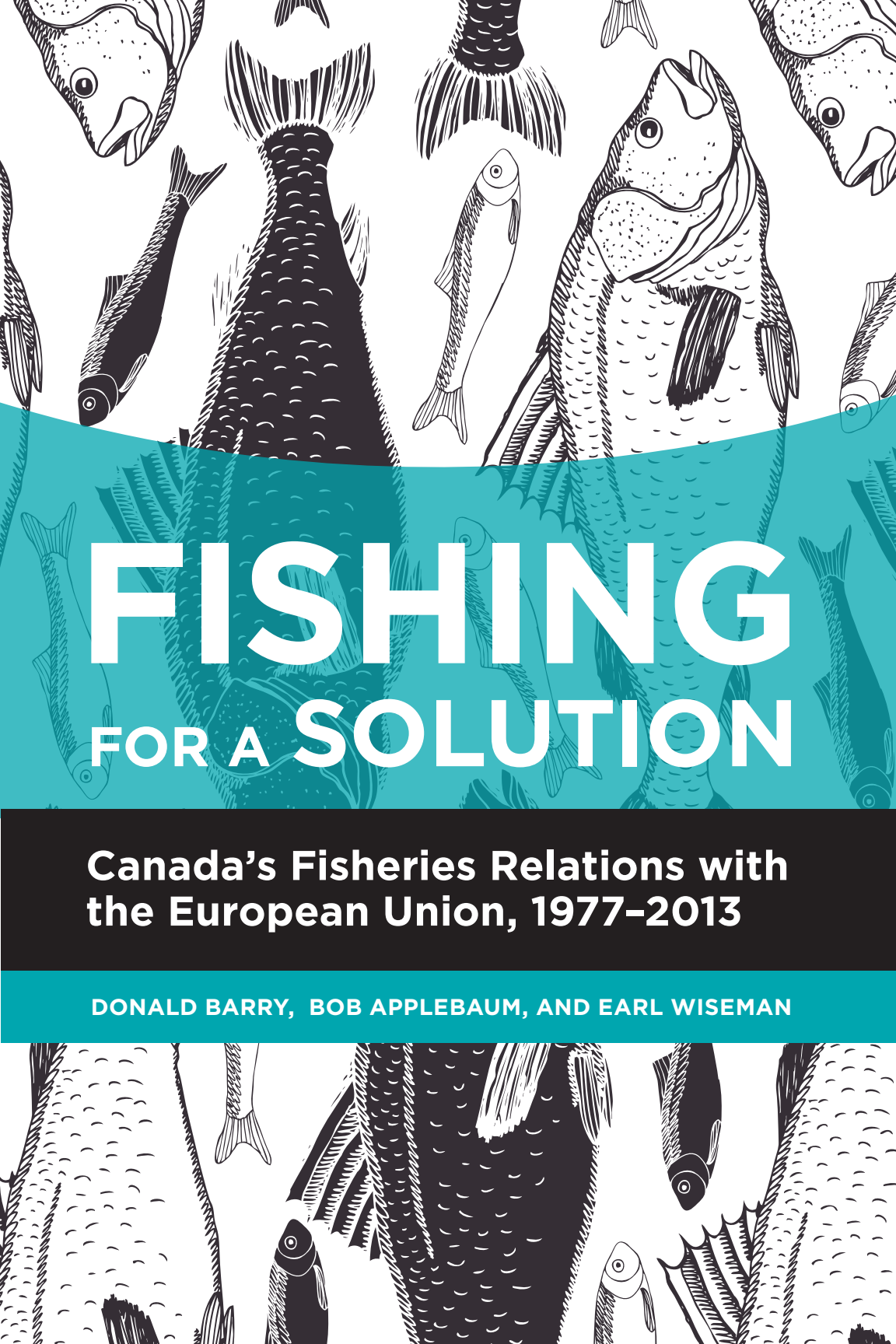

FISHING FOR A SOLUTION

Canada's Fisheries Relations with the European Union, 1977–2013

DONALD BARRY, BOB APPLEBAUM, AND EARL WISEMAN

2014

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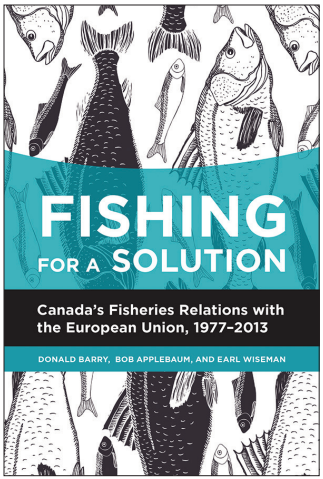

FISHING FOR A SOLUTION: CANADA'S FISHERIES RELATIONS WITH THE EUROPEAN UNION, 1977–2013

Donald Barry, Bob Applebaum, and Earl Wiseman

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Table of Contents

To the memory of my parents,
and to the other members of my family

(DB)

To the memory of my former Deputy Minister,
Peter Meyboom

(BA)

To Karen, Tara, and Brahm
for your love, support, and acceptance
of my many work-related absences

(EW)

FOREWORD

The buildup of European fisheries in the Northwest Atlantic after World War II resulted in a steady depletion of fish stocks along the Canadian Atlantic seaboard, until by the mid-1970s many stocks were reduced to the point of marginal economic viability for Canadian fisheries. The establishment by Canada of the 200-mile limit on January 1, 1977, promised to reverse this situation.

On extending fisheries jurisdiction, the Canadian authorities established a very conservative management regime inside 200 miles, in some areas against significant domestic opposition, as the 200-mile limit had created high expectations within the fishing industry. For the next five years fisheries statistics and biological data indicated that a slow recovery was taking place.

Meanwhile the European Union (EU) was preoccupied with the development of a Common Fisheries Policy, an extremely difficult challenge made all the more so with the accession of Portugal and Spain to the EU in 1986. This set the stage for aggressive fishing practices and aggressive fisheries negotiations with other coastal states, including Canada.

In these early years of extended fisheries jurisdiction, Canada was preoccupied with rebuilding fish stocks; the EU was preoccupied with finding outlets for its fishing capacity. The stage was set for a confrontation between the restrictive policies of the Canadian authorities and the demands for utilization of fishing capacity by EU member states at a time when fish stocks in the Northwest Atlantic as a whole were fished to their sustainable maxima, and often beyond.

To make matters even more complex, many of the groundfish stocks off Newfoundland and Labrador were distributed on either side of the 200-mile limit on the Grand Banks, and completely outside 200 miles on

the Flemish Cap. Some were largely outside 200 miles on the Grand Banks during the spring spawning season. However, EU interest in fishing inside 200 miles remained. Anticipating significant increases in Canadian catches, the Canadian government decided that when such access inside 200 miles was allowed benefits to Canadian industry should be obtained in the form of enhanced access to EU markets. Thus a policy of "allocations for access" was adopted. It was not successful, either in terms of conservation incentives or access to markets,

This book tells the story, beginning in 1977 and continuing for the next 35 years of Canada-EU fisheries relations. It is a story of successes and failures, good intentions and bad outcomes, simple goals and complex results, and overall not the well-managed fisheries and positive bilateral relationship that was sought. Perhaps the low point occurred in the 1980s when fish stocks had been reduced by adverse environmental conditions, when unusual migration of spawning stocks occurred outside the 200-mile limit, and when Spain and Portugal overfished there to such a large extent that most of the stocks collapsed. In particular, the large Labrador/Northeast Newfoundland cod stock, already stressed because faulty data had led to scientific advice that allowed total allowable catches to be set too high, was essentially destroyed, resulting in the displacement of some 20,000 Newfoundland and Labrador fishers.

In essence the Canadian fisheries became a casualty of the EU's Common Fisheries Policy, leaving Spain and Portugal free to fish without restraint, which they did. Serious confrontations resulted, among the most visible of which was the "Turbot War" in the mid-1990s.

Eventually (2005), members of the Northwest Atlantic fisheries Organization (NAFO) decided to modernize and modify the NAFO Convention in response to the experience of the previous 30 years. The proposed changes were controversial and opposed by experienced former Canadian fisheries officials, and by all opposition parties in the House of Commons, which voted 147 vs 142 *not* to ratify. The Harper government, nevertheless, announced the next day that it had ratified the agreement.

Obviously the story is far from finished. This book, meanwhile, provides a detailed account of the relationship to date, an object lesson in the importance of regional politics in EU fisheries policy, and foreign policy more generally, and a disappointing outcome in terms of the promise of

the 200-mile limit for the Atlantic fisheries economy, especially in Newfoundland and Labrador.

After some 35 years of extended jurisdiction, the situation outside 200 miles has stabilized in a set of uneasy compromises. The Canadian offshore groundfish trawler fleet has all but disappeared. It might even be concluded that after all this time the primary beneficiaries of the fisheries in the Northwest Atlantic outside 200 miles are a few EU countries.

Carefully researched and documented, this book is an essential reference for any analysis of the Canadian Atlantic fisheries in the NAFO area, NAFO itself, and the evolution of Canadian and EU international fisheries policy.

A. W. (Arthur) May

ACKNOWLEDGMENTS

This is a work of research and reflection on Canada's fisheries relations with the European Union (EU) from the late 1970s, when Canada established a 200-mile exclusive Canadian fishing zone, and the Northwest Atlantic Fisheries Organization (NAFO) was created to manage fisheries outside the 200 miles, to the conclusion of a proposed new NAFO Convention in 2007, which is currently in the international ratification process. The volume brings together the insights of Donald Barry, a long-time student of the relationship, and those of Bob Applebaum and Earl Wiseman, two former senior public servants who served a combined total of nineteen years in the position of Director General of the International Affairs Directorate in Canada's Department of Fisheries and Oceans.

We take this opportunity to thank those who have assisted us and to pay tribute to those, in Canada and elsewhere, who have worked over the years to improve the international management of marine resources. Friends, colleagues, and close observers of Canada-EU fisheries relations generously shared their views with us. The Ottawa-based libraries of the Department of Fisheries and Oceans; the Department of Foreign Affairs, Trade and Development; and the Delegation of the European Union to Canada were indispensable resources. Regrettably, the Department of Fisheries and Oceans and EU libraries have since closed. We would also like to thank Scott Parsons, author of the definitive book *Management of Marine Fisheries in Canada*, for his suggestions as our work progressed. Osvaldo Croci kindly read the introduction and made useful comments.

We are grateful to the late Dr. Arthur May for contributing the Foreword to the book. Dr. May headed the Canadian delegation in the international negotiations that led to the founding of NAFO, and to NAFO's meetings in the early years of its operations. He also served as the

organization's first chair. Dr. May was Deputy Minister of the Department of Fisheries and Oceans from 1982 to 1985. His eminence in international fisheries issues was recognized in his appointment, in 2004, as chair of the Canadian government's Advisory Panel on the Sustainable Management of Straddling Fish Stocks in the Northwest Atlantic. He passed away in January 2014, as this book was going to press. Dr. May's untimely death was a great loss.

Donald Barry would like to thank the University of Calgary's Killam Resident Fellowship Committee for the award of a Killam Resident Fellowship that allowed him to get the project underway. Chapter 1 and chapter 3 are revised versions of articles that originally appeared in the *Journal of European Integration* and the *International Journal*, and are reproduced with the kind permission of the editors of those publications.

We extend our thanks to the University of Calgary Press, in particular Karen Buttner, who facilitated arrangements at the press, our editor, Peter Enman, and designer Melina Cusano.

Bonnie Walter provided valuable assistance in formatting the text.

ACRONYMS

CAFSAC	Canadian Atlantic Fisheries Scientific Advisory Committee
CFCA	Community Fisheries Control Agency (European Union)
CFP	Common Fisheries Policy (European Union)
COREPER	Committee of Permanent Representatives (European Union)
DG	Directorate General (European Commission)
DG MARE	Directorate General for Maritime Affairs and Fisheries (European Commission)
EC	European Community
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EU	European Union
FANL	Fisheries Association of Newfoundland and Labrador
FAO	Food and Agriculture Organization
FFAW	Fish, Food and Allied Workers Union
GATT	General Agreement on Tariffs and Trade
ICNAF	International Commission for the Northwest Atlantic Fisheries
IUU	Illegal, Unreported and Unregulated Fishing
LTA	Canada-European Union Long-Term Agreement on Fisheries
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	Northeast Atlantic Fisheries Commission
NRA	NAFO Regulatory Area
RFMO	Regional Fisheries Management Organization

STACTIC	Standing Committee on International Control (NAFO)
t	Tonne (metric ton = 1,000 kg. = 2,205 lb.)
TAC	Total Allowable Catch
UNCLOS	United Nations Convention on the Law of the Sea
UNFA	United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Stocks (UN Fish Agreement)
VSM	Vessel Satellite Monitoring
WWF	World Wildlife Fund

INTRODUCTION

European fleets have long plied the rich fishing grounds in the Northwest Atlantic off Canada's east coast. Sailing under the British flag in 1497, John Cabot was among the first Europeans to report codfish in such abundance that they could be scooped up "in baskets let down with a stone." By the early 1500s, British, French, Portuguese, and Spanish fishers, their own fish stocks in decline, began fishing for northern cod, the largest and most important fish stock in the waters of the continental shelf off the coast of southern Labrador and northeastern Newfoundland. Everyone believed the resource was inexhaustible. A report by Canada's Department of Agriculture in 1885 proclaimed, "Unless the order of nature is overthrown, for centuries to come our fisheries will continue to be fertile."[1]

The cod fishery was the foundation for the settlement of Newfoundland. Over the years, the fishery evolved into two distinct components: a domestic fleet of small vessels operating in coastal waters, and a mostly foreign fleet operating offshore. In the century prior to 1950, cod catches in the combined fishery ranged up to 300,000 tonnes (t) a year, with the offshore fleet taking the largest share. In 1949, following a steady increase in the number of European vessels participating in the offshore fishery, Canada and other states with fleets in the region formed the International

Commission for the Northwest Atlantic Fisheries (ICNAF) to regulate fishing outside Canada's three-mile limit.

In the 1950s and 1960s the foreign fishing effort intensified, with vessels from the United States, the United Kingdom, the Soviet Union, East and West Germany, Spain, Portugal, and Japan in search of cod and other groundfish stocks. "The introduction of high-powered factory trawlers – which operated in all seasons and weathers, located fish on their spawning grounds with sonar equipment, dragged huge nets to scoop vast quantities of the fish from the seabed, and then filleted and froze the fish in onboard processing plants – made possible dramatic increases in catches," says Elizabeth Brubaker, with the northern cod catch reaching a peak of over 800,000t in 1968. "With two hundred factory trawlers plying the waters off Newfoundland," Brubaker adds, "it took only the fifteen years between 1960 and 1975 for fishermen to catch as many northern cod as they had in the 250 years following Cabot's arrival."[2] By the mid-1970s fish stocks were in rapid decline, threatening the survival of the Canadian fishing industry. ICNAF, which had only limited authority, proved powerless to halt the slide.

Meanwhile, in 1964, the Canadian government, under pressure from the fishing industry and Atlantic provincial governments, established a nine-mile fishing zone adjacent to its three-mile territorial sea, extending the latter to 12 miles six years later. By the mid-1970s a consensus had been reached at the United Nations Law of the Sea Conference that coastal states should have the right to expand their fisheries jurisdiction to 200 miles from their coasts. In 1977, Canada joined other maritime nations and the European Union (EU) in establishing a 200-mile zone.[3] Led by Canada, ICNAF members formed a new body, the Northwest Atlantic Fisheries Organization (NAFO), to replace their outdated organization. The changes brought about new fisheries relationships between Canada and other ICNAF members, including the EU, which was in the process of creating a Common Fisheries Policy (CFP) for its member states.

In 1981, after accords had been reached with other distant water fishing states, Canada and the European Union signed a long-term agreement on fisheries (LTA), which gave the Union access to northern cod and other fish stocks in Canada's waters in return for conservation cooperation and improved access to the EU market for certain fish products. However, the Union adopted a market allocation scheme that limited the access benefits

that were to have been available to Canadian fish products under the agreement, and in 1985, West German trawlers, the main beneficiaries of Canada's fishing concessions, continued fishing for northern cod outside 200 miles after taking most of their LTA quota – a development that Canada had not anticipated.

No sooner had these problems been resolved than another one arose with the entry of Spain and Portugal into the Union in 1986. With its own stocks fully allocated, the EU sought to increase fishing opportunities for Spanish and Portuguese fishers in NAFO waters. Rejecting the total allowable catches (TAC) and quotas for its fleet, the Union began giving much larger allocations to Spain and Portugal, the actual catches of which were even greater. Canada's expanded fleet continued to fish within its quotas, taking the lion's share of the catches, as was by then customary. However, the TAC's for northern cod were too high because the scientific advice was based on faulty information. The pressure of years of overfishing led to the collapse of northern cod and other groundfish stocks, the imposition of fishing moratoria by Canada and NAFO, and a new crisis in Canada's Atlantic fishing industry.

After the stocks collapsed, Canada and the EU began to normalize their fisheries relations. Even as they did so, Spain and Portugal were turning their attention to the Greenland halibut (turbot) stock outside 200 miles, for which no total allowable catch had ever been established by NAFO. Scientists warned that increasing catches threatened the survival of the stock. Pressed by Canada, NAFO established a TAC and quotas for 1995. The EU disputed its share and set its own higher quota, precipitating a new conflict with Canada, which took unilateral action against Spanish vessels. The dispute was resolved when Canada and the Union reached an agreement on turbot quotas and rules to curb fishing violations that were adopted by NAFO the same year.

The agreement had a salutary, though temporary, effect upon the relationship. Spain and Portugal began expanding their fishing effort, which was accompanied by an increase in fishing violations in the offshore zone. In 2002, NAFO members, under pressure from the Union, disregarded Canada's opposition and warnings from scientists, and voted to increase the turbot TAC, although they agreed to some measures to improve compliance. With domestic pressure to extend Canada's offshore jurisdiction to protect fish stocks on the rise, Ottawa stepped up its own enforcement

efforts and pressed for action to improve fisheries governance. In 2005, NAFO launched a major initiative led by the EU and Canada to revamp the NAFO Convention with the expressed aim of improving the organization's structures and decision-making rules as well as its surveillance and enforcement functions. The new NAFO agreement, which was reached in 2007, awaits approval and thus has yet to be tested.

Importance of Internal Politics

The checkered history of Canada-EU fisheries relations reflects the differing interests of the two parties. The European Union has a large distant water fleet with an extensive history of fishing in the Northwest Atlantic and has sought to enhance fishing opportunities for its vessels. Canada has sought to ensure the conservation of the stocks and to protect the interests of its own fishing industry. In both Canada and the EU, the fisheries sector wields political influence disproportionate to its economic importance. Although it contributes less than 1 percent to the gross domestic product of Canada and EU countries, the industry is concentrated in coastal communities, the members of which have strong opinions on matters affecting their livelihood. While small in numbers, they can have an outsized impact on local and national elections that politicians are bound to take into account.[4] The importance of the fishery, Christian Lequesne has noted, is reinforced by "images that belong to the maritime past" of countries on both sides of the Atlantic, and "the hardships of fishermen seeking to provide food for the population."[5]

In Canada the federal government has exclusive authority over ocean fisheries. Provinces in Atlantic Canada also have a role due to their control over fish processing and related activities.[6] Although the economies of the Atlantic provinces in varying degrees have been reliant on the fishing industry, that of Newfoundland and Labrador has been most dependent, although that dependence has been declining. The industry's share of the province's gross domestic product has fallen from 10 percent in the early 1980s to 3.4 percent in recent years. The number of fishers and fish plant workers has decreased from about 60,000 to 21,000 over the same period.

Of these, 11,000 people, in 500 communities, are employed in the harvesting sector while the remaining 10,000 work in the province's 102 primary fish plants. Together they represent about 11 percent of Newfoundland's labour force.[7]

The role played by European fleets in the decline of Northwest Atlantic fish stocks has made foreign fishing an especially sensitive issue in Newfoundland. Barbara Johnson has observed that those whose livelihood depends upon the fishery have long been "hostile to the claims of distant-water fleets fishing in what they view as their waters."[8] The province's government and fishing industry strongly supported the 200-mile extension. After the EU fleet escalated its fishing effort in the Northwest Atlantic in the late 1980s and again after 2000, they pressed Ottawa to assume "custodial management" of fish stocks on the continental shelf outside the 200-mile limit, for conservation purposes. (In recent years the term has come to describe a system providing for Canadian management of fish stocks outside 200 miles to ensure the sustainability of the stocks and prevent overfishing, while maintaining the traditional proportionate catch shares of distant water fishing states.[9]) However, St. John's and the industry have not always seen eye-to-eye. For example, while the province was against the NAFO Convention amendments, developed from 2005 to 2007, the industry was in favour.

Fishing in the European Union is governed by the EU's Common Fisheries Policy, which consists of four main pillars: conservation and management of fisheries resources, market organization for fisheries products, structural measures to facilitate the modernization of the sector, and foreign fisheries relations. Although authority is vested in the Union, Lequesne has pointed out that "The CFP operates not through a transnational process in which experts regulate problems in a rational way; instead it is based on negotiations between diverse political and social actors who defend interests which are anchored in national and local territories."[10]

At the apex of the policy process are EU institutions, the principal actors being the Council of Ministers, the European Commission, the European Parliament, and, occasionally, the European Court of Justice. The Council of Ministers of Agriculture and Fisheries (Fisheries Council), composed of ministerial representatives of the member state governments, is the venue in which the main decisions about the CFP, including TACs and quotas, are made on the basis of proposals put forward by the

European Commission. The Council's agenda is prepared by senior national officials and the fisheries counsellors from member state delegations in Brussels. It is reviewed by the Committee of Permanent Representatives (COREPER), composed of member states' ambassadors or their deputies, which seeks to reach agreement or, failing that, to offer options for the Council's consideration. Since the launch of the CFP in 1983, Council decisions that formerly required unanimity have been made by consensus or qualified majority vote, with each member state's vote being weighted according to its population. But such decisions often involve trade-offs, and even apparent losers rarely emerge empty-handed.[11]

The European Commission is the EU's executive arm. The Commission is divided into administrative units called Directorates General (DG), each of which reports to a commissioner appointed by the Commission's president from members chosen by EU states. The DG for Maritime Affairs and Fisheries (DG MARE), formerly known as DG XIV Fisheries, is responsible for fisheries issues. In making proposals to the Council, DG MARE draws upon scientific advice that furnishes "rational arguments for passing unpopular regulatory measures, such as the establishment of new TACs or reductions in fleet capacity, for which it is necessary to convince fishermen and national ministers." When the Council becomes engaged, "negotiations move into a political mode, shifting from an emphasis on the protection of stocks to the balance between different geographical areas and the preservation of socio-economic peace."[12]

Until 2009, the European Parliament (EP) had a limited role in decisions on fisheries matters. The Council adopted measures after consulting the EP, although it was not bound by parliamentarians' views. That changed with the adoption of the Treaty of Lisbon, which established the "ordinary legislative procedure" as the principal means by which decisions are made. The procedure, which gives the EP "a genuine co-legislative role in fisheries," adds a measure of complexity to EU policy making and provides additional points of access for member state governments and fishing interests to influence EU decisions.[13] The EP's endorsement of the revised NAFO Convention in 2010 marked the first time parliamentarians exercised their power under the Lisbon Treaty to approve or reject an international fisheries accord entered into by the EU.[14]

Member state governments and fishing interests have numerous opportunities to influence the outcomes of CFP deliberations. Because the

EU lacks the competence to take enforcement action, member states are also responsible for carrying out decisions agreed to, including enforcement of the measures adopted for the conservation and management of fish stocks, which they have not been willing to delegate to the Union. This is consistent with the Union's subsidiarity principle, which is based on the notion that action should be taken at the level of governance (EU, national, or local) at which it is most effective. Enforcement systems vary according to the differing legal traditions, resources, and political will of the member states. Not surprisingly, enforcement has been highly uneven. In 2005, the EU established the Community Fisheries Control Agency to work with member states to improve compliance with the rules of the CFP. The European Commission has called the results "disappointing," noting that

> inspection systems do not guarantee efficient prevention or detection and there is an absence of general control standards. Member States do not make optimal use of inspection activities…. What controls are carried out are too often ineffective and insufficient. Follow-up procedures do not guarantee that sanctions are imposed. Sanctions are either non-existent or not dissuasive. [The result is] an 'infringement culture' in the sector and administrations which puts the whole CFP into question.[15]

West Germany was the principal EU country fishing in the Northwest Atlantic until 1986, when Spain and Portugal joined the Union and became its major distant water fishing members. Both states had a long and sometimes contentious history of fishing in the Northwest Atlantic. Spain is the EU's leading fishing power, the largest component of which is the distant water fleet. The fleet operates out of the Autonomous Region of Galicia, which is the most dependent of all of Europe's regions on the fisheries sector. Almost 5 percent of Galicia's workforce is employed in the industry, and 12 percent of its workers depend upon it. The NAFO fishery contributes some 6 percent of the economy of the region. Decentralization of constitutional powers in Spain gives regions leeway in the formation of national policy, further complicating policy making at the national and EU levels. Officials from the regions, including Galicia, which has its own Ministry of Fisheries, "have never hesitated to exploit EU institutions and law at every possible opportunity in order to involve themselves to a

greater extent in the formulation of the CFP." For example, in 1996, Galicia intervened in the Court of First Instance on behalf of vessel owners in their unsuccessful attempt to overturn a regulation lowering the EU's turbot fishing quota in the wake of the "Turbot War" with Canada.[16]

Although the contribution of the fisheries sector to Portugal's economy has fallen over the last two decades, it remains an important part of the economy of the country's coastal regions. Fisheries account for 24 percent of all employment in the Norte region, where most of the vessels fishing in NAFO waters are based. The economic value of their catches makes up 5 to 7 percent of that of the country's entire fleet.[17] As with the case of Spain, the industry's dependence on offshore catches ensures that access to fish stocks in the offshore zone remains a significant issue.

NAFO

Although Canada's 200-mile declaration brought most of the continental shelf under Canadian control, significant portions of the most important fishing grounds off the northeast coast of Newfoundland (known as the Grand Banks) extend beyond the boundary. These are: the eastern edge of the Grand Banks, known as the "Nose" (NAFO Division 3L); the southern edge known as the "Tail" (NAFO Division 3NO); and the "Flemish Cap" (NAFO Division 3M), which is completely outside the 200-mile limit. (See map, Appendix I.) About 90 percent of the fish stocks are found within 200 miles, but depending on the time of the year up to 10 percent are outside the boundary and can be fished in international waters on the Nose and Tail of the Grand Banks. They are known as "straddling stocks."

The Northwest Atlantic Fisheries Organization, which came into being on January 1, 1979, manages the major fish stocks in the Northwest Atlantic beyond 200 miles. Currently, Canada and 11 other Contracting Parties are members of NAFO. (For a list of past and present members see Appendix II.) The waters outside Canada's 200-mile zone constitute the NAFO Regulatory Area (NRA) to which, under the 1979 Convention, the organization's management functions apply. Each year NAFO establishes TACs and quotas for straddling stocks, including redfish, American plaice, yellowtail flounder, witch flounder, Grand Banks cod, capelin,

squid, Greenland halibut, shrimp, and thorny skate. It also manages the discrete stocks, primarily cod, redfish, shrimp, and American plaice, on the Flemish Cap. In addition to having the exclusive right to manage fish stocks inside 200 miles under the 1979 Convention, Canada manages the northern cod stock in NAFO Divisions 2J3KL, which extends beyond the 200-mile limit to such a limited extent (averaging under 5 percent over the course of a year) that it is not considered to be a straddling stock.

The 1979 NAFO Convention recognizes Canada's "special interest" in fish stocks outside the 200-mile limit through two provisions. The first requires that in managing straddling stocks outside 200 miles NAFO "shall seek to ensure consistency" with Canada's management strategy inside 200 miles. (The organization has generally followed Canada's conservative management strategy of $F_{0.1}$, which permits annual catches of about 20 percent of the fishable biomass of each stock.) The second requires that Canada be given "special consideration" in the allocation of fish stocks straddling the Canadian 200-mile limit and those entirely outside.[18] Although Canada has always supported the strict application of the $F_{0.1}$ approach for the straddling stocks, it has not been as insistent regarding the 3M stocks. These stocks, being discrete high seas stocks for which the consistency rule does not apply, have been subject to different approaches.

NAFO currently consists of the General Council, charged with supervising the work of the organization; the Fisheries Commission, with responsibility for managing the fisheries resources and enforcement in the NRA; the Scientific Council, which provides advice on matters pertaining to fish stocks; and a Secretariat, headquartered in Dartmouth, Nova Scotia, that manages the organization's ongoing activities. Each Contracting Party is a member of the General Council and the Fisheries Commission and can make scientists available to the Scientific Council. NAFO meets annually in September to set the next year's TACs based on the scientific advice and quotas for fish stocks that reflect historic fishing patterns. (The exception is the northern cod TACs and quotas, which are set by Canada for the stock as a whole, both inside and outside 200 miles.) NAFO also establishes control and enforcement measures. Decisions are taken by consensus or majority vote of the Contracting Parties.

The NAFO Convention has serious weaknesses, the effects of which became apparent in the mid-1980s when Canada-EU fisheries relations deteriorated after Spain and Portugal joined the Union. The first is the

objection procedure, which allows any Contracting Party that disagrees with a quota decision to file an objection with NAFO's executive secretary within 60 days. As a result, the decision is not binding on the objecting party, which is free to set its own quota. There is no dispute settlement procedure to resolve such conflicts. The second is the issue of flag state enforcement, which leaves it to the home (flag) state to deal with vessels that violate NAFO's rules. Although NAFO has increased its surveillance and control capabilities over the years, there remains a substantial gap between detecting infractions and doing something about them.[19]

In 2007, the NAFO Contracting Parties attempted to remedy these problems by agreeing to proposals for amendments to modernize the Convention, and new enforcement measures. The amendments, Adela Rey Aneiros points out, "essentially constitute a new convention with only one article from the previous text remaining intact."[20] Among other things, the proposed new Convention would require members to justify their objections to quotas and sets out complex non-binding dispute settlement procedures to resolve disagreements, with the option of invoking binding arrangements contained in the United Nations Convention on the Law of the Sea (UNCLOS) or the United Nations Fish Agreement (UNFA) should NAFO processes fail.[21] However, it would also open the door to NAFO management inside Canada's 200-mile limit, which is explicitly excluded in the 1979 Convention. Bringing the proposed new Convention into force requires the approval of three-quarters of NAFO's 12 Contracting Parties. By the time of NAFO's annual meeting in 2013, five of them – Norway, Canada, the EU, Cuba, and Russia – had given their consent.

The new enforcement provisions, which came into effect in 2007, require flag states to order vessels cited for serious violations of NAFO rules, including misreporting of catches, directed fishing for stocks under moratoria, and repeat offences, to return to port for inspection, with guidelines for appropriate sanctions against offenders. The regulation still leaves ultimate control in the hands of flag states that have shown significant inconsistency in fulfilling their obligations.

Overview of the Book

The role of internal politics in shaping the policies of Canada and the European Union is a central theme of this book. Chapter 1 shows how Canada and the European Union forged a new relationship in the wake of Canada's 200-mile extension, culminating in the adoption of a long-term fisheries agreement. The pact reflected Canada's interest in securing conservation cooperation and reduced tariffs for selected fish products in the EU market, and the Union's interest in maintaining access to northern cod in Canadian waters for West Germany's deep sea fleet. Relations began to unravel when the EU introduced a market quota system that restricted the gains Canadian fish products were to receive under the LTA, and West German trawlers continued to fish for northern cod in the NAFO Regulatory Area after taking the bulk of their quota inside Canada's 200-mile zone. Both issues were settled, but a new problem loomed when Spain and Portugal joined the Union in 1986.

Chapter 2 explores the troubled state of Canada-EU fisheries relations following the Spanish and Portuguese accessions. With access to other fishing grounds limited, the EU looked to NAFO waters to help accommodate those countries' demands. Abandoning its earlier cooperation in NAFO, the Union challenged the organization's $F_{0.1}$ management approach and objected to most TACs and quotas. It set its own quotas at much higher levels, which Spain and Portugal regularly exceeded. Since the extension of jurisdiction, Canada's fleet had taken the largest share of the catches and continued to do so, while staying within its NAFO allocations. The EU also began a major fishery for northern cod outside 200 miles, ignoring the TACs and quotas set by Canada. Later the Canadian government, too, acted out of line with conservation principles, disregarding warnings that its northern cod TACs were too high. It feared the consequences of the enormous unemployment that would result if sharp reductions were imposed. The collapse of the stocks and the closure of most fisheries, in 1992, ushered in a more cooperative, if short-lived, period in Canada-EU relations.

Chapter 3 discusses the Turbot War. Following the collapse of most of the other stocks, Spain and Portugal shifted their fishing effort to turbot, the largest remaining commercial stock. In response to scientists'

warnings that the turbot stock was overfished, NAFO established a TAC and quotas for the 1995 fishing season. Pressed by Spain and Portugal, the EU objected to its allocation and set its own much higher quota. Backed by the Newfoundland government and the fishing industry, Ottawa, using new legislation that gave the government authority to conserve straddling stocks outside 200 miles, took enforcement measures against Spanish vessels fishing in the NAFO Regulatory Area. The conflict ended with a new quota-sharing agreement for turbot and stricter conservation and enforcement rules to deter fishing violations.

Chapter 4 traces the rise and fall of Canada-EU fisheries cooperation in the wake of the Turbot War. Six years of collaboration ended abruptly in 2002 when the EU mobilized sufficient support among NAFO's Contracting Parties to raise the turbot TAC above that recommended by scientists. This was the first time Canada was outvoted on a conservation measure for a straddling stock. Only some of Canada's proposals to curb growing fishing violations, especially by Portuguese vessels, were accepted. In the face of mounting calls from the Newfoundland government and fishing industry to take over responsibility for the management of stocks on the Nose and Tail of the Grand Banks and the Flemish Cap, Ottawa bolstered its own surveillance and enforcement. But it rejected the custodial management option in favour of working with other Contracting Parties to strengthen management through NAFO reform.

Chapter 5 describes efforts to overhaul the NAFO Convention and tighten the organization's surveillance and enforcement rules. In 2007, these resulted in approval of an expanded control and enforcement regime, and proposals for what is effectively a new Convention to streamline the organization's structures, change its voting and objection procedures, and seek to avoid future "fish wars" by providing for less strict approaches to conservation. Ottawa ratified the proposed new Convention, which Newfoundland's fishing industry supported but the province's government and a majority of Members of Parliament opposed. The European Union ratified the amendments without incident.

Chapter 6 explores the impact of internal politics in Canada and the European Union through the successive stages of the Canada-EU fisheries relationship, and the prospects for future relations.

1

THE LONG-TERM FISHERIES AGREEMENT

Fisheries relations between Canada and the European Union have been shaped by changes in international fisheries management since the 1970s. An important impetus was the widespread adoption of 200-mile fishing zones by the world's coastal states. This was reflected in the decision of Prime Minister Pierre Trudeau's government to extend Canada's offshore fisheries jurisdiction from 12 to 200 miles as of January 1, 1977. The announcement was of special concern to the European Union, whose member states had traditionally fished in the waters of the Northwest Atlantic off the coast of Newfoundland and Labrador. Over the next four years the two sides attempted to work out a new fisheries relationship. In December 1981, their efforts culminated in the Canada-EU long-term agreement on fisheries (LTA).

Evolution of Canadian Fisheries Policy

The Canadian government's decision to proclaim a 200-mile zone followed an alarming decline of fish stocks since the 1960s due to sharply increased foreign fishing and the inability of the existing international regional fisheries management organization, the International Commission for the Northwest Atlantic Fisheries (ICNAF), to regulate fisheries effectively beyond the existing 12-mile limit. Overfishing had an especially serious effect on northern cod (NAFO Divisions 2J3KL), the mainstay of the Atlantic groundfish industry. (See Appendix I.) With 90 percent of all significant stocks in the Northwest Atlantic found on rich fishing grounds on the continental shelf within 200 miles of the southern coast of Labrador and northeast coast of Newfoundland, the governments of Newfoundland and Nova Scotia and the fishing industry pressed Ottawa to extend Canada's offshore jurisdiction.

The 200-mile declaration had two important effects on Canadian fisheries diplomacy. First, it required Canada to develop new relationships with states that had historically fished inside 200 miles and, to a lesser extent, outside 200 miles for stocks straddling the offshore limit. Second, the growing ability of Canada's industry to exploit the fisheries resources newly available as a result of the displacement of foreign fleets from inside 200 miles increased the need for access to foreign markets for the increased domestic production. Ottawa's efforts to leverage its developing foreign relationships to increase Canadian fish sales in turn heightened the importance of domestic factors in shaping Canada's external fisheries policy.

The Canadian government's long-term goal was to "Canadianize" all fishing within the 200-mile limit although, in accordance with the then-draft UN Law of the Sea Convention, Ottawa undertook to allocate fish surplus to Canadian harvesting capacity to countries with traditional fisheries inside 200 miles. It allowed ICNAF to set total allowable catches (TAC) and individual country fishing quotas for all managed stocks in the Northwest Atlantic to apply to Canada's waters in 1977, subject to Canadian licensing and enforcement inside 200 miles. This did not include northern cod, which was considered to be a Canadian stock found almost entirely within 200 miles, for which Canada set the TACs and quotas. But

Ottawa emphasized that after 1977, although ICNAF would continue to operate for a transitional period outside 200 miles, Canada would establish all TACs and quotas in Canadian waters. In 1978, Canada and ICNAF, for the area outside 200 miles, began imposing the strict $F_{0.1}$ management strategy to allow the fish stocks to rebuild. The reductions were borne by foreign fleets. Between 1977 and 1982 their quotas for northern cod were reduced from 51 percent to 12 percent of the total allowable catch.

The Canadian government made it clear that it would only allow fishing in Canadian waters by countries that entered into agreements with Canada, and that it would have to receive certain benefits in return. The primary focus was on Canadian-managed stocks for which surpluses were then available. The content of these benefits evolved through four cumulative phases.[1] The first phase encompassed treaties reached in 1976, prior to the 200-mile extension. Ottawa used these so-called "framework agreements" to gain recognition of its planned extension and secure fisheries cooperation outside 200 miles, in return for undertakings to provide annual fishing allocations for surpluses it identified, those surpluses and allocations to be determined by Ottawa. Norway, the Soviet Union, Poland, Spain, and Portugal, which accounted for almost 90 percent of all foreign fishing off the Atlantic coast, signed agreements with Canada during this period.

The second phase comprised framework agreements signed in 1977, after the 200-mile limit had been established. An important objective was to secure acknowledgment of Canada's "special interest" outside 200 miles in the straddling fish stocks on the Nose (NAFO Division 3L) and Tail (NAFO Division 3NO) of the Grand Banks off the northeast coast of Newfoundland and discrete fish stocks on the Flemish Cap (NAFO Division 3M) in exchange for annual fishing allocation undertakings. Canada reached agreements with Cuba, Romania, East Germany, Bulgaria, and Japan at this time.

Canadian policy entered a third stage in 1978, when Ottawa decided to adopt a "commensurate benefits approach," through which it sought commercial compensation, in the form of increased fish purchases, in return for fishing quotas in Canada's waters. This principle was incorporated into annual allocations agreements with Spain, Portugal, and Poland. Prime Minister Joe Clark's short-lived government expanded the commensurate benefits approach in 1979 by introducing the concept of long-term

fisheries agreements that offered major fish-consuming countries multi-year allocations of Canadian fish stocks in return for improved terms of access to their markets.

The fourth phase of Canada's policy got underway in 1980. Ottawa began seeking to establish "satisfactory fishing relationships" with countries fishing in Canadian waters. This consisted of five elements: a bilateral treaty, a commitment to scientific cooperation, satisfactory trade relations in fishery products, satisfactory fishing behaviour outside 200 miles, and membership in the Northwest Atlantic Fisheries Organization (NAFO), which replaced ICNAF as of January 1, 1979. In return signatories received rights to surplus and in some cases, non-surplus, stocks inside 200 miles. It was during this phase that Canada and the EU negotiated the long-term fisheries agreement.

The Newfoundland government and fishing industry supported the extension of Canadian fisheries jurisdiction and Ottawa's early approach to foreign fisheries agreements. However, they became critical of the government after it began seeking accords that gave other countries fishing rights to non-surplus fish stocks in return for better access to their markets. The government of Newfoundland opposed the principle of allocating non-surplus fish stocks for trade purposes. The province's fish producers and fishers wanted to catch stocks assigned to foreign fleets.

The EU's Common Fisheries Policy

By this time, the European Union had begun establishing its authority over fisheries policy. This occurred in response to three factors: the effect of enlargement in 1973, which brought the United Kingdom, Ireland, and Denmark, all of which have significant fishing interests, into the organization; a serious decline in EU fish stocks due to overfishing; and the adoption of 200-mile fishing limits by increasing numbers of coastal states, which affected the Union's fisheries relations with those countries. Accordingly, in 1976, the EU decided to adopt a comprehensive Common Fisheries Policy (CFP). The Council of Ministers agreed to establish a 200-mile zone effective January 1, 1977, and authorized the European Commission to begin negotiating agreements with third countries. The Union's member states

also agreed to launch discussions leading to the adoption of an overall internal fisheries management scheme consisting of a conservation policy, procedures for determining total allowable catches and national quotas for important fish stocks, access to member states' coastal waters, marketing arrangements, and a structural policy for adapting fleets and onshore processing facilities to changing conditions in the industry.

The conclusion of agreements with countries in whose waters member states' deep sea vessels had traditionally fished was critical to the development of the CFP. The accords enabled the fleets to maintain their foreign operations, thereby easing pressure on allocations in the EU's own waters. The transfer of authority over fisheries policy from member states to the Union as a whole also enhanced the Commission's competence in this sector.

Decisions involving the distribution of limited resources are seldom easy. So it was not surprising that the search for a Common Fisheries Policy led to widespread policy clashes within the EU. The conflicts were compounded by the divergent interests of member states, which were reinforced by the pressures of their small but politically potent fishing constituencies, and by the fisheries policies of third countries with which the Union had to deal. Complicating matters further were the Union's decision-making procedures, which required unanimous agreement among member states for the approval of internal fisheries measures and foreign treaties. This in turn limited the Commission's capacity to manage the Union's internal bargaining. Disagreements over fisheries policy led to protracted deadlocks and solutions based on accommodations of varying stability among member states. Fisheries arrangements with other countries, including Canada, often became entangled in the EU's internal debates.

Negotiating the LTA

In December 1977, Canadian and European Commission officials began discussions to develop a bilateral framework accord. The talks ended in July of the following year after only two meetings because the parties could not reach agreement. The main sticking points were Canadian demands

that the EU make tariff concessions on fish products in exchange for fishing rights inside Canada's waters and recognize Canada's special interest in fish stocks in the Northwest Atlantic outside 200 miles. The Union contended that the General Agreement on Tariffs and Trade (GATT) was "the appropriate setting within which to discuss trade liberalization" and that acceptance of Canada's special interest claim "might prejudice the emerging consensus on the law of the sea."[2]

The Interim Accords

Ottawa and Brussels were able to agree on an interim accord that gave EU vessels allocations in Canadian waters until December 1979, pending further negotiations on a framework agreement. In return, the Union would limit to 1,190t its Atlantic salmon harvest off Greenland, where high catch volumes were reducing Canadian stocks halfway through their Canada–Greenland–Canada migration route. In a separate understanding, the EU undertook to improve its tariff rate quota on fish imports in the Tokyo Round of GATT negotiations, which were then underway. As part of the eventual GATT agreement the Union lowered its tariff from 15 to 8 percent for all GATT parties on a fixed quantity (10,000t) of certain cod products of principal benefit to Canada. This still left rates levied on Canadian exports well above those applied to Norway and Iceland, Canada's main competitors in the EU market, which benefited from preferential rates set at 3 percent and 0 percent respectively, in their free trade agreements with the Union.[3] The two sides finessed Canada's special interest claim by taking note of "discussion on the nature of Canada's interest in the stocks of the Grand Banks–Flemish Cap area seaward of Canadian fishery waters."[4]

Accords Embroiled in EU Politics

The Canadian government quickly approved the interim pact. But when the agreement came before the EU Council of Ministers in November 1978, just before the opening of the annual cod fishing season in the Northwest Atlantic, which runs from early December to early April, it quickly became a pawn in disagreements among member states over Common Fisheries Policy issues. The Danish and British governments both vetoed the accord. Denmark opposed the inclusion of Greenland salmon catch limits in the agreement. The British government's objection was more serious.

As London saw it, other member states were using third party agreements to achieve their CFP priorities while its own demands for stricter conservation measures and a wide exclusive fishing zone for its fishers, a demand sharply contested by France, which wanted wide-ranging fishing rights in EU waters off the UK, went unfulfilled. The UK, accordingly, decided to link its assent to external agreements to approval of CFP measures favourable to British interests. In this case its aim was to force West Germany, the chief beneficiary of the agreement with Canada, to pressure the recalcitrant French to ease their stand on coastal fishing. West Germany was the only member state with a deep sea fleet that depended on access to Canada's offshore zone. Some 12 percent of its overall annual catch came from waters now under Canadian control.[5]

The Canadian government responded to the Union's failure to approve the accord by refusing to allow EU vessels to fish in Canadian waters as of January 1, 1979. The critically timed decision forced German trawlers to suspend their fishing operations after taking their 1978 quota. The West German government began pressuring the Danes and the British to lift their reserves on the pact. Denmark promised to drop its objection if the Greenland salmon quota were included in an exchange of letters rather than in the agreement as Canada had demanded – a condition Ottawa accepted. The UK withdrew its veto after West Germany agreed to give British fishers a share of its cod quota in Norwegian waters in return for the UK's share of a less valuable fish stock in the same region. The settlement left the controversy over fishing in waters off the UK unresolved.[6]

The EU Council approved the agreement in February 1979. The Canadian government then issued the necessary licences allowing the Union's vessels to take their 1979 cod allocation. The agreement was signed in June.[7] However, Ottawa told the EU that it would not receive its fishing quotas for the following year unless it approved a new agreement by the end of 1979. In December, Canadian and Commission officials agreed to extend the provisions of the interim pact through 1980 so they could begin negotiating a long-term framework agreement. The EU agreed to the extension in January 1980 and the pact was signed three months later.[8]

LTA Negotiation Begins

As an incentive to the European Union, the Canadian government proposed that the two sides negotiate a long-term fisheries agreement that would give the EU assured allocations of Canadian cod in return for improved tariff rate quotas on fish products of interest to Canada. Ottawa raised the possibility of increasing the Union's shrinking cod quota subject to satisfactory progress in the negotiation. At the time, there was widespread optimism about the health of the 2J3KL cod stock. The Canadian government's Task Force on Atlantic Fisheries (Kirby Commission) typified the optimism of the era, predicting that "by 1987, the cod catch should be more than triple the 1976 harvest; the total groundfish catch will have more than doubled."[9] Therefore, Ottawa believed its offer to the EU would not have a negative impact on the growing Canadian fishing industry.

The new marketing approach, developed under Prime Minister Joe Clark's government and implemented by Prime Minister Pierre Trudeau's administration, was adopted in response to the rapid increase in domestic fish landings and the depressed condition of the onshore processing industry in Atlantic Canada. These factors, combined with a levelling off of sales in the mature US market, made the search for other sales opportunities critical for Canada. The Newfoundland government also called on the EU to lower its tariffs.[10]

Having recently reduced catch levels in its waters, the EU welcomed the prospect of assured multi-year fishing allocations. The West German government, which was under pressure from its deep sea trawling fleet, lobbied hard for an agreement. The Commission persuaded other member states to go along by making the case that long-term access to Canadian fishing grounds would reduce West Germany's claims for cod allocations in the North Sea. As a result, the Union abandoned its opposition to linking fishing rights to improved tariff rate quotas. In April 1980, the Council formally authorized the Commission to negotiate a long-term agreement with Canada. The likelihood of an agreement was enhanced by the Council's decision to adopt a Common Fisheries Policy by January 1, 1981. The decision was part of a larger deal averting a budget crisis, by which West Germany agreed to help reduce the UK's payments in return for London's consent to settle CFP issues by the January deadline.[11]

Negotiations between Canada and the EU began in late April 1980 and continued fitfully until June of that year. The main issues in dispute were the size of the fishing rights and tariff rate quota concessions, and proposed limitations on Greenland salmon catches. The tariff issue was of special concern to the UK. Recent sharp increases in the value of its currency had led to an influx of cheap imports of fish, especially from Denmark and the Netherlands, that had seriously depressed domestic prices. London was under pressure from the fishing industry for protection from foreign imports. Although imports of Canadian fish were small compared to those from Norway, Iceland, and other EU member states, the proposed LTA market concessions became the focus of the industry's opposition. Denmark's interest in the salmon issue stemmed from concern over an approaching referendum on membership in the Union in its dependent territory of Greenland.[12]

The negotiation was finally completed in November 1980 when officials from Canada and the Commission reached agreement on a long-term accord. The pact, which was to last for six years, incorporated the major elements of Canada's recently adopted satisfactory fishing relationship approach, the centrepiece of which was the fishing rights for market access exchange. The pact gave the EU access to up to 16,000t of cod each year in NAFO Divisions 2J3KL (8,000t in the first year, 9,500t in the remaining years) and 2GH (6,500t), together with smaller amounts of squid. In return, Canada received tariff concessions for up to 47,000t of semi-processed cod, redfish, and herring each year at rates ranging from 3.7 percent to 10 percent. The concessions were made on an *erga omnes* basis to comply with GATT obligations, which left them open for use by other countries.[13] Ottawa's cod allocation to the EU, which represented about 3 percent of the total allowable catch, would increase the Union's quota by about 8 percent. The EU's market access concessions were expected to increase Canadian sales to the Union by up to 12 percent over the life of the agreement. In an accompanying exchange of letters the Union agreed to maintain the existing catch limit on salmon off Greenland pending the signing of an international salmon convention, which was finally reached in 1983. The agreement resolved the issue of EU recognition of Canada's special interest in straddling and discrete stocks outside the 200-mile limit by a reference to the relevant article of the NAFO Convention.[14]

The LTA Under Siege

The LTA soon became a casualty of the Union's inability to conclude a Common Fisheries Policy by the agreed deadline of January 1, 1981. The December 1980 Fisheries Council meeting failed to resolve the lingering dispute over coastal fishing between the UK and France. Neither could it agree on a scheme for distributing fishing quotas among member states in EU waters. As a result, the UK, which continued to encounter stiff domestic industry opposition to Canada's improved market access terms, blocked approval of the LTA. London contended that the agreement would not be politically saleable at home unless it were adopted a part of a Common Fisheries Policy package that met the UK's concerns. The Danish government, seeking higher Greenland salmon quotas, also placed a reserve on the pact.[15]

The Canadian government decided to approve the agreement. But it refused to issue the licences required for EU vessels to fish in Canada's waters until the Union did so. Ottawa faced growing criticism from the Newfoundland government and the fishing industry. The provincial government was "totally opposed" to the principle of granting non-surplus fish to foreigners in exchange for tariff concessions.[16] The Fisheries Association of Newfoundland and Labrador, which represents the province's major fish producers, and the Fish, Food and Allied Workers Union (FFAW), Newfoundland's largest fisheries workers group, were also against the accord. They argued that the Newfoundland fleet had become capable of taking the entire 2J3KL cod quota and that foreign allocations would force the early suspension of its annual operations. The agreement, moreover, failed to guarantee Canadian fish sales in the EU market. As a spokesman put it, "This deal is just not good enough."[17]

Ottawa's action put the onus back on the EU. However, the Commission's capacity to respond was constrained by the Union's unanimous consent requirement. The West German government, pressured by its idle deep sea fishers and the distressed onshore processing industry, soon began pressing the British and the Danes to alter their LTA stands. West Germany got some relief at a Fisheries Council meeting in January 1981, at which Denmark agreed to lift its reserve on a stalled fishing pact with Norway that gave German trawlers access to Norwegian cod. In return, the Danish government received a commitment from the Commission

to renegotiate the Greenland salmon quota with Canada. Ottawa agreed to increase the EU's quota from 1190t to 1270t. But the UK continued to insist that approval of the LTA be linked to the adoption of a Common Fisheries Policy.[18]

The West German government, supported by the Commission, continued to press member states to ratify the LTA. At a Council meeting in February, the Commission's president, Gaston Thorn, argued that such agreements were an important test of the EU's credibility and that they should be separated from disputes over internal policy matters.[19] The Commission also took the unusual step of issuing a public statement urging member states to give their approval. All but the UK offered support. The British government blamed France for the fisheries impasse. London would not approve the LTA without a settlement of the coastal fishing dispute and revisions to the Union's marketing arrangements to safeguard the country's beleaguered fishing industry. West Germany offered to absorb the bulk of the reduced tariff imports from Canada if the UK lifted its reserve. But London would only agree if the EU's reference prices, which ensured that fish imported from third countries did not disrupt the market for home production, were increased by 25 percent – a demand other member states considered excessive.[20]

West Germany's government and the Commission still hoped to break the deadlock over the LTA before the fishing season in Canadian waters ended early in April 1981. Prior to the Council's meeting on March 10, the Commission presented new proposals to settle the Anglo-French coastal fishing dispute. Gaston Thorn also visited London and Paris an effort to expedite a settlement.[21] However, the Council meeting ended in failure because British and French representatives could not resolve their differences. The UK also rejected new German proposals to protect the British market from low-cost third country imports in exchange for approving the LTA. Last-minute attempts to avert a West German threat to raise the issue at the EU summit meeting on March 23–24, if the agreement were not confirmed, also failed. The LTA, accordingly, made its way onto the summit agenda.[22]

German officials upped the pressure on the British government before the summit by publicly accusing it of breaking its 1980 Common Fisheries Policy pledge. They also warned that there would be repercussions over future budget assessments if the UK refused to lift its veto of the LTA.[23]

Despite the threats, Prime Minister Margaret Thatcher remained adamant on her government's demands for improved market protection measures and a solution to the coastal waters access dispute as a precondition for approving the agreement. A bitter Chancellor Helmut Schmidt blamed the fisheries failure on the UK, saying, "The Federal Republic agreed to a financial deal which caused enormous difficulties and higher taxation in Germany. I was deceived and disappointed. There is no point in such an agreement if one side does not stick to it." Mrs. Thatcher was unmoved. "I do not give in to pressure," she replied.[24] At the end of March, EU member state fisheries ministers made another attempt to ratify the LTA. But the rapidly approaching end of the Canadian fishing season removed the urgency from the issue and no progress was made.[25]

Resolving the EU Impasse

The impasse was not resolved until late September 1981, when the Fisheries Council approved the LTA as part of a Common Fisheries Policy mini-package settlement. The action followed renewed German pressure, including the threat to boycott future Fisheries Council meetings, until the accord had been confirmed. The UK agreed to drop its demand for a resolution of the coastal fishing access dispute, but it made the inclusion of revised market support mechanisms in the Common Fisheries Policy settlement the price of its acceptance of the agreement.[26]

The Canadian government did not immediately ratify the pact. The delay was prompted by uncertainty over how the EU would implement its market access commitments for fish exports covered by the LTA, as well as the continuing hostility of the Newfoundland government and the fishing industry to the accord. The province reiterated its opposition to Ottawa's allocations-for-access marketing strategy. Premier Brian Peckford only half-jokingly likened the federal government's approach to permitting Russian farmers to grow their own wheat in Saskatchewan in return for the Soviet Union's promise to buy Canadian grain. "The principle of giving away raw resources for a reduction in tariff on the same product is wrong," he said.[27] For their part, industry representatives made guaranteed purchases of Canadian fish products by the EU a condition for their support of the LTA. However, on December 17, 1981, after consultations with Commission officials and with the expectation that domestic critics

would be appeased by the eventual improvement in Canada's export performance in the EU market after the agreement became operational, Ottawa announced that it would approve the agreement.[28]

Canada and the European Union agreed to extend the accord by one year, so it would begin in January 1982 and terminate in December 1987. The revised LTA was signed on December 30, 1981, following the EU Council's approval of the accord. The Union assigned the bulk of its fishing allocations to West Germany, with smaller amounts going to the UK, France, and Italy.[29] Ratification survived last-minute veto threats by Denmark and Ireland, which demanded and received concessions on unrelated fish import quotas. Although the Canadian government approved the agreement, it remained concerned about how the EU would implement its LTA tariff commitments. Accordingly, at the time of the signing of the agreement it sent a note to the EU stating its trade access expectations and claiming the right to limit the Union's fishing allocations if the anticipated access benefits failed to materialize.[30]

Problems of Implementation

Canada's fears about the European Union's internal marketing arrangements proved well founded. Canada had expected its new tariff rate quota to apply throughout the EU, so that Canadian producers could expand their markets wherever they could. Instead, in early January 1982, the EU implemented its LTA tariff concessions by means of a tariff rate quota scheme within the EU, distributing the total differentially among members. Designed in response to British demands, the scheme assigned the largest share of Canada's lower tariff rate exports to West Germany. The UK, which had been receiving 80 percent of Canada's cod exports to the EU, and was expected by Canada to absorb most of the increased sales, was assigned only 12 percent of the total. The Canadian government responded by withholding the licences of EU vessels about to begin fishing in Canadian waters, pending the outcome of consultations with Commission officials. Ottawa agreed to issue the licences in late January 1982 after the officials gave assurances that they would do their best to ensure full implementation of the LTA. Ottawa warned that it would monitor export sales under the agreement and that it would reserve the right to reassess the EU's fishing allocations if the Union's compliance were not satisfactory.[31]

Commission officials did not seem to take the Canadian government's threat seriously (a reaction that would be repeated and lead to other conflicts in the future), apparently assuming that Ottawa was too heavily committed to its marketing approach to risk reducing its negotiated improved access to the EU market.[32] However, the Union's failure to cooperate seriously weakened Ottawa's ability to maintain domestic support for the LTA. This problem was aggravated on March 11, 1982, when the European Parliament, responding to pressure from aroused publics stirred by animal welfare and environmental groups, voted to recommend that the EU ban the import of seal pup skins and products on the basis of alleged cruelty and conservation concerns. With the Union accounting for some 70 percent of Canadian seal skin exports, it was understood that such a prohibition would be a serious blow to the industry, which was largely based in Newfoundland. The province's fisheries minister, Jim Morgan, who was in Strasbourg for the vote, warned that if the Commission went along with the parliament's motion, his government would pressure Ottawa to retaliate by suspending the Union's fishing rights in Canadian waters. Newfoundland fishing groups, many of whose members were involved in the sealing trade, endorsed the minister's stand.[33]

The Canadian government refused to rule out the possibility of withholding the EU's fishing rights, although it did not explicitly link the LTA and seal export issues. But it did threaten to reduce the Union's fishing allocations if the market access rules affected compliance with the LTA. The approaching end of the fishing season, combined with the more extended period required to determine the effects of the market arrangements, reduced the effectiveness of the threat in 1982. But it became more credible when Canadian and Commission officials met to review the agreement in November of that year, shortly before the new fishing season got underway.

At the meeting, Canadian officials complained that although Canada had complied fully with its LTA commitments it had not received sufficient benefits from the EU's tariff concessions. They asked for compensation to offset the losses suffered by Canadian exporters. The EU Council agreed to increase the UK's share of the Union's 1983 quota from 12 percent to 43 percent for certain cod products, together with a share of any unused portion of the Union's overall commitment. Ottawa decided to issue only 80 percent of the licences to EU vessels to fish the less valuable 2GH cod and none for the more valuable 2J3KL cod while it reviewed the Union's

compliance with the LTA. The assessment, completed in late January 1983, showed that Canada had received only 30 percent of its tariff rate quota benefits to which it had been entitled under the agreement in 1982.[34]

Ottawa then agreed to allow EU vessels to take 20 percent of their quota of 2J3KL cod, pending negotiations with Commission officials over its trade complaint. But in early March 1983, fisheries minister Pierre De Bané announced that Ottawa would withhold the necessary licences permitting the EU fleet to take the remainder of its 1983 quota until there was a satisfactory resolution of the trade access issue. "Our dissatisfaction with the Agreement to date is well-known to the EEC authorities," the minister said. "The reduction in fishing allocations should bring home to the EEC that actions to avoid their international obligations will rebound to their own disadvantage." He also warned that the Union's recent decision to impose a two-year ban on imports of seal pup skins and products had not improved the atmosphere between the two parties.[35] The EU's action had brought renewed pressure on Ottawa from the government of Newfoundland and the fishing industry to retaliate against the Union by excluding its fishing fleets from Canadian waters.[36]

New LTA Arrangements

The deadlock between Canada and the European Union over the LTA finally ended in December 1983 when they agreed to new implementation arrangements. The EU undertook to reduce tariff rates on certain cod products covered by the agreement and guaranteed that Canada would be able to sell at least 53 percent of its exports in the British market under the LTA. In return, Canada agreed to restore the Union's fishing rights and to clarify certain administrative regulations governing EU fishing in Canadian waters.[37] The Union ratified the new arrangements without incident. Canada also approved the amendments, although the Newfoundland government and fishing industry reiterated their opposition to the LTA.[38] However, the respite gained by the new arrangements would be short-lived.

2

FROM CONFLICT TO COOPERATION

In the spring of 1985 a new challenge to the long-term fisheries agreement (LTA) arose when West German trawlers, after taking 7,400t of the EU's 9,500t quota of northern cod inside Canada's 200-mile limit (NAFO Divisions 2J3KL), caught an additional 19,000t of the same stock outside Canadian waters in the NAFO Regulatory Area (NRA). (See Appendix I.) This appears to have been the first time Canadian and foreign fishers realized that large concentrations of cod could be fished commercially on the Nose of the Grand Banks outside the Canadian 200-mile limit (NAFO Division 3L). It was a discovery that would have enormous implications for the future of Canada's international fisheries relations in the Northwest Atlantic. When the concept of the 200-mile limit took shape, Canadian concern about straddling stocks focused on the Tail of the Grand Banks (NAFO Division 3NO), where there were traditional Canadian and foreign fisheries for cod and flatfish stocks (American plaice, witch flounder, and yellowtail flounder) that were concentrated primarily inside 200 miles. The northern cod fishery by domestic and foreign fleets had taken place inside 200 miles, and there was a general assumption that the stock would be protected by the new 200-mile limit. There was now a yawning new gap in Canada's protective "wall." Straddling stocks were more

vulnerable to severe depletion as a result of overfishing outside 200 miles than had ever been envisaged.

The full implications of this discovery would take some time to sink in. Initially, the West German catch on the Nose of the Grand Banks was seen in Canada simply as a new challenge to the LTA. The Canadian government argued that the vessels' action violated the agreement because the quota had been understood to be the EU's allocation set by Canada for the stock as a whole. Northern cod was considered to be a single stock managed by Canada, a position that NAFO had always "tacitly accepted."[1]

Fisheries ministers from the four Atlantic provinces urged the federal government to take a strong stand against the EU. The Newfoundland House of Assembly passed a resolution calling on Ottawa to extend Canada's authority over the entire Grand Banks for purposes of conservation. John Fraser, fisheries minister in Prime Minister Brian Mulroney's new government, raised the issue with EU and West German authorities. The Union had never challenged Canada's right to manage the 2J3KL cod stock. Now that it realized there was the potential for a commercial fishery in the NRA, it sought to separate the management of the stock outside 200 miles from that inside 200 miles. Claiming the LTA applied only to Canadian waters, the Union said it would demand compensation for curbing its fishing outside 200 miles. However, West German officials persuaded the trawler owners to withdraw the vessels for the remainder of the year. The issue was resolved in January 1986, when the owners agreed not to overfish the LTA quota for the stock that year, after Ottawa threatened to suspend their licences to operate in Canadian waters.[2]

Spain and Portugal Join the EU

While this was taking place, a more serious conflict loomed as the EU began preparing for the entry of Spain and Portugal into the Union, in January 1986. Both countries were members of NAFO, Portugal having joined in 1979 and Spain in 1983. Canada had a fishing agreement with each country, although by 1985 both pacts were in trouble.[3] Between 1977 and 1981, Ottawa had given Spain and Portugal annual allocations of surplus 2J3KL cod in Canadian waters, in return for fisheries cooperation

outside 200 miles and, after 1978, market access undertakings. In 1981, when the Canadian industry was able to fish the entire northern cod total allowable catch (TAC), Ottawa offered both states a two-year "phase-out agreement" to ease their withdrawal from that fishery. Spain rejected the offer, closed its markets to Canadian fish and expanded its fishing effort for cod in the NRA. Some Spanish trawlers flew flags of convenience of countries that were not NAFO members. The Canadian government banned Spain's vessels from Canadian waters in 1984, after Madrid began using NAFO's objection procedure to increase its cod and redfish catches in the NRA. Ottawa ended its fishing pact with Spain in 1986. Termination of a treaty was an unusual step for Canada to take in its international relations and demonstrated the seriousness with which it took the issue.

In contrast, the fisheries agreement with Portugal operated reasonably well until 1985, although some Portuguese vessels joined the reflagging effort to avoid NAFO controls. As Portugal's quotas in Canadian and NAFO waters were relatively small, a lucrative business developed whereby cod caught by Canadian fishers was salted in local fish plants and sold to Portuguese vessels. This wet salt cod was dried in Portugal to produce the final product. The practice enabled Canadians to add value to their catch and the Portuguese to obtain an intermediary product that allowed their vessels to return to port with a full load and create additional employment for the vessel owners' fish plants. Ottawa continued to allocate non-surplus northern cod to Portugal as a reward for its purchases, and offered to do so after Portugal joined the EU, provided that Lisbon would agree not to fish northern cod in the NRA and to restrict the fleet's catches to its customary shares of the NAFO-managed stocks. Lisbon refused to make any commitments for 1986 on the basis that its fisheries policy would come under EU jurisdiction that year.

More than two-thirds of Spain's fishing operations and a quarter of Portugal's took place outside their respective waters in areas that were increasingly being closed to them, and no additional allocations were available in the EU's own waters. The Union promised to find other fishing opportunities for the Spanish and Portuguese fleets. Enlargement thus increased the importance of the external aspect of the Common Fisheries Policy (CFP). As a June 1986 document from the European Commission updating guidelines for implementing the CFP put it, "the Community fleet has now become heavily dependent on access to third country waters

to such a level that this dependence constitutes one of the fundamental aspects of the basic equilibria in the policy." The Commission considered the NRA to be "a permanent field of activity for external fishing."[4]

Both Spain and Portugal criticized NAFO for following Canada's conservative $F_{0.1}$ fisheries management approach. "With Spain and Portugal's accession to the EEC," said a Spanish fishing official, "we will be able to unite to reject the very low Northwest Atlantic cod quotas imposed by the Northwest Atlantic Fisheries Organization, a group dominated by Canada, which wants to safeguard the resources for commercial not biological reasons."[5] The claim was not entirely unfounded. The $F_{0.1}$ management strategy had two main purposes. One was to provide a buffer against the possibility that TACs would be set too high based on faulty scientific data. The other was to maintain the stocks at fairly dense levels to improve catch per unit effort levels, thereby improving economic returns for all who fished them. However, Spain and Portugal preferred higher catches to higher densities and were not concerned about the health of the stocks.

Until 1985, the EU had espoused a firm conservation policy. As a member of NAFO it had cooperated closely with Canada on conservation, supported the $F_{0.1}$ management strategy, and opposed Spain's efforts to secure higher quotas for its fleet. Canadian government officials had speculated that when Spain and Portugal joined the Union, their fisheries would be constrained by the EU's policy. The Spanish and Portuguese thought otherwise, and they would be proven right.

NAFO Engaged

In 1985, the EU began implementing its policy of finding distant water fishing opportunities to accommodate the needs of the Spanish and Portuguese fleets. Prior to NAFO's annual meeting in September, the European Commission notified Ottawa that it intended to propose a change in the Fisheries Commission's management strategy for setting TACs in the NAFO Regulatory Area, from the normal one that obtained advice only on the $F_{0.1}$ catch level to one that called for a range of options. The EU would propose that NAFO adopt an F_{max}, or maximum sustainable yield, approach that permits catches at the highest levels scientists believe fish

stock growth rates will support, even though the EU employed a stricter scheme in its own waters. The F_{max} approach was inherently unsafe, as significant overfishing would take place if the scientific advice was inaccurate and recommended TACs that were too high to sustain the stocks. In an apparent bid to give NAFO responsibility for 3L cod on the Nose of the Grand Banks, which was managed by Canada as part of the 2J3KL cod stock, the European Commission said it would propose that the Scientific Council assess the state of cod stocks in the NRA in 1986, and that NAFO adopt appropriate management measures. The Commission would not table the proposals if Canada agreed to raise the EU's cod allocations to 40,000t from the LTA level of 9,500t and allow Union vessels, including those of Spain, to fish their 2J3KL and 3NO cod quotas in Canadian waters. Canada refused. As a result, the EU put the proposals on the NAFO meeting's agenda.[6]

At the meeting, the Contracting Parties accepted the European Union's request to determine what portion of the 2J3KL cod stock was outside Canada's 200-mile limit but rejected its bid for F_{max} TACs on most of the remaining NAFO stocks in 1986. (At the time NAFO managed 10 stocks. Eight of these – 3M cod, 3NO cod, 3M redfish, 3LN redfish, 3M American Plaice, 3LNO American plaice, 3LN0 yellowtail flounder, and 3NO witch – were of major significance. Two stocks – 3+4 squid and 3NO capelin – were of lesser importance.) Responding to Canada's concerns about the unregulated fishing of 2J3KL cod by Spanish trawlers outside the 200-mile limit, NAFO also declared a moratorium on fishing 3L cod. The EU voted against seven TACs and the moratorium set by NAFO. The European Commission representative said the Union would lodge objections against all measures it had voted against and would set its own unilateral quotas based on the F_{max} numbers provided by the NAFO Scientific Council.[7]

The Union's Fisheries Council subsequently approved the EU's objections and set unilateral quotas for four stocks it had traditionally fished, leaving the remaining stocks open to unrestricted fishing.[8] The Union had no customary NAFO allocations for some and relatively low historic quotas for the others. Rather than establishing its 3L cod allocation at the 40,000t level the EU had asked Canada to provide, the Council increased it to 68,560t of 2J3KL cod, most of which was assigned to Spain and Portugal. The total included the 9,500t of 2J3KL cod under the long-term

fisheries agreement, which Canada would continue to allocate until 1987. With its objections and no enforcement controls in place, the autonomous quotas were significantly overfished, and stocks that had never been part of the EU's traditional NAFO fishery became a large component of its unilaterally expanding activity.[9] (See Table I.)

By March 1986, Canadian officials were expressing concern over the EU's failure to control fishing by Portuguese vessels in the NAFO Regulatory Area. When the Union failed to act, Ottawa banned Portugal's trawlers from entering Canadian ports to refuel and resupply. The Portuguese had a long history of using the port of St. John's, and the prohibition was costly for both the city and their fleet.[10]

Relations deteriorated further when Canada apprehended two Spanish trawlers in the mid-Atlantic bound for Spain with Canadian fisheries inspectors on board. The inspectors had boarded the vessels in Canadian waters where they suspected the vessels were fishing illegally. Refusing to obey the inspectors' order to go to a Canadian port, the ships fled. Once outside 200 miles, the captains claimed they had been fishing in the NRA and that the inspectors had boarded the vessels illegally under the guise of NAFO's Joint Enforcement Scheme, which controlled fishing outside 200 miles. The inspectors were removed at sea by a Canadian patrol vessel and returned to Canada, and the vessels resumed their homeward journey. Meanwhile, Ottawa and Brussels had become embroiled in a new dispute over restrictions imposed on Canadian cod exports under the LTA.[11]

Positions Harden

In June 1986, Tom Siddon, who had succeeded John Fraser as fisheries minister, declared that Ottawa would introduce new surveillance and enforcement measures and larger fines to control illegal fishing in Canadian waters. Adding that the strategy of granting fishing rights for market access had not worked, he said that while the government would honour existing commitments it would no longer allocate quotas for non-surplus fish, and that quotas of surplus fish for free-market countries would be contingent on compliance with Canadian and NAFO conservation measures. (Ottawa would continue to seek purchase commitments from countries with

state-controlled markets.) Port privileges for foreign fleets would also depend upon conservation cooperation.[12] The new policy meant that Canada would not extend the LTA beyond the termination date of 1987, and EU vessels would no longer have access to Canadian ports.

The EU Fisheries Council, apparently accepting Spain's claim that Canadian inspectors had boarded its vessels outside the 200-mile limit, endorsed a proposal from the European Commission to withdraw from the NAFO Joint Enforcement Scheme, and from the EU-Canada Bilateral Scientific Observer Agreement, which the Union did. The aim, according to *Eurofish Report*, was "to force some degree of re-negotiation of the existing NAFO and bilateral arrangements in order to limit the powers which the Commission feels the Canadian authorities have abused."[13] It also allowed EU vessels to fish without any effective constraints.

The EU kept up its offensive at NAFO's next annual meeting in September 1986. The head of its delegation publicly criticized the $F_{0.1}$ management strategy for ignoring "social considerations" and called for a new agreement to replace the organization's high seas enforcement regime. Ottawa released a position paper, which noted that of the 37 fishing violations uncovered by Canadian inspectors, Spain was responsible for 27 and Portugal nine. Offences ranged from failure to maintain adequate fishing records to the use of small mesh nets. As they had the previous year, the Contacting Parties rebuffed the Union's bid for higher TACs and quotas. Armed with the Scientific Council's advice that "less than 5 percent on average" of the 2J3KL cod stock is present in the NAFO Regulatory Area "throughout the year," Canada proposed that the moratorium on 3L cod fishing be continued. The EU took issue with Canada's claim that the TAC was used up in Canadian waters, saying "it could not accept the principle of a stock occurring in the international waters of the Regulatory Area being 'fully subscribed in the Canadian zone'."[14] But NAFO members voted to renew the ban. Dissatisfied EU officials reiterated the Union's intention to stay out of the NAFO enforcement agreement. The EU lodged objections against nine measures it had voted against. The Fisheries Council established unilateral quotas for four stocks, including a 2J3KL cod quota of 68,560t, which the Union would not enforce.[15] (See Table I.)

Charging that Ottawa's approach was not working, Premier Brian Peckford took Newfoundland's case for extending Canada's offshore jurisdiction to the annual meeting of the prime minister and premiers

in Ottawa in November 1986. Although the Department of Fisheries and Oceans had rejected such action because it lacked international support, Peckford demanded that the government appoint a task force to study the issue and recommend options to extend the boundary beyond the 200-mile limit established in international law. The Fisheries Council of Canada, which represents the views of Canadian fish processors, endorsed Peckford's stand, issuing a position paper urging Ottawa to adopt as a long-term goal extension of jurisdiction over the Nose and Tail of the Grand Banks. Opposition to the government's handling of foreign fisheries issues intensified after Ottawa, apparently without consulting Newfoundland authorities, offered allocations of non-surplus cod to France if it would agree to submit to an international tribunal the long-standing boundary dispute off the French islands of St. Pierre and Miquelon in the Gulf of St. Lawrence.[16]

Officials from the European Commission and Canada met in April 1987 to discuss the future of the long-term fisheries agreement. Canadian representatives made it clear that the government would not reconsider its decision to end its fishing rights for market access approach and would not renew the LTA, leaving the EU with no further allocations in Canada's waters after 1987. The LTA had provided no apparent benefits for Canada either in terms of conservation cooperation or increased sales of fish products to the EU. It had given significant benefits to the Union, whose vessels had caught large amounts of non-surplus northern cod. As a result of the failure to get the LTA renewed, the Fisheries Council, when it met in May 1987, raised the Union's autonomous cod quota for 2J3KL cod from 68,560t to 76,400, assigning most of the increase to Spain and Portugal.[17] (See Table I.)

EU representatives came to NAFO's annual meeting in September 1987 determined to press the fisheries management issue. The head of the delegation described relations with Canada as "strained" and hinted that the Union would continue to object to almost all NAFO TACs and set its own catch levels based on a different management approach, although no such strategy became apparent. The Contracting Parties again rejected the Union's call for higher TACs. The EU then objected to almost all TACs and corresponding EU quotas in the NAFO Regulatory Area, concurring only in decisions to ban fishing for 3M cod and the TAC for 3NO capelin, which the EU had never fished historically. As in the previous two years,

the European Commission's recommendations to the Fisheries Council for autonomous quotas exceeded those set for the EU at the NAFO meeting. Although the Commission claimed they were based on science, it provided no evidence. In reality, they were based on what the fleet projected it could catch.[18]

Spain and Portugal opposed the recommendations, which came before the Fisheries Council in December 1987. Their main concern was the proposed NAFO ban on 3M cod fishing, which they contended would damage their fishing operations. The Council compensated Spain and Portugal by increasing the proposed 2J3KL cod quota, which the Union's fleet could fish only in NAFO Division 3L, as it could no longer operate in Canadian waters. (See Table I.) Both countries remained dissatisfied and abstained from the allocation decisions. Canadian officials criticized the Council's action, pointing out that the EU's autonomous quota for 2J3KL cod represented more than 30 percent of the overall TAC set by Canada for the entire northern cod stock. The government of Newfoundland called for stronger action against the EU. "I don't know whether it will come down to kicking the EEC out of NAFO or trying to bring them in line in some way," said Tom Rideout, the province's fisheries minister, "but there is going to have to be a hard stance taken."[19]

In February 1988, Canada, the European Union, and other Contracting Parties agreed on a new system to replace the NAFO Joint Enforcement Scheme, from which the Union had withdrawn the previous year. Called the NAFO Joint Inspection Scheme, it clarified the duties and powers of NAFO inspectors when boarding vessels outside Canadian waters. This, of course, would not prevent overfishing as long as the EU, because of its use of the objection procedure, was not bound by the quota levels established for NAFO Regulatory Area.[20]

Prior to NAFO's annual meeting in September of that year, the Scientific Council released a report recommending substantial reductions in the TACs for certain straddling stocks for 1989, including a 37.5 percent reduction for 3NO cod, which was in decline. It also proposed that the existing moratorium on 3M cod be continued. The report was not well received by the EU, whose cod quota in the Svalbard region off Norway had recently been lowered. Spain and Portugal, the countries principally affected by Norway's action, urged the Union to resist reductions in the NRA.[21]

The NAFO meeting was "strained and acrimonious." EU officials walked out of a reception when John Crosbie, the Minister for International Trade, who as Newfoundland's representative in cabinet was closely involved in fisheries issues, criticized the Union's fishing practices. All Contracting Parties but the EU approved the Scientific Council's recommended TACs. The Union supported the extension of the moratorium on 3M cod but voted against the TACs and quotas for seven other stocks. In an unprecedented move aimed at the EU, the other Contracting Parties supported a resolution urging all members "to avoid excessive or inappropriate use of the objection procedure against the regulatory measures adopted.[22] Undeterred, the Union objected to the 1989 TACs and allocations set by NAFO and released its own proposed unilateral quotas, which were slightly lower than the previous ones, but still 10 times greater than those assigned by NAFO. These quotas would not restrict EU catches in 1988, which according to the EU's own catch reports to NAFO were significantly higher. The Fisheries Council adopted the recommendations in December, with Spain opposed. (See Table I.) A frustrated Canadian fisheries minister Siddon accused the Union of "taking the course of political expediency to satisfy Spanish and Portuguese fishing interests.[23]

Canada's Situation Worsens

Canadian concern for the health of Northwest Atlantic fish stocks grew in early 1989 when the Canadian Atlantic Fisheries Scientific Advisory Committee (CAFSAC), a federal government advisory body, reported that the northern cod stock was much smaller than scientists had previously estimated and recommended that the TAC be reduced from 266,000t to 125,000t to prevent it from collapsing. The new assessment was based on a retrospective analysis generated by research vessel data rather than commercial catch reports of earlier times, which were found to have significantly under-reported actual catches. CAFSAC's advice was in sharp contrast to the optimistic view expressed by the Kirby Commission less than a decade earlier. Crosbie and Siddon responded by reducing the 2J3KL cod TAC to 235,000t. Siddon also appointed an Independent Northern Cod Review Panel, chaired by Leslie Harris, president of Memorial University

in St. John's, to provide a detailed stock assessment. The panel was asked to provide an interim report by May 1989.[24]

Crosbie explained the government's reluctance to follow CAFSAC's recommendation:

> We couldn't suddenly cut the TAC by more than half. If we did, for historic and political reasons, we would have had to give priority to inshore fishermen or accept the death of their outport communities. Cutting the total allowable catch to 125,000 tonnes overnight would have wiped out the offshore fishery. Two large Canadian companies were primarily involved in the offshore fishery – National Sea Products in Halifax and Fishery Products International in St. John's; both had fish-processing plants along the south and east coasts of Newfoundland. If we accepted the new TAC recommended by the scientists, both National Sea and Fisheries Products International would have gone bankrupt.[25]

The causes of the decline of the northern cod stock have been much debated. The most likely explanation, William Schrank suggests, is "that the stock was never given an adequate chance to recover from the massive overfishing of the late 1960s." The subsequent expansion of the domestic industry, encouraged by scientific projections that were later recognized as having been too high, combined with Spanish and Portuguese overfishing in the NAFO Regulatory Area, left the stock "too weakened to successfully resist decimation."[26] But because the Europeans had vastly overfished the northern cod stock, while the Canadians had stayed within their northern cod quotas, it was the Europeans who were blamed.[27] Premier Peckford repeated his demand that Canada extend its jurisdiction over the Grand Banks.

Ottawa faced more criticism after it signed the controversial agreement with Paris to resolve the St. Pierre and Miquelon boundary issue. The pact, which came amidst announcements of fish processing plant closures, trawler tie-ups, and layoffs in Newfoundland, gave France an allocation of 2,950t of northern cod and access to other fish stocks for

a three-year period, in return for the French government's agreement to settle the boundary issue by international arbitration.[28]

The Northern Cod Review Panel's interim report confirmed CAFSAC's findings. But it expressed concern about the impact the group's proposed reduction would have on Newfoundland's economy, and recommended that the TAC be lowered to 190,000t. At Crosbie's suggestion, the Mulroney government established a special Cabinet committee to deal with the foreign fishing issue, consisting of Crosbie, fisheries minister Siddon, and the Secretary of State for External Affairs, Joe Clark, who served as chair. The committee approved a three-fold strategy made up of diplomatic overtures to the European Commission and EU member state governments, involving the prime minister, cabinet ministers, and Canadian representatives in western Europe; a public relations campaign directed at European audiences in which Canadian parliamentarians and officials, provincial government officials, and fishing industry and business representatives would participate; and a legal initiative to encourage international support for an enhanced role for coastal states in high seas fisheries management. The fishing industry and the Newfoundland government preferred stronger measures, but they realized that Crosbie had advanced the agenda as far as he could.[29]

Signs of Change

By this time, there were indications that the EU's approach was about to change. The most visible sign was the appointment of Manuel Marin, a former Spanish government official, as the new fisheries commissioner. Marin set out to reform the Common Fisheries Policy, with an agenda that included stricter conservation measures in the Union's own heavily fished waters, fleet reductions, and negotiation of new access arrangements with third countries, including Canada. A European Commission official called fisheries "the main element spoiling our bilateral relationship." He hoped the two sides could find a compromise to their differing management approaches, somewhere between Canada's conservative $F_{0.1}$ strategy and the Community's liberal F_{max} approach. This would help the EU restructure its bloated fishing sector, especially in Spain and Portugal, where

major adjustments were required. After this was done, the official said, the Union would support stricter conservation measures in the Northwest Atlantic.[30]

In April 1989, in an apparent first step to improve relations with Canada, the European Commission proposed a reduction in the EU's unilateral quota for 2J3KL cod from 84,000t to 58,400t, in response to Canadian scientists' concern about the state of the northern cod stock. However, the concession was more apparent than real in that the EU's reported catches to NAFO in 1988 had been only 26,559t. This was less than a third of the unilateral cod quotas it had set the previous year and less than 50 percent of its reduced autonomous quota for 1989. Ottawa was not impressed, pointing out that fishing for 3L cod had been banned since 1986, and that the Commission's new proposal opened the door to continued unrestrained fishing by EU vessels. Not surprisingly, Spain and Portugal saw things differently. Facing strong domestic opposition to the proposed reduction, Madrid used its presidency of the Council to delay approval of the recommendation until its term ended in July.[31] As the cut came after most of the EU's annual fishing in the NRA had ended, the effect on catches would have been negligible.

Meanwhile, the Canadian government launched its diplomatic offensive. Prime Minister Mulroney raised the issue with French president François Mitterand during his visit to Ottawa in May 1989, and with Spain's prime minister, Felipe González, in Brussels later that month. In June, trade minister Crosbie discussed fisheries matters with Frans Andriessen, the European Commission's vice president responsible for external affairs and trade. They agreed to create a joint high-level working group to explore ways of resolving the fishing issue. "There is now a political will to resolve this long-standing dispute," Andriessen said.[32] However, each side interpreted the agreement differently. Brussels saw it as evidence that Ottawa was willing to be more flexible in its fisheries management strategy. Ottawa viewed it as a vindication of its approach. Crosbie warned that if the talks failed, the Canadian government would launch the second phase of its strategy in the form of a high-profile campaign to win the support of influential European publics.[33]

Manuel Marin adopted a conciliatory tone in his keynote address to the NAFO meeting in September 1989. He stressed the EU's commitment to conservation but added: "In order to be effective, measures adopted by

NAFO must necessarily recognize the interests of all Parties concerned." A briefing paper prepared by the European Commission noted that all the organization's members except the Union received fishing rights in Canadian waters in return for cooperation in NAFO, disguising the fact that these rights were for surpluses in fish stocks in which the EU had no interest. The organization's decisions, a Commission official charged, were "not representative of each contracting party's opinion freely expressed but of the dominance of Canada within NAFO."[34] In a pointed reference to the EU's failure to apply the same management practices in its internal and international fisheries operations, the other Contracting Parties approved a resolution reaffirming the principle of "relative stability" in their approaches.[35] The meeting agreed to maintain TACs and quotas in the NAFO Regulatory Area in 1990 at existing levels, with minor changes. Departing from its previous practice, the Union abstained instead of voting against the decisions. At the end of the meeting, Marin proposed a joint Canada-EU study of fish stock management. "If I am going to move," he said, "that means the other side is going to move. It's not possible to win the match 10 to nil."[36] Canadian officials declined, although they were willing to review their studies with European scientists.

Dissatisfied with the EU's failure to support NAFO's decisions, John Crosbie announced that Canada would begin its campaign to rally public support in Europe against overfishing. He also appointed Alan Beesley, the former head of the Canadian delegation that negotiated the Law of the Sea Convention, as the Special Ambassador for Marine Conservation to coordinate Ottawa's approach, including the contemplated legal initiative to control fishing outside the 200-mile limit.[37]

Crosbie launched the public campaign in October 1989. Meeting with fisheries officials and journalists in London, Bonn, Cologne, and Paris, he compared overfishing by EU vessels to the depletion of the earth's ozone layer and the destruction of tropical rainforests. Ottawa also appealed to environmental organizations, including Greenpeace, to mobilize public opposition to the Union's fishing practices. Ironically, many of the groups had participated in the campaign to ban the import of seal pup skins and products in the early 1980s. Following Crosbie's visit, a Canadian parliamentary delegation toured European capitals, meeting with legislators, environmental group representatives, and the media. An industry delegation also visited Europe, holding discussions with fleet owners and

processors in the UK, Portugal, and Germany.[38] However, the initiatives had little effect.

In December 1989, the European Commission, following the lodging of objections to NAFO decisions on TACs and quotas for 1990, submitted to the Fisheries Council its proposed unilateral fishing quotas for 1990. It argued that the recommendations, eight of which exceeded NAFO allocations but were less than those assigned the previous year, represented "a considerable effort toward reconciliation in order to show the Community's readiness to begin active cooperation with Canada." The Council accepted most of the proposals, although in response to pressures from Spain and Portugal, it raised the unilateral quota for 2J3KL cod and another for 3M redfish. (See Table I.) An EU spokesman admitted that the Commission also intended to use the quotas as a bargaining chip in negotiations with Ottawa.[39] In Canada the reductions were seen as an empty gesture because the EU fleet had failed to catch most of its unilateral quotas in the previous year due to the worsening state of the stocks. Calling the quotas "hypothetical," Crosbie said that "they make you wonder how seriously [the Europeans] value their relations with Canada."[40]

The Fisheries Council's decisions came as Ottawa was preparing to reduce the 1990 northern cod TAC from the previous level of 235,000t to 197,000t, close to that recommended in the Northern Cod Review Panel's interim report but well above CAFSAC's advice. Crosbie claimed a deeper cut would bring about the "complete elimination" of the offshore fishery.[41] Although slow in coming, Ottawa's actions did reduce fishing opportunities for the Canadian fleet. The EU, however, had made no serious reductions. Prime Minister Mulroney wrote a letter protesting the Union's quotas to Jacques Delors, the President of the European Commission. In a conciliatory reply, Delors offered to intervene personally if negotiations between officials failed. But he repeated the EU's claim that Canada's arguments in favour of reduced fishing were not supported by science.[42]

In January 1990, the Department of Fisheries and Oceans released figures showing that Spain and Portugal had caught more than five times their NAFO-assigned quotas of cod and flatfish stocks the previous year. The flatfish stocks, a department official charged, "were the most important contributors to the bottom line of Fisheries Products International and the second most important to National Sea Products," both of which had recently announced new fish plant closures and layoffs.[43] Canadian critics

called for tougher measures against the EU, but Ottawa resisted. "There are no gunboat solutions," said external affairs minister Joe Clark.[44]

In the spring of 1990, Canada and the EU held further discussions on their fisheries problems. The new Canadian fisheries minister, Bernard Valcourt, met with Manuel Marin in Brussels in April to follow up earlier talks between officials. One of the main subjects discussed was the recently released final report of the Northern Cod Review Panel, which confirmed the decline of the stock and urged Ottawa to require more substantial fishing reductions to ensure its recovery. The report argued that in recent years the stock had been overfished because the TACs set by Canada had been too high, based on faulty scientific information. Fishing by foreign fleets, including that of the EU, had also made a substantial contribution to the problem. It recommended that Ottawa seek international agreement to extend Canadian management over all fish stocks on the Grand Banks, and that it act unilaterally in the absence of an agreement. Marin admitted that the report posed a new challenge to the Union's contention that Canada's fish stock management policy was not supported by science. Valcourt and Marin agreed that that increased fishing activities in the NRA by non-NAFO members, especially South Korea and Panama, had become a serious problem. In response to Canada's claim that many Panamanian vessels were actually reflagged Spanish and Portuguese trawlers, the Commission agreed to strengthen controls on fish landed in EU ports by those ships.[45] But it would take more than 10 years before the Union implemented regulations to accomplish this.

In response to the Northern Cod Review Panel's report, the federal government announced a five-year, $548-million Atlantic Fisheries Adjustment Program to help rebuild the stock and to facilitate economic adjustment and diversification for fisheries workers affected by the cutbacks. The government rejected the report's call for a unilateral extension of the 200-mile limit on the basis that it would be inconsistent with international law. However, Canadian officials had begun exploring ways of developing the Law of the Sea so coastal states could gain more control over fish stocks on their continental shelf.[46]

Valcourt and Mulroney had another meeting with Marin in Ottawa in May 1990. They agreed with his proposal for a working group to analyze scientific data on the state of the fish stocks. Marin said that if the study showed the stocks were well managed, the EU would expect Ottawa

to restore its fishing rights in Canadian waters.[47] Although the request seemed reasonable, it was not achievable because the only fishing opportunity for surplus fish in Canadian waters was for silver hake, which was of no interest to European fishers. This showed how important the principle of potential access to Canadian waters was for the EU even if actual fishing opportunities were non-existent.

Mulroney raised the overfishing issue with Spain's prime minister, Felipe González, in Ottawa the same month. Gonzáles agreed on the importance of conservation. But, reflecting the Spanish fishing industry's claim that Canada was attempting to exclude its vessels from the Northwest Atlantic in order to increase its own catches and sell more product in the EU market, he argued that further study was required before remedial action could be undertaken. Clark and Crosbie also pressed Canada's case in meetings with the European Commission's vice-president, Frans Andriessen, who visited Ottawa shortly after Gonzáles.[48]

Shortly thereafter, Ottawa launched its legal initiative. It secured the G-7's endorsement of the principle of marine conservation at its meeting in Houston, Texas, in July 1990. And in September of that year, it convened a Conference on the Conservation and Management of Living Resources in the High Seas in St. John's. The conference, which was attended by representatives from 16 countries, addressed offshore fishing problems experienced by coastal states.[49] It provided the impetus for a movement which would result in a call at the UN Conference on the Environment and Development (Earth Summit) in Rio in 1992 for a special UN Conference on Straddling and Highly Migratory Fish Stocks.

Testing Time

The test of the EU's new willingness to cooperate would come at the annual meeting of NAFO in September 1990. In August, the organization's Scientific Council released its TAC proposals for 1991, most of which remained at the levels established by NAFO for 1990, except for reductions in 3NO cod, and 3M and 3LN redfish. The Council also recommended that the moratorium on 3L cod and 3M cod be extended. The Contracting Parties approved most of the proposals, but they agreed to a request from

Norway and the Faroe Islands to end the moratorium on 3M cod, on the basis of evidence that cod was being caught illegally in the zone anyway, and a legal fishery might be better managed. The decision allowed fishing to take place within the context of a formal TAC, a portion of which was assigned to the EU, thereby reducing some of the pressure on it to set its own quota. For the first time since disputes over TACS and quotas began in 1985, the EU was cooperative. It voted in favour of seven decisions and abstained on three others: 3M cod, 3LN redfish, and 3NO witch flounder. It opposed the ban on 3L cod fishing outside 200 miles. (See Table I.)

In addition, the meeting unanimously passed two resolutions tabled by Canada and the EU. The first was aimed at eliminating fishing in the NAFO Regulatory Area by fleets operating under the flags of non-member countries, including reflagged vessels, up to 40 of which were believed to be from Spain and Portugal, which had fished in the NRA. The second established a working group to consider improvements in NAFO's surveillance and control system. Commissioner Marin said the cooperation shown "could represent the basis of a stable and positive relationship … and put an end to a situation which could have polluted the whole of our bilateral relations." Trade minister Crosbie called the Union's support for the seven TAC decisions "an important move."[50]

In December 1990, Ottawa took another step to conserve the northern cod stock following the release of the Report of the Implementation Task Force on Northern Cod, which reaffirmed the conclusions of CAFSAC and the Northern Cod Review Panel. The government's revised management plan reduced the TAC by 7,000t to 190,000t in 1991, by another 5,000t in 1992, and by a further 5,000t in 1993. The chairman of the Northern Cod Review Panel called the reductions inadequate. But fisheries minister Valcourt contended that stronger action would "shut down the entire economy of Newfoundland and Labrador and coastal Nova Scotia, throwing thousands of people out of work."[51]

Meanwhile, Manuel Marin was delivering a grim message of his own. He released a white paper, which argued that the Union's fishing fleet would have to be reduced by 40 percent over the next 10 years in order to avert the collapse of key EU fish stocks. It called for a 70 percent reduction in TACs for certain species and the introduction of a compensation package to offset the impact of the reductions on fishing communities in member states. Marin also announced that the European Commission was

considering major cutbacks in its unilateral quotas in the NRA in order to improve relations with Canada.[52] In reality, reductions had to occur, as the scientific evidence and catch rates of the EU fleet showed that the required quantities of fish were no longer there. The Union pointedly avoided stating that it would reduce its catches. It was clear that its fisheries would continue to be unrestricted.

Marin met with Canadian ministers Crosbie and Valcourt in advance of the Fisheries Council's deliberations. Although Valcourt said Marin made no promises, he "showed understanding of our request to reduce EU quotas."[53] In fact, the meeting had been awkward. Scheduled to begin with a short "courtesy call" by the two Canadian ministers and the fisheries commissioner, after which they were to be joined by their senior officials, the meeting was conducted by those three alone in French, with Valcourt attempting to translate for Crosbie. The Canadian ministers did not take notes and were unable to recall the EU's positions and reactions to their interventions. Marin's report to his officials was the only record of what had occurred. It downplayed the urgency the Canadian ministers said they had expressed.

The ineffectiveness of the Canadian *démarche* could be seen when the European Commission released its 1991 quota proposals. The EU agreed to seven NAFO TACs. Bowing to pressure from Spanish and Portuguese fishing interests, the Commission set autonomous quotas of 27,000t of 2J3KL cod, 6,000t of 3LN redfish, and 1000t of 3NO witch flounder, even though the EU had no NAFO shares of the redfish and witch flounder stocks because, traditionally, its fleet had not fished them. This meant, of course, that the fleet could legally exceed the TAC by these amounts. Crosbie and Valcourt called on the Fisheries Council to "reconsider the proposed quotas," which "provide no basis for discussing access to Canadian ports or allocations of surplus stocks in the Canadian zone." However, the Fisheries Council approved the Commission's proposals.[54] (See Table I.)

The Newfoundland government and fishing industry officials denounced the EU's quota decisions, which followed the revelation that some 30 Spanish vessels had begun fishing in the NAFO zone after being expelled from Namibia's waters. Predictably, their criticism focused on Ottawa's handling of the offshore fishing issue. Marin agreed that it was time for Canada and the European Union to end their "futile war," adding that he had been directed by the Fisheries Council to seek the reactivation

of the expired long-term fisheries agreement, which would give the EU access to Canadian ports and to fish stocks inside Canada's 200-mile limit. However, Crosbie rejected the overture, saying that the EU's behaviour did not warrant such concessions.[55]

European Commission officials expressed disappointment, although they privately conceded that they had a serious problem controlling the Spanish and Portuguese vessels. The *Eurofish Report* noted that it was "widely alleged that national inspectors are turning a blind eye to infringements of conservation rules and false catch declarations committed on the other side of the Atlantic."[56] However, the EU neither acknowledged this officially nor supported NAFO measures to put in place stronger controls than were applied in European waters under the Common Fisheries Policy.

In February 1991, the Department of Fisheries and Oceans released catch estimates showing that although the EU had reduced its unilateral quotas, its fleet still caught about five times the amount of fish allocated to it by NAFO the previous year. As before, Spain and Portugal were identified as the principal violators of NAFO catch reporting and gear rules. Ottawa called for the early adoption of the "hail system," a new international control instrument that would require fishing vessels to radio precise information on their location in the NAFO Regulatory Area.[57] The Union subsequently joined other NAFO Contracting Parties in approving the system. They also agreed to begin consultations on strengthening the organization's capacity to deal with non-member fishing in the NRA, surveillance and control, and scientific cooperation.[58]

Under pressure from Canada's premiers, who joined Newfoundland Premier Clyde Wells in demanding that Ottawa take stronger action against overfishing by EU vessels, Canadian officials sought agreement on fishing quotas with their European Commission counterparts. But the two sides remained far apart on certain quotas, including northern cod. Some progress was made at NAFO's annual meeting in September 1991 when the Contracting Parties accepted the Scientific Council's advice for eight fish stocks, although they rejected the Council's proposal to restore the ban on 3M cod and adopted a TAC for redfish in the same zone that was larger than the scientists had recommended. As it had the previous year, the EU abstained on 3LN redfish and 3NO witch. It also abstained from the decision to continue the moratorium on 3L cod outside 200

miles. When the EU Fisheries Council met in December, it set a unilateral quota of 26,300t for 2J3KL cod, a reduction of only 700t from the previous year, while maintaining those for 3LN redfish and 3NO witch at 1991 levels.[59] (See Table I.)

Frustrated by the slow progress and pressed by Newfoundland and fishing industry officials, the Canadian government announced in January 1992 that it would increase its diplomatic and public relations campaigns to try to persuade the EU to abide by NAFO's fishing quotas. Ottawa called for a special meeting of the organization to deal with surveillance and control, and non-member fishing. It would also seek agreement at the Earth Summit in Rio in June on new measures to give effect to the provisions of the Law of the Sea Convention dealing with straddling stocks[60]

During this time, trade minister Crosbie visited Portugal, accompanied by a large delegation of Canadian industry representatives. He turned the business development trip into a sustained *démarche* on the problems of EU overfishing in the Northwest Atlantic. He also made a major intervention at a Conference of World Fisheries Ministers in La Toja, Spain, to which he was invited by the Spanish fisheries minister, who was attempting to raise his country's profile as a leader in international fisheries policy matters. The Spanish minister was not pleased to see the supportive statements made in response to Crosbie's speech by representatives from countries that were also being subjected to the export of excess EU fishing capacity.

Further initiatives took on a sense of urgency in February 1992 with the release of a new report by the Canadian Atlantic Fisheries Scientific Advisory Committee, which recommended that the total allowable catch for northern cod be reduced to 25,000t for six months. John Crosbie, the new fisheries minister, accepted the committee's advice and lowered the TAC for the year to 120,000t. The move prompted National Sea Food Products to shut down its operations in Newfoundland and Fishery Products International to terminate more workers and close plants.[61]

Unwilling to abandon diplomacy, Prime Minister Mulroney rejected a call from Premier Wells to force EU vessels out of the offshore zone. However, Crosbie endorsed a plan by the United Fishermen of Newfoundland and the Fish, Food and Allied Workers Union to stage a high seas protest to draw attention to the foreign overfishing problem. He showed his support by flying over the protesters in a surveillance aircraft.[62]

Manuel Marin denied that the Union was to blame for the plight of the Canadian industry and claimed that EU scientists could not confirm the Canadian assessment of the state of the 2J3KL cod stock.[63] Premier Wells went to New York to seek UN support for a proposal to give coastal states custodial management of the fisheries on the continental shelf outside their 200-mile limit pending effective multilateral action. He noted that, although Canada had not acted quickly enough to reduce the 2J3KL cod TAC, the Union's failure to abide by the NAFO moratorium on fishing this stock outside 200 miles was "reprehensible."[64]

As a "new political gesture," the EU offered to partially suspend its unilateral quota for northern cod if Canada agreed to reopen ports to its vessels and provide access to other fish stocks in Canadian waters. Crosbie called the proposal "an insult." But in an attempt to encourage a diplomatic solution, he agreed to the Union's request for a special review of the northern cod stock by NAFO's Scientific Council. At a meeting with Mulroney and Crosbie in Ottawa, Commission president Delors and Portugal's prime minister, Aníbal Cavaco Silva, undertook to reduce the EU's fishing in the NAFO Regulatory Area if scientific evidence showed that stock was endangered, and to participate in a forthcoming NAFO surveillance and control meeting called at Canada's request. The Union would also review its opposition to Canada's proposal that the pending Earth Summit in Rio call for a conference to develop an international regime for the conservation and management of high seas fisheries.[65]

In May 1992, NAFO members drew up proposals to improve the monitoring of fishing outside Canada's 200-mile limit for consideration at the organization's annual meeting in September. Shortly thereafter, the EU, while denying any responsibility for the decline of the fish stocks, announced that it was temporarily suspending its fishing of cod in NAFO Division 3L. The announcement was made just prior to a special meeting of NAFO's Scientific Council called to discuss scientists' findings on the state of the northern cod stock.

Although Brussels claimed that its vessels had taken nearly all of their allotment for 1992, Canadian estimates showed that landings of northern cod were only a fraction of the EU's unilateral quota of 26,300t. The scientists' report, tabled at the meeting, noted that the stock was at its lowest recorded level, but it was unable to identify the precise cause of the decline. It recommended that Canadian fishers limit their catch to 50,000t.[66]

In June, Canada achieved a breakthrough when 188 countries attending the Earth Summit endorsed the principle of sustainable fishing on the high seas. They also called for a follow-up United Nations conference to implement the principles of the UN Law of the Sea Convention for straddling and highly migratory fish stocks. This would culminate in the UN Fish Agreement (UNFA), which was reached in 1995 and came into effect six years later.

But this was of little immediate consequence. The following month, Crosbie announced that the northern cod fishery would be closed for two years. The moratorium left 19,000 fishers and plant workers unemployed, "making it the largest layoff in Canadian history."[67] By the time the northern cod ban was extended and quotas for other groundfish stocks reduced in 1994, 40,000 fish workers in Atlantic Canada, 27,000 of them in Newfoundland, were out of work.

The state of the fishery made it easier for Canada and the EU to cooperate. At the annual NAFO meeting in September 1992, the Union, which had used the objection procedure to set unilateral quotas 53 times since 1986, accepted all the organization's conservation decisions. These included a ban on northern cod fishing outside the 200-mile limit in NAFO Division 3L. The Fisheries Council approved the quotas in December.[68] (See Table I.)

The same month, Canada and the EU reached a new fisheries accord subject to ratification. Working on the assumption that the NAFO and Canadian moratoria would eventually be lifted, Canada would then set the TAC for the entire 2J3KL cod stock inside and outside 200 miles. It would set aside 5 percent for NAFO to allocate outside 200 miles, two-thirds of which would be assigned to the EU. (This was an important development in that it was the first time the EU acknowledged the 5 percent figure and formally accepted Canada's right to set the 2J3KL cod TAC.) The Union would receive access to Canadian ports (ending the ban imposed in 1987), access to surplus fish in Canadian waters, and commercial collaboration, in return for conservation cooperation. In addition, the two sides would develop joint proposals for dispute settlement in NAFO, and cooperate to prevent fishing by vessels that were not members of the organization.

Fisheries minister Crosbie was keen to have the agreement ratified in order to tie the EU to greater cooperation in NAFO. He signalled that he was prepared to give approval as soon as the Union did so. The Union did

not act, because of objections from Spain and Portugal. As 1993 proceeded and the prospect of a federal election loomed, Canadian officials warned that there was a good possibility that if it were elected, the opposition Liberal Party, which shared Newfoundland's concern about the Union's ability to enforce its undertakings, would not likely approve the agreement. The EU finally ratified the agreement in December 1993, six months after a Liberal majority government was elected. By that time, overfishing by the EU fleet was again on the rise. The Canadian government refused to ratify the accord.[69]

3

THE TURBOT WAR

Between 1992 and 1994, NAFO closed some fisheries and reduced the TACs for others in the NAFO Regulatory Area. The EU accepted all conservation decisions. But the Canadian government was concerned about the ability of the EU to control its fleet. It was also concerned about unregulated fishing by stateless and flag-of-convenience vessels, many of which were reflagged Spanish and Portuguese trawlers.

Prime Minister Jean Chrétien's Liberal government, which came to power in 1993, made fisheries conservation a priority. As Minister of Indian Affairs and Northern Development in the Trudeau government, Chrétien had been involved in the development of the 1970 Arctic Waters Pollution Prevention Act. Over the objections of the United States, the Act asserted Canadian control over Arctic waters, requiring all vessels therein to follow Canada's marine environmental regulations. In the 1993 election, Chrétien responded to representations from the Newfoundland fishing industry by promising to end foreign overfishing of east coast fish stocks. His government repeated the pledge in the Speech from the Throne in January 1994.[1]

Chrétien appointed Newfoundland MP Brian Tobin, a skilled communicator with a shrewd sense of tactics and timing, as Minister of

Fisheries and Oceans. In discussions with EU authorities in Brussels in January 1994, Tobin hinted that the government might seek legislation authorizing the arrest of foreign vessels violating NAFO conservation rules on the Nose and Tail of the Grand Banks (NAFO Divisions 3L and 3NO) (See Appendix I.) He later revealed that the Canadian military had been asked to draw up plans to intercept foreign trawlers outside the 200-mile limit.[2] On a visit to St. John's the following month, Chrétien confirmed that the government was preparing legislation to give federal authorities the power to seize and charge foreign-owned vessels undermining the rules. "I'm not afraid of these people. I'll take them on," he said.[3] Less than two months later, Ottawa began making good on its promise when a Department of Fisheries patrol ship arrested the *Kristina Logos*, a vessel flying the Panamanian flag and crewed by Portuguese nationals but still registered in Canada (allowing its arrest under international law), for fishing 3NO cod in violation of a NAFO moratorium.[4]

In May 1994, parliament approved amendments to Canada's Coastal Fisheries Protection Act, which gave the government authority to protect straddling stocks on the high seas. Regulations were adopted under which stateless and flag-of-convenience vessels that refused to comply with fisheries conservation measures in the NAFO Regulatory Area could be arrested. The government, as "a temporary step in response to an emergency situation," exempted the legislation from the jurisdiction of the International Court of Justice. The EU protested that the regulations violated international law. But Newfoundland's premier, Clyde Wells, said the measures recognized the "major sacrifice" made by the fishing industry. "Canada is now telling the international community that it will not stand idly by and watch this sacrifice frustrated by a few foreign fishing fleets."[5]

Growth of the Fishery

Stateless and flag-of-convenience vessels left the area almost immediately after the regulations had come into force, allowing the government to concentrate on the fishing activities of EU vessels. Matters came to a head in the autumn of 1994 when NAFO, for the first time, established a total

allowable catch and quotas for turbot, the largest straddling stock that had not been brought under NAFO control outside 200 miles.

Turbot had been fished commercially off the Newfoundland coast since the early 1960s. Canada set catch limits based on scientific advice. The catch by all countries, primarily Canada, rose to 36,000t in 1969 and ranged from 24,000t to 39,000t before declining to an average of 20,000t between 1985 and 1989. No conservation concerns arose during this period. After the 200-mile limit was established, almost all of the catch was taken in Canadian waters, mainly in NAFO Divisions 2+3K. The chief participants were Canada, the Soviet Union, East Germany, Poland, and after 1984, Portugal and Japan. Canada took more than 67 percent of the average annual catch.

By the beginning of the 1990s, the stock inside 200 miles had begun to migrate to deeper waters in response to environmental changes. Concentrations were found outside Canada's offshore zone in waters at the edge of the Grand Banks, in NAFO Divisions 3LMNO, where they became the focus of intensive foreign fishing. Annual reported catches grew steadily from 27,000t in 1990 to 62,000t in 1994. The principal harvesters were EU vessels from Spain and Portugal, which made turbot the main target of their fishing effort following the closure or decline of other fisheries. Between 1992 and 1994, the two countries accounted for three-quarters of the overall catch. Canada's share dropped to about 10 percent. The turbot fishery was especially important to Spain, which took about 80 percent of the EU's total.[6] The Union ignored the scientific consensus in Canada and NAFO that the catch was unsustainable.

In February 1994, Canadian researchers reported that the spawning stock had declined by two-thirds since the last survey in 1991. In June, NAFO's Scientific Council warned that "offshore effort levels in all Subareas are in excess of what the Greenland halibut stocks can sustain."[7] Ottawa substantially reduced the Canadian quotas, although the new limits exceeded the industry's actual catches. It also asked NAFO to take over the management of the stock and to set a total allowable catch (TAC).

Setting a TAC

The turbot issue came before NAFO's annual meeting in Dartmouth in September 1994. The Scientific Council recommended that fishing be reduced, although it did not call for a specific TAC. The EU questioned the advice and proposed a TAC of 40,000t; Canada called for 15,000t. The meeting ultimately adopted a Norwegian proposal for a 27,000t TAC. The TAC was not agreed to until the final day, leaving the quota distribution undecided. A special meeting was scheduled for Brussels on January 30–February 1, 1995, to allocate quotas among the Contracting Parties. In December, the EU's Fisheries Council approved the overall catch limit over the objections of Spain and Portugal. The Iberians wanted an autonomous quota of 30,000t, claiming that scientific evidence allowed for a 40,000t TAC. Only Greece and Italy supported them.[8]

Meanwhile, Canada pressed its concerns about conservation of fish stocks on the high seas. Canadian officials were especially troubled by the growing number of citations against Spanish and Portuguese trawlers for using illegal fishing gear, misreporting catches, landing undersize fish, and taking fish under moratoria. In October 1994, Tobin set out Canada's complaints in a diplomatic note he personally delivered at a meeting in Ottawa with the EU, Spanish, and Portuguese ambassadors. He offered to assist the Union in inspecting Spanish and Portuguese vessels suspected of fishing infractions in Canadian or European ports and pledged to take action against Canadian violators. The European Commission, which had seen its proposal to expand the power of EU inspectors turned down by the Fisheries Council the previous year, argued that only Spain and Portugal could inspect their vessels. Spain termed Tobin's proposal "inadmissible."[9]

In January 1995, Tobin took his fisheries conservation message to Europe. At meetings in Brussels with Sir Leon Brittan, the European Commission's vice president responsible for trade, and Yannis Paleokrassas, the departing fisheries commissioner, Tobin reiterated his concerns about Spanish and Portuguese infractions and the lack of follow-up action. Both sides agreed to continue discussions at the official level, but Tobin remained skeptical about the ability of the EU to regulate its fleet. He warned that if the Union did not act Canada was prepared to take its own enforcement action.[10] In a subsequent speech in Reykjavik he called the

behaviour of the Spanish and Portuguese fleets "criminal in the legal sense and in a moral sense too."[11]

Spanish officials dismissed Tobin's charges as an attempt to bolster Canada's position before the approaching NAFO meeting. They argued that Spain had met its commitments and accused Canada of using the Union as a scapegoat for its mismanagement of the fisheries. An EU spokesperson complained that Canada's "over-zealous interpretation" of the limits of high seas fishing rights had "soured" relations with the Union. But he confirmed Tobin's doubts about the Union's ability to police its vessels by asking Canada to report violations to member states.[12]

Setting Quotas

His hand strengthened by the cabinet's support for his hard-line stand, Tobin went to the NAFO meeting in Brussels determined to win a substantial victory. "We held down our catches in recent years for reasons of conservation while the EU has taken too much," he said, "and now that a catch limit has been set, Canada wants a fair share of the resource."[13] He repeated his concerns about the EU fleet's fishing practices when he met with the new fisheries commissioner, Emma Bonino, on the eve of the meeting. Bonino was willing to deal with the Canadian government's complaints but rejected any connection between the violations and the allocation of turbot quotas.[14]

Canada and the EU each went into the meeting claiming 75 percent of the TAC. Since the Spanish and Portuguese fleets had dominated the turbot fishery in the previous three years, the Union argued that quota decisions should be based on recent catches, which reflected a demonstrated ability to fish the stock. Noting that EU totals prior to 1990 were insignificant and those afterwards constituted overfishing leading to depletion, Ottawa contended that the allocations should be based on historic catch levels. Both sides modified their positions slightly, but they remained far apart. A compromise was needed to break the deadlock.

The Canadian delegation asked its Cuban counterpart to table a proposal for a distribution key based on historic catches and the special interest of the coastal state, as formulated in the NAFO Convention, under

which Canada would receive 16,300t (60.37 percent), the EU 3,400t (12.59 percent), Russia 3,200t (11.85 percent), Japan 2,600t (9.63 percent), and others 1,500t (5.56 percent). Cuba agreed. Canada quickly called for a vote. The EU, recognizing that it had been outmanoeuvred, warned that such action would put the two sides "on the path to confrontation." Both sides attempted to strengthen their positions, with Canada focusing its efforts on Norway, Japan, and South Korea, and the EU lobbying Eastern European states in line to join the Union. The vote carried by a margin of six to five, with Canada, Cuba, Iceland, Japan, Norway, and Russia in favour, and Estonia, the EU, Latvia, Lithuania, and Poland opposed. Denmark (for Greenland and the Faroe Islands) and South Korea abstained.[15]

Tobin hailed the decision as a "clear message" to Spain and Portugal that "there is no reward for those who ignore the needs of conservation."[16] Bonino called it unacceptable and indicated that she would take steps to initiate an objection. EU vessels would continue fishing until the issue was settled.[17] Tobin offered to transfer some of Canada's allocation to the Union as a transitional measure to avert an objection, to ease the EU fleet towards accepting its reduced catch opportunity, and to encourage a cooperative atmosphere for the discussion of enforcement issues. But EU authorities, angered by the decision and under intense pressure from Spain, were in no mood to cooperate. The head of the EU delegation to Canada said that Ottawa's actions would "seriously threaten" relations with the Union. Spain's fisheries minister said the quota would have "a tremendous social impact, the loss of jobs, especially in the Galicia region, which we cannot accept."[18]

On February 13, Jacques Roy, Canada's ambassador to the EU, handed Bonino a letter from Tobin reiterating Canada's quota transfer offer and proposing a meeting of officials to discuss the necessary arrangements. However, the fisheries commissioner confirmed her intention to launch an objection.[19] Tobin went on the offensive. Canada would "not let the European Union devastate turbot the way it has devastated other groundfish stocks," he warned, "It's unacceptable for the EU to say 'We played, we lost and we're not abiding by the majority decision of an international conservation body'."[20] The Fish, Food and Allied Workers Union (FFAW) urged Ottawa to fight the EU with "every means at its disposal." Its president, Earle McCurdy, said, "I don't know if you'd call it gunboat diplomacy. If that's what it is then so be it." If the government failed to act "our chances of rebuilding fish stocks which straddle our 200-mile limit are virtually

nil."[21] Clyde Wells and his fellow Atlantic province premiers urged Ottawa to take all necessary steps to enforce NAFO's decision.[22]

Undeterred, the European Commission backed Bonino's plan to lodge an objection to the EU's quota, although it expressed willingness to meet with Canada under NAFO auspices. Supported by fishing groups from British Columbia, Quebec, and other Atlantic provinces, the FFAW urged Ottawa to adopt regulations under the amended Coastal Fisheries Protection Act to give fisheries officers the authority to arrest Spanish and Portuguese vessels fishing turbot outside 200 miles. "This is a question of national will," said McCurdy. "We in Atlantic Canada expect to be protected from foreign invasion on the fishing grounds in the same way that people on the Prairies would expect to be protected from foreign invasion of their farmlands."[23] Newfoundland's fisheries minister, Bud Hulan, also urged Ottawa to move against the vessels.

By this time, Tobin and his officials had begun laying the groundwork for a firm response. With the approval of the Departments of Justice and National Defence, he circulated an internal document that reviewed the recent history of Canada-EU fisheries relations and outlined possible responses in the likely event that the Union challenged NAFO's decision and established its own turbot quota. These were: stepped up inspections of EU vessels; extending the regulations of the Coastal Fisheries Protection Act to the Union's vessels; and authorizing actions, including force, "to interfere with" ships that refused to stop fishing. Detailed domestic and international communications plans were made to maximize support for the government's anticipated measures.[24] A senior Canadian fisheries official was dispatched to the capitals of the UK, France, Germany, Sweden, and the Netherlands to brief the media and legislators on the seriousness of the situation and to provide background information on potential Canadian actions.

On Wednesday, March 1, the EU Fisheries Council, ignoring a last-minute plea from Canada, unanimously agreed to invoke the objection procedure and set a unilateral quota of 18,630t (69 percent of the TAC). The decision came amid reports that 39 Spanish trawlers had already taken 6,000t of turbot. Canadian ambassadors to all EU member states delivered a letter from Chrétien reaffirming the government's intention to "take appropriate measures" if the Union failed to heed the NAFO decision. Canada's ambassador to the EU presented a similar message to Sir

Leon Brittan and to Emma Bonino's chief of staff. Foreign Affairs Minister André Ouellet called for a meeting of senior Canadian and EU officials to discuss the issue, but he publicly warned that if the EU's unilateral quota were not rescinded "Canada will have no alternative but to act."[25]

Applying Pressure

On Friday, March 3, after the EU lodged its objection with NAFO, Tobin announced that the Coastal Fisheries Protection Act regulations had been expanded to make it an offence for Spanish and Portuguese vessels to fish for turbot on the Nose and Tail of the Grand Banks. Chrétien sent a letter to Jacques Santer, the President of the European Commission, to explain the action and to propose a 60-day fishing moratorium for Canadian and European vessels to allow negotiations to take place.[26]

On Monday, March 6, the EU's reply came in the form of a strongly worded message from the Foreign Affairs Council, which defended the EU's right to use the objection procedure, restated its commitment to conservation, and condemned the Coastal Fisheries Protection Act as a violation of international law. Spain announced that it would send a naval vessel to protect its vessels. Tobin warned that fisheries enforcement officers would begin seizing Spanish trawlers within 24 hours if they did not stop fishing. The Newfoundland government and the fishing industry were solidly behind the minister.[27]

An immediate confrontation was averted when the Spanish vessels withdrew eastwards, but an EU spokesman affirmed that they were free to continue fishing. On Wednesday, March 8, the trawlers returned and resumed operations.[28] Tobin met with Chrétien and other senior officials to make the case for arresting a Spanish vessel, using force if necessary. André Ouellet and David Collenette, the Minister of National Defence, were "extremely reluctant" to back Tobin's plan. Gordon Smith, Ouellet's deputy minister and former ambassador to the EU; James Bartleman, Chretien's foreign policy advisor; Eddie Goldenberg, his senior policy advisor; and Jocelyne Bourgon, the Clerk of the Privy Council, who "had already had several heated exchanges with Tobin," all urged the prime minister not to provoke the EU. Chrétien recalls that he "listened to both

sides, made up my own mind, and decided to back Tobin" subject to a final diplomatic effort, adding that he kept the minister "in check when I felt he was trying to go too far."[29]

At a press conference shortly thereafter, Tobin confirmed that the government would not back down. Ottawa preferred a negotiated settlement, but one way or another the overfishing had to end. According to the *Toronto Sun*, Tobin had "privately confided that he hoped the diplomacy would break down because only action could lead to meaningful talks." At 4:30 a.m. (EST) on Thursday, March 9, Chrétien telephoned Santer in an attempt to avert a confrontation. But Santer would not agree to a moratorium, and Chrétien would not agree to negotiations until the vessels had left the Grand Banks. Shortly thereafter, Canadian fisheries patrol vessels were instructed to target a trawler for arrest.[30]

Canadian officials had been keeping a close eye on the *Estai*, one of several Spanish trawlers fishing on the Nose of the Grand Banks, which had been cited for fishing violations the previous year. Late in the afternoon of March 9, fisheries and RCMP officers seized the *Estai* after a high seas chase that began when the vessel repelled earlier boarding attempts and cut its net in an effort to escape. The chase ended four hours later when a Canadian fisheries patrol boat, on orders from Ottawa, fired warning shots across its bow. In announcing the arrest, Tobin declared that the government was imposing a moratorium on turbot fishing inside and outside the 200-mile limit.[31] However, Chrétien agreed with a suggestion from the French ambassador, whose country held the presidency of the EU at the time, "to send a negotiating team immediately to Brussels, even if uninvited, to make the Canadian case on the ground and mitigate the pressure for European Union retaliatory action on Monday morning."[32] On Friday afternoon, March 10, a high-level delegation, consisting of Smith, Bartleman, and William Rowat, the Deputy Minister of Fisheries and Oceans, quietly departed for Brussels ready to begin discussions with European Commission officials.

War of Words

The arrest of the *Estai* won widespread approval in Canada, especially in Newfoundland. Earle McCurdy summed up the mood, saying, "Nothing less will satisfy me than to see Spanish trawlers towed through The Narrows (of St. John's Harbour), every last one of them."[33] But there was outrage at EU headquarters in Brussels and in Spain. As the high seas drama unfolded, the Commission denounced "in the strongest possible terms" Ottawa's "illegal" attempt to enforce conservation measures beyond the 200-mile limit. It condemned Canada's "unilateral aggression," called for an urgent meeting of NAFO, and warned that the EU would be forced to consider additional action "to defend its legitimate rights" if Canada arrested more vessels.[34] Commission spokespeople accused Canada of using conservation as a pretext for pandering to domestic pressures and blamed Ottawa for the collapse of east coast fish stocks. While not ruling out a direct response by Spain, they noted that there was "complete solidarity" among the member states: "All agree that it is a flagrant violation of the Law of the Sea." Meanwhile, in Spain there were calls for sanctions against Canada.[35]

Meeting in emergency session, the Committee of Permanent Representatives (COREPER) suspended scientific and technical cooperation and education agreements with Canada and asked the Commission to draw up a list of other possible retaliatory measures. In a follow-up diplomatic note, the EU demanded that Canada "immediately release the vessel (Estai), repair any damages caused, cease and desist from its harassment of vessels flying the flag of community member states and immediately repeal the legislation under which it claims to take such unilateral action."[36]

While the EU framed the issue in legal terms, Tobin portrayed Ottawa's action as a necessary conservation measure: "This is not an issue about who gets what slice of the pie but rather sustaining the pie, sustaining the resource, preventing its extinction." Canada's ambassador to the EU repeated the minister's message in Brussels, saying, "We are engaged in a race against time to protect the last groundfish stock in the Northwest Atlantic."[37]

On Sunday, March 12, the scene shifted to St. John's, where thousands turned out for the arrival of the *Estai* under Canadian escort. The vessel

was impounded and the captain was charged with violating the Coastal Fisheries Protection Act. An EU delegation, which included the French and Spanish ambassadors, called for the release of the ship and withdrawal of the charges. But the Union refused an invitation from Canadian authorities to participate in the inspection of the vessel.[38]

Spain's prime minister, Felipe González, reacted swiftly, accusing Canada of a "flagrant" breach of international law and demanding that the *Estai* be freed. Madrid announced that it would send a second naval patrol ship to the Grand Banks and bring the seizure of the *Estai* before the International Court of Justice. The Spanish warships were under orders to fire on any Canadian boarding party that attempted to prevent the country's trawlers from fishing in the contested zone. When COREPER met the next day, it decided that no formal discussions on the fishing dispute would take place while the *Estai* was being held. But by this time informal talks between members of the recently arrived Canadian delegation and Commission officials were underway.[39]

The same afternoon, Tobin began constructing the case against Spain, telling a press conference that a preliminary inspection of the *Estai* had uncovered evidence that "frankly exposes, as never before, damaging anti-conservation fishing practices." Canadian inspectors had found that 79 percent of the vessel's catch consisted of undersize turbot, indicating the use of illegal small mesh nets. The catch, moreover, was double the size reported in the *Estai*'s logbooks. "This kind of information is very powerful in making our case that Canada has taken, in effect, a custodial action to prevent the disappearance of this species," he said. In an apparent effort to drive a wedge between Spain and other member states, Tobin added, "If this practice goes on the Nose and Tail of the Grand Banks, why would it be any different if the same fleet gets access to European waters?"[40]

By this time there were signs that the EU consensus was not as solid as it appeared. The public information campaign mounted by Canada in Europe gave media commentators and legislators in several member states and Brussels a better understanding of the nuances of the dispute. The British government was under pressure from parliamentarians, who did not support Spain because of recent antagonism between British and Spanish fishers, and from Eurosceptic MPs, who demanded that the government oppose sanctions against a Commonwealth country. The UK fisheries minister expressed sympathy for "Canadians who seek to defend

what they deem as their legitimate interests." However, Spain's foreign minister, Javier Solana, vowed to "keep up the pressure on all sides to try to solve this problem, which I insist is a European one."[41]

Bonino and Brittan held a joint news conference on Tuesday, March 14, to explain the EU's position. Attempting to undermine Tobin's conservation argument, Bonino claimed the dispute was about who could catch fish rather than how much fish could be caught. "The message must be very clear," she stated. "Canada has not only taken an EU boat to satisfy its internal needs and to hide its inefficiency in fisheries management. Canada has taken the international community hostage." However, she noted that the EU was prepared to begin talks as soon as the *Estai* was released. Brittan said the Union's strategy was to contain the dispute.[42]

Meanwhile, defiant Spanish owners ordered their trawlers, which had left the contested zone after the arrest of the *Estai*, to resume fishing just east of the area where the *Estai* had been apprehended. Tobin warned that if they returned, the government was ready to act. He continued to build the case against the *Estai*, revealing that Canadian inspectors had discovered two log books aboard the trawler, a fraudulent one for EU inspectors and another for the use of the captain and the owner, which recorded the ship's actual catch.[43]

In a speech to the European Parliament on Wednesday, March 15, Bonino accused Tobin of spreading disinformation and repeated her charge that Canada was making the Union a scapegoat for the mismanagement of its own fisheries. Solana denied that Spanish fishers had violated NAFO rules. Both expressed satisfaction at the solidarity shown by member states.[44]

Negotiations Begin

Away from the war of words, negotiations for the release of the *Estai* were underway. A breakthrough was achieved when Canada announced that it would free the ship after its owners agreed to post a bond of $500,000. The action came as thousands of residents of the *Estai*'s home port of Vigo rallied to condemn Canada's "piracy." Bonino called the release of the vessel "a vindication" of the EU's stance. Tobin described it differently,

saying, "If we can move forward the cause of conservation through this incident, that's well worth doing."[45] He disclosed that the *Estai*'s net, which had been recovered, was not only below the minimum size allowed by NAFO but also contained a second even smaller liner to catch undersize fish. Moreover, inspectors had discovered a concealed area in the vessel's hold containing 25t of very small American plaice, a stock under moratorium since 1992.[46]

Formal talks between the Canadian delegation, led by Gordon Smith, and EU officials, headed by Horst Krenzler, the European Commission's Director General for External Relations, got underway on Thursday, March 16. Despite their differences, the two sides agreed that a solution had to be found. The delegations split into a senior group of high level officials to focus on political and legal matters and quotas, and a technical group of fisheries experts to deal with control and enforcement issues.

The senior group held two sessions before adjourning the following day. They agreed on a proposal that would give each side an equal share of the turbot TAC but were at odds over other matters. Canada insisted that resolution of the quota issue required agreement on strict control and enforcement measures. The EU wanted to keep the two separate and settle the dispute through NAFO – a position it would be forced to abandon because of lack of support for an early meeting by other Contracting Parties.

More progress was made at the technical level. By Friday evening, March 17, a document emerged that contained an outline of proposals the two delegations agreed to develop. To the surprise of the Canadians, Commission officials put forward several control and enforcement measures that the Union had rejected in previous discussions within NAFO when they had been presented by Canada. The most notable contentious issue was over Canada's insistence on complete observer coverage for vessels fishing in the NAFO Regulatory Area (opposed by Spain) and the EU's preference for a system of satellite tracking (dismissed as inadequate by Canada).[47]

Although disagreements remained, the general outline of a "fish for enforcement" deal began to emerge by the time the discussions ended.[48] Each side would agree to certain trade-offs. Canada would accept a reduced quota in return for stricter enforcement. The EU would consent to tougher enforcement in order to secure a larger allocation for the Spanish fleet. The Newfoundland fishing industry and the provincial government

quickly gave their support. However, Spanish fishing organizations criticized the EU for negotiating with Canada while it was allegedly in breach of international law. "We're completely against this," said the head of the Vigo Ship Owners Association. "We understand they're going to sell us out." Madrid expressed its displeasure with Canada by suspending all bilateral meetings and introducing visa requirements for Canadian visitors. Ottawa responded that it welcomed Spanish visitors to Canada.[49] Still, Canada and the EU were sufficiently encouraged to resume technical discussions in Brussels on Tuesday, March 21. After Smith, Bartleman, and Rowat left Brussels the two working groups continued to meet on an almost daily basis. They met separately and together at various times during the negotiations.

The next day, in a letter to Chrétien, Santer offered to speed up deliberations by proposing that political talks between Smith and Krenzler be resumed at a preparatory meeting for the June G-7 summit, which was about to begin in Vancouver. But by then 10 Spanish trawlers had resumed fishing in the contested zone, accompanied by a naval patrol vessel with orders to use "deadly force" to protect them from arrest. Chrétien telephoned Santer and Felipe González to seek their cooperation in removing the ships. Tobin said the government was willing to give them time to withdraw; if they did not Ottawa was prepared to act. He disclosed that two fisheries patrol boats had been fitted with warp cutters designed to sever the steel cables (warps) that attach trawlers' fishing nets.[50]

Renewed Tension

On Sunday, March 26, after the hastily arranged discussions in Vancouver had ended inconclusively, a specially equipped fisheries patrol vessel cut the net cable of the *Pescamaro Uno*, one of the Spanish trawlers fishing on the Grand Banks, after it refused to allow Canadian inspectors on board. Tobin, who was in New York attending the UN Conference on Straddling and Highly Migratory Fish Stocks, said that the action had forced the remaining ships to withdraw from the area. The next day, Bonino, who was also attending the conference, accused Canada of turning the Northwest Atlantic into the "Far West." She claimed Canada had fabricated the

evidence against the *Estai*, and that an examination by EU inspectors on the vessel's return to Spain had revealed no irregularities. This was no surprise, as the vessel had plenty of time on its return to home port to ensure that incriminating evidence was removed. The EU also refused to examine the illegal net, which was in Canada's custody. Tobin denounced the "ecological madness" of uncontrolled fishing and accused the Union of failing to monitor or enforce measures to conserve the depleted turbot stock.[51]

Despite the inflammatory exchanges, Canadian and EU authorities were moving towards a diplomatic solution. That evening, Santer telephoned Chrétien to express concern over the warp-cutting incident. Chrétien defended that action but agreed that a negotiated settlement was needed. Both sides would order their officials to make progress in their talks and to avoid further confrontations. The seriousness of this commitment was underscored when William Rowat returned to Brussels on Tuesday, March 28. He had a mandate to conclude the negotiations linking turbot quotas to control and enforcement issues that had been the subject of ongoing discussions. Rowat was soon joined by Gordon Smith.[52] Newfoundland government and fishing industry officials also arrived in Brussels to advise the Canadian negotiators.

Meanwhile, the Canadian government kept up its pressure on the EU. The day after Bonino demanded proof of EU violations, Tobin displayed the *Estai*'s huge net, the size of a football field, along with its illegal small mesh liner, on a barge in the Hudson River across from the UN headquarters in New York. He also produced undersized turbot, smaller than his hand, as well as American plaice found in a secret hold on the vessel. In a shameless but highly effective bit of hyperbole, Tobin declared, "We are down to the last, lonely, unloved, unattractive little turbot, clinging by its fingernails to the Grand Banks of Newfoundland, saying 'Someone, reach out and save me in this eleventh hour as I'm about to go down to extinction'."[53]

The demonstration dealt a damaging blow to the EU's credibility. Backing away from her accusations, Bonino called for an end to the "war of words" and a resolution of the dispute.[54] But member states' solidarity soon faced a new test. Before COREPER met on Wednesday, March 29, to consider possible trade sanctions, the British government, responding to growing pressure at home, threatened to veto any attempt to impose penalties against Canada. Germany, the Netherlands, Ireland, Denmark, and

Sweden also opposed action that might inflame the dispute. Over British objections, COREPER instructed the Commission to present a strongly worded diplomatic note to Ottawa setting out the Union's version of the *Pescamaro Uno* incident and condemning Canada's action.[55]

COREPER returned to the issue the next morning, but it failed to come up with a list of countermeasures for use in the event of further incidents. Spain directed its anger at the UK. Spain's fisheries minister rebuked British fishers, many of whose vessels were flying Canadian flags as a gesture of support, for "backing violent behaviour" in international waters. Prime Minister Felipe González responded to domestic pressures with a letter to French Prime Minister Édouard Balladur, stating that "what's at risk here is the very credibility of the EU and its member states." A split would be seen "as a sign of weakness and jeopardize the image of efficiency and solidarity we want for the external relations of the European Union."[56] The UK's prime minister, John Major, supported Canada, although he cautioned against further attempts to interfere with the Spanish fleet. Tobin refused to comment on the rupture but suggested that rising public concern had forced the Union to negotiate. "There's almost nobody in the European Union who supports the notion that we don't have a problem and that we don't need to fix it," he said.[57]

In an effort to recover lost ground in the battle for public opinion, the Commission released a lengthy document challenging Canada's case and drawing attention to the Canadian government's fisheries management failures. Tobin admitted that Ottawa had made mistakes in the past but said it had mended its ways. It was time for the EU to do the same. The Union suffered another setback when the *Daily Telegraph* reported that a British investigation had revealed that Spain routinely overfished its quotas, landed undersize fish, and was prepared for more international confrontations to protect its distant water fleet.[58]

Agreement Reached and Rejected

Behind the scenes in Brussels, Canadian and EU negotiators continued to work towards an agreement. As a Commission source put it, "Even as the Brian and Emma show goes on …, while they are throwing dirt in public,

we are negotiating in private."[59] As before, the discussions were carried out by a senior group, which dealt with political, legal, and quota issues, and a technical group, which focused on control and enforcement matters. The two groups worked in tandem with occasional plenary sessions to review progress.

On Monday, April 3, the broad outlines of an accord emerged. However, the Spanish government rejected the proposed pact on the quota distribution, which would give each side 10,000t of turbot and establish a comprehensive control and enforcement regime. Madrid demanded that the EU be assigned half the 27,000t TAC, that charges against the *Estai* be withdrawn, and that the ship's cargo and bond be returned. The last two demands posed a bureaucratic problem for Canadian negotiators because by law such decisions could only be made by Canada's Attorney General.

Despite the setback caused by Spain, the negotiators returned to the bargaining table in an optimistic mood. On Wednesday, April 5, they reached a deal, which gave each party 10,000t of the 27,000 turbot TAC for 1995 and established a distribution arrangement for 1996 and, beyond that, separated the stock outside 200 miles in NAFO Divisions 3LMNO from that inside 200 miles in NAFO Divisions 2+3K. The Canadian share was split, allowing 3,000t to be fished outside 200 miles and the other 7,000t in Canadian waters. Under the formula, the EU would receive 50 percent of the TAC that applied to international waters, Canada 15 percent, and other Contracting Parties 35 percent. Canada would have a separate TAC in its own waters. The draft agreement also required the repeal of the provisions in the Coastal Fisheries Protection Regulations that applied to Spain and Portugal, and jointly proposed for NAFO's consideration an overall control and enforcement system, which included full independent observer coverage on a two-year pilot project basis, a satellite tracking pilot project, and, most significantly, comprehensive procedures regarding inspection and infringements.

Canada and the EU also agreed on a strategy to resolve the long-standing dispute over the fishing of northern cod in NAFO Divisions 2J3KL. The parties would propose to NAFO that when the northern cod moratorium was no longer necessary Canada would set the TAC for this stock. Ninety-five percent would be allocated to Canadian fishers, with the remaining 5 percent, in the NAFO Regulatory Area, divided between the Union's vessels (65.4 percent) and those of other contracting parties (36.4

percent). This would fulfill most of the major elements of the moribund 1992 Canada-EU fisheries accord.[60]

Later that night another hitch developed when the captain of a Spanish trawler, one of several that had resumed fishing, radioed that a Canadian fisheries patrol boat had tried to ram his vessel. The captain also spoke on a Spanish radio station where he expressed the concerns of Spanish fishers in the NAFO zone. This broadcast raised the level of outcry in Spain and forced the EU to respond in public. Jacques Santer sent a strongly worded protest to Canadian authorities, as did the French president of the Fisheries Council. The incident became a *cause célèbre* in Spain, where 3,000 demonstrators marched on the Canadian embassy in Madrid throwing fish and threatening Canadians. Javier Solana warned the British that "our memory is long. The conflict could lead us to a deep crisis in Europe." Tobin, who was coy about whether he ordered the fisheries vessel's action, commented wryly, "We know now that the person making foreign policy on behalf of the European Union is some Spanish fishing captain floating around somewhere off the coast of Newfoundland."[61]

Santer and Bonino pressed for quick approval of the agreement, lest the political hiatus during the Easter break (Easter Sunday fell on April 16) lead to another escalation by what one EU official called "these crazy Canadians." Santer argued that Spain's demand for a larger quota would be difficult to achieve and called on Madrid to be flexible, a position endorsed by Bonino, who had previously given Spain strong support. Pressed by France, member states took a united stand. When the Fisheries Council considered the agreement on Monday, April 10, in the face of persistent demands from Spain, with Portugal's support, for a higher catch limit, ministers limited themselves to a call for negotiations to continue.[62]

Tobin warned that Canada was not prepared to renegotiate the substance of the accord and hinted at reprisals if no progress was made over the next two days. Solana indicated that Spain might soften its demands but rejected the existing allocation. He also insisted on a resolution of the *Estai* issue.[63] On Wednesday, April 12, COREPER representatives agreed that the pact would have to be brought under NAFO auspices as the agreement outlined, and that the *Estai* issue be resolved. At the same time, Spain was under pressure not to stretch the EU consensus. "We have to safeguard the solidarity within the European Union but also have to safeguard the interests of our allies and friends in Canada," said Santer.[64]

Canadian and EU officials completed their discussions the next day with both sides committed to securing quick approval of the accord by NAFO. They also reached an understanding that as part of the political settlement Canada's Attorney General would consider lifting the charges against the *Estai* and returning its cargo and bond. This was subsequently done. However, there was no agreement on Spain's demand for a larger share of the turbot TAC.[65]

Two lengthy meetings of COREPER on Friday, April 14, failed to produce the necessary approval. With France acting as a go-between, Canada made two final concessions. Although it estimated that EU vessels had caught 6,000–7,000t of turbot, a figure the Union contested, Canada agreed to allow the vessels to fish 5,013 additional tonnes to reach their 10,000t quota. Canada also took note of the EU's claim for a 55.35 percent quota in the future distribution by NAFO in international waters. Spain, in an apparent effort to secure Ottawa's support for a plan to obtain additional quota from other NAFO members, refused to go along. Portugal was also reported to be dissatisfied with the quota and enforcement provisions.[66]

Under Pressure, the EU Accepts

Spain's rejection convinced Canadian authorities that a strong response was required. That evening Chrétien met with his ministers of fisheries, defence, foreign affairs, and justice, and decided to order fisheries officers to arrest another Spanish trawler. Two warships, a frigate and a destroyer, and an icebreaker were dispatched to the Grand Banks to back up six fisheries patrol vessels and coast guard ships already in the area. The vessels were instructed to use force if Spanish naval vessels fired on Canadian boarding parties. While the warships were on their way to the Grand Banks, Canadian officials in Ottawa and Brussels informed EU authorities of the government's plan. Canadian naval authorities also communicated the message to their Spanish counterparts. Tobin said that enforcement action could be taken as early as the next day.[67]

As the first of the warships took up its position Saturday morning, a senior European Commission official telephoned James Bartleman to say

that after an all-night emergency session of COREPER, Spain was prepared to accept the negotiated settlement. Chrétien authorized Canada's ambassador to the EU to meet with Commission officials to finalize the deal. Although Spain's agreement was expected within hours, Tobin tried to force the issue by calling for the arrest of another vessel. Chrétien "ordered Tobin back from the brink," reportedly telling the minister, "You score some goals, then you can play defence for a while."[68] Shortly afterwards, he received a report that Madrid had accepted. That evening Tobin convened a news conference to announce the crisis was over. The agreement was adopted by the Council on Monday, April 17, with only Portugal opposed. The accord was formally signed three days later.[69]

Canadian and EU authorities struck a conciliatory note. Tobin observed, "if there is a winner in this conflict then it's the fish." Bonino said the agreement was good for "Canada, and the Union, fishing and fishermen."[70] But their differing perspectives were also evident. Chrétien called the agreement "a major breakthrough on conservation and enforcement—our primary objective," while Bonino claimed, "The rule of law has been restored on the high seas."[71]

Canadian fishing groups welcomed the accord. The Spanish government agreed that it was the best outcome in the circumstances, but it openly criticized the UK's support of Canada. Madrid also refused to withdraw its complaint before the International Court of Justice and continued to impose visa requirements on Canadians for another two months.[72] The Spanish fishing industry reacted angrily. "We are faced with a very bleak future because of Canada's illegal aggression and the lack of support by the EU," one official said. Portugal's prime minister, Anibal Cavaco Silva, agreed. He observed, "EU solidarity hasn't been very strong for a while now. The negotiation wasn't easy precisely because Canada knew this."[73]

Aftermath

Before the fishing dispute erupted, the Canadian government had been promoting free trade between North America and Europe. With the controversy behind it, Ottawa turned its attention to repairing relations with the EU. But the Union, stung by the criticism from Spain and Portugal,

was in no mood to cooperate. This became evident when Sir Leon Brittan visited Ottawa in May. He warned that the dispute would "inevitably continue to have repercussions well outside the fisheries sector. Many in the EU were shocked by Canada's disregard for international law and its apparent willingness to resort to gunboat diplomacy … rather than pursuing the usual discussion of such issues between friendly powers" – this despite the fact that the Union had failed to act for some 10 years on Canada's evidence of the EU fleet's disregard for conservation in the Northwest Atlantic.[74] Chrétien showed his displeasure by cancelling a scheduled meeting with Brittan, and André Ouellet issued a statement defending Ottawa's actions. Brittan did not back down. According to EU officials, his comments "reflected" public opinion in Europe. When Chrétien met Santer in Paris a short time later, the two leaders expressed their willingness to improve relations and to begin moving towards the solution of common issues.[75]

The chill in the relationship did not prevent Canada and the EU from joining forces to secure approval of the turbot agreement in NAFO. Both lobbied for its adoption at a special session in June 1995 and at the annual meeting three months later. Some members expressed concern about the "belt and suspenders" nature of the control and enforcement arrangements, but the accord was confirmed at the September meeting, which also established a quota distribution for turbot in 1996, slightly amending the Canada-EU formula. Canada used its influence to secure the approval of several Contracting Parties to reduce their share of the TAC so the EU could obtain the 55.35 percent of the TAC that Spain had demanded for its agreement to end the Turbot War. A European Commission official observed that the Turbot War had produced a "break-through" in Canada-EU fisheries cooperation. "This is the first year (since 1985) at a NAFO meeting where there has been no confrontation."[76] The EU Fisheries Council approved the 1996 TAC and quota allocations without incident.

Meanwhile, in August 1995, the UN Conference on Straddling Stocks and Highly Migratory Species succeeded in creating the UN Fish Agreement. Although some observers had warned that Canada's aggressive unilateralism could jeopardize its long-term objectives for a multilateral fisheries regime, the new convention appeared to vindicate Chrétien's claim that Canada's actions had enhanced the prospects for an accord.[77]

However, the turbot dispute continued to make waves. When Spain took over the Council presidency in July 1995, it used its position to exclude Canada from discussions leading to an action plan for closer trade, political, and security cooperation between the European Union and the United States. In February 1996, after Italy assumed the presidency, the European Commission proposed a similar agreement with Canada. Spain joined in authorizing the Commission to begin discussions, but it insisted that EU negotiators be bound by the wishes of individual member states. Canadian and Commission officials wanted to complete the negotiations before Chrétien, Santer, and Italian Prime Minister Romano Prodi met in Rome in June. But the talks reached an impasse over a Canadian proposal for cooperation to oppose the extraterritorial application of national laws, such as the Helms–Burton Act in the United States, which seeks to punish foreign companies using property confiscated from Americans by the Cuban government. Spain and other member states welcomed the proposal but insisted that it apply to the Coastal Fisheries Protection Act as well. The deadlock was not broken until December 1996, when the accord was signed without making this concession to Spain.[78]

One important lesson learned from the Turbot War was the importance of effective communication among North Atlantic fisheries ministers. Brian Tobin realized that he had few personal connections with his counterparts in several key countries. He decided to invite all ministers responsible for fisheries in the North Atlantic to a conference in St. John's, in 1996, so they could get to know one other better and discuss issues and common concerns. Only the minister and one key official from each party were permitted to sit at the table. Representatives from the EU, the Faroe Islands, Greenland, Iceland, Norway, and Russia participated. The benefits of the personal rapport and small group discussions led the parties to make the meeting an annual event. The meetings continue to this day as the North Atlantic Fisheries Ministers Conference.

4

NEW CONFLICTS ARISE

The Turbot War ushered in a more cooperative period in Canada-EU fisheries relations. In June 1996, Canada reopened its ports to European fishing vessels. The EU had wanted access to the ports following the exclusion of its fleet nine years earlier. But Canada's "concession" had more to do with improving European optics than providing any real benefits. The Europeans had been servicing their vessels in the nearby French port of St. Pierre and Miquelon, and their newer trawlers could remain at sea for the entire fishing season. The following month, Ottawa and Brussels settled a disagreement over the labelling of scallops, giving Canadian products better access to the EU market.[1] They also began annual meetings at the deputy minister level to exchange views on fisheries matters.

Changes were also subtly taking place in NAFO's decision-making process. The EU persuaded Canada and the other Contracting Parties that, to the extent possible, decisions should be made by consensus as a "package deal," rather than voting on each item individually, as had been the practice in the past in accordance with the Convention's voting provision, which required that decisions be made by majority vote.[2] The EU's objective was to avoid being isolated as it had been in the past and to assure that its interests would not be easily overridden in the future. Consensus

decision making became the standard practice in NAFO. There was no apparent realization on the part of the parties that this would produce weaker conservation decisions. The EU succeeded in moving all key issues to "heads of delegation plus one" meetings at NAFO sessions. It was at these meetings that package deals were reached. Individual items were not agreed to until the entire package was settled, not unlike most multilateral negotiations and the EU's own practice. In the past, linkages had generally been made in bilateral discussions between delegations and compromises brought to plenary sessions. Only very contentious issues were taken to heads of delegation meetings. The package deal approach saw most of these issues explored in these small group meetings without national delegations present to witness concessions being made in general sessions. Heads of delegations agreed to trade-offs that would have been difficult to make in front of full delegations in plenary meetings. Presumably, members assumed that in the long run reduced conflict and the avoidance of lodging objections would compensate for the loss of transparency and strict adherence to conservation requirements.

A Promising Start

At NAFO's annual meeting in September 1996, the Contracting Parties approved, by consensus, the TACs and quotas for 1997, including the agreement on northern cod reached by Canada and the EU as part of the settlement of the Turbot War. They also agreed to continue making overtures to states registering flag-of-convenience vessels in order to control illegal fishing, and to set up a working group on dispute settlement with the goal of reforming the organization's objection procedure.[3] Fred Mifflin, the new Canadian fisheries minister, said the decision on northern cod confirmed Canada's right to manage the stock and would prevent "a buildup of foreign effort on the Nose of the Grand Banks that could jeopardize the rebuilding of the Northern cod stock."[4] The EU Fisheries Council approved the measures in December.

The conservation and enforcement measures agreed to the previous year proved their worth. Canadian NAFO inspectors reported a marked decline in infringements by foreign vessels in the NAFO Regulatory Area

(NRA), from an average of 45 in the pre-1995 period to 12 in 1996. Spain, which had a new government committed to reforming the fisheries sector, took a tougher line with offenders and kept Canada informed about actions taken. For example, in March 1997, Madrid revoked the licence of one of its trawlers for the remainder of the year after Canadian inspectors discovered a fraudulent fishing log on board.[5] Still, it seemed to Canadian officials that the EU and its member states were satisfied to demonstrate that they had acted on a few egregious cases and thought it unfair of Canada to pressure them to act on all serious infringements. For a time, Canada tried to encourage stronger action, with little success.

When they met in September 1997, NAFO members agreed to continue the pilot observer program and to decide whether to make it permanent at their next annual meeting. They continued existing fishing moratoria and imposed a new ban on 3LN redfish and 3NO witch flounder on the Nose and Tail of the Grand Banks to help rebuild those stocks. (See Appendix I.) They also set a TAC of 4000t for 3LNO yellowtail flounder, lifting a ban that had been in place since 1994, and reduced the TAC for depleted 3M cod on the Flemish Cap (NAFO Division 3M). Over Iceland's protests, they agreed to continue a days at sea or effort-based fishing system for 3M shrimp instead of a quota system that Iceland had requested.[6]

With fish stocks still under stress and the existing Atlantic Groundfish Strategy (the successor to the Atlantic Fisheries Adjustment Program) to aid fishers and plant workers affected by the northern cod moratorium, due to expire in August 1998, Ottawa approved the Canadian Fisheries Adjustment and Restructuring program. Intended to do a better job of downsizing the industry than its predecessor, the $730 million program included fishing licence buybacks, lump sum payments to those due to receive assistance for another year, early retirement incentives, and economic development programs targeted at affected communities.[7]

The EU had yet to take the necessary measures to restructure its own bloated fisheries sector. The differing approaches of Canada and the Union could be seen in the summer of 1998, when the UN Food and Agriculture Organization (FAO) proposed an international agreement to reduce fleet capacity. Canada joined the United States and New Zealand in pressing for a broadly based accord, while the EU and several Latin American countries called for a more limited pact that focused on threatened species.[8] The EU's actions in this multilateral negotiation were consistent with

its practice in most international bargaining at the time when there was a possibility that the outcome would constrain its behaviour. Unless the Fisheries Council decided to act following its usual lengthy internal deliberations, the Union dragged its feet, refusing to act until the pressures were too great to resist. These pressures tended to be internally rather than externally generated.

Still, Canada, the EU and other Contacting Parties found enough common ground at NAFO's annual meeting in September 1998 to make the observer program permanent. "Although costly in terms of manpower," the *WorldFish Report* observed, the "three-year pilot programme demonstrated that observers are the most cost effective and secure means of controlling fisheries activities." Vessel Satellite Monitoring (VSM), favoured by some members, was useful but could not "deal with vessels using illegal gear, misreporting catches and excessive bycatches."[9] The Contracting Parties agreed to raise the 3LMNO turbot TAC from the 20,000t established for 1988 to 24,444t for 1999, of which the Union would receive 13,530t. They also increased the 3LNO yellowtail flounder TAC from 4,000t to 6,000t, further reduced the 3M redfish TAC, and imposed a ban on 3M cod. Other catch limits remained unchanged. In addition, the meeting established working groups to define the precautionary principle, which calls for prudence in managing resource risks, and agreed to improve transparency in the handling of fisheries regulations and quota allocations. Both the Canadian and Newfoundland governments were pleased with the results. David Anderson, who succeeded Fred Mifflin as fisheries minister in Chrétien's government, praised the cooperation between the two levels of government and the fishing industry, while his Newfoundland counterpart, John Efford, lauded the strong stand taken by Ottawa. The EU Fisheries Council gave its approval to the measures.[10]

There were more signs of progress in the April 1999, when 20 Canadian and European fish processors met in Brussels under the auspices of the Canadian government and the European Commission, the Fisheries Council of Canada, and the Association des Industries de Pêche, in what the Commission called "part of a process to rebuild mutual confidence." The meeting followed the EU Fisheries Council's decision to lower the Union's tariff on coldwater shrimp from 20 to 6 percent. The two sides discussed the Commission's market reform proposals and access issues in preparation for an anticipated new round of World Trade Organization

negotiations. Although the EU accounted for 10 percent of Canadian fish sales abroad, exports had declined by more than 50 percent during the previous decade, in part because of the Union's high tariffs. Canadian producers reiterated their long-standing call for the same access as Iceland and Norway on the basis that processors in the EU could not meet consumer demand.[11]

At NAFO's annual meeting in September 1999, the Contracting Parties continued the moratoria on cod, although the EU criticized Canada's decision to reopen a small northern cod fishery of 9,000t in Canadian waters. Canada referred to this as a "recreational fishery" that allowed inshore fishers in small boats the right to catch a limited number of fish for personal consumption. The Union achieved its "main priority" in the form of an increase in the 3LMNO turbot TAC to 29,935t, with its quota rising to 14,355t. The yellowtail flounder TAC was also raised from 6,000t to 10,000t. Existing bans on 3LN redfish, 3M and 3LNO American plaice, 3NO witch flounder, 3NO capelin, and 3NO shrimp remained in effect. NAFO members agreed to apply the precautionary principle to fish stocks in the NRA, and maintained working groups on dispute settlement and quota allocations.[12]

The EU was soon forced to grapple with its own problems of declining stocks and overcapacity in the fisheries sector. In December 1999, the Commission responded to scientific advice by recommending cuts of up to 80 percent in TACs and quotas for certain stocks in its own waters. But, reminiscent of Ottawa's initial response to similar warnings, the reductions were scaled back because of member states' concerns about the economic impact on fishing communities.[13]

At the next NAFO annual meeting, in September 2000, members responded to scientific advice by maintaining existing moratoria on cod, witch flounder, redfish, and American plaice while increasing catch limits to 13,000t for yellowtail flounder and to 29,640t for 3LMNO turbot, of which the EU would receive 16,406t. They decided to begin satellite vessel location monitoring in 2001 to complement the observer program and developed a detailed plan to implement the precautionary approach for cod, yellowtail flounder, and American plaice.[14]

Despite Spain's concerns that Canadian legislation to implement the UN Fish Agreement (UNFA) in 1999 could extend Canada's control and monitoring beyond the 200-mile limit, relations between Ottawa and

Madrid continued to improve.[15] In May 2001, the two governments issued a declaration on the overall relationship and fisheries cooperation, in which they committed themselves to "sustainable and responsible" fishing practices. They also reaffirmed the importance of NAFO in fostering fisheries cooperation in the Northwest Atlantic.[16]

Meanwhile, in December 2000, with EU fish stocks at all-time lows, the Union's Fisheries Council agreed to major fishing reductions. Although less than the European Commission had recommended, they were, according to fisheries commissioner Franz Fischler, "the most drastic cuts there have ever been since we have had quotas."[17] In March 2001, the Commission released a "Green Paper" on Common Fisheries Policy reform. Admitting that the CFP had not produced a sustainable fisheries policy, the paper proposed to improve conservation through the adoption of multi-year TACs, replacing annual negotiations that put upward pressure on catch levels and quotas, to enhance enforcement to increase compliance with fisheries regulations, and fleet reductions. However, third party agreements were still viewed as a "vital part of the [EU's] strategy for shifting fleet overcapacity out of EU waters." The expiration of a fishing agreement with Morocco, which left 500 Spanish and Portuguese vessels without access to that country's waters, put added pressure on the Union to maintain fishing opportunities for its fleet.[18]

Paralleling these developments was an increase in fishing infractions in the NAFO Regulatory Area, which rose to 26 in 2001, although they remained below the pre-1995 average. Problems of reconciling fishing overcapacity with limited quotas in the NRA, and of harmonizing inspectors' findings with differing state legal requirements created opportunities and incentives for some vessel operators to circumvent NAFO's control arrangements. Violations included directed fishing for cod, American plaice, and other stocks under moratoria, exceeding quotas for groundfish and shrimp, misreporting catches, and use of small mesh nets. Most infractions were committed by Spanish and Portuguese vessels involved in the groundfish fishery. Russia, which mainly fished for groundfish, and Estonia, and the Faroe Islands, which were engaged in the shrimp fishery, had fewer infringements. Russia was the only country, apart from Canada, that consistently penalized offending boats.[19]

Clash of Views

Canada came to a special meeting of the NAFO Fisheries Commission in Helsingor, Denmark, January 29–February 1, 2002, seeking stronger conservation and enforcement measures. It proposed that NAFO agree to limit the depth of the turbot fishery to 700 feet and increase the mesh size of nets in the 3LNO thorny skate fishery to reduce the bycatch of cod, American plaice, and other stocks under moratoria.[20] It also proposed to close the Southeast Shoal of the Grand Banks (NAFO Division 3NO) to fishing in order to protect certain flatfish stocks. Seeking to buy time to deal with its overcapacity problem, the EU proposed that the total 2+3KLMNO turbot TAC for 2002 be increased to 44,000t, with the Union's quota rising to 18,046t. NAFO scientists had recommended that the catch level should not exceed the current year's total of 40,000t. However, EU officials believed that because Canada fished only part of its allocation there was room for the TAC to grow.[21]

The depth restriction and TAC proposals for the turbot fishery dominated discussion. The former had been considered at the 2001 meeting, and despite additional information provided by the NAFO Scientific Council at the EU's request, the Union had claimed it needed more time and scientific advice before it could agree. The advice at the 2002 meeting was clear. Depth restrictions would protect vulnerable stocks, and the NAFO Standing Committee on International Control's (STACTIC) Control and Enforcement Working Group provided information showing that implementation would not be overly complex. The EU questioned how such a measure could be enforced. As the meeting drew to a close, there was no agreement on the turbot TAC and depth restriction issues.[22]

Under pressure from fishing industry representatives, the Canadian delegation broke with the practice of reaching decisions by consensus and called for the proposals to be put to a vote. Canada had never lost a conservation vote on a straddling stock issue in NAFO, which normally implemented the NAFO Convention provision requiring the Contracting Parties to adopt measures consistent with Canada's. With the EU and other Contracting Parties clearly challenging this Convention obligation, the Canadians decided that they were not prepared to compromise on key

issues where the scientific advice was clear, and were willing to lose a vote to expose the unsustainable practices of the EU.

The depth restriction proposal was defeated by a vote of six to three. The Union, France (on behalf of St. Pierre and Miquelon), and soon-to-be EU members Estonia, Latvia, Lithuania, and Poland, voted against, while Canada, Japan, and the United States voted in favour. Cuba, Denmark (for Greenland and the Faroe Islands), Iceland, Norway, Russia, and the Ukraine abstained. The EU's proposal to raise the turbot quota was approved by a vote of eight to six. The EU, Japan, Russia, the Ukraine, Estonia, Latvia, Lithuania, and Poland supported the measure. Canada, Cuba, Denmark (for Greenland and the Faroe Islands), Iceland, Norway, and the United States were opposed. France (for St. Pierre and Miquelon) abstained. Capitalizing on the circumstances, Estonia proposed an increase in the fishing effort for 3M shrimp. The proposal carried by a margin of nine to six. The EU, Denmark (for Greenland and the Faroe Islands), Estonia, Japan, Latvia, Lithuania, Poland, Russia, and the Ukraine were in favour. Canada, Cuba, France (for St. Pierre and Miquelon), Iceland, Norway, and the United States were against.[23]

Although the Contracting Parties agreed to increase the mesh size of nets in the thorny skate fishery, to introduce daily reporting requirements in the shrimp fishery in order to control misreporting of catches, to maintain existing management measures for other stocks, and to set up an annual review process to assess members' compliance with NAFO conservation measures, Canada's fisheries minister, Robert Thibault, was "deeply disappointed." There were "still too many parties at this table who find it easier to talk about conservation than practice it," added a Canadian official.[24] Newfoundland government and fishing industry officials were also angered by NAFO's decisions. They showed "a weakened resolve to address conservation objectives in the NAFO regulatory area," said Gerry Reid, the province's fisheries minister. "Canada must act decisively to ensure the protection of these resources."[25]

The Helsingor meeting was a turning point for NAFO and Canada. It marked the beginning of the end of Canada's coastal state dominance of the organization, the decline of Canada's influence in protecting the fish stocks of the Northwest Atlantic, and the start of the EU's ascendance into the leadership position that Canada had filled for some 25 years. The effectiveness of the NAFO Convention's consistency principle, which

requires that NAFO fisheries management measures for straddling stocks be consistent with Canada's, and the overarching principle of privileging conservation interests over all others, were called into question. NAFO was on the way to becoming an organization focused on the interests of distant water fishing states with different priorities.

Internal Pressures Mount

Although the implications of what had occurred at Helsingor had yet to sink in, they were considerable. At the instigation of Newfoundland MP Loyola Hearn, who was also the opposition fisheries critic, the House of Commons Standing Committee on Fisheries and Oceans began a study of the implications of extending Canada's jurisdiction over the Nose and Tail of the Grand Banks and the Flemish Cap. The committee heard calls for Ottawa to take control of the continental shelf, to close Canadian ports to foreign vessels violating fishing rules, and to give Newfoundland a greater role in the management of the fisheries. Fisheries association and industry officials agreed with Gerry Reid that if NAFO failed to reform itself Canada should withdraw and assume custodial management of fish stocks on the Grand Banks.[26]

The committee's deliberations took on added impetus when Canada closed its ports to vessels from the Faroe Islands and Estonia for exceeding their shrimp quotas. The closures forced the ships to return home to unload their catches, thereby reducing their profit margins. Canadian inspectors also cited a Russian factory freezer trawler for illegally fishing cod in the NAFO Regulatory Area. Russia cancelled its vessel's fishing licence in the NRA for the remainder of 2002.[27]

The committee released its report in June 2002. It urged the government to "take decisive action to deal with foreign overfishing" by withdrawing from NAFO and establishing a "custodial management regime" that would see Ottawa "assume sole responsibility for the management and conservation of the areas of our continental shelf beyond the 200-mile limit: the Nose and Tail of the Grand Banks and the Flemish Cap," by September 2003. The goal was to create "a resource management regime that would provide comparable standards of conservation and enforcement for

all transboundary stocks, inside and outside the 200-mile limit." Under the scheme "Canada would conduct the science, set the TACs, and implement and administer a conservation-based management system that would include monitoring and enforcement." Other countries would continue to fish in the offshore zone, their quotas being determined by "historic allocation and access." [28]

Gerry Reid welcomed the report's recommendation, which "supported the position of the province," adding that his department was developing its own model of custodial management.[29] However, federal fisheries minister Thibault rejected the recommendation, which amounted to unilaterally extending Canadian sovereignty over international waters. "Custodial management or unilateral expansion of the 200-mile limit are one and the same," he said. "It's not in accordance [with] international law. It would never be agreed [to] by other countries." [30]

Thibault, who had earlier pressed Canada's conservation concerns with visiting members of the European Parliament and at the annual meeting of North Atlantic Fisheries Ministers, took his message to Madrid, Lisbon, Brussels, and Copenhagen. He came away encouraged that the Europeans would "increase efforts to take action against those who violate NAFO conservation measures." European fish importers also endorsed Canadian concerns about the impact of high EU tariffs on Canadian shrimp products.[31]

Meanwhile, the EU continued its efforts to overhaul the Common Fisheries Policy. In May 2002, the European Commission launched its reform proposals. These included the adoption of multi-year TACs and quotas, an end to subsidies for fleet expansion, assistance for affected fishing communities, a revised inspection structure combining EU and national resources and full adoption of satellite vessel monitoring systems, a new approach to third country agreements that would end the use of flag-of-convenience vessels and uncontrolled landings in ports, and improved fishing controls outside EU waters. EU fisheries commissioner Fischler warned, "Either we make bold reforms now, or we watch the demise of our fisheries sector. The desperate race for fish has to stop."[32]

Member states were sharply divided over the proposals. Eight countries – the UK, the Netherlands, Belgium, Luxembourg, Austria, Finland, Germany, and Sweden – supported the Commission's tough conservationist approach. Six states – Spain, Portugal, France, Greece, Ireland, and

Italy, dubbed the "Friends of Fisheries" – emphasized the socio-economic importance of the sector and were opposed. They favoured an "ambitious and proactive policy" that would "preserve the capacities of our fleets to be able to fish in both international waters and in the EEAs (Exclusive Economic Areas) of third countries."[33]

Using the same arguments they had employed in NAFO in the past, Spain and Portugal were critical of the Commission's proposed reforms. Spain's fisheries minister complained that the assessments "do not reflect the reality of stocks compared with reports we get from boat owners and fishermen." His Portuguese counterpart warned that they would "mean the death foretold for the fishing industry in Portugal."[34] But the Commission had an important ally in Denmark, which assumed the presidency of the Council in July and imposed a December 2002 deadline for adopting the changes.[35] Even so, the EU was under pressure to maintain fishing opportunities for member states' distant water vessels.

The Canadian government had to contend with its own pressures. In August 2002, Danny Williams, head of Newfoundland's opposition Progressive Conservatives, held a joint press conference with Alastair O'Rielly, president of the Fisheries Association of Newfoundland and Labrador (FANL), and Earle McCurdy, head of the Fish, Food and Allied Workers Union (FFAW), to urge Thibault, the federal fisheries minister, to reconsider his rejection of the parliamentary Standing Committee on Fisheries and Oceans' recommendation on custodial management. Accusing Thibault of weakening Canada's bargaining position going into NAFO's annual meeting in September, Williams declared, "We must send a clear message to Ottawa that enough is enough. We must build a coalition of interests both inside and outside of the province in support of our cause."[36]

Loyola Hearn, the driving force behind the committee's report, agreed. "Instead of going with a bargaining chip and saying our government is behind us, the Minister has tied the country's hands."[37] With support from politicians from all parties, the "Coalition for Custodial Management" assembled an 18,000-signature petition for presentation to the federal government. But Thibault would not act on custodial management without international support.[38]

At NAFO's annual meeting in September 2002, Canada presented a detailed report on fishing compliance in the regulatory area. Based on data reported to NAFO by Contracting Parties from their observers and

other sources from 1999 to 2002, it identified an increasing trend in violations, singling out vessels from Spain and Portugal for fishing for northern cod and other stocks under moratoria. Also named, but with significantly fewer violations, were Russia, Estonia, the Faroe Islands, Lithuania, and Latvia. The EU delegation countered with a report of its own. Using data from 2001–2002, it claimed that most observer reports could not be substantiated by home port inspections. It judged the level of compliance to be satisfactory, unlike the situation that existed before 1995.

There was a crucial flaw in the EU's inspection regime. Instead of ordering vessels into port immediately after a serious violation had been alleged, with an inspector on board with the power to inspect, issue citations, and safeguard the evidence, vessels were allowed to return on their own with plenty of time to ensure that no evidence of an infringement could be found. Further, when observers, who are only authorized to report possible violations, identified infringements, the EU refused to use their reports or to summon the observers to give evidence of an offence. The stated or written evidence of the observers was often the only possible basis for subsequent action. Without this evidence, follow-up measures were minimal. With Canada's agreement, the Contracting Parties accepted the EU's proposal for an annual compliance assessment beginning in 2003 to monitor infractions and follow-up action. They also agreed to establish a working group to assess the integrated use of satellite technology and observer reports to provide up-to-date information on catches and location of fishing vessels in an effort to enhance compliance.

The Contracting Parties followed the Scientific Council's recommendations on all decisions on TACs except 2+3KLMNO turbot, which remained contentious. Because of uncertainty about the size of the fishable stock, the Council recommended that the catch for 2003 be no more than the average of the catches in 2000 and 2001, or 36,000t. Pressed by Spain and Portugal, the EU delegation argued that the advice "lacked clarity" and "did not have the scientific rigor of previous reports." The EU was supported by Latvia, Estonia, Japan, and Russia, which were willing to consider reducing the TAC but not to the level recommended by the scientists. The Canadian delegation acknowledged the importance of the stock to other parties but took issue with the EU's interpretation of the scientists' advice and called for approval of the recommendation. In the end, the parties settled on a TAC of 42,000t.[39]

New Internal Pressures

Robert Thibault expressed disappointment at the turbot decision while noting that the catch would not likely exceed 36,000t. Overall, "we got most of what we wanted," he said.[40] The turbot TAC became a *cause célèbre* in Canada. For Newfoundland's fisheries minister, Gerry Reid, the decision confirmed that "custodial management is the only viable option for Canada to pursue." FANL president Alastair O'Rielly agreed that "marginal gains" made by Canada could not compensate for NAFO's flawed negotiating process. "Custodial management is an option that must be further pursued by the Canadian government." The FFAW's Earle McCurdy called on Ottawa to put the idea "on the front burner of the national political agenda, where it rightly belongs."[41]

Thibault announced the details of "a new approach" that would see Ottawa close Canadian ports to countries and individual vessels that committed "serious violations" of NAFO rules. These included misreporting catches, fishing after a closure, fishing for species under moratoria, exceeding allocations, illegal fishing gear, failing to maintain observer coverage, and interfering with NAFO inspectors, observers or evidence.[42] However, the St. John's *Telegram* dismissed the move as "just another baby step" that "may not even remove the guilty vessels."[43] Alastair O'Rielly noted that while the policy would have some effect on countries such as Russia, Lithuania, and Latvia, whose vessels use Canadian ports, it would have no impact on Spain and Portugal, whose vessels do not: "Therefore, it doesn't constitute much of a deterrent."[44]

Having received a lukewarm reception for his case for custodial management at a meeting of the Canadian Council of Fisheries and Agriculture Ministers, Reid attempted to enlist the support of non-governmental organizations, including the World Wildlife Fund (WWF), which had been pressing the EU to reform the Common Fisheries Policy. While the WWF agreed to work with the minister to examine alternative management approaches, it did not commit itself to his government's plan.[45]

In November 2002, the Department of Fisheries and Oceans responded to the report of the House of Commons Standing Committee on Fisheries and Oceans. It acknowledged that the document reflected the

"deep and long-standing frustration" of the Newfoundland government, industry, and public regarding foreign overfishing, and endorsed the idea of a public awareness campaign to increase knowledge of the problem. However, it rejected the committee's key recommendation on custodial management. "Other nations would strongly oppose any arbitrary extension of Canadian jurisdiction," said Thibault. "Canada's interests are best served when it is an international partner, rather than becoming an international pariah." The government would convene a roundtable forum consisting of international law specialists and stakeholders from Atlantic Canada to consider ways to improve the management of straddling stocks.[46]

The debate continued into 2003 amid new warnings about the state of groundfish stocks. In February, the government-sponsored Round-Table Forum on Improving the Management of Straddling Fish Stocks discussed how Canada could bring pressure to bear, including targeted bilateral diplomacy, reform of NAFO, and taking a lead role in international fisheries management developments.[47] An all-party committee of provincial and federal politicians, established by the Newfoundland House of Assembly to consider the plight of the cod stocks, called for the creation of "a Canadian-based fisheries management regime to protect straddling fish stocks" that would include custodial management and observers from Canada on all vessels in the offshore zone.[48] The House of Commons Standing Committee on Fisheries and Oceans also weighed in, repeating its call for Canada to adopt a custodial management regime in the offshore zone.[49]

In April 2003, Thibault announced that many of the remaining cod stocks in the Canadian zone would be closed to commercial and recreational fishing. An aid package would be provided for displaced fishers and plant workers.[50] The announcement was greeted with dismay in Newfoundland. Premier Roger Grimes, behind in public opinion polls and heading into an election, assailed the federal government for its alleged mismanagement of the fisheries. He demanded that the terms of Newfoundland's union with Canada be renegotiated to give the province a bigger share of the management of the resource, which Prime Minister Jean Chrétien rejected. Grimes attempted to win the support of fellow premiers by incorporating his proposal into a larger package of constitutional changes. But the premiers showed little interest.[51] In the end, Ottawa and St.

John's agreed to establish a Canada–Newfoundland and Labrador Action Team on Cod Recovery to develop a rebuilding plan.

By this time, the EU had completed its overhaul of the Common Fisheries Policy. The agreement, which was adopted by the Fisheries Council in December 2002, included multi-year TACs for certain stocks, although the Council retained the authority to set catch levels should scientific advice demonstrate the need for review. It also included a 45 percent reduction in the cod TAC in most EU waters, compulsory Vessel Satellite Monitoring, and the gradual elimination of most subsidies for the modernization and construction of fishing vessels. Although wary of increasing the European Commission's powers, the Fisheries Council authorized the Commission to develop plans to strengthen fisheries inspections and harmonized penalties for infractions. The overall package was less than the Commission recommended, but fisheries commissioner Fischler declared that it marked "a significant turning point…. which truly deserves to be called a reform."[52]

The need to improve conservation in the NAFO Regulatory Area was one of the main topics discussed by Thibault and Fischler in Montreal in July 2003, prior to the organization's annual meeting in September. The Canadian government reopened ports to vessels from Estonia and the Faroe Islands after they agreed to respect their quotas and a few infringing vessels were withdrawn. But, underlining its conservation message, Ottawa banned a Greenland ship which had been overfishing shrimp from using Canadian port facilities. Canadian NAFO inspectors also cited two Portuguese trawlers, the *Santa Mafalda* and the *Joana Princesa*, which had a history of fishing violations for catching species under moratoria on the Tail of the Grand Banks.[53]

Improved Cooperation in NAFO

Changes to the Common Fisheries Policy, which set the EU on a reform course, laid the groundwork for more cooperative deliberations at NAFO's annual meeting, although Canada and the EU continued to disagree over compliance issues. In the absence of the anticipated NAFO compliance review, the two sides presented their own reports. The Canadian report

reiterated concern about what Ottawa saw as a continuing increase in fishing infractions by European vessels and called for more effective follow-up action. The EU argued that Canada's report was too dependent on allegedly unreliable observer reports. It contended that compliance reviews must take account of sea and port inspections together with data provided by satellite-based vessel monitoring systems. The Union judged the level of compliance in the NAFO zone to be satisfactory.

Canada's compliance data was based on observer reports supplied to NAFO and Canadian inspections at sea, together with air surveillance and satellite vessel tracking reports. Although Ottawa had significantly more enforcement capabilities than the EU in the NAFO Regulatory Area, as well as the EU's observer reports, it did not have the Union's at-sea or port inspection reports and, therefore, could not conduct as comprehensive review as the EU, which had all the Canadian data as well as its own. However, while the Union's database was more complete, the EU acknowledged that it ignored the observer reports. Moreover, port inspection reports did not necessarily reflect at-sea conditions because the inspections took place several weeks or, in some cases, even months after the event and no EU official had remained on board the vessels to ensure the continuity of the evidence.

Following the working group's study, the Contracting Parties agreed to launch a pilot project on compliance to assess the use of existing approaches and emerging technologies linking real-time data on vessel location and daily catches, provided by ship captains and observers, with information from satellite monitoring systems. Observer and satellite data from Faroese and Icelandic vessels would also be compared to determine whether the new technologies would be as effective while being less costly than observers. (The Faroe Islands and Iceland had long raised concerns that the observer program was too expensive. Their concerns were understandable in that they had few vessels fishing in the NAFO Regulatory Area and the program and administration costs put a substantial burden on their governments and ships.) This element of the new pilot project did not sit well with Canadian opponents who viewed the observer program as a necessary part of the surveillance and enforcement regime. However, when the pilot project was adopted, all parties acknowledged that the overall priority was to improve surveillance and to provide disincentives

to cheating by vessels that, in the past, had appeared unconcerned about being caught violating NAFO rules.

NAFO set catch levels for 2004 in accordance with the Scientific Council's advice. The big breakthrough came on turbot. Faced with an unambiguous warning about the state of the stock from the Scientific Council, members agreed to a 15-year rebuilding program that would see the 2+3KLMNO TAC sharply reduced from 42,000t in 2002 to 20,000t in 2003, and to 16,000t in 2007. Consistent with its new fisheries management approach, the EU insisted on the plan.[54]

This was a bold step for the Union, whose vessels would absorb the bulk of the reductions. The conservationist-minded European Commission joined forces with the Spanish government, which was intent on modernizing the country's economy, and Spain's vessel owners, who wanted to improve their unfavourable international reputation, to pressure a reluctant Portugal to go along with the agreement.[55] To fisheries commissioner Fischler, the turbot decision showed "that NAFO can take decisive action to conserve stocks," although it only showed that it was possible for the EU to allow NAFO to do so. Fischler also admitted that effective enforcement was critical to the plan's success.[56]

Fishing Violations

Foreign fishing remained a volatile issue in Canada in the lead-up to an anticipated general election. In March 2004, Prime Minister Paul Martin's government, which had recently come to power, introduced a new strategy to strengthen Canadian monitoring and enforcement. The five-year, $17.5-million plan, announced by fisheries minister Geoff Regan, would increase Canada's air and sea patrols beyond the 200-mile limit and entail close cooperation between the Departments of Fisheries and Oceans and National Defence in sharing data to guide aircraft and ship deployments and on-board inspections. Fisheries officials would compile a blacklist of "rogue vessels" that would be denied access to Canadian ports. The government would also step up its diplomatic activity, focusing on issues of non-compliance and follow-up enforcement by governments, and improved long-term international fisheries governance.[57] The announcement

was too little for opposition critic Loyola Hearn, who won approval for a private member's motion in parliament that called on the government immediately to establish custodial management over the Nose and Tail of the Grand Banks and the Flemish Cap.[58]

Determined to show that it was serious about curbing foreign overfishing, Martin's government took a further step in May 2004 by committing an additional $15 million in 2004 to expand Canada's offshore patrol contingent from one to three ships. This would allow for more boardings of foreign trawlers to monitor compliance. The government also broadened the Coastal Fisheries Protection Regulations to apply UN Fish Agreement procedures to vessels operating in the NAFO Regulatory Area.[59] These regulations gave operational authority to legislation passed in 2001 to implement the UNFA, authorizing Canadian fisheries inspectors to detain a vessel alleged to have committed a serious infringement. However, that provision of the Coastal Fisheries Protection Regulations has never been implemented.[60]

As part of the enhanced enforcement effort, Canadian inspectors boarded several trawlers in the NAFO Regulatory Area, citing a Portuguese vessel, the *Avirense*, for illegally fishing for cod and American plaice. A second Portuguese trawler, the *Brites*, cut its net to avoid detection. Fisheries minister Regan asked Portugal to order the *Avirense* to a port in Canada for inspection, but it refused. The Portuguese ambassador claimed that EU inspectors, who were part of the boarding team, "could not verify" their Canadian counterparts' findings: "So it wasn't a violation according to European officials."[61] The European Commission ordered the *Brites* to return to Portugal after Canadian officials recovered the vessel's net containing illegal catches of cod, American plaice, and redfish. The Commission claimed the action was "a clear demonstration" of the Union's commitment to conservation and control of its fleet's fishing activities.[62] But, in a decision reportedly made at the highest level, the Portuguese government refused to agree to Canada's request, which had the support of the Commission, that a Canadian inspector be present when the *Brites* was examined in its home port. European inspectors rejected Canada's evidence and no charges were laid.[63]

It was not surprising that EU inspectors found no evidence of illegal fishing, as the EU had failed to inspect the contents of the *Brites*' severed net when it was in the Canadian port. Moreover, because the net had been

found by Canada and was therefore outside the EU's chain of evidence, the proof was not regarded as reliable. This approach to enforcement demonstrated the EU's limitations. It could only ensure member states inspected their vessels in accordance with their national standards of evidence. Since joining the EU, Spain and Portugal often appeared to do what they could to minimize any possibility that port inspectors would find any real evidence. There were other examples of EU port inspections failing to find proof of alleged infractions. In addition to evidence tampering on board vessels as they returned to port, there were situations in which vessels diverted to other ports to offload part of their catch before returning to their home ports. There was even one case in which a vessel was closely monitored by EU and Canadian inspectors as it unloaded its catch in port, but when the inspectors returned to the warehouse the following morning the catch was gone. Hence, the EU found no evidence of an offence and did not pursue the owner of the vessel for tampering with the evidence.

However, more Canadian inspections did lead to a substantial decline in the number of foreign vessels operating in the NAFO Regulatory Area. Diplomatic initiatives begun by Prime Minister Martin's government, which was returned to power in the general election in June 2004, also produced positive results. Martin raised the overfishing issue at the G-8 summit and in follow-up discussions with European leaders. Ottawa secured the European Commission's support for a technical consultation between NAFO inspectors aimed at achieving a common understanding of their respective inspection practices. In a sign of their closer cooperation, Spain invited Canada to participate in the inspection of a Spanish trawler that had been cited for fishing violations in the NAFO Regulatory Area. Ottawa also headed off a threat from Denmark (on behalf of the Faroe islands) unilaterally to increase shrimp allocations assigned to the Faroes, by agreeing to support the Faroese demand for a larger share of the TAC at NAFO's next annual meeting, in September 2004.[64]

At the meeting, the NAFO Secretariat presented its first compliance report, which documented reduced but recurrent citations for directed fishing for moratoria species, misreporting of catches, mesh size violations, satellite monitoring infractions, and failure to carry independent observers. Canada and the EU remained at odds over compliance issues. The Canadian delegation argued that although Ottawa's increased inspections served as a deterrent, more effective follow-up by governments

was necessary to achieve permanent change. The EU delegation contended that its vessels were being unfairly targeted by Canadian inspectors and that most of their citations were not supported by their European counterparts. The meeting agreed to improve NAFO inspection arrangements by initiating obligatory product and storage labelling for all fishing vessels, and strengthening the role of inspectors. It also approved the Canada-EU proposal for a workshop for NAFO inspectors to exchange information on how they carried out inspections in the regulatory area. The meeting would take place in Brussels in January 2005.

The Contracting Parties restated their commitment to the precautionary approach for the management of NAFO fish stocks and brought three new stocks – redfish in NAFO waters in sub-area 2 and Division 1F+3K, white hake in NAFO Division 3NO, and thorny skate in NAFO Division 3LNO – under the organization's management.[65] Existing management plans for other fish stocks, including the rebuilding program for turbot, would remain in effect. Despite support from Canada, Denmark failed to obtain a larger shrimp quota for its Faroe Islands dependency, raising the possibility of renewed trouble in the offshore zone.[66]

Geoff Regan, the federal fisheries minister, was "encouraged" by the progress made but noted that Ottawa would keep up its "diplomatic efforts and strong enforcement measures, such as boardings, to ensure compliance in international fisheries practices in the NRA." However, his Newfoundland counterpart, Trevor Taylor, pointing to ongoing fishing violations in the offshore zone, called NAFO "ineffective," and said St. John's would "continue to press the federal government to pursue custodial management." The federal opposition critic, Loyola Hearn, agreed with Taylor that nothing had been achieved. The Canadian delegation "should have been sent to NAFO to make sure a mechanism was put in place to deal with fishing abuses," he charged. "Instead we came out of the meetings the same way we have done for twenty years, empty-handed."[67]

Pressures for Reform

The Martin government continued to keep the overfishing issue in the public eye. The prime minister, in his address to the UN General Assembly in September 2004, emphasized Canada's interest in stronger international fisheries governance, calling for a "global oceans policy" to facilitate the recovery of depleted stocks.[68] Regan held discussions with Portugal's fisheries minister in Lisbon. They launched an initiative to improve mutual understanding of how the Canadian and Portuguese judicial systems deal with fishing violations, which would culminate in a workshop involving legal advisors and officials from both countries in St. John's in February 2005.[69] Regan also took part in a UN General Assembly debate on overfishing, at which time he announced that Canada would host a conference on "Governance of High Seas Fisheries and the United Nations Fish Agreement – Moving from Words to Action" to further international fisheries regulation.[70] At home, he appointed an Advisory Panel on the Sustainable Management of Straddling Fish Stocks in the Northwest Atlantic. The panel, chaired by Arthur May, a former Deputy Minister of Fisheries and Oceans and the first chair of NAFO, was to provide advice on how to reduce overfishing in the NRA and strengthen the role of coastal states in protecting straddling stocks.[71]

The creation of the panel came at a time when Canada was embroiled in a new controversy over shrimp fishing by vessels from the Faroe Islands in the NRA. Dissatisfied with NAFO's refusal to increase its quota in September, Denmark lodged an objection on behalf of the Faroe Islands, prompting Ottawa to close Canadian ports to the Faroese and Greenland fleets.[72] The Newfoundland government supported Ottawa's action but stressed the need for a permanent solution. "The only thing [rogue vessels] understand," said Premier Danny Williams, "is a physical presence out on the water and being successfully prosecuted for their crimes when they return home."[73]

In its next budget, Martin's government would make permanent the $15 million allocated in May 2004 to expand offshore surveillance. St. John's welcomed the move but repeated its view that only custodial management would offer a lasting solution. Ottawa also adopted an action plan based upon the UN Food and Agriculture Organization's

International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IUU), which including a blacklist of offending vessels.[74]

The Canadian government's planned conference on high seas fisheries governance took place in St. John's, May 1–5, 2005. In his address, Premier Williams argued that custodial management was "the only viable and legitimate option for the fisheries off our coast."[75] Prime Minister Martin agreed that tougher sanctions for overfishing were necessary, but he stopped short of endorsing custodial management, calling instead for increased cooperation within existing agreements.[76]

Trevor Taylor set out his government's plan to protect depleted stocks on the Nose and Tail of the Grand Banks. Under the scheme, NAFO would continue to manage the discrete fish stocks on the Flemish Cap and assign TACs and quotas for them, and make scientific recommendations for the straddling stocks. Canada would manage the straddling stocks, ensuring that conservation standards were consistently applied inside and outside 200 miles, while respecting other states' traditional shares. Canada would also be in charge of surveillance and enforcement. Taylor assured delegates that custodial management was neither "an extension of jurisdiction" nor "a grab for resources or territory." It was "a resource stewardship concept that would seek international support. It would respect historical shares, promote conservation, and enhance the role of the coastal state. It would strengthen compliance with consistent management measures, and provide more effective deterrence for fisheries violations outside the 200-mile limit." The scheme could be used by other coastal states. If it could not be executed within NAFO the province would encourage Ottawa "to pursue this option through other means."[77] Although delegates gave Taylor's speech a polite reception, there was no groundswell of support.[78]

Ministers from the 19 countries attending the conference, including seven NAFO parties (Canada, the EU, the United States, Japan, Iceland, Norway, and the Faroe Islands), issued a declaration setting out goals for reforming global fisheries governance. The declaration urged states to approve international fisheries accords, including the UNFA, reaffirmed the centrality of regional management organizations in implementing agreed obligations, and called for the strengthening of those bodies especially in the areas of decision making, monitoring and enforcement, and sustainable management of stocks.[79] Taylor endorsed the statement but was

disappointed that the declaration "could not be translated into a concrete action plan because some countries did not share the urgency to end the environmental threat of overfishing." He claimed that while the EU opposed custodial management, countries such as Argentina, Australia, Chile, and South Africa were sympathetic.[80]

That same month, Canadian fisheries officers seized the *Santa Mafalda* after it entered Canada's 200-mile zone. The arrest stemmed from charges laid against the Portuguese vessel in 2003 for unlawfully entering and fishing in Canadian waters. Geoff Regan described the action as a vindication of Canada's strict approach to overfishing, pointing out that there were 20 percent fewer foreign vessels operating on the Nose and Tail of the Grand Banks, and that infractions were also down. But critics of Ottawa's policy remained skeptical. Gus Etchegary, a retired fisheries executive, dismissed the arrest as "a PR stunt by DFO to convince the Canadian public that everything is under control when, in fact, nothing could be further from the truth."[81] Trevor Taylor noted that despite the *Santa Mafalda's* long record of violations in the NAFO Regulatory Area, "little was done until Canada took action within 200 miles." This, he said, was "a clear example" of the inability of NAFO "to deal with overfishing outside 200 miles and illustrates why Canada should become the custodial manager of depleted fish stocks on the Nose and Tail of the Grand Banks."[82]

NAFO came under attack from another quarter the following month when the Advisory Panel on the Sustainable Management of Straddling Stocks in the Northwest Atlantic submitted its report to fisheries minister Regan. The report argued that the changes required to make NAFO effective were so extensive and the benefits to most Contracting Parties so few that reform was impractical. Custodial management, moreover, would not be "legally possible or achievable." It recommended that NAFO be replaced "with a new Regional Fisheries Management Organization (RFMO) that incorporates the modern approaches to, and principles of, sustainable ecosystem management contained in UNFA and the array of other international agreements, codes and declarations that have emerged in recent years. The new arrangement," said the report, "should explicitly recognize the special interest of the coastal states in the sustainable management of stocks, while protecting existing shares of rebuilt stocks for current members of NAFO. The absence of an objection procedure combined with compulsory dispute resolution and enhanced enforcement

powers will also help to make this new RFMO the model for managing the world's straddling stocks and shared fishery resources in a sustainable manner."[83] Regan agreed with the panel's assessment of NAFO's weaknesses, but asserted "that reform of the organization would achieve much of the same objectives." He claimed that Canada was "already on the path of NAFO reform, and we are making progress," pointing out that "several NAFO members support Canada's objective to conduct a major overhaul of the organization."[84]

Talks on NAFO reform took place in May 2005 at the annual North Atlantic Fisheries Ministers Conference, attended by representatives from Canada, the EU, Iceland, the Faroe Islands, Norway, and Russia. Based on the discussions, Canada and Norway began preparing working papers for consideration at NAFO's annual meeting in September. Public impetus was given to these efforts by reports released by Greenpeace and the World Wildlife Fund. The Greenpeace report accused NAFO of having "failed to sustainably manage some of the richest fishing grounds on earth," singling out deep sea bottom trawling as one of the most destructive fishing methods. It called on Ottawa "to demand an immediate moratorium" on the practice "so that the biodiversity of the high seas can be protected."[85]

The WWF report urged NAFO to take immediate steps to bring "illegal fishing disguised as accidental catch of fish banned from commercial use" under control. A NAFO rule allowing vessels to keep a small percentage of non-targeted fish stocks caught incidentally had "led to massive abuse as many vessels are purposefully operating in areas where fishing of species such as cod is banned but their incidental catch is very likely to happen." The report claimed that for some vessels "bycatch can make up as much as 80 percent of the landed catch, leading to huge profit increases." According to the WWF, Canadian vessels were responsible for about 15 per cent of the bycatch taken in 2003, with ships from Portugal, Spain, and Russia accounting for most of the remainder.[86] The pressures to reform NAFO were growing. Whether they would lead to measures to make the organization more effective and whose interests they would serve remained to be seen.

5

REFORMING NAFO

It appeared that years of Canadian frustration about the ability of NAFO to fulfill its obligations were coming to an end. At the organization's annual meeting in September 2005, the Contracting Parties agreed to begin the task of reforming the organization. Canada and Norway presented discussion papers. Canada's paper explained the need for revamping NAFO; Norway's paper suggested possible reforms based on recent developments in international fisheries governance and revisions of other regional fisheries management organizations. The meeting approved an EU-Canada proposal to establish an *ad hoc* Working Group on NAFO Reform, with the EU as chair and Canada vice-chair, which had a broad mandate to recommend changes to the decision-making process, organizational structure, and any other matters it deemed appropriate. The Fisheries Commission's Standing Committee on International Control (STACTIC) was charged with recommending measures to strengthen the monitoring, surveillance, and enforcement regime, including sanctions, the role of observers, and follow-up action regarding fishing violations. TACs and quotas for 2006 were set in accordance with the Scientific Council's advice.[1] Canadian and EU officials hailed the results, but a WWF spokesperson offered a more somber assessment. "They had to commit to this," said the representative.

NAFO "has to be fixed next year or I think everyone will agree it's time to look at other options."[2] However, it was ironic that the EU, which had long resisted strict conservation measures and effective enforcement in order to maximize catches, would take the lead in developing a new framework for promoting conservation in the Northwest Atlantic.

The following month, efforts to improve fisheries relations between Canada and Portugal culminated in the signing of a memorandum of understanding in which the two countries committed themselves to technical, scientific, economic, and enforcement collaboration, and government and stakeholder exchanges. A Committee for Bilateral Cooperation on Fisheries would meet annually to manage the agreement and review their fisheries relations.[3] Fisheries minister Geoff Regan noted that Portugal had recently reduced its fishing effort in the NAFO Regulatory Area and that its vessels were no longer targeting stocks under moratoria, calling these "very important improvements that we appreciate." Portugal's fisheries minister claimed the accord would "dispel the image that we are normally the culprit" and "ensure to Canada that our … inspectors are doing the job as accurate [*sic*] and rigorous [*sic*] as Canadian inspectors." The minister defended his government's enforcement record, saying that his country's laws "are very strict" and that Lisbon "does all [it can]" to apply them.[4] But while Portugal's laws were strict, the political power of the fishing industry ensured that enforcement was weak.

The agreement had little impact on the Canadian debate over foreign overfishing. The issue surfaced during the general election campaign that got underway in December 2005. Opposition leader Stephen Harper pledged that a Conservative government would implement custodial management within five years if the attempt to reform NAFO failed. Prime Minister Paul Martin promised to follow international rules but agreed that unilateral action might be necessary if renewal proved unsuccessful.[5]

Loyola Hearn continued to speak out after taking over the fisheries portfolio in Harper's government in February 2006. He asserted that NAFO was beyond repair and that Canada had to assume responsibility for enforcement outside the 200-mile limit. Charging that Spain and Portugal "constantly break the rules," he said, "Hopefully, it doesn't come down to High Noon, but somewhere along the line it might have to. There is no future in going the way we are going."[6]

But before long Hearn was sounding and acting much like his predecessors. Changing the definition as it was commonly understood, he likened custodial management to ongoing efforts to halt overfishing and reform NAFO, claiming that "to a large degree" Canada already controlled the Nose and Tail of the Grand Banks and the Flemish Cap (NAFO Divisions 3L, 3NO, 3M). (See Appendix I.) He also acknowledged the importance of foreign support for conservation, saying, "Every time you open your mouth, the international partners are looking, and all you have to do is say something that's insensitive and the cooperation is gone and the fear factor is back. So, you have to be very careful; we're not in this game alone." He added that if diplomacy failed Canada was prepared to act.[7]

It was clear that Harper's government had concluded that custodial management was not a viable option and had committed itself to NAFO reform to escape from the political corner it had backed itself into. Reform, in the form of a wholesale revision of the organization's Convention that the government could claim as the solution to NAFO's ills, would solve its political problem. However, Hearn and his officials did not seem to realize that they had already made a serious negotiating blunder. Canada was in the position of *demandeur*, committed to a course of action that required as the end result a revised NAFO Convention, which the government could claim as a victory. The EU, Canada's partner in the enterprise, was neither committed to nor even had any real interest in revising a Convention that already gave it most of what it wanted. As chair of the working group, it was in a position to ensure that any revisions to the 1979 Convention would privilege its interests over Canada's, especially when it came to changes to provisions favouring the coastal state that Canada had been able to include when it was the dominant player after the 200-mile extension in 1977. Harper's government had unwittingly created a trap for itself. Now it was about to walk into it.

Improving Control and Enforcement

In July 2006, Canada and the EU took another step to improve control and enforcement in the NAFO Regulatory Area (NRA) by launching joint at-sea inspection patrols and air surveillance. Built upon earlier inspection workshop discussions, the project was intended to foster a shared understanding of fishing violation standards. Hearn stated that the arrangements would "strengthen the inspection process for Canada and the EU."[8] But his Newfoundland counterpart, Tom Rideout, was skeptical. "I guess the proof of the pudding will be if and when infractions are detected. How expeditious and how cooperative is the EU going to be then in making sure that those infractions are prosecuted in the offending country and prosecuted without delay or hindrance?"[9]

The following month, Hearn met with Joe Borg, the EU's fisheries commissioner, to press the case for stronger NAFO enforcement. "Once we agree on the sharing or the quotas, then it's imperative that we live by that to make sure the stocks are protected," Hearn said. "If some countries say I'll catch what I want, or I'll catch species that are under moratorium, then we have to be in a position to be able to take action against these fleets."[10] As if to make Hearn's point, Canadian fisheries officers cited the captain of a Portuguese trawler, the *Joana Princesa*, which had been cited for earlier infractions, for using an undersized mesh liner inside the vessel's net. EU inspectors confirmed the findings. Any follow-up action by Portugal is not publicly known. This is generally the case for infringements by EU vessels, even though there is a requirement to report to NAFO on the disposition of violations. In any case, the owner who operates Portugal's biggest fishing fleet, including the *Aveirense* and the *Brites*, was unrepentant.[11] Hearn said that tougher NAFO enforcement was preferable to unilateral Canadian action but warned, "We either have to clean up this mess collectively or we're going to do it by ourselves." Borg endorsed Hearn's call for NAFO reform.[12]

The WWF re-entered the debate with a new report accusing NAFO of failing to protect fish stocks. The report proposed that the organization replace its stock-by-stock management approach with a comprehensive one based on scientific advice that recognized the interdependence of the marine ecosystem. It also called for major organizational reforms, including

removal of the objection procedure, mandatory compliance with management decisions, and improved enforcement. "If NAFO fails to take reform seriously, there is tremendous international pressure for some other drastic action," said the director of the WWF's Atlantic Marine program: "There are alternatives out there, but they're not very pretty ones."[13]

At the annual NAFO meeting in September, the Contracting Parties set the TACs and quotas for 2007, and agreed to ban bottom trawling on sea mounts and corals to protect delicate deep water habitats. They also agreed to combine NAFO's blacklist of vessels involved in illegal, unreported, and unregulated (IUU) fishing with that of the Northeast Atlantic Fisheries Commission (NEAFC). Vessels engaged in IUU fishing would be denied port access for resupply, landing, and transshipment of fish by members of both organizations. Although IUU fishing had not been a significant issue in NAFO waters since 1994, it continued to be a problem for NEAFC. As NEAFC members (the EU, Russia, Norway, Iceland, and the Faroe Islands) also belonged to NAFO, the decision to create a joint blacklist was understandable.[14]

In addition, the Contracting Parties approved the STACTIC report's recommendations for stronger control and surveillance. The measures, which came into effect in 2007, require vessels without full observer coverage to report their catches in real time, with electronic technology being used to detect illegal fishing.[15] A flag state must order vessels cited for serious fishing infractions to port for immediate inspection. Guidelines for sanctions include fines, seizure of gear and catches, and suspension of licences and quotas. However, as Adela Rey Aneiros points out, "The efficacy of the system ultimately depends on the flag state's consent and the organization's perceived control of the application and enforcement of penalties is weak."[16] The new regulations were not included in the pending amendments to the NAFO Convention and can be changed at any NAFO meeting.

Stronger enforcement rules were especially important to Canada, which threatened to walk out of the meeting if no action were taken. "If we didn't get the deal we wanted, we would walk away," said Hearn. "We were not going to come back and say we tried."[17] The Canadian fisheries sector supported Canada's efforts. The European Commission, for which the measure promised tighter control while leaving the subsidiarity principle based on flag state enforcement intact, also welcomed "the progress

made in addressing the issues of monitoring and control of the fisheries and follow-up of alleged infringements."[18]

Hearn pointed out that the mandatory recall of vessels for breaking fishing rules would hit owners "right in their pocketbooks, because boats only make money if they're fishing." If flag states failed to comply with the changes, Ottawa would "continue to keep its options open."[19] In November 2006, the government of Spain revoked the licence of a Spanish trawler cited by Canadian inspectors for misreporting its catch. Hearn claimed the action vindicated Ottawa's strategy, saying, "If this … carries forward – as we're sure it will – a lot of these concerns we've had over the last few years will be diminished."[20] The Canadian government was also pleased that the EU had decided to raise the tariff rate quota ceiling on shrimp from all countries from 7,000t to 10,000t, allowing more product to be imported at the reduced tariff rate of 6 percent rather than the 20 percent that would otherwise apply. Shrimp accounts for almost 90 percent of Canada's seafood exports to the UK.[21]

Some observers remained skeptical. In February 2007, the Standing Senate Committee on Fisheries and Oceans issued a critical report on the NAFO reforms. Senator William Rompkey, the committee's chair, noted that while proposed changes "offer some hope for better conservation and enforcement, much still depends on the good will and cooperation of NAFO member states to effect real change, and such a positive attitude was not always evident in the past."[22] Hearn was critical of the report, crediting the reforms for the fact that that no citations had been issued outside the 200-mile zone since the new regime came into effect.[23] He called attention to the recall of another Spanish vessel to its home port in May 2007, after it was cited for misreporting its catch, as further proof that the new enforcement measures were working. "This is what we said the changing of the rules would result in," he said. "It goes to show we knew what we were talking about."[24] Although it was politically expedient for Hearn to claim success for his actions, that success also reflected a decline in the overall foreign fishing effort in the NRA in response to reduced TACs and catches, and the stepped-up inspection program introduced by the previous government. The improvements and evolving custodial management claims provided convenient political cover for Harper's government while work on revising the 1979 NAFO Convention was underway.

The NAFO Amendments

Meanwhile, the Working Group on NAFO Reform had began drafting amendments to the 1979 Convention, attempting to harmonize the objectives of Canada, the EU, and the other Contracting Parties, with the declared goal of bringing the Convention into line with the UN Fish Agreement (UNFA) and other international instruments. The reform process worked differently than it had in creating the 1979 NAFO Convention, when the Canadian government took the initiative after extending its offshore jurisdiction to 200 miles. At that time it was natural for Canada to play the lead role, as the major fisheries outside 200 miles were directed at straddling stocks of primary interest to Canada. Ottawa controlled the process, convening the necessary international conferences and authoring the successive negotiating texts. After the Convention came into force, Canada assumed the primary role in developing the rules, including annual conservation decisions, overcoming the natural reluctance of the distant water fishing states to limit their catches. However, when the effort to overhaul NAFO got underway in 2005, Canada, having demanded and initiated this process as NAFO's dominant coastal state, allowed the EU to become the most important player. As chair of the working group, the Union assumed the role of authorship, deciding on how the deliberations were to be incorporated into draft texts. Canada had no greater influence than any other Contracting Party, the EU excepted.

The NAFO reform effort followed a similar exercise in the Northeast Atlantic by the members of the Northeast Atlantic Fisheries Commission. With the EU holding the pen on the NAFO reforms, the NEAFC agreement provided a ready and compelling template. However, the NEAFC accord, reflecting the circumstances of the Northeast Atlantic, had reduced the rights of coastal states and strengthened those of distant water states. Although the NAFO Convention recognizes Canada, the United States, Denmark (on behalf of Greenland and the Faroe Islands), and France (for St. Pierre and Miquelon) as coastal states, only Canada has vital fish stocks straddling its 200-mile limit. In contrast, the Northeast Atlantic has several neighbouring members with complex straddling and transboundary stock issues. The stocks migrate back and forth within 200 miles across

the marine boundaries of several member states and also to the high seas outside 200 miles, making shared responsibility an important factor.

The EU, supported by its fellow NEAFC members, succeeded in watering down several crucial clauses in the original NAFO Convention to diminish Canada's rights and protections while offering little to satisfy Ottawa's long-standing demands for an end to the abuse of the objection procedure and for timely, effective dispute settlement. By also leaving out of the NAFO amendments any provisions implementing the right under the UN Fish Agreement to seize and detain a vessel on the high seas should a flag state fail to fulfill its obligations, the EU would win a significant point.

The working group issued two reports, in April and September 2006, and various drafts of the document, which covered the objectives of the Convention, adoption of the precautionary and ecosystem approaches, organizational structure, decision making and objections, dispute settlement, and the budget.[25] The working group's draft proposals broadened the organization's objectives to promote the sustainable use of fishing resources and called for the implementation of the precautionary principle and ecosystem approach to fisheries management. They also streamlined NAFO's governance structure by merging the General Council and the Fisheries Commission into a single NAFO Commission supported by a Science Council and other subsidiary bodies.

In a major departure from the 1979 Convention, an early draft of the proposals replaced the existing provision excluding NAFO from managing fisheries inside Canada's 200-mile limit with one that allowed for the possibility of NAFO management in Canadian waters. The draft proposals further changed the existing simple majority voting formula to one based on consensus, in the absence of which a two-thirds majority would be required. Reportedly suggested by Russia's representative and inserted into the draft document by the EU chair with little or no discussion, the new voting formula would apply to all decisions, including conservation measures, TAC, and quota allocations, making more conservation compromises necessary to reach those decisions than are required in the 1979 Convention.

In addition, the draft proposals provided for a dispute settlement process to deal with formal objections to conservation and management measures adopted by NAFO. Under the new provisions, an objecting party

would be required to explain the reasons for its objection and declare what alternative measures it intended to take to provide for conservation, as it would not comply with the measure to which it objected. Either the objecting party or the NAFO Commission, by mail vote, could then refer the objection to an *ad hoc* panel of experts that would make recommendations to the NAFO Commission on whether the explanation was well-founded and whether the alternative measures to be taken were consistent with "the objective" of the Convention. The NAFO Commission would have to make a decision by a two-thirds majority vote within 30 days of receiving the recommendations. If the objecting party disagreed with the new decision it could lodge another formal objection so that it would not have to comply. In these circumstances, disputing Contracting Parties could resort to further dispute settlement provisions, which would allow any party, or the Commission, by a two-thirds majority vote, to submit the dispute to a new non-binding *ad hoc* panel. If no solution was found through the non-binding dispute settlement procedures, the amendments established no procedures for binding dispute settlement other than references to the availability of the binding dispute settlement provisions of UNCLOS or UNFA.[26]

The Standing Senate Committee on Fisheries and Oceans weighed into the discussion of the proposed amendments in its February 2007 report on NAFO. During its hearings on the reforms, the committee had received the views of a variety of experts, including three former senior officials of the Department of Fisheries and Oceans. These were William Rowat, a former deputy minister, and Bob Applebaum and Earl Wiseman, each a former director general of the department's international affairs directorate. In preparation for their appearance before the committee in October 2006, the former officials received a briefing from fisheries and oceans officials, during the course of which they became aware of the NAFO working group's proposals. Rowat, Applebaum, and Wiseman raised several concerns, especially regarding the potential for NAFO management inside 200 miles and the proposed two-thirds voting requirement. In their testimony they expressed optimism that an appropriate reformed Convention could be developed if the problems they had identified were addressed, as they expected would be the case based on their discussion with the departmental officials.[27]

But by the time the Senate fisheries committee completed its deliberations it concluded that the changes proposed by the working group would leave "Canada's coastal state interests … less protected than before." It recommended that the working group's proposals be scrapped and that Canada "take the lead in drafting a new version of the legal text to take forward to negotiations. In so doing, Canada should refuse the imposition of the two-thirds voting rule and any other changes that could weaken Canada's control within the 200-mile limit and its position outside 200 miles." The committee also recommended that the government consult outside experts in developing Canada's approach.[28]

When Applebaum and his colleagues reviewed a subsequent draft of the Convention amendments released two months later, they were surprised to find that none of the issues they and the Senate fisheries committee had raised had been addressed. In fact, the situation regarding NAFO's conservation and management role inside Canada's 200-mile limit had become considerably worse in that the latest draft would allow the Commission to establish measures throughout the Convention area up to Canada's shores, including the Gulf of St. Lawrence, "where agreed by consensus."[29] After first raising their concerns privately with the fisheries minister Hearn and his officials, and receiving no response, Applebaum aired them publicly in an interview on the CBC St John's program "The Fisheries Broadcast."

In July, Applebaum spoke at a public meeting in St John's, sponsored by the Fisheries Community Alliance of Newfoundland. He charged that the proposed new Convention "will not strengthen NAFO, but instead will weaken it, and the result, in the long run, will be more, not less foreign overfishing outside 200 miles, decreasing prospects of stock rebuilding, and if the stocks do rebuild, greater prospects of stock depletion in the future." Fixing the problems would "require a lot of very careful handling, of a kind for which the Canadian negotiators, to date, have not demonstrated the necessary capability."[30]

A Department of Fisheries and Oceans official insisted that "The current draft provides Canada with absolute say over what goes on in its EEZ (exclusive economic zone). Nothing can come down on us from NAFO, it's just not possible." However, Arthur May agreed that the changes would make "it easier for the European Union and its allies, in Eastern Europe and elsewhere, to gang up on us." It appeared that "the EU have managed

to outmaneuver us, quite frankly, so far, in getting the kind of wording they would like,"[31]

Prior to NAFO's annual meeting in September 2007, at which the draft Convention would be up for adoption, Rowat, Applebaum, Wiseman, and Scott Parsons, a former assistant deputy minister in the Department of Fisheries and Oceans, re-engaged the debate in a widely circulated opinion article in the *Ottawa Citizen*. They argued that the proposed changes, which contained neither a strong enforcement instrument to curb fishing violations nor a timely and effective dispute settlement procedure to prevent overfishing, would weaken NAFO. The draft Convention, without taking a single step towards Canadian custodial management outside 200 miles, could also give NAFO a form of custodial management in Canadian waters. The introduction of the two-thirds voting majority requirement, moreover, would make it harder for Canada to secure decisions to limit catches outside 200 miles based on the NAFO Scientific Council's advice, and increase pressures "for trade-offs between the needs of conservation and the needs of foreign fishing fleets. It would also make it more difficult for Canada to obtain decisions to continue Canada's current quota share percentages in the stocks managed by NAFO outside 200 miles." Canada would fare better under the 1979 Convention than the proposed new one.[32]

Hearn, who had recently visited Spain and Portugal to press Canada's case against overfishing, signing an agreement with Madrid on technical, scientific, economic, and enforcement cooperation, lashed out at the former officials. He vowed that Ottawa would "not accept any proposal that weakens our ability to manage fisheries within our own 200-mile limit." Apparently unaware of the work the former officials had done during their careers to try to prevent overfishing, Hearn accused them of failing to speak out when the fish stocks were declining, adding, "Perhaps if they had been so diligent in raising concerns when they were being paid by the Canadian public to do so, our stocks might not be in the shape they are today."[33]

The negotiations on NAFO reform came to a close at the organization's annual meeting in September, with the approval, subject to ratification by the Contracting Parties, of the final version of the proposed amendments to the Convention. Some changes were made in response to the critics' concerns. The controversial provision that allowed NAFO management inside Canadian waters simply by consensus was changed to

allow the NAFO Commission to establish management measures inside the 200-mile zones up to the coastlines of its coastal state members only if "the coastal State in question so requests and the measure receives its affirmative vote."[34] The effect on quota shares of the provision replacing the simple majority voting formula with one based on consensus or a two-thirds majority requirement when efforts to promote consensus failed was modified by means of a change in NAFO's regulations to provide that TACs and quotas established at an annual meeting would remain in force if they were not changed at a subsequent annual meeting. However, this provision was not included in the proposed new Convention but adopted as a decision of NAFO that could be changed in the future by a two-thirds majority vote. Finally, the dispute settlement procedure for referring objections to conservation and management issues was revised so that a simple majority vote rather than a two-thirds majority would be required to refer the objection to an *ad hoc* panel. A two-thirds majority vote would still be required to adopt a panel's recommendation.[35]

Curiously, there was nothing in the proposed new Convention that would prevent a recurrence of the situation that had arisen at the special meeting of NAFO in Helsingor in 2002, which outraged Canada and galvanized its campaign for NAFO reform. At that time, a majority of the Contracting Parties had, for the first time, defied the provision in the 1979 Convention requiring that NAFO management measures be consistent with those of the coastal states. They did so by voting to increase the TAC for turbot, which Canada had proposed be lowered, and defeating Canada's proposal for a depth restriction for trawling. Both Canadian proposals followed scientific advice. The proposed new Convention fails to strengthen the consistency provision to remedy this problem. Instead, it weakens the provision by not including voting rules to prevent similar actions in the future.

The proposed new Convention will come into force when ratified by three-quarters of NAFO's members. The Canadian delegation joined the EU and other delegations in voting for its adoption subject to ratification. Fishing industry groups in Canada expressed the view that although the changes were not custodial management they were an improvement over the current NAFO regime. Spain and Portugal were won over within the EU on the basis that the proposed new Convention strengthened the position of distant water states.[36] "The amended Convention protects the

interests of Canadians and integrates the most up-to-date decision making and management practices," said Loyola Sullivan, Canada's Ambassador for Fisheries Conservation. EU fisheries commissioner Borg called it "a state-of-the-art cooperation instrument that will help us adopt legally binding arrangements for the sustainable use of sea resources."[37]

Aftermath

In the months that followed, discussion of the Convention amendments was muted, although the Newfoundland government took issue with the Harper government's 2008 election platform claim that Ottawa had "assumed custodial management of the fishery" in the NAFO Regulatory Area.[38] The debate was renewed in September 2009 after the federal government announced its intention to ratify the agreement.

Rowat, Parsons, Applebaum, and Wiseman were invited to St. John's to brief Premier Danny Williams on the NAFO Convention changes. While there, they participated in a public forum on NAFO sponsored by the Fisheries Community Alliance of Newfoundland, at which they repeated their concerns that the amendments would weaken NAFO and threaten Canada's ability to achieve its conservation goals. Premier Williams, who said that the federal government had described the amendments to him as a set of practical measures to improve NAFO's operations, urged Prime Minister Harper not to ratify the accord.[39]

While implicitly acknowledging that the proposed new Convention would allow for the possibility of international management inside Canada's 200-mile limit, Gail Shea, the new fisheries minister, defended the two-thirds voting formula as a means of protecting Canada's fishing quotas, and praised the proposed dispute settlement mechanism as a step forward in dealing with the objection procedure.[40] In a follow-up letter to Harper, urging the government to reject the proposed new Convention, Rowat, Parsons, Applebaum, and Wiseman challenged the minister's assertions. They pointed out that while a two-thirds majority vote rather than the existing simple majority would be required to change existing quota percentage shares, if the allocation percentages were reduced by a two-thirds majority vote it would take another two-thirds majority vote

to get the Canadian shares back. Decisions on stricter conservation measures would also be subject to the two-thirds voting rule. If conservation decisions could not be achieved and stocks became depleted, Canada's catches would be affected whatever the percentage shares were. The former officials also observed that in place of the swift, decisive dispute settlement process to deal with objections that Canada had sought, the proposed new Convention contained complex, time-consuming procedures that would not likely result in a binding decision during a given fishing season. Although it would provide avenues for pressure to be placed on NAFO members to withdraw objections, it would be of questionable value given the concessions Ottawa had made to achieve it, especially those affecting coastal state management inside 200 miles and the two-thirds voting majority system.[41]

Shea continued to defend the government's position, repeating the disingenuous claim that Ottawa had established "custodial management … over the straddling and groundfish stocks that are important for Newfoundland and Labrador and the Canadian fishing industry." Fish, Food and Allied Workers Union president Earle McCurdy, a prominent supporter of the Convention amendments, called the statement "absolute nonsense."[42]

The House of Commons Standing Committee on Fisheries and Oceans and the Senate Standing Committee on Fisheries and Oceans took up the issue, hearing from supporters and critics of the amendments. Supporters argued that although the proposed new Convention fell short of the ideal of custodial management, it was an improvement over the 1979 Convention. They downplayed concerns that the amendments put Canadian sovereignty at risk, arguing that other Contracting Parties had no interest in assuming a management role inside Canada's 200-mile zone and that Ottawa would never consent to their doing so. One of them suggested that to satisfy critics the federal and Newfoundland governments should sign a binding accord in which Ottawa would refuse to support any measure that would compromise Canadian sovereignty unless St. John's gave its express consent. Critics asked why the EU would insist on, and Canada would agree to, a treaty provision that would never be implemented.

The EU had resisted key clauses of the UNFA that Canada had sought to have adopted. In order to appease European stakeholders, the Union had developed a strategy to implement UNFA in line with one of its original

objectives of having distant water states involved in the management of fish stocks inside the 200-mile zones of coastal states. In the negotiation of the proposed new NAFO Convention the EU had succeeded in introducing this concept into the text at Canada's expense.[43]

The House of Commons fisheries committee recommended against ratification. Its Senate counterpart, citing concern that the amendments would compromise Canada's ability to manage fisheries inside the 200-mile limit, called on the government to delay approval pending further study.[44] In a vote in the House of Commons, on December 10, 2009, which carried 147–142, all three opposition parties, the Liberals, the New Democrats, and Bloc Québécois, joined forces against the governing Conservatives, to accept the fisheries committee's recommendation. The Newfoundland government also urged Ottawa to reject the proposed new Convention. Undeterred, Harper's government announced the next day that it had ratified the agreement.[45]

As of NAFO's annual meeting in September 2013, five of the required nine Contracting Parties had ratified the proposed new Convention. It seems a matter of time before the remaining approvals are secured. Whether or not the proposed new Convention comes into effect, NAFO will be tested in the coming years as fish stocks in the NRA begin to recover. The cod fishery on the Flemish Cap was reopened in 2009, and the TAC for 3M redfish increased despite the NAFO Scientific Council's advice that the TACs established were too high.[46] The decisions were welcomed by the Spanish and Portuguese governments and their fishing industries, and the number of vessels fishing in the NRA is on the rise. It remains to be seen how quickly other fisheries will be reopened and whether TACs and quotas will be set on the basis of scientific evidence. It is unclear how these matters would be dealt with under the proposed new Convention, whether the dispute resolution mechanism would curtail objections, or whether Canada would be forced to allow NAFO to manage stocks inside 200 miles in return for acceptance of stricter conservation measures in the offshore zone.

The long-term success of the new surveillance and enforcement rules, moreover, is not assured, given the weakness of the EU's control system. An investigation by the *Guardian* newspaper in the spring of 2012 reported that more than 20 former and current observers on Spanish and Portuguese vessels operating in the NRA reported "being regularly

intimidated, offered bribes and undermined by the fishing crews they are observing" in order to deter them "from reporting serious infringements of regulations," including "illegal catches of hundreds of tonnes of cod, American plaice and Greenland halibut." Among the intimidation tactics were surveillance, sleep deprivation, threats to throw observers overboard, and stealing their official documentation. A spokesperson for the Spanish Fishing Association called the revelations "a great surprise." But a European Commission official admitted that "while the legal framework regulating fisheries is improving, we are aware that there are shortcomings in the culture of compliance among fishermen."[47] More than 30 years after Canada and the EU signed the long-term fisheries agreement, the goal of strong enforcement may continue to prove elusive.

6

CONCLUSION

International negotiations stand at the intersection of domestic and external politics. Gilbert Winham was among the first to observe that bargaining takes place at two levels, an external negotiation between parties and an internal negotiation within their policy structures. Robert Putnam has expressed the relationship through the metaphor of a "two-level game" in which governments try "to balance international and domestic concerns in a process of 'double-edged' diplomacy."[1] They seek both to win something competitively from each other and to satisfy domestic interests whose support is necessary to achieve agreement. In the case of the European Union the game is played at three levels: the international level where the Union negotiates with other parties, the EU level where member states and interests bargain with each other to determine the Union's position in external negotiations, and the member state level where national positions are decided. In reaching agreement, the parties' internal politics become entangled in that each side's gains depend upon the other's ability to meet its undertakings. This can be seen in the history of Canada's fisheries relations with the European Union during the 1977–2013 period.

Canada's decision to extend its offshore fisheries jurisdiction to 200 miles in 1977, in order to protect depleted fish stocks, compelled Canada

and the European Union, with member states that had long fished in the waters of the Northwest Atlantic, to work out a new relationship. This led to the 1981 long-term agreement on fisheries (LTA). The cornerstone of the LTA was an exchange of concessions that promised Canada conservation cooperation and better access to the EU market for certain fish products in return for EU fishing rights for non-surplus northern cod and other potentially non-surplus fish stocks inside Canada's 200-mile limit, for a six-year period. The exchange reflected each side's priorities. Canada's were to secure conservation cooperation outside 200 miles and to diversify export opportunities for its expanding fish production in the wake of the extension. The Union's were to maintain West Germany's distant water fishing operations and to ease pressure on its own fish stocks, which would help bring the EU closer to a long-sought Common Fisheries Policy (CFP). In return, the Canadian industry would have to accept slightly lower catch levels to accommodate allocations to the EU, while the Union would have to allow more Canadian competition in its market. Each side's concessions became the focus of internal controversies.

The government of Newfoundland and Labrador and the fishing industry opposed the agreement. The province rejected the strategy of allocating non-surplus fish stocks for trade concessions, which it argued should be pursued in multilateral trade talks. It also believed that conservation cooperation was in the interest of all parties and should not have to be paid for by Canadians. The fishing industry was against the LTA because it guaranteed the Union's fleet catches in Canadian waters but did not assure increased Canadian fish sales in the EU market. Ottawa had the authority to approve the pact, the provincial government's influence over the decision being dependent upon its ability to mobilize the industry's support. The likelihood that the successful operation of the agreement would meet the industry's concerns gave Ottawa leeway to proceed. But that would depend on the EU's cooperation.

Although the EU signed the LTA, member states were not unanimous in their support. The only state with a direct interest in the fish allocations under the LTA was West Germany, whose deep sea fleet stood to gain the most from the pact. The UK, Denmark, and Ireland had little or no interest in securing access to Canadian fish stocks. However, they were vitally interested in access to member states' coastal waters, fishing quotas, and internal market issues. The Canadian fishing rights concession reduced

West Germany's claims to cod stocks in EU waters, thereby making possible higher quotas for other member states. But for the British, the Danes, and the Irish the gain was marginal compared to other objectives they wanted to enshrine in the Common Fisheries Policy. The LTA gave them important leverage in their efforts to secure acceptance of their demands.

Canada expected that its traditional British market would absorb the bulk of Canadian fish exports under the agreement. However, after the LTA was adopted, the British government responded to pressures from its beleaguered domestic fishing industry by demanding that the EU impose market allocation quotas even though Canadian sales to the UK were but a fraction of those of Iceland, Norway, and other EU states. For their part, Denmark and Ireland used the LTA to obtain other quota and market access concessions.

Although the European Commission could negotiate agreements with third parties, it was reliant on member states' support for ratification and implementation. In order to get that support it employed a variety of tactics, including compromise proposals, mediation, suasion, and acting as an outright ally of the German government. However, it failed to secure the consent of the UK. In the end, the Union accepted the British government's demand that would limit Canada's access to the UK market. The trade-off resolved the EU's internal problem at Canada's expense, eliminating most of the market access benefits that Canada had expected to receive from the LTA.

In accepting the British demand, the EU was clearly challenging Canada. European officials did not seem to take seriously Canada's threat to retaliate. But the Union's action, together with its decision, in early 1983, to ban the import of seal pup skins and products, further eroded the Canadian government's ability to create domestic support for the LTA. Ottawa responded by suspending the Union's fishing rights concession.

Canada's ability to force the EU to comply by withholding its fishing allocation depended on whether West Germany could influence other member states. Ottawa's leverage was also affected by the fact that the fishing season ends in April, well before the Union's annual market compliance with the LTA could be assessed. Accordingly, Ottawa could not suspend the EU's fishing rights during the fishing season in 1982, but it did so for the following season in 1983, compelling the Union to renew

its debate over the LTA. This paved the way for Canada-EU compromise arrangements in December of that year.

By 1985 there was new controversy, this time about fishing by EU vessels in the NAFO Regulatory Area (NRA). It began when West German vessels moved into the NRA, where they continued to fish for northern cod after taking most of their allocation in Canadian waters. The issue was resolved when the West Germans agreed to avoid overfishing their LTA quota. But with Spain and Portugal poised to join the Union in 1986, and no new quotas available in its own waters, the EU was under intense pressure from those countries' governments and fishing industries to expand fishing opportunities in the Northwest Atlantic. As a result, it began pressing NAFO for a less restrictive fisheries management approach and higher quotas in the NRA. When its demands were rebuffed, the Union for the ensuing years repeatedly resorted to the organization's objection procedure to set autonomous quotas that were well above those allotted by NAFO and Canada. Some of these were above any historic catch levels. The largest shares were assigned to Spain and Portugal, the actual catches of which were even higher. The Union lacked the authority, means, and inclination to control their fishing behaviour.

The EU's fishing rights under the LTA expired at the end of 1987 and were not renewed. Canada applied diplomatic pressure to the Union to comply with its assigned NAFO quotas, with no effect. Stig Gezelius concludes that "the EU NAFO policy from 1986, with its extensive use of the 'objection procedure,' can most likely be interpreted as a strategy to externalise a problem of overcapacity in its domestic fishing fleet following the accession of Spain and Portugal in 1986. The straddling stocks of the Grand Bank[s] provided an opportunity for externalisation. The NAFO Convention … provided the autonomy necessary for the EU to externalize part of these ecological costs."[2] Although Canada's recently expanded fleet never exceeded its quotas, it was the main participant in the NAFO-managed fisheries, which reached unsustainably high levels when the EU began its unrestricted fishing. The Canadian fleet also accounted for most of the catches in the northern cod fishery. But while it fished within its allocations, the Canadian TACs were later found to have been too high because the scientific assessments were based on flawed data. In contrast, the EU knowingly overfished the northern cod stock in defiance of the

Canadian TACs and the NAFO moratorium on fishing for 2J3KL cod outside 200 miles.

Each side looked to the other to help solve its problems. Higher allocations would aid the EU's efforts to restructure its bloated fisheries sector. Canada wanted the Union to reduce its fishing effort to ease pressure on fish stocks so it could meet the demands of its own fishers for sustainable catch levels. But internal pressures and the demands of the scientific advice constrained both parties' capacity to make concessions.

Difficulties in rationalizing the fisheries sector and limited opportunities available to member states' distant water fleets made it hard for the EU to resist pressures from Spain and Portugal to set large quotas. Concern about risks to the fish stocks led Canada to insist, initially, that they be managed conservatively within the ranges set by scientists. But as the stocks declined, Canada also yielded to the pressures of the domestic industry to keep their catches of northern cod high for a few years. As Raymond Blake observes, both sides "maintained high quotas because they did not know how to deal with the massive unemployment that would likely have resulted from shutting down the fishing industry." In short, they "lacked the political will to take the responsible and sensible action required to save the stocks."[3]

Relations became more cooperative as fish stocks neared collapse and Canada closed the northern cod fishery. Canada and the EU reached an agreement that provided for the Union's acceptance of their NAFO quotas and Canadian management of 2J3KL cod in return for access to a small percentage of northern cod outside the 200-mile limit at some point in the future, and use of Canadian ports. However, the Canadian government did not ratify the pact because of doubts about the ability of the EU to control the fishing behaviour of its fleet.

Ottawa's concern about the EU fleet's fishing practices grew as Spain and Portugal refocused their fishing effort on turbot, one of the last remaining commercial stocks in the NRA at that time. With scientists warning that the stock was in decline, NAFO established a total allowable catch, assigning the largest share to Canada. Under pressure from the Spanish and Portuguese government and fishing interests, the EU opted out of the decision and set a high quota of its own. Pressed by the Newfoundland government and the fishing industry, Ottawa declared a moratorium on turbot fishing by the Canadian and foreign fleets inside

and outside 200 miles, and gave itself the authority to arrest EU vessels in the NRA. A Canadian boarding party seized a Spanish trawler, the *Estai*, and severed the net of another, the *Pescamaro Uno*. An inspection of the *Estai* revealed serious fishing violations. The issue took on national importance in Canada and Spain, with public opinion strongly supportive of each country's respective stand.

Canada's fisheries minister Brian Tobin and his officials took a hard line with the EU. Department of Foreign Affairs officials favoured a diplomatic solution, but Tobin had the backing of Prime Minister Jean Chrétien, who agreed that firm action was required. The Newfoundland government also lobbied for a tough response. The industry mobilized the support of fishing groups across the country. But what made the issue a national one were the arrest of the *Estai* and the ensuing revelations of major fishing violations by the vessel. A public opinion poll reported that 89 percent of Canadians backed the actions taken against the Spanish vessels while 58 percent would support the further use of force if the dispute continued.[4]

In the EU the issue was of direct concern to Portugal and especially to Spain, whose policy was dominated by the need to maintain its large distant water fleet. The Galicia-based industry's long-held belief was that Canada's efforts to limit its operations in the NRA were intended to displace the Spanish trawlers and capture their markets. The issue was handled by Spain's Ministry of Agriculture, Fishing and Food, which supported a strong response. The country's foreign ministry, like its Canadian counterpart, preferred to resolve the dispute by diplomatic means. But circumstances favoured the hard-line position advocated by the industry and supported by fisheries officials. Prime Minister Felipe González's government had a shaky grip on power and was sensitive to the pressure of political opponents who attempted to portray it as weak and irresolute. At the same time, Spanish ship owners and trawler captains seemed willing to go to great lengths to force the hand of their government and the EU. The seizure of the *Estai* made the issue the focus of national attention. According to a Gallup poll, 92 percent of the Spanish respondents believed that Canada was not justified in arresting the vessel.[5]

Within the European Commission, DG XIV Fisheries took the lead in managing the turbot issue during the initial phases, although DG I External Affairs, which had dismissed as "posturing" the warnings of DG

Fisheries officials that Ottawa seemed bent on a confrontation with the Union, assumed a more prominent role as the crisis grew following the arrest of the *Estai*.[6] Spain privately blamed the Commission for agreeing to a total allowable catch that, it claimed, was lower than necessary to protect the stock, even though the Commission would have been accused of ignoring conservation if it had not done so.[7] It is clear that at the NAFO meeting in Brussels, the EU was out-lobbied by the determined group of Canadian representatives in the allocation of the NAFO quotas and that Ottawa was intent on using its victory to strengthen its bargaining position in negotiations concerning the fishing practices of the Spanish and Portuguese vessels. However, the steep reduction imposed on the EU fleet put enormous pressure on the Union to set an autonomous quota. This in turn increased domestic pressure on the Canadian government to respond with force.

At the EU Council level, member states, whatever their individual views, found common ground in condemning the seizure of the *Estai* as a violation of international law. But Ottawa succeeded in shifting the focus to that of conservation, testing EU solidarity. The British government in particular came under pressure from its fishing industry, which had also experienced problems with Spanish vessels, to side with Canada. Although its qualified support for the Union's stand was criticized for weakening the EU's bargaining position, the consensus that was reached, prompted by the French presidency, was firm when it needed to be. What forced the EU to make concessions was pressure exerted by Ottawa at critical points: the arrest of the *Estai*, which brought the two sides to the bargaining table; the cutting of the *Pescamaro Uno*'s net, which accelerated the negotiations; and a threat of further action against Spanish fishing vessels, which led to EU approval of the agreement ending the dispute.

The agreement increased the EU's turbot allocation and created a stricter control and enforcement scheme to oversee fishing in the NAFO Regulatory Area. It was not well received in Spain and Portugal, but officials on both sides of the conflict agreed it was a good one that responded to each party's concerns. It formally acknowledged the right of EU vessels, and by extension those of Spain and Portugal, to have their interests in the NRA taken into account and established their access to a larger share of the turbot stock than had been assigned originally by NAFO. It also gave the EU a means to pressure member states to act in accordance with the

Union's undertakings. For Canada the prospect of stricter control and enforcement would aid its efforts to ensure the recovery of straddling stocks. The agreement was adopted without incident as a NAFO decision at the organization's annual meeting in September 1995.

For the next six years Canada and the EU concurred in all TACs and quotas, and control and enforcement measures, with the latter being credited for a substantial decrease in fishing violations in NAFO waters. But there were troubling signs that cooperation would not last. The Canadian government, which had already taken tough conservation decisions, was making a concerted effort to reduce the size of its fisheries sector. But although the EU began to cut TACs in its own waters, it still saw foreign fishing grounds as a means of dealing with its overcapacity problem. The first indication that all was not well was an increase in fishing infractions by Spanish and Portuguese vessels in the NRA. Then, at the NAFO special meeting in Helsingor, Denmark, early in 2002, the EU mustered sufficient support among Contracting Parties to raise the turbot TAC and its own quota and defeat an important depth restriction measure for fishing by trawlers to protect moratoria stocks. Despite contrary scientific advice, the NAFO Convention requirement for consistency with the coastal state's management measures, and Canadian opposition, Canada for the first time lost a vote on straddling stock issues in NAFO.

At home, the Canadian government was pressed by the opposition in parliament, and by the government of Newfoundland and Labrador and fishing industry, to assert custodial management over the Nose and Tail of the Grand Banks, and the Flemish Cap. Ottawa rejected unilateral action as a violation of international law but closed Canadian ports to a number of fishing violators. Reforms to the EU's Common Fisheries Policy laid the groundwork for improved cooperation in NAFO. Still, compliance remained a stumbling block. Although the Spanish government and fishing industry took steps to modernize the sector and improve its reputation, the Portuguese dragged their feet and their vessels continued to accumulate infractions in the NRA. The Union, which lacked the authority to act on compliance issues, received little help from Lisbon.

In response to continuing domestic pressure, Prime Minister Paul Martin's government launched a two-fold strategy consisting of stepped-up monitoring and enforcement by Canada in NAFO waters and diplomatic overtures to the EU focused on compliance issues and overall

fisheries governance. The initiatives produced results. After inspections increased, the number of foreign vessels fishing in the NRA dropped sharply and violations went down. Diplomatic efforts culminated in an agreement among the Contracting Parties at NAFO's September 2005 annual meeting to begin a thoroughgoing review of the organization with a view to modernizing its operations and strengthening its control and enforcement functions.

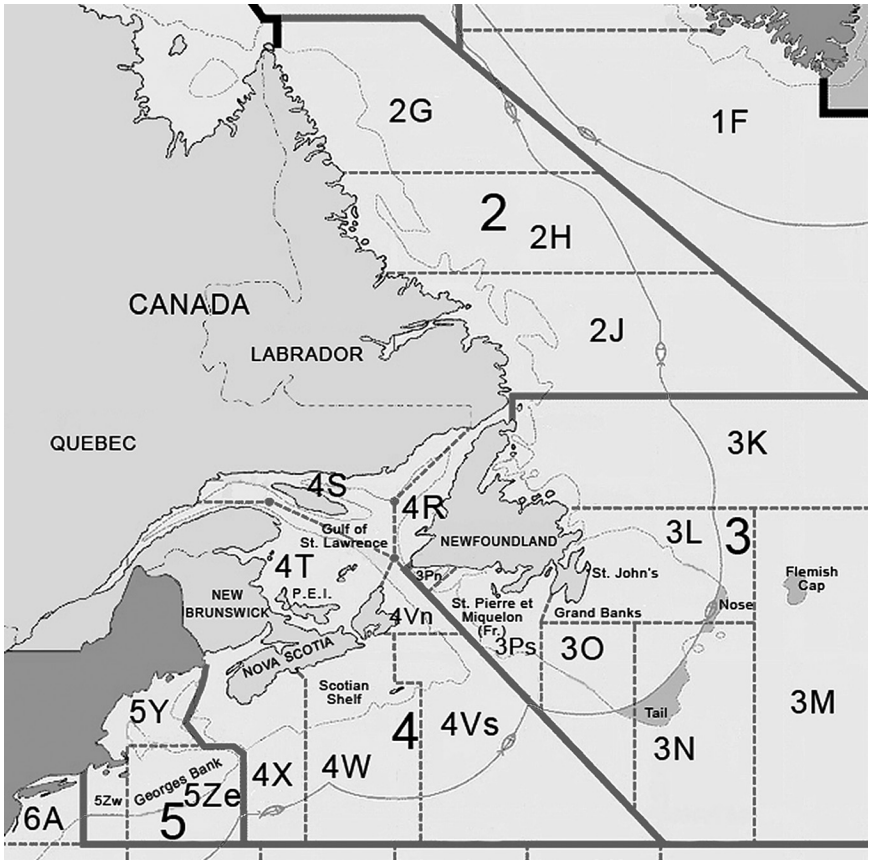
Two years later, the Contracting Parties, subject to ratification, agreed to revamp the NAFO Convention by streamlining the organization's structure and modifying the voting and objection procedures. However, the agreement created the possibility of future NAFO management in Canadian waters and the potential for further weakening Canada's ability to conserve the stocks and ensure sustainable quotas for its own fishers. The agreement did not provide for timely and effective dispute settlement to deal with overfishing problems. NAFO also launched new enforcement measures, which were not part of the proposed Convention amendments. The most important of these required flag states to direct vessels cited for fishing violations to port for full inspection, with guidelines for suitable sanctions against offenders.

Any perception that the Canadian government had failed to bring about the major improvement in fisheries governance it had promised would have been politically unacceptable at home and would have given rise to new pressures to impose custodial management outside 200 miles, which the government realized was impractical. Ottawa was committed to making NAFO more effective and believed the proposed new Convention was an improvement over the original one, especially because it contained dispute settlement arrangements that offered the possibility of deterring overfishing. The main concession of allowing the possibility of NAFO management in Canadian waters contained safeguards that gave Canada the power to prevent that from happening. The Newfoundland government joined critics in opposing ratification. However, the fishing industry appeared to share the federal government's view of the revamped Convention and the adequacy of protections against infringements on Canadian sovereignty. While Ottawa expressed confidence that the port recall requirement for serious fishing violators would increase compliance, the industry took a wait-and-see approach.

Although the European Union claimed the changes to NAFO reflected recent practice within the organization, they also furthered the Union's long-standing goals of weakening Canada's coastal state influence in NAFO and enhancing the rights of distant water fishing states.[8] The new enforcement measures, which were not included in the proposed new Convention and can be changed at any NAFO meeting, provided greater assurance that the EU fleet would comply with NAFO's fishing regulations and the prospect of more consistency in the application of penalties for offences, paralleling a similar effort to improve adherence to the rules of the Common Fishery Policy. Spain and Portugal believed their vessels had been harassed by Canadian inspectors and wanted a system that could limit Canadian interference with them. They were not keen on the mandatory ordering to port of vessels charged with serious infractions but were won over by the fact that the regulations did not infringe on the principle of flag state enforcement.

At the time of writing, ratifications have not reached the threshold required to bring the proposed new NAFO Convention into force. If enough ratifications are entered and it becomes operative, a development that seems likely, or even if that does not happen, Adela Rey Aneiros predicts that Canada-EU fisheries relations will be cooperative as long as "the difficult balance of interests in the Northwest Atlantic is maintained and NAFO can prove its operational effectiveness; the EU can convince its fishing industry of the need to strictly enforce conservation and control measures, and, subsequently, apply penalties as appropriate; and the Canadian federal government can convince the provinces that a broad consensus has been reached and a high degree of compliance will be attained."[9] It remains to be seen whether international cooperation will work to allow fish stocks to rebuild and provide stability in the NAFO Regulatory Area as the stocks begin to recover.

APPENDIX I:
MAP OF NAFO CONVENTION AREA



Source: Fisheries and Oceans Canada

APPENDIX II: MEMBERS OF NAFO

Current members

Canada (1978)
Cuba (1978)
Denmark, on behalf of the Faroe Islands and Greenland (1979)
European Union (1978)
France, on behalf of St. Pierre and Miquelon (1996)
Iceland (1978)
Japan (1980)
South Korea (1993)
Norway (1978)
Russian Federation (1992)
Ukraine (1999)
United States (1995)

Former members

Bulgaria (1979–2006)
Estonia (1992–1994, joined the EU)
Latvia (1992–2004, joined the EU)
Lithuania (1992–1994, joined the EU)
Poland (1979–2004, joined the EU)
Romania (1979–2002)
Portugal (1979–1986, joined the EU)
Spain (1983–1986, joined the EU)
East Germany (1978–1990, joined the EU following reunification of Germany)
Soviet Union (1978–1991, succeeded by the Russian Federation)

Source: Northwest Atlantic Fisheries Organization

TABLE I

TABLE I

Comparison of EU Unilateral Quotas, EU NAFO Quotas, and EU Catches Reported to NAFO for NAFO Groundfish Stocks and 2J3KL Cod for 1986–1992

(Quantities in Tonnes)

	1986			1987			1988		
Stock	EU NAFO Quota	EU Unilateral Quota	EU Catch Reported to NAFO	EU NAFO Quota	EU Unilateral Quota	EU Catch Reported to NAFO	EU NAFO Quota	EU Unilateral Quota	EU Catch Reported to NAFO
3M Cod	6,465	7,500	11,079	6,465	7,500	6,441	0	0	562
3NO Cod	12,345	26,400	30,285	12,345	26,400	19,896	14,750	26,400	19,816
3M Redfish	3,100		11,571	3,100		22,648	3,100	12,000	7,247
3LN Redfish	0		23,388	0		28,179	0	20,000	12,722

3M American Plaice	350		2,789	350		5,106	350	3,000	2,549
3LNO American Plaice	700		21,122	610		16,992	510	9,000	9,831
3LNO Yellowtail	300		5,887	300		1,183	300	5,000	3,205
3NO Witch	0		3,788	0		2,954	0	4,000	2,888
3+4 Squid	NS[1]	25,000		NS[1]	25,000		NS[1]	25,000	
3NO Capelin				375	375		250	250	
Totals	23,260	58,900	109,909	23,545	59,275	103,399	19,260	104,650	58,820
2J3KL Cod	0	68,560[2]	60,446	0	76,400[2]	33,607	0	84,000	26,559
Grand Totals	23,260	127,460[3]	170,355	23,545	135,675[3]	137,006	19,260	188,650	85,379

TABLE I (CONT'D)

Comparison of EU Unilateral Quotas, EU NAFO Quotas, and EU Catches Reported to NAFO for NAFO Groundfish Stocks and 2J3KL Cod for 1986–1992

(Quantities in Tonnes)

	1989			1990		
Stock	EU NAFO Quota	EU Unilateral Quota	EU Catch Reported to NAFO	EU NAFO Quota	EU Unilateral Quota	EU Catch Reported to NAFO
3M Cod	0	0	548	0	0	638
3NO Cod	9,220	26,400	18,817	6,860	7,000	6,825
3M Redfish	3,100	12,000	13,225	7,750	12,000	13,672
3LN Redfish	0	20,000	6,344	0	6,000	7,311

3M American Plaice	350	3,000	3,404	350	500	461
3LNO American Plaice	385	6,820	11,492	317	500	650
3LNO Yellowtail	100	1,670	1,131	100	200	130
3NO Witch	0	4,000	1,990	0	1,200	1,411
3+4 Squid	NS[1]	25,000	350	NS[1]	NS[1]	
3NO Capelin	700	700		750	750	
Totals	13,855	99,590	57,301	16,127	28,150	31,098
2J3KL Cod	0	58,400[4]	35,595	0	32,000	23,759
Grand Totals	13,855	157,990	92,896	16,127	60,150	54,857

TABLE I (CONT'D)

Comparison of EU Unilateral Quotas, EU NAFO Quotas, and EU Catches Reported to NAFO for NAFO Groundfish Stocks and 2J3KL Cod for 1986–1992

(Quantities in Tonnes)

	1991			1992		
Stock	EU NAFO Quota	EU Unilateral Quota	EU Catch Reported to NAFO	EU NAFO Quota	EU Unilateral Quota	EU Catch Reported to NAFO
3M Cod	6,465	6,465	4,280	6,465	6,465	6,421
3NO Cod	5,016	5,016	6,511	5,016	5,016	2,377
3M Redfish	7,750	7,750	10,502	6,665	6,665	6,845
3LN Redfish	0	6,000	11,201	476	6,000	4,148
3M American Plaice	350	350	1,603	350	350	704
3LNO American Plaice	328	328	973	328	328	605

3LNO Yellowtail	140	140	246	140	140	122
3NO Witch	0	1,000	1,100	0	1,000	586
3+4 Squid	NS[1]	NS[1]		NS[1]	NS[1]	
3NO Capelin	750	750		750	750	
Totals	20,799	27,799	36,416	20,190	26,714	21,808
2J3KL Cod	0	27,000	23,512	0	26,300	7,523
Grand Totals	20,799	54,799	59,928	20,190	53,014	29,331

1. Quota to the EU was not specified
2. Includes 9,500t of 2J3KL cod allocated by Canada to the EU under the Canada-EU Long Term Fisheries Agreement.
3. The EU did not set unilateral quotas for all stocks.
4. Amended by the EU in July 1989. Set initially at 84,000t.

Based on reports from the European Commission, Fisheries and Oceans Canada, and the Northwest Atlantic Fisheries Organization

NOTES

INTRODUCTION

1 Quoted in Elizabeth Brubaker, "Unnatural Disaster: How Politics Destroyed Canada's Atlantic Groundfisheries," in Terry Lee Anderson, ed., *Political Environmentalism* (Stanford: Hoover Institution Press, 2000), 164.

2 Brubaker, "Unnatural Disaster," 164–65.

3 The European Union (EU) was known as the European Economic Community (EEC), or simply as the European Community (EC), from its establishment in 1958 until 1993, when it acquired its present name following the conclusion of the Treaty on Economic Union (Maastricht Treaty). The contemporary title is used throughout the book, except where it is found in documents and statements from the pre-1993 era.

4 Barbara Johnson, "Canadian Foreign Policy and Fisheries," in Barbara Johnson and Mark Zacher, eds., *Canadian Foreign Policy and the Law of the Sea* (Vancouver: University of British Columbia Press, 1977), 52–99; Christian Lequesne, "Fisheries Policy: Letting the Little Ones Go?" in Helen Wallace, William Wallace and Mark A. Pollack, eds., *Policy-Making in the European Union*, 5th ed. (New York: Oxford University Press, 2005), 353–76.

5 Lequesne, "Fisheries Policy," 358. Lequesne writes with reference to Europe, but the point applies equally to Canada.

6 Peter Clancy, "Chasing Whose Fish? Atlantic Fisheries Conflicts and Institutions," in Mark

Sproule-Jones, Carolyn Johns and B. Timothy Heinmiller, eds., *Canadian Water Politics: Conflicts and Institutions* (Montreal and Kingston: McGill-Queen's University Press, 2008), 262–65.

7 William E. Schrank, "The Newfoundland Fishery: Ten Years After the Moratorium," *Marine Policy* 29 (2005): 417–18; Report of the Independent Chair: MOU Steering Committee, "Newfoundland and Labrador Fishing Industry Rationalization and Restructuring, February 2011," i.

8 Johnson, "Canadian Foreign Policy and Fisheries," 54.

9 The history of the term and its antecedents is discussed in Advisory Panel on the Sustainable Management of Straddling Fish Stocks in the Northwest Atlantic, "Breaking New Ground: An Action Plan for Rebuilding The Grand Banks Fisheries," June 2005, 60–71.

10 Lequesne, "Fisheries Policy," 354. For extended discussions of the Common Fisheries Policy see: Michael Leigh, *European Integration and the Common Fisheries Policy* (London: Croom Helm, 1983); M.J. Holden and David Garrod, *The Common Fisheries Policy*, 2nd ed. (Oxford: Fishing News Books, 1996); and Robin R. Churchill and Daniel Owen, *The EC Common Fisheries Policy* (Oxford: Oxford University Press, 2010).

11 Lequesne, "Fisheries Policy," 362–63; Europa/Summaries of Legislation/Glossary, Coreper, http://europa.eu/legislation_summaries/glossary/coreper_en.htm#.

12 Lequesne, "Fisheries Policy," 362, 366.

13 Jesús Iborra Martin, Policy Department B: Structural and Cohesion Policies, European Parliament, "The Common Fisheries Policy: Practical Guide" (Provisional version), 2009, 17.

14 European Parliament, "MEPs back international agreements on fishing in the North Atlantic," *Press Release*, October 18, 2010.

15 European Commission, "The Common Fisheries Policy: A User's Guide" (2009), 22. See also Constance Johnson, "Fisheries Enforcement in European Community Waters Since 2002—Developments in Non-Flag Enforcement," *International Journal of Marine and Coastal Law* 23 (2008): 249–70.

16 Lequesne, "Fisheries Policy," 361; ORCA Inc., "Select Drivers in the European Union in Relation to NAFO Management and Decisions," prepared for the Advisory Panel on Sustainable Management of Straddling Stocks in the Northwest Atlantic (February 2005), 12; Victor Vázquez Seijas, "The Future for Fisheries-Dependent Communities: The Fisheries-Dependent Region of Galicia," *Journal of Northwest Atlantic Fisheries Science* 23 (October 1998): 175–84.

17 European Parliament, Directorate General Internal Policies of the Union, "Fisheries in Portugal," IPOL/B/PECH/NT/2006_04, 26/07/2006; ORCA Inc., "Select Drivers," 12.

18 Article XI. 3 requires that the Fisheries Commission "seek to ensure consistency between:

any proposal that applies to a stock or group of stocks occurring both within the Regulatory Area and within an area under the fisheries jurisdiction of a coastal State, or any proposal that would have an effect through species interrelationships on a stock or group of stocks occurring in whole or in part within an area under the fisheries jurisdiction of a coastal State; and

any measures or decisions taken by the coastal State for the management and conservation of that stock or group of stocks with respect to fishing activities conducted within the area under its fisheries jurisdiction."

Article XI. 4 requires that "Proposals adopted by the Commission for the allocation of catches in the Regulatory Area shall take into account the interests of Commission members whose vessels have traditionally fished within that Area, and, in the allocation of catches from the Grand Bank and Flemish Cap, Commission members shall give special consideration to the Contracting Party whose coastal communities are primarily dependent on fishing for stocks related to these fishing banks and which has undertaken extensive efforts to ensure the conservation of such stocks through international action, in particular, by providing surveillance and inspection of international fisheries on these banks under an international scheme of joint management." (The Contracting Party referred to is Canada.)

Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO Convention), http://www.nafo.int/about/frames/about.html.

The EU was a reluctant signatory to the NAFO Convention, having opposed Canada's special interest outside 200 miles through the "consistency" and "special consideration" clauses. Throughout the UN Law of the Sea negotiations the Union had taken the position that coastal states should have no more rights outside 200 miles than other states. It decided to adopt the Convention for other reasons, including the fact that it was the first international agreement it signed to which the Soviet Union was also a party. The Soviet Union had not yet recognized the EU. The Soviets' acceptance of the EU as an equal member of NAFO was an important step for the EU in achieving international acceptance.

19 Scott Parsons, "Governance of Straddling Stocks in the Northwest Atlantic: A Review of the Northwest Atlantic Fisheries Organization," Prepared for the Advisory Panel on Straddling Stocks (March 5, 2005), 5.

20 Adela Rey Aneiros, "Spain, the European Union, and Canada: A New Phase in the Unstable Balance in the Northwest Atlantic Fisheries," *Ocean Development*

and International Law 42, nos. 1–2 (2011): 162. For the text of the proposed new Convention see "Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries," GC 07/4, http://www.nafo.int/about/frames/activities.html.

21 The UN Fish Agreement, sometimes referred to as the UN Fish Stocks Agreement (UNFSA), is formally known as the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention for the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

1 | THE LONG-TERM FISHERIES AGREEMENT

This chapter draws on Donald Barry, "The Canada-European Community Long Term Fisheries Agreement: Internal Politics and Fisheries Diplomacy," published in the *Journal of European Integration* 9, no. 1 (Autumn 1985): 5–28.

1 Terence C. Bacon, Director General, Bureau of Legal Affairs, Department of External Affairs, "Canada's 200-Mile Fishing Zone: The First Five Years," Chilean Conference on EEZ and Fisheries Regime," October 28–30, 1981.

2 Michael Leigh, *European Integration and the Common Fisheries Policy* (London: Croom Helm, 1983), 128, 130.

3 *European Report*, no. 524, July 19, 1978, and no. 528, August 3, 1978; Agreement on Fisheries Between the Government of Canada and the European Economic Community, July 28, 1978; *Financial Post* (Toronto, ON), July 14, 1978; confidential sources.

4 Agreement on Fisheries Between the Government of Canada and the European Economic Community, July 28, 1978.

5 *European Report*, no. 526, July 26, 1978, no. 535, September 23, 1978, no. 570, February 7, 1979, and no. 573, February 17, 1979; *Europe*, no. 2555, November 8, 1978; Leigh, *European Integration*, 129.

6 *European Report*, no. 574, February 21, 1979, and no. 608, June 30, 1979.

7 *International Canada*, March 1979, 102, and June 1979, 153; Agreement in the Form of an Exchange of Letters Between the Government of Canada and the European Economic Community, Concerning their Agreement on Fisheries, Brussels, June 28, 1979.

8 *Europe*, no. 2782, November 5/6, 1979, and no. 2824, January 11, 1980; *European Report*, no. 646, December 15, 1979, and no. 654, January 23, 1980; Agreement in the Form of an Exchange of Letters Between the European Economic Community and the Government of Canada, Concerning the Amendment and Extension of their Agreement on Fisheries of June 28, 1979, *Official Journal of the European Communities (OJEC)*, no. L 312, December 8, 1979. See also Council of the European Communities, *Press Release*, April 14, 1980.

9 Canada, Task Force on Atlantic Fisheries, Navigating Troubled Waters: A New Policy for the Atlantic Fisheries (Ottawa: Minister of Supply and Services Canada, 1983), 23.

10 *International Canada*, February 1979, 66; *Eurofish Report*, no. 61, September 5, 1979; *European Report*, no. 646, December 15, 1979; confidential sources.

11 Leigh, *European Integration*, 92–93, 129–30; *Eurofish Report*, no. 82, June 25, 1980.

12 *European Report*, no. 695, June 21, 1980; *Eurofish Report*, no. 81, June 25, 1980; confidential sources.

13 The EU's apparent concession would provide little benefit to Canada. Under GATT this quantity was open to all exporting countries, including those with even more preferential quotas. Thus, it would be largely used up before Canada could take advantage of it. Norway and Iceland could use this tariff rate quota when theirs were filled or even, as they did, use it first to keep others out of the EU market, after which they would use their own quotas.

14 Agreement on Fisheries Between the European Economic Community and the Government of Canada, December 30, 1981, *OJEC*, no. L 379, December 31, 1981. In Article VII. 1, "The two Parties reaffirm their attachment to the cooperation provided for in the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, to which they are Contracting Parties and, in particular, in Article XI, paragraph 4, thereof."

15 *Eurofish Report*, no. 97, February 18, 1981; confidential sources.

16 *Eurofish Report*, no. 93, December 10, 1980, no. 97, February 18, 1991, and no. 98, March 14, 1981.

17 *Evening Telegram* (St. John's, NL), December 11, 1980; confidential sources. The Nova Scotia industry was also affected by the LTA, although in a more limited way than its Newfoundland counterpart. Opinion within the Nova Scotia industry was divided. Inshore fishers, who did not fish in areas assigned to the EU but expected to gain from the LTA tariff concessions, supported the pact. However, offshore fishers and processors, many of whom operated trawlers in the Union's designated fishing zones, opposed it. The Nova Scotia government initially supported the LTA but later came out against it. *Chronicle Herald* (Halifax, NS), March 4, 1981 and October 27, 1981.

18 *Globe and Mail* (Toronto, ON), January 1, 1981; *Europe*, no. 3079, February 16/17, 1981; *Eurofish Report*, no. 96, February 4, 1981, and no. 97, February 18, 1981; Leigh, *European Integration*, 130–31.

19 *Europe*, no. 3080, February 18, 1981; *Eurofish Report*, no. 96, February 4, 1981; *European Report*, no. 752, February 18, 1981.

20 *Eurofish Report*, no. 97, February 18, 1981.

21 *The Times* (London, UK), March 7, 1981.

22 *European Report*, no. 759, March 14, 1981; *Eurofish Report*, no. 99, March 18, 1981; *Europe*, no. 3101, March 19, 1981.
23 *The Times*, March 21, 1981.
24 *The Times*, March 25, 1981.
25 *European Report*, no. 763, March 28, 1981.
26 Leigh, *European Integration*, 113–14; confidential sources.
27 *Daily News* (St. John's, NL), January 5, 1982; confidential sources.
28 *Eurofish Report*, no. 119, December 22, 1981; *European Report*, no. 832, December 24, 1981; confidential sources.
29 Agreement on Fisheries Between the European Economic Community and the Government of Canada, December 30, 1981, *OJEC*, no. L 379, December 31, 1981.
30 Confidential sources.
31 Leigh, *European Integration*, 132; *Eurofish Report*, no. 120, January 13, 1982, and no. 121, January 27, 1982; *Europe*, no. 3288, January 15, 1982, and no. 3293, January 22, 1982; confidential sources.
32 Confidential sources.
33 *Globe and Mail*, March 12, 1982; *Evening Telegram*, March 12, 1982; *Eurofish Report*, no. 125, March 24, 1982; Donald Barry, *Icy Battleground: Canada, the International Fund for Animal Welfare, and the Seal Hunt* (St. John's: Breakwater Books, 2005).
34 *European Report*, no. 903, November 6, 1982, and no. 920, January 15, 1983; *Globe and Mail*, January 28, 1983; confidential sources.
35 Department of Fisheries and Oceans, "Reduced Cod Allocation for EEC," *Press Release*, March 4, 1983.
36 *Globe and Mail*, March 1, 1983, and March 2, 1983.
37 Agreement in the Form of an Exchange of Letters Between the Government of Canada and the European Economic Community Concerning their Fisheries Relations, December 30, 1983.
38 *Chronicle Herald*, December 2, 1983; *Evening Telegram*, December 21, 1983; *Globe and Mail*, December 21, 1983.

2 | FROM CONFLICT TO COOPERATION

1 L.S. Parsons, *Management of Marine Fisheries in Canada*, Canadian Bulletin of Fisheries and Aquatic Sciences, no. 225, 1993, 273–74.
2 Parsons, *Management of Marine Fisheries in Canada*, 273–74; *Eurofish Report*, no. 204, May 9, 1985; *Evening Telegram* (St. John's, NL), May 11, 1985, June 18, 1985, and June 27, 1985; *Canadian Press*, January 23, 1986.
3 This discussion is based on Parsons, *Management of Marine Fisheries in Canada*, 265–71.
4 Commission Communication to the Council, "Guidelines and Initiatives for the Development of the Common Fisheries Policy," June 12, 1986, COM (86) 302 final. The implementation of this policy, which led to severe overfishing, was not only harmful to the Northwest Atlantic resources but also

devastated many of the fisheries of developing countries with which the EU signed agreements. In these agreements the Union primarily provided money for quotas. Often the recipient countries lacked an adequate management system in their zones and the EU provided scientific "cooperation," which generally overestimated the amount of fish available to catch. This, combined with the lack of effective controls, led to unrestricted fishing and unsustainable catch levels.

5 Tom Wray, "Spain to Harden EEC Line on Fisheries," *National Fisherman*, November 1985, 5.

6 Karl M. Sullivan, "Conflict in the Management of a Northwest Atlantic Transboundary Stock," *Marine Policy* 13, no. 2 (April 1989): 128.

7 *Evening Telegram*, October 2, 1985; *Times & Transcript* (Moncton, NB), October 8, 2005; Parsons, *Management of Marine Fisheries in Canada*, 274–75.

8 Prior to this time, the Fisheries Council had routinely reviewed and adopted the results of the NAFO meetings. Although the Council had the authority to annul the European Commission's objections, it did not do so in 1985 or any subsequent year.

9 *Eurofish Report*, no. 235, July 31, 1986. Although the EU stated that it would set its unilateral quotas based on a higher, F_{max}, level of fishing, it allocated to itself all of the increased fishing at the F_{max} level and more. Even if the EU had limited its catches to its unilateral quotas, which it did not, while the other members of NAFO caught their legitimate shares of the TACs set by NAFO, the F_{max} level would have been significantly overfished for some stocks. This unilateral claim had no basis in science but reflected the EU Common Fisheries Policy's commitment to find fishing opportunities for its distant water fleet in apparent disregard for the costs.

10 *Eurofish Report*, no. 226, March 27, 1986, and no. 230, May 22, 1986; *Toronto Star* (Toronto, ON), May 7, 1986; *Evening Telegram*, May 21, 1985.

11 *Toronto Star*, May 27, 1986.

12 Government of Canada, "New Fisheries Relations Policies Announced," *News Release*, June 13, 1986. For many years the Spanish fleet had fished close to the 200-mile limit, and at times some of these boats followed the fish into Canada's waters. This reflected the historic distribution of the stocks, which were primarily found in greater abundance inside the Canadian zone. When Canadian patrol vessels approached the Spanish vessels fled back across the line. Some were apprehended and fined. The owners were prepared to pay the fines as "a cost of doing business." With the higher fines the Spanish fleet, their past claims of faulty navigation equipment resolved, suddenly found the boundary line, demonstrating that real financial penalties can restrain illegal fishing practices.

13 *Eurofish Report*, no. 233, July 3, 1986.

14 Parsons, *Management of Marine Fisheries in Canada*, 275.

15 *Chronicle Herald* (Halifax, NS), September 12, 1986, and September 13, 1986; Eurofish Report, no. 248, February 19, 1987.

16 *Evening Telegram*, November 21, 1986; Fisheries Council of Canada, "Foreign Overfishing: A Strategy for Canada," February 1987; *Toronto Star*, February 14, 1987.

17 Parsons, *Management of Marine Fisheries in Canada*, 275; *Eurofish Report*, no. 254, May 14, 1987.

18 *Chronicle Herald*, September 18, 1987; *Eurofish Report*, no. 268, November 26, 1987.

19 *Times & Transcript*, January 29, 1988. See also *Europe*, no. 4683, December 17, 1987; *Eurofish Report*, no. 270, December 22, 1987. The EU's own NAFO reported quotas and catches show that although the Union increased its unilateral quotas, its actual catches fell, reflecting the declining state of the stocks. For example, for 1986 the EU fleet reported to NAFO cod catches at about the same level as its unilateral cod quotas of 103,176t. The EU's official NAFO cod quotas, not including any 2J3KL cod, were only 21,215t. For 1987, the Union unilaterally increased its cod quotas for 1988 to 110,300t, while its NAFO quota fell to 18,810t. It reported cod catches of 59,944t. For 1988, For 1988, the EU accepted the NAFO moratorium on 3M cod but also increased its unilateral quota for 2J3KL cod, bringing its unilateral cod quotas to 110,400t, and set for itself unilateral quotas for six other NAFO stocks, bringing its total unilateral quotas to 188,650t compared to its NAFO quotas of 19,260t. However, that year the decline in the stocks started to hit the EU fleet. Its total cod catch reported to NAFO was only about 47,000t. Between 1986, when the Union began setting unilateral cod quotas until 1992, when it stopped, without external restraints its cod catches fell by more than 75 percent. While all other NAFO members respected the scientific advice, the Union continued to support its fleet's perceived immediate needs to the detriment of all other NAFO parties. Canada had similar problems with the decline in quotas and its effect on the Canadian fleet. However, strict conservation measures were adopted, even if their adoption may have been slow at times. The reduction in quotas in the Northwest Atlantic had a significant effect on most of Canada's fleet, which only fished in the Northwest Atlantic. The EU's distant water fleet in the NRA was significantly less affected.

20 *Eurofish Report*, no. 264, October 1, 1987, and no. 273, February 28, 1988; *Globe and Mail* (Toronto, ON), October 2, 1987.

21 *Eurofish Report*, no. 287, September 1, 1988.

22 *Eurofish Report*, no. 289, September 29, 1988; *Globe and Mail*, September 14, 1988, and September 15, 1988; *Ottawa Citizen* (Ottawa, ON), September 16, 1988.

23 *Ottawa Citizen*, December 14, 1988. See also *Eurofish Report*, no.

293, November 24, 1988, and no. 295, December 15, 1988.

24 Department of Fisheries and Oceans, "Northern Cod TAC for 1989 Announced," *News Release*, February 8, 1989.

25 John C. Crosbie, *No Holds Barred: My Life in Politics* (Toronto: McClelland & Stewart, 1997), 378.

26 William E. Schrank, "The Newfoundland Fishery: Ten Years After the Moratorium," *Marine Policy* 29, no. 5 (2005): 410. See also Alan Christopher Finlayson, *Fishing for Truth: A Sociological Analysis of Northern Cod Stock Assessments from 1977 to 1990*, Institute of Social and Economic Research, Memorial University, Social and Economic Studies, no. 52, 1994; Leslie Harris, "The East Coast Fisheries," in Bruce Mitchell, ed., *Resource and Environmental Management in Canada: Addressing Conflict and Uncertainty* (Toronto: Oxford University Press, 1995), 130–50; George A. Rose, *Cod: The Ecological History of the North Atlantic Fisheries* (St. John's: Breakwater Books, 2007); Alex Rose, *Who Killed the Grand Banks? The Untold Story Behind the Decimation of One of the World's Greatest Natural Resources* (Mississauga, ON: John Wiley & Sons Canada, 2008); and Gus Etchegary, *Empty Nets: How Greed and Politics Wiped Out the World's Greatest Fishery* (Portugal Cove–St. Philip's, NL: Boulder Publications, 2013).

27 In its retrospective analysis of the northern cod stock in 1989, the Canadian Atlantic Fisheries Scientific Advisory Committee determined that a major factor contributing to the perilous condition of the stock was that the Canadian TACs had been set too high because much of the catch reporting data of the 1960s and 1970s, on which the TACs had been based, was inaccurate. European fleets were blamed because of their blatant disregard for conservation after the EU decided, in 1985, to conduct an unrestricted fishery.

28 *Globe and Mail*, April 1, 1989; Michael Harris, *Lament for an Ocean: The Collapse of the Atlantic Cod Fishery: A True Crime Story*, updated ed. (Toronto: McClelland & Stewart, 1999), 111–15.

29 Department of Fisheries and Oceans, "Report on Northern Cod Released," *News Release*, May 20, 1989; confidential sources.

30 *Financial Post* (Toronto, ON), April 10, 1989.

31 *Eurofish Report*, no. 303, April 27, 1989, and no. 305, May 25, 1989.

32 *Eurofish Report*, no. 306, June 8, 1989.

33 *Eurofish Report*, No 306, June 8, 1989; *Globe and Mail*, June 3, 1989.

34 *Globe and Mail*, September 12, 1989; *Eurofish Report*, no. 314, September 28, 1989. The official's claim was incorrect. At the time, fishing vessels from NAFO members Norway, Iceland, and Denmark did not receive allocations in Canadian waters. The other NAFO parties did so as part of bilateral agreements signed between 1977 and 1979. These agreements as well as the

NAFO Convention had recognized the special interest of Canada as the coastal state in the NAFO Regulatory Area. The EU had refused such agreements, even though Spain and Portugal had signed similar pacts prior to their accession to the EU.

35 "Relative stability" was a key principle built into the EU's Common Fishery Policy. It meant that as TACs changed, the relative quota shares of the stocks would remain constant among the member states. The same principle applied in NAFO. However, the EU's unilateral quotas violated this principle. For example, in 1989, the NAFO TAC for the 3NO cod stock on the Tail of the Grand Banks was 25,000t. The EU's share at relative stability was 37 percent of the TAC. However, with its unilateral quota set at 26,400t, the Union claimed more than 100 percent of the TAC set by NAFO. Further, by its actions it created a new TAC of 42,180t (the NAFO TAC of 25,000t minus the EU's NAFO-allocated quota of 9,220t plus the Union's unilateral quota of 26,400t), and the EU claimed 62.2 percent of this EU-imposed TAC. For witch flounder in the same area the situation was even worse. The EU had no traditional fishery and hence a zero quota. However, through its objection it set a unilateral quota of 4,000t for this stock. The entire TAC for the stock was 5,000t. The EU claimed the right to 80 percent of its newly created TAC, even though it had no significant catches before it began using the objection procedure in 1985. The most egregious attack on relative stability was on the 3LN redfish stock. The TAC in 1987 was 25,000t, which was allocated to Contracting Parties that had traditionally fished that stock. The EU's member states had never done so. Accordingly, the Union's quota was 0t, which it had always been, although as a result of its objection the EU allowed its fleet to catch 28,179t that year. The EU fleet caught more than the entire TAC itself. With these catches the EU raised its proportion from 0 to 53 percent of the total catch envisaged for that year. This attack on the principle of relative stability affected all NAFO members and prompted the unanimous support, except for the EU, for this resolution.

36 *Globe and Mail*, September 16, 1989.

37 Government of Canada, "Canada Announces Public Information Campaign to End EC Overfishing," *News Release*, October 6, 1989; Department of External Affairs, "Canada Appoints Ambassador for Marine Conservation," *Press Release*, October 6, 1989.

38 Department of External Affairs. "Information Campaign on Overfishing in the Northwest Atlantic, Activity Summary, June 1989–December 1009;" *Globe and Mail*, October 14, 1989.

39 *Globe and Mail*, December 13, 1989; *Calgary Herald* (Calgary, AB), December 21, 1989.

40 *Calgary Herald*, December 20, 1989.

41 *Ottawa Citizen*, January 19, 1990, and January 2, 1990.
42 *Globe and Mail*, January 24, 1990.
43 *Globe and Mail*, January 20, 1990. The Spanish and Portuguese fishing effort for flatfish was a new development. The EU had received very small NAFO quotas because of a lack of a traditional fishery. These were based on the historical catches of the French fleet operating out of St. Pierre and Miquelon. The quotas assigned to the EU were in turn traditionally allocated to France. This changed when the EU onslaught on the fish stocks began in 1986, and Spain and Portugal massively entered the flatfish fishery.
44 *Globe and Mail*, January 23, 1990.
45 Independent Review of the State of the Northern Cod Stock, "Final Report," February 1990 (Ottawa: Minister of Supply and Services Canada, 1990); *Eurofish Report*, no. 327, April 12, 1990.
46 *Globe and Mail*, May 8, 1990; *Eurofish Report*, no. 330, May 24, 1990.
47 *Ottawa Citizen*, May 11, 1990; *Eurofish Report*, no. 330, May 24, 1990.
48 *Chronicle Herald*, May 16, 1990.
49 Institute of Fisheries and Marine Technology, "Conference on the Conservation and Management of the Living Resources of the High Seas," St. John's, NL, September 5–7, 1990.
50 *Eurofish Report*, no. 339, September 27, 1990. See also no. 336, August 16, 1990, and no. 338, September 13, 1990.
51 "Report of the Implementation Task Force on Northern Cod (Summary), October 1990 (Ottawa: Minister of Supply and Services Canada, 1990), 4–5; *Globe and Mail*, December 15, 1990.
52 *Eurofish Report*, no. 344, December 6, 1990.
53 *Globe and Mail*, December 1, 1990.
54 Government of Canada, "Canadian Ministers Object to EC Commission's Fishing Quota proposals," *News Release*, no. 286, December 11, 1990; *Eurofish Report*, no. 345, December 20, 1990. The EU's unilateral quotas for the redfish and witch flounder stocks were largely based on the EU's unrestricted catches of these stocks in 1986 and 1987, under the Union's objections to NAFO TACs and quotas. (The Commission had not set any quota limits for these stocks for those years.) Reported EU catches in 1986 and 1987 averaged about 26,000t and 3,400t for these stocks, respectively. These catch levels were used by the Union to set unilateral quotas for these stocks in 1988 and 1989 at 20,000t and 4,000t, respectively. However, the EU reported catches for these stocks in 1990 had declined to 7,311t and 1,411t. Therefore, the levels of the Union's unilateral quotas set for these stocks in 1991 (6,000t and 1,000t) were not a serious effort to cut the fleet's fishing possibilities. Since 1986, through the use of the objection procedure, the EU had created a dependency on two new fisheries for its fleets, which it could not eliminate. Further, despite the EU's

agreement to accept most of the NAFO quotas for 1991, its reported catches show that most of its own unilateral and NAFO quotas were exceeded.

55 *Eurofish Report*, no. 345, December 20, 1990, and no. 344, December 6, 1990.

56 *Eurofish Report*, no. 350, March 14, 1991.

57 Government of Canada, "Canada Calls for Emergency Decision to Improve Controls on Fishing," *News Release*, February 28, 1991.

58 Department of Fisheries and Oceans, "Monitoring of Fishing Activity Outside 200 Miles," *News Release*, May 14, 1991.

59 *Globe and Mail*, July 13, 1991, August 28, 1991, September 14, 1991, December 17, 1991, and December 19, 1991; *Eurofish Report*, no. 364, September 26, 1991, and no. 370, December 19, 1991.

60 *Globe and Mail*, January 6, 1992 and January 10, 1992.

61 *Globe and Mail*, February 18, 1992, February 25, 1992, and February 29, 1992; *Eurofish Report*, no. 374, February 27, 1992.

62 *Globe and Mail*, March 3, 1992, March 4, 1992, March 30, 1992, April 1, 1992, and April 2, 1992; confidential sources.

63 European Community "EC/ Canada Relations in the Fisheries Sector," NR (92) 5, April 2, 1992.

64 *Globe and Mail*, April 2, 1992. See also Government of Newfoundland and Labrador, "Questions and Answers on Foreign Overfishing," 21 May 1992.

65 *Globe and Mail*, April 3, 1992, April 22, 1992, and April 24, 1992; *Europe*, no. 5717, April 25, 1992.

66 *Globe and Mail*, May 16, 1992; *Europe*, no. 5742, June 3, 1992; European Community, "The Scientific Council of NAFO Assesses the Status of Cod," NR (92) 10, June 5, 1992; *Eurofish Report*, no. 382, June 18, 1992.

67 Raymond B. Blake, *From Fishermen to Fish: The Evolution of Canadian Fisheries Policy* (Toronto: Irwin Publishing, 2000), 86; *Globe and Mail*, July 3, 1992

68 J. Alan Beesley and Malcolm Rowe, "Canada and Spain: A Conservation Dispute," L.O.S. Lieder, reprinted in the *Telegraph-Journal* (St. John, NB), May 16, 1995; *Eurofish Report*, no. 395, December 21, 1992.

69 *The Packet* (Clarenville, NL), December 29, 1992, and January 5, 1993; Crosbie, *No Holds Barred*, 396; Agreement in the Form of an Exchange of Letters Between the European Community and the Government Concerning Fisheries Relations, *Official Journal of the European Communities (OJEC)*, no. L 340, December 12,1993.

3 | THE TURBOT WAR

This chapter draws upon Donald Barry, "The Canada-European-Union Turbot War: Internal Politics and Transatlantic Bargaining," published in the *International Journal* 53, no. 2 (Spring 1998): 253–84.

1 House of Commons, *Debates*, January 18, 1994, 10.

2 *Eurofish Report*, no. 421, January 20, 1994; *Chronicle Herald* (Halifax, NS), January 25, 1994.

3 *Evening Telegram* (St. John's, NL), February 26, 1994.

4 *Globe and Mail* (Toronto, ON), April 4, 1994.

5 Government of Canada, "Canada Takes Action to End Foreign Overfishing," NR-HQ-94-30E, May 10, 1994; *Chronicle Herald*, May 11, 1994; *Eurofish Report*, no. 432, June 23, 1994. For a discussion of the Coastal Fisheries Protection Act and its impact, see Douglas Day, "Tending the Achilles' Heel of NAFO: Canada Acts to Protect the Nose and Tail of the Grand Banks," *Marine Policy* 19, no. 4 (1995): 257–70.

6 Claude Emery, "Overfishing Outside the 200-mile Limit: Atlantic Coast," *Current Issue Review* 90-6E, Research Branch, Library of Parliament, September 17, 1996, 13–14 and App. 3.

7 Northwest Atlantic Fisheries Organization (NAFO), *Scientific Council Reports, 1994* (Scientific Council Meeting, 8–22 June 1994), 108.

8 *Globe and Mail*, September 24, 1994; *Eurofish Report*, no. 439, September 29, 1994; NAFO, Report of the Fisheries Commission, 16th Annual Meeting, 19–23 September 1994, NAFO/FC Doc. 94/13; *Eurofish Report*, no. 445, December 22, 1994. The figure of 40,000t that was in the Scientific Council report was not a recommendation for a catch level. It was intended to demonstrate the Council's view that if the fishing pressure remained as high as it had been in the previous year a catch of about 40,000t could be expected compared to the EU's 1993 catch of close to 50,000t. The Council also made it clear that it advised a significant reduction in the level of fishing and warned of the need to reduce catches.

9 Brian Tobin, *All in Good Time* (Toronto: Penguin Canada, 2002), 95, 95–96; *Eurofish Report*, no. 434, July 21, 1994; confidential sources.

10 *Europe*, no. 6397, January 13, 1995; *European Report*, no. 2007, January 14, 1995; *Eurofish Report*, no. 446, January 19, 1995.

11 *Evening Telegram*, January 14, 1995.

12 *Chronicle Herald*, February 1, 1995.

13 Fisheries and Oceans, "Tobin Says NAFO Must Decide Equitable Sharing Arrangement for Greenland Halibut," *News Release*, January 27, 1995.

14 Tobin, *All in Good Time*, 96–100; confidential sources.

15 NAFO, Report of the Fisheries Commission – Special Meeting, 30 January–1 February 1995, Brussels, Belgium, NAFO/FC Doc. 95/2; Tobin, *All in Good Time*, 99–102; Michael Harris, *Lament for an Ocean: The Collapse of the Atlantic Cod Fishery, A True Crime Story*, updated ed. (Toronto: McClelland & Stewart, 1999), 13–14. Canada's lobbying efforts are discussed in Adam Gough, "The Turbot War: The Arrest of the Spanish Vessel *Estai* and its Implications for

Canada-EU Relations," MA Thesis, University of Ottawa, 2009, 49–50.

16 *Globe and Mail*, February 2, 1995.

17 *Europe*, no. 6212, February 3, 1995.

18 *Globe and Mail*, February 8, 1995: *Europe*, no. 6419, February 13/14, 1995; Tobin, *All in Good Time*, 103–7, 109–12.

19 Tobin, *All in Good Time*, 103–4; Europe, no. 6420, February 15, 1995.

20 *Globe and Mail*, February 16, 1995.

21 *Evening Telegram*, February 18, February 21, and February 22, 1995.

22 *Evening Telegram*, February 21, 1995.

23 *Globe and Mail*, February 24, 1995.

24 Tobin, *All in Good Time*, 109; Robert H. Edwards, "The 1995 Canada-European Union Turbot Crisis: Canada's Use of Force in Fisheries Diplomacy," MA Thesis, Dalhousie University, 1996, 159–68.

25 Tobin, *All in Good Time*, 114, 112–14; Department of Foreign Affairs and International Trade, "Canada Urges EU to Respect NAFO Halibut Allocation and Negotiate Outstanding Issues," *News Release*, March 2, 1995.

26 *Europe*, no. 6434, March 6–7, 1995; *European Report*, no. 2022, March 8, 1995.

27 *Calgary Herald* (Calgary, AB), March 7, 1995; *Sources Say*, no. 786, March 7, 1995, *Europe*, no. 6435, March 8, 1995; *Evening Telegram*, March 8, 1995.

28 *Globe and Mail*, March 9, 1995.

29 Jean Chrétien, *My Years as Prime Minister* (Toronto: Alfred A. Knopf Canada, 2007), 109, 108–9; Tobin, *All in Good Time*, 116–18, 123–24.

30 *Toronto Sun* (Toronto, ON), March 19, 1995; *Globe and Mail*, March 10, 1005.

31 *Globe and Mail*, March 10, 1995; Harris, *Lament for an Ocean*, 1–5; Gough, "The Turbot War," 59–63.

32 James Bartleman, *Rollercoaster: My Years as Jean Chrétien's Diplomatic Advisor, 1994–1998* (Toronto: McClelland & Stewart, 2005), 101.

33 *Evening Telegram*, March 10, 1995.

34 European Union, "Commission Statement on Canadian Attempted Seizure of European Fishing Vessel," NR (95) 11, March 9, 1995.

35 *Sources Say*, no. 793, March 10, 1995; *Financial Times* (London, UK), March 11, 1995.

36 *Calgary Herald*, March 11, 1995.

37 *European Report*, no. 2023, March 11, 1995.

38 Gough, "The Turbot War," 65.

39 *Globe and Mail*, March 13, 1995; *Calgary Herald*, March 13, 1995; Bartleman, *Rollercoaster*, 101–3.

40 *Globe and Mail*, March 14, 1995; *Calgary Herald*, March 14, 1995.

41 *Globe and Mail*, March 14, 1995; *Manchester Guardian Weekly* (Manchester, UK), March 19, 1995.

42 *European Report*, no. 2024, March 15, 1995; *Globe and Mail*, March 15, 1995.

43 *Globe and Mail*, March 15, 1995. The "official" logbook significantly under-reported the catch in order to allow the vessel to remain on the fishing grounds for the entire season. As well, failure to file accurate catch reports when the vessel offloaded its catch in port would lead to lower taxes having

to be paid by the owner and an opportunity to move large volumes of fish onto the grey market. Tax evasion in the fisheries sector in Spain and Portugal was well known in the industry and to the two countries' governments.

44 *Europe*, no. 6441, March 16, 1995.

45 *European Report*, no. 2045, March 18, 1995; *MacLean's*, March 27, 1995, 18–19.

46 *Globe and Mail*, March 16, 1995.

47 *Calgary Herald*, March 17, 1995, and March 18, 1995; *Europe*, no. 6443, March 18, 1995; *European Report*, no. 2025, March 18, 1995, and no. 2026, March 21, 1995; *Globe and Mail*, March 18, 1995, and March 21, 1995; *Sources Say*, no. 801, March 16, 1995; Department of Foreign Affairs and International Trade, "Conservation and Enforcement Primary Concerns in Fisheries Dispute," *News Release*, March 18, 1995; confidential sources.

48 *Globe and Mail*, March 18, 1995; *Evening Telegram*, March 21, 1995.

49 *Calgary Herald*, March 17, 1995, and March 19, 2005.

50 Bartleman, *Rollercoaster*, 103–5; *Globe and Mail*, March 22, 1995; *Calgary Herald*, March 24, 1995.

51 *Sources Say*, 28 March 1995; *Gazette* (Montreal, QC), March 28, 1995; *Europe*, no. 6449, March 27–28, 1995; *Calgary Herald*, March 28, 1995. The inability of EU fisheries inspectors to find evidence of infractions by the fleet was a long-standing enforcement issue. A vessel would be inspected at sea, a serious infringement found, and a citation issued. But when the ship returned to its home port no violation could be detected. It was easy for vessels to divert to another port, transfer or dump their catch at sea, or discard small-mesh nets.

52 *Globe and Mail*, March 29, 1995. Tobin sent Rowat back to Brussels after rumors surfaced that the Department of Foreign Affairs was lobbying Chrétien and the Privy Council Office to take charge of the negotiations because of fisheries officials' alleged inflexibility. Smith reportedly complicated Rowat's task in Brussels by implying that the government was not fully behind Tobin. Earlier, Smith had tried to persuade Tobin to alter his stance, asking whether it was worth damaging relations with the EU for the sake of "some smelly little fish." Tobin notes that, in contrast, officials abroad performed their duties admirably. Among these was Jacques Roy, the ambassador to the EU, who, along with Gianluigi Giola, the European Commission's Deputy Director General for External Relations, played an important role in helping to keep the lines of communication open between the two sides. Tobin, *All in Good Time*, 117, 133–36; Gough, "The Turbot War," 77–78.

53 Brian Tobin, *All in Good Time*, 132.

54 *Globe and Mail*, March 30, 1995.

55 *Financial Times* (London, UK), March 29, 1995; *Eurofish Report*, no. 451, March 30, 1995; *Europe*, no. 6452, March 31, 1995. For the text of the note, see European Union, "Canada-EU fisheries Dispute," *News*, NR (95) 18, March 30, 1995.

56 *Calgary Herald*, March 31, 1995.

57 *Calgary Herald*, March 31, 1995; *Europe*, no. 6452, March 31, 1995. Some commentators have suggested that the British government supported Canada for reasons of historic ties and sentiment. But it is unlikely that these factors overrode domestic considerations. Readers will recall that the UK blocked approval of the long-term fisheries agreement with Canada for almost a year because the British fishing industry was dissatisfied with the pact's market access provisions, and to gain bargaining leverage on other Common Fisheries Policy matters.

58 *Chronicle Herald*, March 30, 1995.

59 *Globe and Mail*, March 30, 1995.

60 *Eurofish Report*, no. 452, April 12, 1995; *Daily News* (Halifax, NS), April 13, 1995.

61 *European Report*, no. 2031, April 8, 1995, and no. 2032, April 12, 1995; Tobin, *All in Good Time*, 133–36.

62 *European Report*, no. 2032, April 12, 1995; confidential sources.

63 *Gazette*, April 12, 1995; *Chronicle Herald*, April 13, 1995; *Financial Times*, April 13, 1995.

64 *European Report*, no. 2033, April 14, 1995.

65 *Calgary Herald*, April 13, 1995; *Globe and Mail*, April 15, 1995.

66 *Globe and Mail*, April 15, 1995, and April 17, 1995.

67 *Calgary Herald*, April 15, 1995; Bartleman, *Rollercoaster*, 110–11; Chrétien, *My Years as Prime Minister*, 110–11.

68 Chrétien, *My Years as Prime Minister*, 111; Lawrence Martin, *Iron Man: The Defiant Reign of Jean Chrétien* (Toronto: Viking Canada, 2003), 113.

69 *Globe and Mail*, April 17, 1995; Bartleman, *Rollercoaster*, 112–13; "Agreement on Fisheries Between the Government of Canada and the European Community," April 16, 1995.

70 *Sources Say*, no. 840, April 18, 1995.

71 *Financial Times*, April 18, 1995; *European Report*, no. 2034, April 19, 1995.

72 *Financial Times*, April 18, 1995. The court ruled that it did not have jurisdiction over the case because of the Canadian reservation lodged when parliament amended the Coastal Fisheries Protection Act to authorize Canadian enforcement actions on the high seas. The second legal action was a civil case brought by the owner and captain of the *Estai* for damages as a result of Canada's alleged illegal arrest and detention of the vessel and its crew. After many years of costly legal action the courts dismissed all claims against Canada.

73 *Fishing News*, April 21, 1995; *Calgary Herald*, May 1, 1995.

74 European Union, "EU-Canada Relations," *News*, NR (95) 21, May 2, 1995.

75 *Times Colonist* (Victoria, BC), May 4, 1995; *Europe*, no. 6476, May 8–9, 1995.

76 *Chronicle Herald*, September 16, 1995; *Eurofish Report*, no. 464, September 28, 1995; confidential sources.

77 See, for example, Ted L. McDorman, "Canada's Aggressive Fisheries Actions: Will They Improve the Climate

for International Agreements?" *Canadian Foreign Policy* 2, no. 3 (Winter 1994/95): 5–28. Allan Gotlieb and Charles Dalfen argue that under Prime Minister Pierre Trudeau, Canada began pursuing its national and international legal interests more aggressively, especially with regard to maritime concerns. See their "National Jurisdiction and International Responsibility: New Canadian Approaches to International Law," *American Journal of International Law* 67 (April 1973): 229–58; and Michael Harris, *Lament for an Ocean*, 9. Prime Minister Chrétien claimed that Canada's actions during the Turbot War were aimed at enhancing the prospects for an international accord. (Prime Minister Jean Chrétien, Address to the American Society of Newspaper Editors, Dallas, Texas, April 6, 1995.) In the judgment of Christopher Joyner and Alejandro Alvarez von Gustedt, the dispute contributed to the successful conclusion of the United Nations Convention on Straddling Stocks and Highly Migratory Species in August 1995. See "The Turbot War of 1995: Lessons for the Law of the Sea," *International Journal of Marine and Coastal Law* 11, no. 4 (November 1996): 425–58.

78 Donald Barry, "Toward a Canada-EU Partnership?" in Patrick M. Crowley, ed., *Crossing the Atlantic: Comparing the European Union and Canada* (Aldershot, UK: Ashgate, 2004), 35–58.

4 | NEW CONFLICTS ARISE

1 *WorldFish Report* (formerly *Eurofish Report*), no. 17, June 17, 1996, and no. 19, July 18, 1996.

2 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO Convention), Article V. 3.

3 *Evening Telegram* (St. John's, NL), September 17, 1996; *WorldFish Report*, no. 25, September 26, 1996.

4 Fisheries and Oceans Canada, "NAFO Recognizes Canadian Decision-making for Northern Cod," *News Release*, September 16, 1996.

5 *WorldFish Report*, no. 36, March 13, 1997; *Evening Telegram* (St. John's, NL), September 13, 1997; *Ottawa Citizen*, October 11, 1997.

6 *Western Star* (Cornerbrook, NL), September 22, 1997; *WorldFish Report*, no. 51, October 9, 1997. In the late 1980s the Faroe Islands' shrimp fleet began to fish on the Nose of the Banks in NAFO Division 3L. This fishery was on the same shrimp stock that straddled the Canadian 200-mile limit and had been traditionally fished inside the Canadian zone by Canada. Canada protested this fishery, claiming it was having a negative impact on the portion of the stock in Canadian waters. The Faroese insisted they had the right to an "experimental fishery." Despite objections, the Faroese continued their "experiment" for three years. In order to reduce the increased pressure on the shrimp stock as a whole, Canada sought NAFO management of

the 3L stock. NAFO agreed with the Canadian proposal and set a TAC. It also decided, in a rush at the end of a busy meeting, to allocate 90 percent of the stock to Canada and distribute the remaining 10 percent equally to all of the NAFO members. The Faroese were outraged when they received only 67t. They believed they deserved a larger share for "developing" the "new" fishery. There was no sympathy for their position among the Contracting Parties. None was prepared to give up its share to the Faroese or to be seen as rewarding a fleet that had overfished the stock. Interestingly, in the early 1990s when the EU attempted to benefit from its "discovery" of the offshore turbot stock, NAFO was consistent in not rewarding excessive unauthorized fishing. The management regime and quota shares for 3L shrimp continued in effect in subsequent years. Iceland had issues with the 3M shrimp stock on the Flemish Cap, especially about the effort management regime which would limit the number of vessels and the days they fished as a conservation measure. The shrimp fishery on the Flemish Cap is managed on the basis of effort control as a unique solution to the historic fishery. The Faroese have regularly objected to their NAFO quota share of 3L shrimp. This led to overfishing of their NAFO quota and subsequent disputes with Denmark, which represents the Faroe Islands and Greenland, in NAFO. Canada responded, on several occasions by closing its ports to Danish-represented vessels.

7 *Globe and Mail* (Toronto, ON), June 20, 1998.

8 *WorldFish Report*, no. 73, August 27, 1998.

9 *WorldFish Report*, no. 75, September 24, 1998.

10 *Telegram* (formerly *Evening Telegram*, St. John's, NL), September 22, 1998; *WorldFish Report*, no. 75, September 24, 1998, and no. 81, December 22, 1998.

11 *WorldFish Report*, no. 89, April 22, 1999; Department of Foreign Affairs and International Trade, "Better Access to EU Market for Canadian Shrimp Exports," *News Release*, April 1, 1999.

12 *WorldFish Report*, no. 100, September 22, 1999; Fisheries and Oceans Canada, "Dhaliwal Announces Canada Successful in Pushing for Conservation-Based Management at NAFO Meeting," *News Release*, September 17, 1999.

13 *Europe*, no. 7618, December 18, 1999; *WorldFish Report*, no. 106, December 21, 1999.

14 Fisheries and Oceans Canada, "Canada Announces Progress at the NAFO Annual Meeting," *News Release*, September 22, 2000; *WorldFish Report*, no. 126, October 4, 2000.

15 *WorldFish Report*, no. 92, June 3, 1999, and no. 98, August 25, 1999. The EU's concern was valid in that Canada had a different interpretation of UN Fish Agreement than the Union. Canada's new legislation allowed for regulations to authorize Canadian enforcement vessels to

act beyond NAFO limitations. The EU fought hard against this and Canada has still not fully embraced its legislative opportunities.

16 Department of Foreign Affairs and International Trade, "Canada and Spain Issue Joint Declaration on Overall Relationship and Fisheries Cooperation," *News Release* no. 65, May 23, 2001, with attached "Joint Declaration Regarding the Overall Relationship and Fisheries Cooperation."

17 *WorldFish Report*, no. 131, December 19, 2000.

18 *WorldFish Report*, no. 138, April 11, 2001, no. 136, March 14, 2001, and no. 137, March 28, 2001.

19 Advisory Panel on the Sustainable Management of Straddling Fish Stocks in the Northwest Atlantic, "Breaking New Ground: An Action Plan for Rebuilding the Grand Banks Fisheries," June 2005, 100; *Globe and Mail*, February 6, 2002; *Telegram*, February 7, 2002.

20 The depth restriction measure was critical for Canada as the primary quota holder of the small American plaice TAC. The proposed measure was intended protect the stock, which was being heavily fished as a bycatch by EU vessels in the turbot fishery. Many of them had American plaice as more than half their catch in NAFO Division 3NO, as they purposely targeted their fishery in shallow waters where the stock was abundant rather than deeper waters that were preferred by the turbot stock. Virtually all EU vessels fishing in NAFO Division 3NO exceeded the NAFO bycatch limit of 10 percent, some with levels as high as 90 percent. The EU claimed that Canada's concerns were not substantiated in the Union's catch reports. This can be explained by the fact that vessels with large catches of American plaice continued to fish for turbot in other areas during the season. When the vessels returned to port for inspection the proportion of American plaice was significantly reduced.

21 Northwest Atlantic Fisheries Organization (NAFO), *Annual Report, 2001* (Scientific Council Meeting, 13 May–14 June, 2001), 109.

22 The EU later claimed that it did not oppose limiting the depth of the turbot fishery. The claim was unfounded, as shown by the fact that it prevented a decision on the issue in 2003, at which point it seems to have disappeared from the agenda.

23 NAFO, *Annual Report, 2002* (Fisheries Commission Special Meeting, 29 January–1 February 2002), 74–75; *WorldFish Report*, no. 159, February 6, 2002; confidential sources.

24 Department of Fisheries and Oceans, "Canada Disappointed with Outcome of NAFO Meeting," *News Release*, February 5, 2002; *Telegram*, February 3, 2002; *CBC News*, "Foreign overfishing hurting Grand Banks conservation," February 7, 2002, http://www.cbc.ca/stories/print/2002/02/07/overfishing_nfld020207.

25 *WorldFish Report*, no. 159, February 6, 2002.

26 *Telegram*, March 16, 2002, and March 22, 2002; *WorldFish Report*, no. 162, March 20, 2002.

27 Department of Fisheries and Oceans, "Canada Closes Ports to Fishing Vessels from the Faroe Islands," *News Release*, March 21, 2002; "Canada Closes Ports to Fishing Vessels From Estonia," *News Release*, April 9, 2002; "Minister Thibault Pleased with Russia's Cooperation Regarding Fishing Vessel Olga," *News Release*, April 3, 2002.

28 House of Commons, Standing Committee on Fisheries and Oceans, "Foreign Overfishing: Its Impacts and Solutions, Conservation on the Nose and Tail of the Grand Banks and the Flemish Cap," June 2002, 22, 18–19.

29 Government of Newfoundland and Labrador, "Minister pleased with report from Standing Committee on Fisheries and Oceans," *News Release*, June 12, 2002 (Fisheries and Aquaculture).

30 *Globe and Mail*, June 12, 2002.

31 Fisheries and Oceans Canada, "Thibault Presses European Ministers to Address Overfishing," *News Release*. June 27, 2002.

32 *Telegram*, May 29, 2002; *WorldFish Report*, May 29, 2002.

33 *WorldFish Report*, no. 160, February 20, 2002.

34 *WorldFish Report*, no. 167, May 29, 2002.

35 *WorldFish Report*, no. 172, August 7, 2002.

36 *The Nor'wester* (Springdale, NL), August 21, 2002.

37 *Telegram*, August 27, 2002.

38 *CBC.ca/news*, "Canada must extend control of fishing, MPs say," September 3, 2002, http://www.cbc.ca/story/canada/national/2002/09/03/overfishing.html?print; *Telegram*, September 21, 2002.

39 NAFO, *Annual Report, 2002* (Fisheries Commission Annual Meeting, 16–20 September); NAFO, *Scientific Council Reports 2002* (Report of Scientific Council Meeting 6–20 June); *WorldFish Report*, no. 175, September 18, 2002; *Telegram*, September 25, 2002; confidential sources.

40 *Canada.com News*, September 23, 2002, www.canada.com/comp...={BE47D1-2337-4C67-B41A-A18F50F16734}

41 Government of Newfoundland and Labrador, "Minister confirms that NAFO is a completely ineffective organization for Newfoundland and Labrador," *News Release*, September 20, 2002 (Fisheries and Aquaculture); *National Post* (Toronto, ON), September 21, 2002; *Telegram*, September 21, 2002.

42 Fisheries and Oceans Canada, "Canada Announces New Approach to Dealing with Foreign Vessels for Serious Violations of NAFO Measures," *News Release*, September 27, 2002.

43 *Telegram*, September 28, 2002.

44 *Times & Transcript* (Moncton, NB), September 28, 2002.

45 Government of Newfoundland and Labrador, "Minister proposes custodial management to his provincial, territorial and federal counterparts," *News Release*, September 27, 2002 (Fisheries and

Aquaculture); "Minister meets with World Wildlife Fund to discuss foreign overfishing and custodial management," *News Release*, November 6, 2002 (Fisheries and Aquaculture).

46 Fisheries and Oceans Canada, "Government Responds to Standing Committee Report on Foreign Overfishing," *News Release*, November 8, 2002, and attached "Government Response to the Standing Committee on Fisheries and Oceans' Tenth Report, Foreign Overfishing: Its Impacts and Solutions (Conservation on the Nose and Tail of the grand Banks and the Flemish Cap)."

47 Fisheries and Oceans Canada, "Report on the Roundtable Forum on Improving the Management of Straddling Fish Stocks," February 20, 2003.

48 Newfoundland and Labrador All-Party Committee on the 2J3KL and 3Pn4Rs Cod Fisheries, *Stability, Sustainability and Prosperity: Charting a Future for Northern and Gulf Cod Stocks*, March 17, 2003, 6.

49 House of Commons, Standing Committee on Fisheries and Oceans, "Custodial Management Outside Canada's 200-Mile Limit," March 2003.

50 Fisheries and Oceans Canada, "$50 Million Action Plan to Assist Fishers, Plant Workers and Communities Affected by Closure of Three Cod Fisheries," *News Release*, April 24, 2003.

51 *Globe and Mail*, June 6, 2003.

52 *WorldFish Report*, no. 182, January 8, 2003.

53 *WorldFish Report*, no. 197, July 23, 2003; Fisheries and Oceans Canada, "Canada Reopens Ports to Estonian Fishing Fleet," *News Release*, December 13, 2002; "Canada Reopens Ports to Faroese Vessels, *News Release*, August 7, 2003; "Canada Cites Two EU Vessels for NAFO Violations," *News Release*, September 19, 2003.

54 This is typical EU behaviour in international fora that has been clearly seen in NAFO on numerous occasions. When the Fisheries Council has decided on a course of action for EU waters, the Union tries to have it integrated into all of its international relations. Many issues decided by the Council have been long promoted by others but strongly resisted by the EU until the Council has acted. The gap between the need for action and a reluctant Council decision, usually based on the lowest common denominator in the EU, has been the cause of significant disputes and extensive delays in adopting and implementing important conservation and enforcement measures.

55 NAFO, Report of the Fisheries Commission, Annual Meeting, September 2003; Fisheries and Oceans Canada, "Canada Makes Progress on Compliance and Conservation at NAFO," *News Release*, September 19, 2003; *WorldFish Report*, no. 209, January 21, 2004; confidential sources.

56 *WorldFish Report*, no. 201, October 1, 2003.

57 Fisheries and Oceans Canada, "New $17.5 M Investment Expands

NAFO Enforcement," *News Release*, March 16, 2004.

58 House of Commons, *Debates*, March 24, 2004, 1654.

59 Fisheries and Oceans Canada, "Government of Canada Announces New Measures to Combat Foreign Fishing," *News Release*, May 6, 2004.

60 UNFA provides for a three-working-day period for the flag state of the vessel to deal with a serious infringement allegation. Should the flag state fail to comply, UNFA allows for the inspecting state to remove the vessel from the fishing grounds, bring it to port for further inspection, and hold the vessel until the flag state has fulfilled its obligations.

61 *Globe and Mail*, May 7, 2004, and May 8, 2004.

62 Delegation of the European Commission to Canada, "EU fishing vessel returns to port after alleged infringement," *Press Release*, May 10, 2004.

63 *Chronicle Herald* (Halifax, NS), May 19, 2004; Globe and Mail, August 20, 2004, and September 3, 2004; confidential sources.

64 Fisheries and Oceans Canada, "Diplomatic Cooperation Strengthening International Partnerships," *Backgrounder*, September 2004; *Globe and Mail*, August 28, 2004.

65 The redfish stock newly found in the northern part of NAFO waters traditionally had been managed in the Eastern Atlantic by members of the Northeast Atlantic Fisheries Commission (NEAFC) but was showing signs of westward migration, and fishing activity for this stock in the previous few years had been occurring in the Northwest Atlantic and had not been counted against the NEAFC quota. The increased effort on the stock, which was justified by some NEAFC parties as outside the NEAFC quotas, convinced NEAFC and NAFO that further management was required by NAFO to avoid overfishing this stock on the high seas in the NAFO Regulatory Area. This was a case of déjà vu in relation to the arguments about 3L cod. But this time it was much easier to resolve.

66 NAFO, Report of the General Council, 26th Annual Meeting, September 13–17, 2004; Report of the Fisheries Commission, Annual Meeting, September 2004); *WorldFish Report*, no. 226, September 22, 2004.

67 Fisheries and Oceans Canada, "Progress Achieved at Annual Meeting of the Northwest Atlantic Fisheries Organization (NAFO)," *News Release*, September 19, 2004; Government of Newfoundland and Labrador, "Minister comments on outcomes of 26th annual NAFO meeting," *News Release*, September 17, 2004 (Fisheries and Aquaculture); "Who's coddling whom? asks Hearn," *Press Release*, September 20, 2004.

68 Fisheries and Oceans Canada, "Taking Action Against Overfishing Remains High Priority of Government of Canada," *News Release*, September 24, 2004.

69 Fisheries and Oceans Canada, "Minister Regan to Visit

Portugal and Britain to Advance International Fisheries Governance Agenda," *News Release*, November 5, 2004.

70 Fisheries and Oceans Canada, "Regan Addresses United Nations General Assembly: Invites Fishing Nations to St. John's Conference," *News Release*, November 16, 2004.

71 Fisheries and Oceans Canada, "Regan Appoints Members of the Advisory Panel on the Sustainable Management of Straddling Fish Stocks in the Northwest Atlantic," *News Release*, December 13, 2004; "Terms of Reference of the Advisory Panel on the Sustainable Management of Straddling Fish Stocks in the Northwest Atlantic," *Backgrounder*, December 2004.

72 *Telegram*, December 2, 2004.

73 Government of Newfoundland and Labrador, "Province encouraged by Prime Minister's signals of action on overfishing," *News Release*, December 2, 2004 (Fisheries and Aquaculture).

74 Government of Newfoundland and Labrador, "Province encouraged by permanent funding to combat overfishing," *News Release*, February 24, 2005 (Fisheries and Aquaculture); Government of Canada, "Canada's National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing," March 2005.

75 *Telegram*, May 2, 2005.

76 *National Post*, May 2, 2005.

77 Government of Newfoundland and Labrador, Trevor Taylor, Minister of Fisheries and Aquaculture, "Luncheon Address, International Conference on the Governance of High Seas Fisheries and the United Nations Fish Agreement – 'Moving from Words to Action'," May 2, 2005.

78 *CBC.CA News*, "Little love for custodial management," May 3, 2005.

79 Fisheries and Oceans Canada, "Ministerial Declaration Signals Political Commitment to Change Direction of High Seas Fisheries Governance," *News Release*, May 2, 2005.

80 Government of Newfoundland and Labrador, "Fishing Conference over, now turn commitments into action: Minister," *News Release*, May 6, 2005 (Fisheries and Aquaculture).

81 *Telegram*, May 31, 2005.

82 Government of Newfoundland and Labrador, "Overfishing violations must be prosecuted regardless of where they occur," *News Release*, May 31, 2005 (Fisheries and Aquaculture).

83 Advisory Panel on the Sustainable Management of Straddling Fish Stocks in the Northwest Atlantic, "Breaking New Ground: An Action Plan for Rebuilding the Grand Banks Fisheries," June 2005, 74, 75.

84 Fisheries and Oceans Canada, "Minister's Response to the Final Report of the Advisory Panel on Straddling Fish Stocks," *Minister's Statements*, September 1, 2005.

85 Greenpeace, *The Northwest Atlantic Fisheries Organisation: a case study in how RFMO's regularly fail to manage our oceans*, June 2005; Bruce Cox (Executive Director, Greenpeace Canada) to Prime

Minister Paul Martin, July 25, 2005.

86 World Wildlife Fund, "Cod overfished in the North-West Atlantic despite ban," *News Article*, September 20, 2005; *Telegram*, September 20, 2005; Andrew Rosenberg, Marjorie Mooney-Seus and Chris Ninnes, "Bycatch on the High Seas: A Review of the Effectiveness of the Northwest Atlantic Fisheries Organization (Toronto: WWF – Canada, 2005).

5 | REFORMING NAFO

1 "Report of the General Council and its Subsidiary Bodies (STACFAD and STACFAC)," 27th Annual Meeting, 19–23 September 2005, Tallinn, Estonia, in Northwest Atlantic Fisheries Organization (NAFO) Meeting Proceedings of the General Council and Fisheries Commission for 2005/2006, http://archive.nafo.int/open/mp/2005-06/meetproc-2005-06.pdf; Canada, "Discussion Paper – Modernization of Regional Fisheries Management Organizations," GC Working Paper 05/05; Norway, "Discussion Paper – The NAFO Convention in the Context of Recent Developments Concerning Ocean Governance," GC Working Paper 05/01; "Reform of NAFO," GC Doc 05/02; "NAFO Starts a Reform Process," *Press Release*, September 23, 2005; Fisheries and Oceans Canada, "Northwest Atlantic Fisheries Organization Commits to Reform Agenda," *News Release*, September 23, 2005.

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INDEX

D

E

F

G

H

I

J

K

L

M

N

O

P

R

S

T

U

V

W

Fishing for a Solution provides a detailed, policy-based account of the development of Canada's fisheries relations with the European Union (EU). It covers over 35 years of this contentious relationship, including the extension of Canada's fisheries jurisdiction to 200 miles in 1977, the subsequent creation of the Northwest Atlantic Fisheries Organization (NAFO) in 1979, and the development of a proposed new NAFO Convention in 2007 that still awaits formal approval as of 2014. Based on the experience of participants from inside the various negotiations and debates, the book delves deeply into the impact of internal politics on international fisheries negotiations. *Fishing for a Solution* is relevant for anyone interested in the inner workings of Canadian foreign policy or in the complexities of managing international resource agreements. It offers a unique perspective on the development of Canada-EU fisheries relations, blending the insights of a long-time observer of Canadian diplomacy with those of two former senior public servants who headed the International Affairs Directorate of Canada's Department of Fisheries and Oceans.

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