our room for manoeuvre on other issues is in any case limited by our needs on fish. If, therefore, we do not make a link with other issues when it suits us, others are likely to do so when it suits them.

26 February 1982

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